

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.21016 OF 2006

Date 05.07.2017

Between:

Suru Rammohana Rao

... Petitioner

AND

The Joint Collector, Vizianagaram and others

.....Respondents



HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.21016 of 2006

ORDER:

The Writ Petition is filed questioning notice dated 19.09.2006 purported to have been issued invoking Land Encroachment Act, 1905.

The impugned notice dated 19.09.2006 discloses that the petitioner had occupied land, in Sy.No.43-27 admeasuring Ac.0.14 cents, by constructing Sai Durga Mini Modern Rice Mill. It is the case of the petitioner that he is the owner of land, in Sy.Nos.43/1 and 2 admeasuring Ac.0.80 cents, and had not occupied the land in Sy.No.43-27.

Heard the learned counsel for the petitioner and the learned Government Pleader for Land Acquisition.

In as much as the contention of the petitioner is that he is not in occupation of land in Sy.No.43-27, and has claim only with respect to Sy.Nos.43/1 and 2, the writ petition as filed is misconceived as the petitioner has an opportunity to respond to notice under Section 7 of the Land Encroachment Act, 1905, before Section 6 order is made setting out that he has nothing to do with Sy.No.43-27, and is not in occupation of the same.

In so far as the order of this Court, in W.P.No.1942 of 2000 dated 28.06.2000, is concerned, the same is in

relation to the alleged interference of the Mandal Revenue Officer with respect to running of rice-mill on the ground that he occupied government land, particularly, burial ground and constructed rice-mill. Even assuming that the petitioner had occupied burial ground, and constructed rice-mill sometime in the year 1993, and there being no clear demarcation of land, the proceedings under the Land Encroachment Act cannot be sustained as it is not possible under the Act to determine the actual extent and title to the same.

In view of the judgment of the Supreme Court in **Government of Andhra Pradesh v. Thummala Krishna Rao**¹ the proceedings under the Act not being proper, in cases of disputes in relation to title, notice under Section 7 of the Act is set aside leaving it open to the respondents to take civil proceedings for recovery of land allegedly encroached by the petitioner.

The Writ Petition is, accordingly, allowed. Miscellaneous petitions pending, if any, in the writ petitions shall stand closed. No order as to costs.

CHALLA KODANDA RAM,J

Date: 21.06.2017
 usd

¹ AIR 1981 SC 1081

