

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.37114 of 2017

ORDER:

Heard Mr V.R.N.Prashanth, counsel for petitioner, Mr P.Bhaskar for respondent Nos.1 and 2 and Mr Lakshmi Narayana Reddy for respondent No.3.

At request of Mr Bhaskar, the writ petition was adjourned from yesterday to today to enable him to get instructions on the limited grievance of petitioner.

The petitioner challenges the communication No.WEL/19/WAT/WP.26221/2017/HC/HYB, dt. 30.10.2017 as illegal and unconstitutional.

The operative portion of the communication reads as follows:

“Further, in obedience to directives of Hon'ble High Court/HYB dt.16.08.2017, the encroachers/unauthorized occupants were personally heard on 21.09.2017 and 22.09.2017. The encroachers vide their representations/explanations dated 23.08.2017 have not submitted any paper evidence to show that they have occupied subject Railway land with valid authority from Railways and even during personal hearing they failed to support their claim to occupy the Railway land.

Also it is to mention that Rly Board imposed ban for any type of temporary licensing of Railway Land not connected with railway working for shops/sheds since 1985 & 2005 which is still in vogue.

For the above mentioned reasons, it is to inform you that all the occupants of subject railway land are to be treated as encroachers and have got no authority to occupy the land, hence they have to vacate the encroached area by clearing the site.”

The grievance of the petitioner is that the 1st and 2nd respondents, even assuming without admitting, have examined the objections raised by the petitioner association through letter dated 22.09.2017, still such examination and the resultant communication impugned in the writ petition cannot and could not be treated as following the procedure in accordance with law on eviction of alleged encroachers. In other words, the consideration by respondent No.2 and by the authority, under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short 'the Act') are different and distinct stages, still by referring to letter dated 30.10.2017, threat of dispossession of members of petitioner's association is looming large. Hence, the writ petition.

Learned Standing counsel contends that the writ petition is filed on mere apprehension and that the last line of communication dated 30.10.2017 merely calls upon the petitioner's association to vacate. He further submits that in all the cases where encroachments are removed, it is only by following procedure prescribed under the Act or the Indian Railway Engineering Code, or the Railways Act, 1989.

I have perused the record and taken note of submissions of learned counsel appearing for the parties.

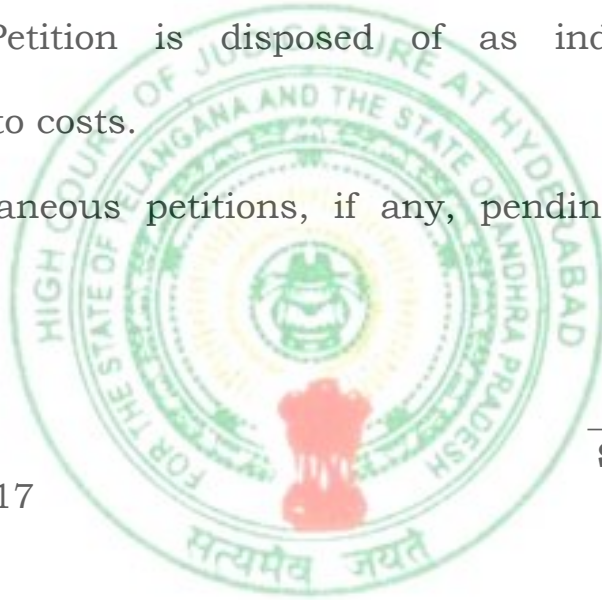
This Court is of the view that the communication dated 30.10.2017 merely calls upon the members of petitioner

association to vacate the encroached area. Therefore, a member of petitioners' association who does not go with the intimation/suggestion stated in the communication dated 30.10.2017, the respondents are under obligation to follow the procedure prescribed by law for evicting the members/encroachers of petitioner association who are treated as encroachers by respondents. As and when procedure is set in motion, it is open to both parties to press for all the claims and objections available in this behalf.

Writ Petition is disposed of as indicated above.
No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

Dt: 07.11.2017
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S. V. BHATT, J

