

HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.8162 of 2018

ORDER:-

The Order passed by the Estate Officer/3rd respondent under Section 5(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short 'the Act') is under challenge in this Writ Petition.

Earlier, when a notice under Section 4(1) of the Act was issued by the 3rd respondent/Estate Officer, the petitioner herein questioned the validity of the same by way of filing a Writ Petition in W.P.No.25242 of 2017 before this Court. This Court by way of an Order, dated 31.07.2017, disposed of the said Writ Petition and the operative portion of the said Order reads as under:-

"Prima facie, very issuance of notice under the Act discloses that the petitioner is in possession of the subject property. Since it is the allegation of the petitioner that the respondent authorities have been interfering with her possession and enjoyment of the property, it is made clear that until final orders are passed, the respondent authorities shall not interfere in any manner with the possession and enjoyment of the petitioner over the property, for which notice has been issued by the respondent authority. Inasmuch as the petitioner has already submitted explanation and raised objections, the respondent authority shall conduct enquiry as per the Act and the Rules and pass final orders on appreciation of the material placed by the petitioner within a period of 12 weeks from the date of receipt of this order."

Subsequently, the Estate Officer/3rd respondent herein passed an Order vide proceedings No.G/W.274/KHT/WW-III, dated 22.01.2018 under sub-section (1) of Section 5 of the Act directing the petitioner to vacate the premises within thirty days. This Writ Petition is filed challenging the validity and the legal sustainability of the order passed by the Estate Officer/3rd respondent.

According to the learned Counsel appearing for the petitioner, the order impugned is totally one without jurisdiction and the subject premises does not fall under the "Public Premises" as defined under the Act and the remedy open for the respondents is to file a civil suit for establishing their title to the property.

On the contrary, it is submitted by the learned Standing Counsel appearing for the respondents that in view of the availability of alternative remedy of the appeal to the District Court under Section 9 of the Act, the present Writ Petition is not maintainable. It is further contended that whether the subject premises is a public premises or not cannot be decided in the present Writ Petition and the proper remedy available to the petitioner is provided under Section 9 of the Act.

Section 9 of the Act reads as under:-

“Appeals.-(1) An appeal shall lie from every order of the estate officer made in respect of any public premises under section 5 or section 5B or Section 5C or Section 7 to an appellate officer who shall be the district judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years' standing as the district judge may designate in this behalf.

(2) An appeal under sub-section (1) shall be preferred, -----

(a) in the case of an appeal from an order under section 5, within twelve days from the date of publication of the order under sub-section (1) of that section;

(b) in the case of an appeal from an order under section 5B of Section 7, within twelve days from the date on which the order is communicated to the appellant; and

(c) In the case of an appeal from an order under Section 5C, within twelve days from the date of such order.

Provided that the appellate officer may entertain the appeal in exceptional cases after the expiry of the said period, if he is satisfied for reasons to be recorded in writing that there was compelling reasons which prevented the person from filing the appeal in time.

(3) Where an appeal is preferred from an order of the estate officer, the appellate officer may stay the enforcement of that order for such period and on such conditions as he deems fit.

Provided that where the construction or erection of any building or other structure or fixture or execution of any other work was not completed on the day on which an order was made under Section 5B for the demolition or removal of such building or other structure or fixture, the appellate officer shall not make any order for the stay of enforcement of such order, unless such security, as may be sufficient in the opinion of the appellate officer, as been given by the appellant for not proceeding with such construction, erection or work pending the disposal of the appeal.

(4) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible and every endeavour shall be made to dispose of the appeal finally within one month from the date of filing the appeal, after providing the parties an opportunity of being heard.

(5) The costs of any appeal under this section shall be in the discretion of the appellate officer.

(6) For the purposes of this section, a presidency-town shall be deemed to be a district and the chief judge or the principal judge of the city civil court therein shall be deemed to be the district judge of the district.”

The above provision of law clearly shows that as against the Orders passed by the Estate Officer/3rd respondent under Section 5 (1) of the Act, appeal lies to the District Court. It is always open to the petitioner herein to raise all these contentions before the District Court including the jurisdiction of the 3rd respondent in undertaking the enquiry.

For the aforesaid reasons, the Writ Petition is disposed of with a liberty to the petitioner herein to avail the above said alternative remedy available to him under Section 9 of the Act. However, having regard to the submissions made by the learned Counsel appearing for the petitioner and taking into consideration the nature of the controversy, three weeks time is

granted to the writ petitioner for availing the alternative remedy which is available to him under Section 9 of the Act. In the meanwhile, there shall be no coercive action in respect of the subject matter pursuant to the impugned Order, dated 22.01.2018

The Writ Petition is disposed of accordingly. Miscellaneous petitions pending, if any, shall stand disposed of. There shall be no order as to costs.

Date: 13.03.2018
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A.V.Sesha Sai, J

