

HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No. 2222 of 2017

ORDER:

In the present Writ Petition, the challenge is to the order of eviction dated 4.1.2017 passed by the second respondent-Estate Officer under Section 5 (1) of the Andhra Pradesh Public Premises (Eviction of Unauthorized Occupants) Act 1968 (for short 'the Act').

Heard learned Counsel appearing for the petitioner and Sri J.Srinivas Rao, learned Standing Counsel appearing for the respondents.

Learned Counsel for the petitioner submits that the explanation submitted by the petitioner pursuant to the notice dated 9.12.2016 was not taken into consideration by the Estate Officer while passing the order of eviction dated 4.1.2017. Learned Counsel further submits that the impugned order is in violation of the principles of natural justice.

On the contrary, it is submitted by learned Standing Counsel for the respondents that there is absolutely no illegality nor any irregularity in the order of eviction passed by the Estate Officer and in view of the availability of alternative remedy of appeal under Section 9 of the Act, the petitioner herein cannot maintain the Writ Petition under Article 226 of the Constitution of India.

Section 9 of the Act reads as under:

“Appeals

(1) An appeal shall lie from every order of the estate officer made in respect of any public premises under section 5 or section 7 to an appellate officer who shall be the District Judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years' standing as the District Judge may designate in this behalf.

(2) An appeal under sub-section (1) shall be preferred,--

(a) in the case of an appeal from an order under section 5, within fifteen days from the date of publication of the order under sub-section (1) of that section; and

(b) in the case of an appeal from an order under section 7 within fifteen days from the date on which the order is communicated to the appellant:

Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) Where an appeal is preferred from an order of the estate officer, the appellate officer pending may stay the enforcement of that order for such periods on such conditions as he deems fit the appellate officer, pending disposal of the said appeal, unless the appellate officer is satisfied,--

(i) that substantial loss may result to the party applying for stay, unless the order is made; and

(ii) that security has been given by the appellant for the due performance of such order as may ultimately be binding upon him.

(4) Every appeal under this section shall be disposed by the appellate officer as expeditiously as possible.

(5) The costs of any appeal under this section shall be in the discretion of the appellate officer.

(6) An order made by an appellate officer, shall be executable by the estate officer concerned as if it were an order made by him under sub-section (1) of section 5 or section 7, as the case may be.

(7) For the purposes of this section, the cities of Hyderabad and Secunderabad shall be deemed to be a district judge and the Chief Judge or the Principal Judge of the City Civil Court therein shall be deemed to be the District Judge of the district.”

Having regard to the above provision of law and in view the submissions of learned Counsel on either side, it is appropriate to relegate the petitioner to alternative remedy of appeal before the District Judge under the provisions of Section 9 of the Act.

Accordingly the Writ Petition is disposed of keeping open to the petitioner to avail alternative remedy of appeal within a period of one month from the date of receipt of a copy of this order and the petitioner shall not be disturbed from the subject premises for a period of two months.

Miscellaneous petitions pending consideration if any in the Writ Petition shall stand closed in consequence. No order as to costs.

JUSTICE A.V.SESHA SAI

DATED 24th January, 2017.
Msnr_x