

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.1753 of 2008

ORDER:

The case of the petitioner is that he is native of Seetharampuram Village in Dummugudem Mandal of Khammam District and inherited an extent of Ac.0-17 cents of land from his father, who purchased the same from one John Mitra prior to coming into operation of Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 as amended by Regulation No. 1 of 1970. Basing on an anonymous complaint, a notice under Section 7 of A.P. Land Encroachment Act (for short "the Act") was issued in respect of above land to the petitioner. After enquiry, the 3rd respondent passed an order dated 30-06-1994 dropping the proceedings initiated under Section 7 of the Act. As no appeal is filed, the same has become final and again the 2nd respondent basing on the complaint filed by unregistered Tribal Welfare Association, the petitioner was issued notice dated 08-10-2007 within two days of receipt of said complaint without conducting preliminary enquiry initiated proceedings under the Act in L.T.R.Case No.18/2007/BCM and passed the impugned order dated 07-12-2007, which has been served on the petitioner on 25-01-2008. Aggrieved by the same, the present writ petition is filed.

This Court while admitting writ petition granted interim stay on 01-02-2008.

Learned counsel for the petitioner submits that the proceedings initiated under Land Encroachment Act has become final while holding that petitioner is in possession of the subject land for more than 40 years and the said order has become final as such the allegations made against the petitioner that the petitioner constructed 12 shops and sold the same has no basis. But there is no documentary proof to show that the sale transaction took place and the 2nd respondent also held that the petitioner is unable to prove that he has possessed the subject land consisting of shops before the commencement of the A.P.Schedule Areas Land Transfer Regulation 1/1970 and he has also sold the same after commencement of the said Act and passed the impugned order basing on the reports from the Tahsildar, dated 05-12-2007, but there is already a finding by the 3rd respondent in favour of the petitioner that he is in possession of property from last 45 years in his order dated 30-06-1994. Though the proceedings were initiated under the Act, but said aspect was not considered. Though the writ petition is filed in the year 2008, no counter affidavit is filed and the said fact is not denied. It is submitted that the report of the 4th respondent dated 05-12-2007 basing on which the impugned order is passed is not served on the petitioner, which is in violation of principles of natural justice. On that ground also the impugned order is liable to be set aside and more so, the proceedings initiated under the Act was in favour of the petitioner. The said aspect is not taken into account by

the 2nd respondent while passing the impugned order. In the writ affidavit, it is clearly stated that out of six shops, the petitioner has no concern with shop Nos 12-2-6/8, 12-2-6/7 and 12-2-6/7, which also goes to show that the impugned order is passed without any application of mind.

In view of above facts and circumstances of the case, impugned order is set aside.

Accordingly, the writ petition is allowed. As a sequel to the disposal of this writ petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

06-06-2017
Nvl





