

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.21604 of 2017

ORDER:

Heard Sri G.Venkata Reddy for petitioners and the Assistant Government Pleader (Revenue) for respondents.

The petitioners challenge notices issued under Section 7 of the Land Encroachment Act, 1905 (for short 'the Act').

Sri Venkata Reddy submits that the petitioners have purchased the properties under registered sale deeds and are in possession and enjoyment for over two decades. Firstly, the petitioners have not encroached the Government land or tank bed or vanka poramboke and secondly the water body is not in existence and there is no necessity to widen the channel. On the other hand, for free flow of water alternate measures such as deepening the channel, maintaining the channel etc., can be considered and for such preventive and maintenance measures, the petitioners will also co-operate with the authorities.

Sri Venkata Reddy further submits that if at this length of time, portions of houses are demolished, the petitioners will be rendered shelterless and they are entitled for regularisation of alleged unauthorized occupation of vanka poramboke as per the Board Standing Orders. The petitioners contend that the existence of structures is not causing obstruction to free flow of water and, therefore, the authorities have to first survey and demarcate and

thereafter, determine the extent of encroachment and consider all possible options before ordering for removal of encroachment.

This Court against challenge to a notice particularly issued under the Act normally does not refer to the contentions on facts. The case on hand slightly stands on different footing and hence reference to the contentions raised by the petitioners is made.

Learned Assistant Government Pleader vehemently opposes the writ prayer by contending that the petitioners are not questioning the jurisdiction of the Tahsildar to issue notices impugned in the writ petition. According to her, the schedule of property in respective notices deals with Sy.Nos.25, 31, 69, 441 and 444 of Gandlapalle village, Chittoor Mandal and District. According to her, the petitioners have to file explanations and the same will be considered by the authorities. For the said purpose, she draws the attention of the Court to the written instructions dated 03-07-2017, wherein it is stated that final action will be taken only after considering the explanations filed by the petitioners.

I have taken note of respective submissions and also the challenge to notices issued under Section 7 of the Act.

This Court *prima facie* is of the view that the notices are not challenged on the ground of lack of jurisdiction but by reference to primary objections and alternative submissions to balance both the requirements, namely, free flow of water and to continue to enjoy

the properties. Such exercise is required to be undertaken and completed only by the authorities, but not by this Court.

Therefore, the writ petition is disposed of by this order.

(a) The petitioners are given liberty to file individual representations/replies to the show-cause notices impugned in the writ petition.

(b) If the circumstances warrant or the petitioners demand, the authorities undertake survey and demarcation of land covered by the above survey numbers, the extent of land available for free flow of water etc., afford opportunity and take a comprehensive decision in this behalf.

(c) The petitioners, if aggrieved by any adverse decision, are always free to work out remedies either under the Act or otherwise.

Miscellaneous petitions, if any, pending, shall stand closed.

No order as to costs.

Dt: 05-07-2017
Prv

S. V. BHATT, J

THE HON'BLE SRI JUSTICE S.V.BHATT



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Prv

