

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.12291 OF 2016

ORDER:

Heard Mr.K.Ramakoeswara Rao for petitioners and the learned Assistant Government Pleader (Assignment) for respondents.

The subject matter of the writ petition covers the following survey numbers and extents:

|                            | Sy.No. | Extent<br>Acs. Cts |
|----------------------------|--------|--------------------|
| 1 <sup>st</sup> petitioner | 822/1  | 1-53               |
|                            | 824/1  | 1-00               |
|                            | 826/1  | 0-89               |
| 2 <sup>nd</sup> petitioner | 824/1  | 3-45               |

The petitioners, apprehending forcible dispossession by respondents from the subject matter of writ petition, were compelled to file W.P.No.28880 of 2012. On 14.09.2012, the writ petition was disposed of and the order is very brief and reads as thus:

“The petitioners claim to be in possession of Government land admeasuring Acs.3.42 cents in Survey Nos.822/1, 824/1 and 826 of Settivaripalle Village, Yellampalle Panchayat, Mydukur Mandal, Kadapa District. Their grievance is that the respondents are trying to dispossess them from the land, without following the procedure prescribed by law.

Heard the learned counsel for the petitioners and the learned Government Pleader for Revenue.

Whenever the Government needs land for any public purpose, it is under obligation to take necessary steps, vis-à-vis the required extent of land. If it is held by private individuals, the proceedings under the Land Acquisition

Act, 1894 (for short 'the Act'), are to be initiated. If, on the other hand, any person has occupied the Government land, he can be evicted from the same, by following the procedure prescribed under the Act. The petitioners assert that they have not been issued any notice, much less any proceedings were initiated.

Hence, the writ petition is disposed of, directing the respondents not to dispossess the petitioners from the land in question, except by initiating proceedings under the Act. There shall be no order as to costs"

Now, the cause of action for filing the present writ petition is that the respondents without obeying the directions issued by this Court are interfering with the possession and enjoyment of the petitioners of subject matter of writ petition. Hence, the writ petition.

The 4<sup>th</sup> respondent filed counter affidavit and also enclosed a few annexures to impress upon this Court the grievance of petitioners that the respondents are still continuing to interfere with petitioner's possession and enjoyment without recourse to law firstly is illegal and secondly untenable, for according to 4<sup>th</sup> respondent on 05.01.2015, notice under Section 7 of the Land Encroachment Act, 1905 (for short 'the Act') was issued to petitioners and since the petitioners refused to receive the notice, it was affixed at the subject matter and eviction order was passed on 19.01.2015 and notice issued under Section 6 of the Act also returned with an endorsement that petitioners refused to receive the same. Therefore, succinctly stated, the reply of respondents is that procedure stipulated by law is followed, orders of eviction were passed and, therefore, the grievance canvassed in this writ petition is unsustainable.

I have perused the notices dated 05.01.2015 and 19.01.2015. The contention of 4<sup>th</sup> respondent that notices were served on petitioners and order directing removal of encroachment was also passed, cannot be could not be accepted, for with the self-serving endorsements of the subordinates of 4<sup>th</sup> respondent, service of notice is presumed, thereafter orders are passed and pursuant to the order of eviction, possession is claimed. The entire procedure followed bristles with illegalities, violative of principles of natural justice and also contrary to the direction issued by this Court. The 4<sup>th</sup> respondent admits the possession of petitioners.

Having regard to the settled possession, the immediate requirement is procedure stipulated by law is followed and fairness in action is exhibited, for these two requirements are not complied by respondents. Hence, in the case on hand, I am satisfied that the writ petition can be disposed of by this order:

The petitioners are given liberty to submit explanation by enclosing a copy of this order to notice dated 05.01.2015 within four weeks from today and the 4<sup>th</sup> respondent is directed to consider the explanation, conduct enquiry into the encroachment complained against the petitioners and pass orders within a further period of six weeks thereafter.

The parties are directed to maintain *status quo* as on today for a period of ten weeks.

The writ petition is, accordingly, disposed of. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending, stand closed.

21<sup>st</sup> July, 2017

*Lrkm*

S.V.BHATT,J

