

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Writ Petition No.4227 of 2008

ORDER:

The petitioner seeks Writ of Mandamus declaring the order of the first respondent in proceedings No.YW/277/WV/Eviction/08 dated 5.2.2008 as arbitrary, illegal and violative of Articles 14, 21 and 300-A of the Constitution of India and consequently set aside the same.

2) The petitioner's case is that he purchased a constructed house bearing No.8-68/1(part), Plot No.21/A, admeasuring 101 sq.yards in Sy.No.171 situated at Mallikarjuna Colony, Alwal, Ranga Reddy District under registered sale deed dated 19.09.1981. While so, the first respondent issued show cause notice dated 13.07.2006 to the petitioner in Form (A) alleging that he is in unauthorized occupation of railway land admeasuring Ac.87.66 square meters and no particulars of the said land i.e., survey number, boundaries, location etc., were mentioned in the said notice. The petitioner submitted reply dated 02.09.2006 and along with the reply he also annexed all the documents showing his ownership of the property like pahanies, sale deed, encumbrance certificate, house tax receipts etc. However, the first respondent after a lapse of more than one and a half year, passed the impugned order dated 05.02.2008 without any enquiry into the mater. The first respondent in the show cause notice dated 13.07.2006 did not mention the survey number and also the nature of acquisition of the said land by the railways. It is stated that the land in Sy.No.171 was never notified by Railways at any point of time and no

compensation was paid to the owners of Sy.No.171. Thus, the action of the first respondent in issuing notice without any particulars and the subsequent impugned order dated 05.02.2008, are bereft of any particulars regarding the ownership of the land in Sy.No.171. In fact, the order dated 05.02.2008 is a cyclostyled order issued to many of the residents in Alwal including the petitioner and no enquiry was conducted and no particulars of ownership of railways were mentioned in any of the orders.

Hence, the present Writ Petition.

3) The first respondent filed counter and opposed the petition justifying its impugned order dated 05.02.2008 stating that the writ petition is not maintainable in view of the efficacious and alternative remedy available to the petitioner in the form of appeal under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short “the Act”). It is also stated that the petitioner encroached the railway property at Alwal Railway Station near 610 k.m and the fact of encroachment by the petitioner is established by a joint survey conducted by the Railway Administration together with the Mandal Revenue Officer and the Assistant Director, Survey Land records, Ranga Reddy District, Hyderabad, wherein the railway boundaries verified and certified by the Assistant Director and Mandal Surveyor were filed as Annexure. It is further stated that the petitioner has deliberately with an intention to create confusion as to the identity of the property and the survey numbers, raised various issues with regard to the survey numbers

but the Gram Panchayat/ Municipality have no right to grant permission for construction in the railway property and the revenue department has no right to grant occupancy right certificates to the petitioner when the property is located within the boundaries of the railway property.

4) Heard both sides.

5) When the matter came up for hearing, learned counsel for petitioner relying upon the judgment of this Court in Writ Petition No.4254 of 2008 dated 14.11.2017, would submit that in similar circumstances, when the first respondent-Estate Officer was found to have not mentioned the particulars of the property in the notice issued under Section 4 of the Act and has not conducted proper enquiry under Section 5 of the Act, this Court was pleased to set aside the impugned order therein with a direction to respondents to issue notice afresh to proceed in accordance with law. Learned counsel for petitioner would thus request to pass similar order in the instant case having regard to the covered judgment dated 14.11.2017 in Writ Petition No. 4254 of 2008.

6) As can be seen, in the instant case also Form-A notice was issued under Section 4 of the Act. It is only mentioned as “you are in unauthorised occupation of Railway land admeasuring 17.98 x 4.87 = 87.66 sq. mtrs in Mallikarjuna Nagar Alwal @ KM 610/000-100” and no other particulars relating to alleged occupied property such as survey number, boundaries or other particulars, are mentioned in the notice. Further, a perusal of the reply notice dated 02.09.2006 given by the petitioner, would show that petitioner has enclosed documents like house

plan, layout, registration and municipal tax receipts, sale deed etc. However, the first respondent has not conducted any enquiry in terms of Section 5 of the Act to ascertain the veracity of the claim made by the petitioner and only passed the impugned order in proceedings No.YW/277/WV/Eviction/08 dated 05.02.2008 without conducting an enquiry. Therefore, in the considered view of this Court, the judgment relied upon by the learned counsel for petitioner in Writ Petition No.4254 of 2008 dated 14.11.2017 squarely applies to the facts of the present case.

7) Therefore, in terms of the said judgment, the Writ Petition is allowed by setting aside the impugned order in No.YW/277/WV/Eviction/08 dated 05.02.2008 passed by the first respondent. However, it is made clear that this order will not preclude the respondents from issuing the notice afresh to proceed in accordance with law. There shall be no order as to costs.

As a sequel there to, miscellaneous applications, pending if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 10.09.2018
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