

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.No.33547 OF 2017

ORDER

Heard learned counsel appearing for the petitioner, learned Government Pleader for Irrigation and learned counsel appearing for the 5th respondent.

It is the case of the petitioner that his daughter gifted an extent of Ac.3.75 cents in Sy.No.369 to her brother, who is the 2nd petitioner, through a registered settlement deed dated 18.6.2014. The 2nd petitioner already owns another extent of Ac.3-75 cents of land in the same Sy.No.369. Hence, the 2nd respondent became the owner of total extent of Ac.7-50 cents. When the 2nd respondent passed an order on 27.09.2017 under Section 6 of the Land Encroachment Act, 1905 (for short 'the Act'), asking the 1st petitioner to remove the encroachment over an extent of Ac.0-50 cents of land in Sy.No.370, which was shown as drainage poramboke, and is adjoining the land of the 2nd petitioner situated in Sy.No.369, the present writ petition is filed.

Learned counsel appearing for the petitioners submits that the 2nd respondent has no jurisdiction to issue the impugned notice under Section 6 of the Act and in any event the impugned

notice should be preceded by a notice under Section 7 of the Act. He further submits that drain which is flowing, is common drainage for the village and the 2nd petitioner has not encroached the land as alleged.

The 2nd respondent lacks jurisdiction, which is admitted by the learned Government Pleader as well as by the 5th respondent.

In the circumstances, since the impugned notice was issued by an authority, who is not competent to issue the same, the impugned notice dated 27.09.2017 is set aside and the writ petition is allowed accordingly. However, this order will not prevent the competent authority to take action in accordance with law. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

23rd October, 2017
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