

**THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

**WRIT APPEAL No.534 OF 2018
&
WRIT PETITION No.39773 OF 2016**

COMMON JUDGMENT: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan).

Heard learned Government Pleader for Revenue (A.P) and Sri C. Damodhar Reddy, learned counsel for the respondent-Writ Petitioner and, with their consent, both the Writ Appeal and the Writ Petitions are disposed of by this common judgment.

The respondent herein filed W.P.No.39773 of 2016 seeking a *Mandamus* to declare the action of the Tahsildar, Kothuru Village and Mandal, in issuing notice dated 15.11.2016 under Section 6 of the Andhra Pradesh Land Encroachment Act, 1905 (for short, "the Act"), to evict the petitioner from the shopping complex in Sy.No.258 of Kothuru Village and Mandal, Srikakulam District, without considering his explanation dated 4.11.2016 and the order of this Court dated 7.11.2016 in W.P.No.38175 of 2016, as illegal and arbitrary; and to, consequently, direct the respondents not to interfere with the petitioner's peaceful possession and enjoyment of the shopping complex. By way of interim relief, the petitioner sought a direction to stay all further proceedings pursuant to the notice issued by the Tahsildar on 15.11.2016 under Section 6 of the Act.

On the petitioner invoking the jurisdiction of this Court, an interim order was passed on 17.11.2016; and, on a vacate stay petition being filed by the appellants herein in W.V.M.P.No.2604 of 2017, the earlier interim order was made absolute. Proceedings

were initiated against the Tahsildar who was asked to show cause how he could have issued the notice under Section 6 of the Act on 15.11.2016 without considering the petitioner's explanation dated 5.11.2016 inspite of the specific direction of this Court in W.P.No.38175 of 2016 dated 7.11.2016.

Facts, to the limited extent necessary, are that the notice, under Section 7 the Act, was issued to the petitioner calling upon him to show cause why he should not be evicted from an extent of Ac.0.1 cent of land in Sy.No.256 of Kothuru Village. While the notice, under Section 7 of the Act, was issued on 29.10.2016, which the petitioner received on 4.11.2016, he filed W.P.No.38175 of 2016 and this Court, by order dated 7.11.2016, disposed of the Writ Petition directing the Tahsildar to pass orders, on the explanation submitted by the petitioner, within a period of four weeks from the date of receipt of a copy of the order; and, till such time, the authorities were directed not to dispossess the petitioner nor demolish the constructions made by him.

The Learned Single Judge, in his order in W.P.No.38175 of 2016, noted the submission urged on behalf of the petitioner that an explanation had already been submitted on 5.11.2016. The fact that the respondent-Writ Petitioner had submitted his explanation, to the notice issued under Section 7 of the Act, on 5.11.2016, is not in dispute. Curiously proceedings, under Section 6 of the Act, were issued on 15.11.2016, without considering the petitioner's explanation or the order of this Court in W.P.No.38175 of 2016 dated 7.11.2016. After the order, under Section 6 of the Act, was passed on 15.11.2016, the Tahsildar claims to have passed an

order thereafter on 15.11.2016, which was served on the respondent herein on 17.11.2016.

The Learned Single Judge has, in the order under appeal observed that, once an order is passed by the Tahsildar under Section 6 of the Act on 15.11.2016, he could not, thereafter, have passed another order on the very same day as he became functus officio. The order of this Court in W.P.No.38175 of 2016 dated 7.11.2016, required the appellants to consider the petitioner's explanation dated 5.11.2016, and pass appropriate orders. It is evident from the notice, issued under Section 6 of the Act dated 15.11.2016, that the petitioner's objections were not considered. Curiously while the notice under Section 6 of the Act dated 15.11.2016 was served on the respondent-Writ Petitioner on the same day i.e. on 15.11.2016, the subsequent order assigning reasons also dated 15.11.2016, was served on the respondent-Writ Petitioner only on 17.11.2016. As to why two proceedings both dated 15.11.2016, were served on two different dates i.e. the first on the very same day i.e. 15.11.2016 and the second on 17.11.2016, has not been explained by the appellants herein.

Sri C. Damodhar Reddy, learned counsel for the respondent-Writ Petitioner, would submit that the very fact that two proceedings, both bearing the same date, were served on the respondent-Writ Petitioner on two different dates would show that the subsequent proceedings dated 15.11.2016 (which was served on the respondent-Writ Petitioner on 17.11.2016) is ante-dated. While this submission cannot be said to be without merit it is unnecessary for us to examine this aspect as the Learned Single

Judge has already called upon the 4th respondent to show cause as to how he could have issued the notice dated 15.11.2016 without considering the explanation of the respondent-Writ Petitioner dated 05.11.2016.

As the relief sought for in the Writ petition is to declare the action of the Tahsildar in issuing notice dated 15.11.2016, without considering the petitioner's explanation dated 5.11.2016, as arbitrary and illegal, suffice it to dispose of the Writ Petition setting aside the notice dated 15.11.2016 on the ground that the petitioner's explanation dated 5.11.2016 was neither considered nor dealt with. As the Tahsildar became functus officio on his issuing proceedings under Section 6 of the Act on 15.11.2016, the subsequent proceedings of the same date is, evidently, a nullity and is also liable to be set aside.

The Writ Petition is allowed leaving it open to the 4th respondent to consider the respondent-Writ Petitioner's explanation dated 5.11.2016, and to pass a reasoned order afresh in accordance with law. While the order under appeal is set aside to the extent indicated herein above, we make it clear that we have not interfered with that part of the order of the Learned Single Judge whereby the Tahsildar was directed to show cause.

Both the Writ Appeal and the Writ Petition are, accordingly, disposed of. No order as to costs. Miscellaneous Petitions, if any pending shall also stand closed.

RAMESH RANGANATHAN, ACJ

KONGARA VIJAYA LAKSHMI, J

4th April, 2018, Gk

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

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