

HON'BLE SRI JUSTICE S.V. BHATT

Writ Petition No.23695 of 2017

ORDER:

Heard Mr. C. Ramachandra Raju for petitioner and the Assistant Government Pleader (Assignment) for respondents.

2. The petitioner challenges the notice of the 2nd respondent in Rc.No.347/ 2013/ A e-file:762248 dated 03.07.2017, as illegal, arbitrary and unconstitutional.

3. To appreciate the challenge of petitioner, this court considers it appropriate to excerpt the relevant portion in the impugned order, which reads as follows:

“...You are hereby directed to handover the tank within 15 days from the date of receipt of this notice to Sri Dantuluri Panduranga Raju through Mandal Revenue Inspector, Kalla. Otherwise necessary action may be taken after destroying the tank bund of 5 acres and out of that Ac.2.60 cents will be handed over to Sri Dantuluri Panduranga Raju.”

4. Counsel for petitioner contends that the notice does not refer to the jurisdiction or enactment under which the notice is issued by 2nd respondent. According to petitioner, the 2nd respondent at any rate cannot assume facts in favour of the applicant before the 2nd respondent and order demolition of fish tank or deliver possession to Dantuluri Panduranga Raju. Hence, the writ petition.

5. The Assistant Government Pleader submits that the non-mention of enactment *per se* does not render notice as illegal or without jurisdiction and the notice impugned in the writ petition shall have to be treated as a notice issued under the A.P. Assigned Lands (POT) Act, 1977. The Assistant Government Pleader, after seeing the tenor in which

the notice is issued, fairly states that calling upon the petitioner to deliver possession to an assignee without enquiry or opportunity to petitioner, cannot and ought not to be permitted. Therefore, she requests the court to treat the impugned notice as a show cause notice, further this court considers giving reasonable time to petitioner to file explanation and thereafter, the 2nd respondent will pass orders in accordance with law. The statement is placed on record.

6. The writ petition is disposed of by this order.

- a) The petitioner is given three weeks time from today to file explanation to the show cause notice impugned in the writ petition;
- b) The 2nd respondent receives the explanation and if the circumstances warrant, after affording opportunity to petitioner, passes order in accordance with law, as the notice impugned in the writ petition is directed to be treated as show cause notice;
- c) It is needless to observe that till the pending issue before 2nd respondent results in an order, possession or physical features of the subject matter shall not be disturbed.

No order as to costs. Pending miscellaneous petitions if any in this writ petition shall stand dismissed in consequence.

Date: 19.07.2017
BSS

S.V. BHATT, J

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Date: 19.07.2017

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