HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No. 5251 OF 2017

ORDER:

This writ petition is filed seeking writ of mandamus declaring the action of the 2nd respondent in keeping the appeals filed under Section 10 of Land Encroachment Act without making any process as illegal and arbitrary.

It is the case of the petitioners that they are absolute owners and possessors of house bearing Nos.1-6-698/1, 1-6-700, 1-6-700/1, 1-6-700, 1-6-699 and 1-6-699 respectively, situated in Sy.No.181/1, Kothapet Revenue Village, Indiranagar, Chaitanyapuri, Uppal Mandal, Medchal District. That the 4th respondent passed order in File No.B/159/2017, dated 27.01.2017 under Section 6 of the Land Encroachment Act declaring the petitioners as encroachers in Sy.No.181/1 of Kothapet Village and ordered for eviction of the petitioners from the subject land in the writ petition. Aggrieved by the said orders, the petitioners preferred appeal before the 2nd respondent under Section 10 of the Land Encroachment Act on 06.02.2017 and 04.02.2017 respectively along with stay petition. But the said appeals are yet disposed of by the 2nd respondent and in the meanwhile, the respondents are trying to evict the petitioners from the subject premises. Aggrieved by the same, present writ petition is filed.

Heard learned counsel for the petitioners, learned Assistant Government Pleader for Revenue, learned Standing Counsel for 6th and 7th respondents-Greater Hyderabad Municipal Corporation (GHMC).

Learned Standing Counsel for GHMC submits that already structures have been demolished in the subject premises.

Section 10 of the A.P. Land Encroachment Act reads as follows:

> **"10. Appeal:—**
> (1) An appeal shall lie
> (a) to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar under this Act and
> (b) to the District Collector from any decision or order of a Collector passed otherwise than 5 on appeal, and
> (c) to the Board of Revenue from any decision or order of a District Collector passed otherwise than on appeal. There shall be no appeal against a decision or order passed by the Collector or the District Collector on appeal, but the District Collector may revise any decision or order passed by a Deputy Tahsildar or Collector under this Act and the Board of Revenue may revise any decision or order passed by any officer under this Act.
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> (2) Pending the disposal of any appeal or petition for revision under this Act, the District Collector or the Board of Revenue as the case may be, may suspend the execution of the order appealed against or sought to be revised.

In view of above provision, the appeal lies to the Collector. But the definition of Collector is defined under Section 1-A(a) of the Act of 1905, which reads as follows:

> **1-A. Definitions:—**
> In this Act, unless the context otherwise requires,— (a) "Collector" means any officer incharge of a revenue division and includes a Deputy Collector, a Sub-Collector and an Assistant Collector.

In the present case on hand, the appeal is preferred before the District Collector. As such, the petitioners have to file appeal before the Collector as defined under Section 1-A (a) of the Act of 1905

In view of above facts and circumstances, it is open for the petitioners to prefer appeal before the 3rd respondent-Revenue

Divisional Officer against the impugned order within a period of two weeks from today. Till then, status quo obtaining as on today shall be maintained by both parties.

With the above direction, this writ petition is disposed of. There shall be no order as to costs. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

14-02-2017
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WRIT PETITION No.5251 OF 2017

Date: 14.02.2017

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