

THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

W.P.No.33010 of 2017

ORDER

Heard the learned counsel for the petitioner and also the learned Standing Counsel for the respondents and perused the prayer in the writ petition with supporting affidavit and the impugned order passed by the Estate Officer under the A.P. Public Premises (Eviction of Un-authorized Occupants) Act, 1968.

2. The prayer in the writ petition reads as follows:

“to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring order dated 16.09.2017 passed in E.C.No.4 of 2017 passed by the 3rd respondent as being illegal, arbitrary, capricious, malafide and contrary to principles of natural justice and violative of Article 300-A of Constitution of India and pass such other order or orders”

3. It is stated in the supporting affidavit that the impugned order is contrary of law, violative of principles of natural justice and unsustainable because in the earlier writ petition filed by the petitioner, interim order was passed not to dispossess except through due process of law.

4. It is the submission of the learned Standing Counsel that the petitioner, despite giving notice to produce documentary proof regarding her claim that the property is her private property acquired through gift deed from her husband saying that it was the ancestral property of her husband, failed to produce any proof and therefore, the impugned order no way requires interference and sought for dismissal of the writ petition.

5. Undisputedly, in the earlier writ petition in W.P.No.23570 of 2017, after hearing both sides on 24.07.2017, this Court gave interim direction not to dispossess the petitioner therein except through due process of law and in the said show cause notice dated 14.08.2017, the writ petitioner herein, who claimed as unauthorized occupant, was asked to appear in person before the authorities (Estate Officer) on 21.08.2017 and show cause as to why she should not be evicted from the premises. On 21.08.2017, the Estates Manager of S.C.Company Limited stated that on 13.08.2017, he along with his staff found said Susheela as unauthorized occupant of Sy.No.170/8 opposite to the Area Hospital, Bellampalli Mandal and she is un-authorizedly proceeding with construction work in the said land, which belongs to the Singareni Collories Company Limited and asked her not to proceed with further construction. Thereafter, he submitted a report to the competent authority to take action as per the A.P.Public Premises (Eviction of Unauthorized Occupants) Act, 1968 (for short 'the Act') and the petitioner failed to appear, however, submitted a written explanation without any documentary proof and subsequent to passing of the interim order in W.P.No.23570 of 2017, the petitioner was asked, by serving notice dated 25.08.2017, to produce any document, but she did not respond. Again a third chance was given to her to produce any document in support of her claim in the explanation as ancestral property of her husband, who executed a gift deed in her favour. It is observed therefrom that the allegation against her is that the property belonging to the Singareni Collories Company property is in her un-authorized occupation by making un-authorized construction and failed to produce any document to the claim to show that it is a private property.

6. Having regard to the above, invoking section 5(1) of the Act from the show cause notice for no documentary proof, asked to vacate and if she fails to do so within 15 days there from liable to be evicted.

7. Here, undisputedly, the said factum of the explanation submitted was not referred to much less reflecting about the consideration directly, but, from the contention of the learned Standing Counsel, it reflects indirectly. It is not the principle of the law to say that the explanation is considered from saying no documentary evidence is produced, in actual reflection of the claim to negate any such contention, and therefore, the order thereby is not sustainable. Suffice to say, the writ petition there from can be disposed of setting aside the order to pass a fresh order within one week from the date of receipt of a copy of the order by reflecting the show cause notice and its consideration.

8. Accordingly, the Writ Petition is disposed of. No order as to costs.

9. Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

27th September, 2017

sj