

THE HON'BLE SRI JUSTICE P.KESHAHA RAO

WRIT PETITION NO. 8271 OF 2012

ORDER:

Heard the learned counsel for the petitioner, learned Government Pleader for Revenue and learned Government Pleader for Social Welfare.

2. The present Writ Petition is filed seeking the relief as under:

“... to issue writ or direction preferably Writ of Mandamus, declaring the Notice Rc.No.B/153/2010 issued by the 5th respondent under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905 dated 12.3.2012 in respect of the land in Sy.No.626 admeasuring Acs.5.00 situated at Jagannadhapuram village, Mulakalapalli mandal as illegal, arbitrary, violative of Articles 14 and 300 A of the Constitution of India and in disobedience of the interim order of this Hon'ble Court dated 22.7.2011 in WPMP.No.25236 of 2011 in WP.No.20776 of 2011 and consequently quash the same.”

3. The case of the petitioner is that he is in peaceful and continuous possession and enjoyment of the land admeasuring Ac.5.00 in Sy.No.626 situated at Jagannadhapuram village, Mulakalapalli mandal, Khammam district. He acquired the said land by way of succession from his ancestors. The said land was acquired since it was Government assessed waste land,

much prior to commencement of AP Scheduled Areas Land Transfer Regulation No.1 of 1959, as amended by Regulation No.1 of 1970. Except the subject land, the petitioner does not possess any other land. In the subject land, the petitioner raised a mango garden and he is eking out his livelihood from the income derived from the mango garden. Since the petitioner is in possession of the Government assessed waste land, the Special Deputy Collector (T.W.), Badrachalam has taken up enquiry suo-motu in LTR.Case No. 274/2004/MLKP in respect of the subject land and passed orders dated 17.5.2006 directing the Mandal Revenue Officer, Mulakalapalli to take the subject property into possession by evicting any person holding possession. Aggrieved by the said orders, the petitioner filed a statutory appeal before respondent No.3 i.e., the Additional Agent to Government and Project Officer, ITDA, Bhadrachalam vide C.M.A.No.26 of 2009. Respondent No.3, after hearing all the parties, disposed of the said appeal by orders dated 30.4.2011 wherein directed the Tahsildar, Mulakalapalli, to initiate action under the Land Encroachment Act for eviction of the petitioner since the provisions under the Land Transfer Regulation will not apply to the subject land. Pursuant to the said orders, respondent No.5 issued a notice dated 12.3.2012 under Section 7 of the AP Land Encroachment

Act, 1905. In the said notice, the petitioner was directed to produce the ownership documents in the office of the Tahsildar, Mulakalapalli within 15 days from the date of receipt of the notice and in default of the same, action would be taken as per law and the petitioner would be held responsible. Questioning the said notice, the present Writ Petition is filed.

4. Learned counsel for the petitioner contended that the impugned notice issued pursuant to the orders passed by respondent No.3 is in violation of the interim orders passed by this Court in WPMP.No.25236 of 2011 in WP.No.20776 of 2011 dated 22.7.2011. Respondent No.3 has no jurisdiction to direct respondent No.5 to initiate proceedings under the provisions of the Land Encroachment Act, 1905 since the scope of the appeal is limited only to the Land Transfer Regulation Act. Therefore, the impugned notice is without jurisdiction.

5. Learned Government Pleader for Revenue and Government Pleader for Social Welfare, based on the counter affidavit filed by respondent No.2 submitted that the petitioner is in unauthorized possession of the subject land. The subject land is situated within the scheduled area and hence, the possession of the petitioner, being a non tribal, is unlawful. The orders issued in GO.Ms.No.971 Revenue (B) Department dated 7.10.1969 will not over ride the regulation. It is also

stated that GO.Ms.No.41 issued by the Government providing benefits to the non-tribals in the schedule area was already struck down by this Court. Further, learned Government Pleader appearing for Social Welfare specifically contended that the impugned notification is in the form of a show cause notice calling upon the petitioner to produce the ownership documents before respondent No.5 to substantiate his contention. Therefore, the Writ Petition as filed against the show cause notice is not maintainable.

6. Having heard both the counsel and from the perusal of the material on record, the issue that comes up for consideration is:

“Whether the Writ Petition as filed is maintainable?”

7. The petitioner acquired the subject land from his ancestors and raised a mango garden. He is eking out his livelihood from the income derived from the said mango garden. While the matter stood thus, since the subject land is a Government assessed waste land, the Special Deputy Collector, Tribal Welfare, Badrachalam, initiated proceedings under the provisions of the Land Transfer Regulation No.1 of 1970. The said proceedings are culminated in the orders passed by respondent No.3 on 30.4.2011 whereby respondent No.5 was directed to initiate proceedings under the provisions

of Land Encroachment Act, 1905. Challenging the notice issued under Section 7 of the said Act, 1905, the present Writ Petition is filed. Though the learned counsel for the petitioner strenuously contended that respondent No.3 has no jurisdiction to give a direction to respondent No.5 to initiate proceedings under the provisions of the Land Encroachment Act, admittedly, from the perusal of the affidavit filed in support of the Writ Petition, it is revealed that the said orders are not in question. The petitioner has chosen to question the consequential proceedings issued by respondent No.5. Therefore, the said ground is not available to the petitioner.

8. Now coming to the aspect of maintainability of the Writ Petition against the impugned notice, the petitioner has been asked to produce the ownership documents in the office of respondent No.5 within 15 days from the date of receipt of the notice, failing which, action would be taken as per law and the petitioner would be held responsible. From the perusal of the said notice, it is revealed that respondent No.5 has not decided the issue. In fact, the petitioner was asked to produce the ownership documents for verification of the title and etc., In any event, the impugned notice will not prejudice the rights of the petitioner and it is only in the form of a show cause notice calling an explanation. When admittedly, the rights and

interest of the petitioner are not crystallized in the impugned notice and it is issued only to seek explanation from the petitioner, this Court is of the opinion that the Writ Petition cannot be maintained. It is settled law that against a show cause notice, Writ Petition is not maintainable. Therefore, the Writ Petition as filed is not maintainable.

9. Be that as it may, when the petitioner was asked to file an explanation, this Court deems it appropriate to direct the petitioner to submit an explanation raising all the objections before respondent No.5 within four weeks from the date of receipt of a copy of this order and on such filing, respondent No.5 is directed to consider all the objections particularly relating to the ownership documents that will be submitted by the petitioner and pass appropriate orders as per law within a period of three months thereafter.

10. With the above said observation, Writ Petition is disposed of.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

P.KESHAHA RAO,J

Date: 23.10.2018

KPM