

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.3943 of 2008

ORDER:

This Writ Petition is filed by the petitioner under Article 226 of the Constitution seeking a direction in the form of 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 case of the petitioner is that he is the owner and possessor of an extent of Ac. 3.06 guntas in Sy.No. 170 situated at Alwal Municipality, Alwal, Ranga Reddy District and he has been granted occupancy Right Certificate by the RDO, Hyderabad in his proceedings No. A1/10/1975 dated 5.5.1982. Further, the Village Map clearly distinguishes the survey numbers which show the land in S.No. 170 is very far from the railway tracks. Further, the land in Sy.No. 170 was never assigned and after obtaining lay out, petitioner sold the same in plots to various individuals and retained a plot to an extent of 250 sq. yards for the residential purpose. The house of the petitioner is adjoining to Hanuman & Ram Mandir, which is in existence for the past 360 years and he has been paying municipal taxes from 1992 to Gram Panchayat. While so, the first respondent issued show cause notice dated 13.7.2006 to the petitioner in Form (A) alleging that he is in unauthorized occupancy of railway land

admeasuring Ac. 105.90 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 4.9.2006 and along with the reply he also annexed all the documents showing their ownership of the property tax receipts, village map, pahanies, patta certificate, etc. However, the first respondent after a lapse of more than 1 ½ years, passed the impugned order dated 5.2.2008 without any enquiry into the mater. The first respondent in the show cause notice dated 13.7.2006 did not mention the survey numbers and also the nature of requesting the said land by the railways. It is stated that the land in S.No. 170 was never notified by Railways at any point of time and no compensation was paid to the owners of S.No. 170. Thus, the action of the first respondent in issuing notice without any particulars and the subsequent impugned order dated 5.2.2008 are bereft of any particulars regarding the ownership of the land in Sy.No. 170. In fact, the order dated 5.2.2008 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 was 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 5.2.2008 stating that the writ petition is not maintainable in view of the efficacious and alternative remedy in the form of appeal under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short “the Act”) is available to the petitioner to file regular appeal. 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 were verified and certified by the Assistant Director and Mandal Surveyor was 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 Sri A. Sudarshan Reddy, learned counsel for petitioners, Sri P. Bhaskar, learned Standing Counsel for Railways, Sri R.S. Murthy, learned counsel appearing for R1, Sri R. Ramachandra Reddy, learned Standing Counsel for GHMC, appearing for respondents 2 & 3 and Smt. A. Deepthi, learned Government Pleader for Revenue.

5. When the matter came up for hearing, learned counsel appearing for petitioner relying upon the judgment of this Court in W.P.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 under Section 4 notice and has not conducted proper enquiry under Section 5 of the Act, this Court was pleased to set aside the impugned order therein with liberty to respondents to issue notice afresh to proceed in accordance with law.

6. 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 W.P.No. 4254 of 2008.

7. 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 of size 9.14 M x 11.58 M admeasuring 105.90 sq. mtrs in Mallikarjuna Nagar Alwal, at km 610/100-200” 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 4.9.2006 given by the petitioner, it would show that petitioner has enclosed certificates like tax receipt, sanctioned house plan, village map, patta certificate and pahanies four numbers. 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 the impugned order in proceedings No. YW/277/WV/Eviction/08 dated 5.2.2008 was passed without conducting an enquiry. Therefore, in the considered view of this Court, the judgment relied upon by the learned counsel for petitioner in W.P.No. 4254 of 2008 dated 14.11.2017 squarely applies to the facts of the present case.

8. 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 5.2.2008 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.

Date: 27.08.2018
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U.DURGA PRASAD RAO, J