

HON'BLE SRI JUSTICE S.V. BHATT

W.P. No.22018 OF 2017

ORDER:

Heard Mr.C.Ramchandra Raju for petitioner and the learned Assistant Government Pleader.

The petitioner challenges the concluding portion in the summon-Form-1 notice dated 16.06.2017 issued by the respondent. The portion of notice under challenge reads as follows:

"If, you are not attended on the said date and time for enquiry, further action will be taken by issuing Bailable Warrant under Section 75 & 76 Cr.P.C. read with Section-6 of Summons Act and Section -5(1) & (2) IPC."

The case of petitioner is that pursuant to the directions issued by this Court in W.P. No.24376 of 2009 enquiry under the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act') is initiated. The petitioner claims to have submitted explanation to the notice already served on him. The respondent while conducting enquiry under the Act does not have power to compel the physical presence of petitioner and alternatively threatened to initiate action under Sections 75 and 76 of the Criminal Procedure Code. Hence the writ petition.

The Assistant Government Pleader, on instructions, submits that to conduct enquiry in the presence of petitioner, the portion impugned in the writ petition was incorporated in the notice dated 16.06.2017. The respondent fairly admits that the Act does not provide the power now sought to be exercised by the respondent.

The respondent submits that the respondent may be permitted to proceed in the matter with the explanation already submitted and material available on record. The portion which is excerpted above is set aside as illegal and without jurisdiction. The writ petition is ordered, however, by leaving it open to respondent to complete the enquiry from the material already available on record and the explanation submitted by the petitioner. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

Date:05.07.2017
Sp



S.V.BHATT, J