

HON'BLE SRI JUSTICE S. V. BHATT

WRIT PETITION No.14434 of 2013

ORDER:

The petitioners challenge Notice dated 15.04.2013 issued under Section 7 of the Land Encroachment Act, 1905 (for short 'the Act'). The schedule of notice impugned in the writ petition refers to Sy.Nos.167/ 3P and 181 and the particulars of land as 'Gayalu' and Gedde'.

2. The case of the petitioners is that the flats constructed or purchased by them forms part and parcel of Sy.No.166/ 3 of Chinamusidiwada Village, Pendurthy Mandal, Visakhapatnam District and is a zeroyiti land. The predecessors-in-interest of the purchasers of the flats filed WP No.15862 of 2010 and this court has held that Sy.No.166/ 3 of Chinamusidiwada village is not government land. Therefore, the notice issued under Section 7 of the Act in respect of Sy.Nos.167/ 3P and 181 is challenged by filing the instant writ petition.

3. After going through the material available on record, *prima-facie* this court is of the view that the right or title acquired through a registered sale deed in respect of Sy.No.166/ 3 of Chinamusidiwada village, cannot and ought not to be accepted as lawful if there is government land in Sy.Nos.167/ 3P and 181 of Chinamusidiwada village and petitioners are in possession of Sy.Nos.167/ 3P and 181. The land in possession of petitioners, whether forms part of Sy.Nos.166/ 3 or 167/ 3P and 181 is a matter of survey, demarcation and determination on the enquiry initiated in this behalf.

4. Having regard to the above observation, learned counsel for the petitioners consent to disposing of the writ petition by this order.

5. The petitioners are given two months time from the date of receipt of a copy of this order to file explanation to notice impugned in the writ petition. The 2nd respondent, after receiving the explanation, is directed to survey and demarcate the land covered by Sy.No.166/3 and the subject matter of notice under Section 7 of the Act and if the encroachment is forming part of schedule of this notice, is directed to proceed and pass orders within a further period of three months there from. The petitioners are all flat owners and are admittedly in possession of their respective flats. The respondents are directed not to dispossess or demolish the constructions pending consideration of the issue of identification of property or encroachment till a decision is taken and communicated to the petitioners.

6. The writ petition is, accordingly, disposed of. No order as to costs. Pending miscellaneous petitions if any in this writ petition shall stand dismissed in consequence.

S V. BHATT, J

Date: 22.06.2017
BSS

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