

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.16878 of 2017

ORDER:

This Writ Petition is filed seeking the following relief:

“...to issue a writ in the nature of Mandamus or an appropriate Writ or order or direction to the Respondents herein holding that the action on the part of the respondents in not following time-schedule set forth in the statutory notices dated 26.04.2017 and 23.04.2017 issued under Section 7 and 6 of A.P. Land Encroachment Act, 1905 as illegal, arbitrary and violation of fundamental rights guaranteed under the Constitution and in violation of the provisions of A.P. Land Encroachment Act, 1905 and the same may be set aside and pass such other order or orders which are deem fit and proper in the interest of justice.”

2) The petitioner is the son of the noticee late Khaja Mohidduin.

The notice is challenged on the following grounds:

- i) The notice is issued to Khaja Mohidduin, who is passed away on 24.05.2003 and as such the same is nullity, *non est* in law.
- ii) The notice under Section 7 of the Act, dated 26.04.2017, has given 15 days time for submitting written objections. Before completion of the said 15 days, the final notice under Section 6 of the Act was made on 28.04.2017, which is contrary to their notice issued under Section 7 of the Act apart from contrary to the provisions of the Act and the Rules made thereunder, besides violative of the principles of natural justice.
- iii) There is no reasoned order made under Section 6 of the Act, which is mandatory.

3) Learned Government Pleader after taking into consideration the material placed on record, fairly submits that the order made under Section 6 of the Act is *non est* and cannot be sustained. However, submits that considering the fact that the respondents are in occupation of the public property, opportunity may be given to take appropriate steps in accordance with law.

4) In the light of what has been set out above and there being no dispute with respect to the noticee having passed away on 24.05.2003, as evident from the Death Certificate filed by the petitioner, the impugned proceedings under Section 6 of the Act is declared as *non est*, however, with liberty to the respondents to take appropriate action, if advised, after duly following the procedure prescribed under law.

5) With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, the Miscellaneous Petitions pending, if any, shall stand closed.

CHALLA KODANDA RAM, J

Date:03.01.2017

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