

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.33990 OF 2017

Dated:11.10.2017

Between:

Kommineni Mattaiah, S/o. K. Rosaiah,
Aged about 70 years, R/o. Pulipadu,
Gurajala Mandal, Guntur District
And others

.. Petitioners

And

The State of Andhra Pradesh, Rep., by its
Principal Secretary, Roads and Buildings
Department, A.P. Secretariat, Velagapudi,
Amaravathi and others

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No.33990 OF 2017****ORDER:**

Heard.

2. In this Writ Petition, petitioners challenge the notice dated 13.09.2017 issued under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905 (for short, 'the Act'). It was alleged in the said notice that the land to an extent of 20 sq. yards in Survey No.738/2, which is a road, is encroached and therefore explanation was called by the petitioners as to why action should not be taken against them. On 16.09.2017, petitioners submitted their explanation bringing to the notice of the Tahsildar, Gurazala Mandal, that they are the owners of the property; they have not encroached the said land; the land occupied by them is in Survey No.738/3, but not in Survey No.738/2; appropriate building permissions were obtained before construction was undertaken and therefore they are not in occupation of the public road, as alleged.

3. Learned counsel for the petitioners submits that though a detailed explanation is submitted by the petitioners, no decision is taken so far and on the contrary, there is threat of demolition of the property, alleging that the petitioners are in occupation of the road. He further submits that the petitioners claim title to the property and when there is a dispute with regard to title to the property, the summary proceedings under the Act cannot be initiated and if the respondent authorities dispute the ownership, they have to avail civil law remedy against the petitioners.

4. A bare perusal of the notice issued against the petitioners would disclose that according to the respondents, the subject area is treated as a road and according to their assessment, 20 sq. yards of road is occupied by the petitioners and therefore notice was issued to them to which they submitted detailed explanation. Once an explanation is submitted, it is mandatory to the authority concerned to furnish suitable reply by way of a reasoned order/decision assigning due reasons in support of the said decision and only after a reasoned order is passed and communicated, further steps in accordance with Section 6 of the Act can be initiated. Learned counsel for the petitioners do not dispute the fact that the Tahsildar is competent to initiate proceedings under Section 7 of the Act. Thus, the jurisdiction is vested in Tahsildar and there is no error in exercising the jurisdiction at this stage. Even before the Tahsildar has taken a decision finally, it cannot be expected that the Tahsildar would not appreciate the stand of the petitioners as stated in their explanation to the show cause notice. It is also not expected that the Tahsildar would not give due reasons to the decision before proceeding further in the matter. Since the petitioners have already raised all the contentions available to them, it is mandatory for the Tahsildar to consider those contentions before taking an appropriate decision. Therefore, this Court is not inclined to entertain the Writ Petition and keep the same pending.

5. The Writ Petition is accordingly dismissed leaving it open to the petitioners to work out their remedies as available in law. It is needless to observe, as noted above, that the Tahsildar shall give due consideration to the explanation offered by the petitioners and

assign due reasons in support of his decision and communicate the said decision to the petitioners before proceeding further in accordance with the provisions of the Act. All the rights and claims of the petitioners are preserved to be agitated before the competent authority. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in the Writ Petition shall stand closed.

P. NAVEEN RAO, J

Date:11.10.2017

Note:- Issue C.C. in three days.

(B/o)
KH

