

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 26386 of 2017

Date : 21.8.2017

Between :

Kudikalu Satish Kumar s/o late Veeranna
R/o Veerabhadravaram village and post
Venkatapuram mandal
Jayashankar Bhupalpally district and another

Petitioner

And

The State of Telangana
Rep by its Prl Secretary, Revenue Department
Secretariat, Hyderabad and others

Respondents

The Court made the following:



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ORAL ORDER:

In this writ petition, petitioners challenge notice issued on 1.8.2107 under Section 6 of the A.P. Land Encroachment Act, 1905 (for short the Act, 1905) directing the petitioners to remove all the structures /belongings from the subject premises and on failing to remove the same warning them that the structures/belongings will be removed forcibly.

2. Petitioners earlier filed W P No. 23518 of 2017 alleging that even without waiting for completion of 15 days time granted to them vide notice dated 3.7.2017 issued under Section 7 of the Act, 1905, respondents are trying to evict them. This Court disposed of the said writ petition by order dated 17.7.2017 directing the respondents to inquire into the matter and pass orders and thereafter if conclusion warrants eviction, take recourse to evict the petitioners and not to evict the petitioners when enquiry is pending. After receipt of the said order, impugned notice is issued under Section 6 of the Act, 1905.

3. Having regard to the earlier directions issued and having noticed that even the present notice is issued in a proforma manner and does not contain reasons for taking a decision consequent to the notice issued under Section 7 of the Act, this Court called for appearance of the Tahsildar to explain his conduct in issuing notice dated 1.8.2017.

4. Tahsildar is present in person. Learned Assistant Government Pleader representing Tahsildar seeks to justify the action of Tahsildar by stating that notice under Section 7 of the Act, 1905 was issued and thereafter explanation of the petitioner was considered and the impugned notice was issued.

5. In the notice issued under Section 7 of the Act, 19905 it was alleged that petitioners are in illegal possession and occupation of the land belonging to the State and therefore directed the petitioners to show cause as to why they should not be evicted. In response to the said show cause notice,

petitioners submitted their explanation on 27.07.2017 stating that they are in actual possession and are not in occupation of the Government land. As it is alleged that petitioners are in unauthorized and illegal occupation of the Government land and proceedings are initiated for evicting them, the explanation filed by the petitioners requires to be considered and a decision has to be taken by assigning due reasons as to why explanation offered by the petitioners is not acceptable. Thereafter, respondents can proceed to next stage under the Act, 1905 i.e., issuing notice under Section 6. After determination is made by assigning due reasons that occupation of petitioners is illegal and unauthorized, then only coercive steps can be taken.

6. Thus, issuance of the notice; consideration of the explanation offered and passing order assigning reasons in support of such order are inbuilt into scheme of the Act and are not empty formalities. Before evicting the alleged illegal occupant of Government land, detailed procedure as envisaged has to be observed.

7. It is also relevant to note that person aggrieved by the decision taken by the competent authority is entitled to prefer appeal against the action declaring him as encroacher and directing him to vacate the premises under Section 10 of the Act, 1905. No effective appeal can be made when reasons are not assigned by the competent authority in the order passed against the person. Further more, while disposing W.P. No. 23518 of 2017 this Court also directed to pass orders and apparently no orders are passed before issuing notice under Section 6 of the Act, 1905.

8. Notice dated 1.8.2017 is set aside and matter is remitted to the stage of consideration of the explanation submitted pursuant to show cause notice dated 3.7.2017 and Tahsildar/4th respondent is directed to consider the explanation offered by the petitioners and pass appropriate order assigning due reasons in support of the decision. Thereafter, if Tahsildar is of the opinion that petitioners are in illegal occupation, he is entitled to proceed under Section 6 of the Act, 1905.

9. Subject to above, writ petition is allowed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

DATE: 21.8.2017
TVK

P NAVEEN RAO,J



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