

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.8684 of 2017

ORDER:

The petitioners challenge the proceedings dated 04.03.2017 under Section 6 of A.P. Land Encroachment Act, 1905 (for short 'the Act').

The principal objection of petitioners against the impugned proceeding is that respondent No.4 before either passing an order under Section 6 of the Act or serving a notice for removing the encroachment, did not issue notice under Section 7 of the Act, to petitioners.

The 4th respondent has placed before the Court the record of proceedings dated 04.03.2017. From the record, the following circumstances can be culled out:

Notice dated 16.02.2017 was directed to be served on petitioners. On 16.02.2017 in the presence of a few mediators and also the Sarpanch, an endorsement was taken that the petitioners are not available for service of the notice at the subject matter of writ petition. Hence, notice has been returned by endorsing the absence of parties. The 4th respondent treating the said endorsement as service of notice on petitioners has passed the order dated 04.03.2017 and issued the notice of eviction.

After perusing the record and taking note of the allegations in the affidavit, this Court is of the view that on the ground that petitioners are encroachers of property appended to the schedule of notice, steps under the Act are initiated. The endorsement that the petitioners are not available at the site does not go with the very purpose of initiating action viz., to remove encroachment against the petitioners. The 4th respondent has taken note of the endorsement that the petitioners in fact declined to receive the notice. If the petitioners are not co-operating to receive the notice, other modes of service ought to have been pursued and thereafter orders as are warranted under Section 6 of the Act can be passed without further delay. Such course was not followed and the notice is certainly vitiated by illegality and violative of principles of natural justice. To meet the ends of justice, the proceedings impugned in the writ petition are liable to be set aside.

Learned Assistant Government Pleader undertakes to furnish a copy of notice dated 16.02.2017 to learned counsel for petitioners during the course of the day.

Mr.Mummaneni Srinivasarao, counsel for petitioners requests four weeks time from today for filing explanation before 4th respondent. The statement is accepted.

Accordingly, the writ petition is ordered as follows:-

Proceedings dated 04.03.2017 are set aside as violative of principles of natural justice and that requirement of Section 7 of the Act not followed before passing order under Section 6 of the Act. The petitioners are given four weeks time from today to submit explanation to the notice dated 16.02.2017. On receipt of the explanation, it is open to 4th respondent to pass orders in accordance with law within a further period of two months thereafter. The parties are directed to maintain *status quo* for a period of two months from today. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

S.V. BHATT, J

5th June, 2017.
ssp

