

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.26750 OF 2007

ORDER:

This writ petition is filed challenging the notices of the second respondent in VBK/14-11 and VBK/14-42 dated 12.11.2007 and 04.12.2007 respectively.

2. It is the case of the petitioner that originally lands admeasuring Ac.5-41 cents in D.No.12 and Ac.6-66 cents in D.No.16 of Polatithippa Village, Machilipatnam Mandal, Krishna District, were held by one Panchakarla Rama Swamy. Later, he sold the said lands to Mellela Venkatasivaramaiah under a registered sale deed dated 16.06.1914 vide document No.1533/1914. The said lands were renumbered as R.S.No.50. After the death of Venkatasivaramaiah in the year 1955, his son Venkata Ramalinga Sastry succeeded the said property, and after his death in the year 1981, M.Satyanarayana (the petitioner) succeeded the same. He executed a registered power of attorney in favour of P.Nagabhushanam. The said land was used for aqua culture for few years and since last 5 years, it has been kept vacant and no cultivation was going on. While so, the second respondent issued a notice dated 12.11.2007, served on 17.11.2007, to one M/s.Balaji Aqua and Agro Products Pvt. Limited, Vijayawada under Section 7 of the Act 5 of Madras Act, 1905 (The Tamil Nadu Land Encroachment Act, 1905) stating that the subject lands are Government lands and sought his explanation as to why the Government does not handover the said lands by evicting him and

also directed him to pay penalty for encroaching the subject lands. The petitioner got issued a legal notice dated 30.11.2007 through his counsel to the second respondent stating that the subject lands do not belong to M/s.Balaji Aqua and Agro Products Pvt. Limited, Vijayawada and that he is the owner of the subject lands, but not the Government. Without considering the said legal notice, the second respondent again issued another notice dated 04.12.2007, served on 07.12.2007, to M/s.Balaji Aqua and Agro Products Pvt. Limited, Vijayawada, as if the said company is the owner of the subject lands, and directed it to vacate the subject land. Challenging the said notices dated 12.11.2007 and 04.12.2007, the present writ petition is filed.

3. Sri K.Durga Prasad, learned counsel for the petitioner, would contend that petitioner's forefather had purchased the subject lands under a registered sale deed dated 16.06.1914 vide document No.1533/1914 and the petitioner succeeded the same by way of inheritance. Therefore, the subject lands are private lands and the petitioner is the absolute owner of the subject lands and they either belong to M/s.Balaji Aqua and Agro Products Pvt. Limited, Vijayawada or belong to the Government. Though the petitioner by his legal notice dated 30.11.2017 brought the factum of subject lands do not belong to M/s.Balaji Aqua and Agro Products Pvt. Limited, Vijayawada to the notice of the second respondent, the second respondent did not consider the same and issued another notice dated 04.12.2007 again to the said company reiterating the contents mentioned in the first notice dated 12.11.2007. He

therefore would contend that the action of the second respondent is illegal, arbitrary and the impugned notices are liable to be set aside.

4. Ms.Vasantha, the learned Assistant Government Pleader for Revenue (A.P) vehemently argued and opposed to the contentions of the petitioner and prayed to dismiss the writ petition.

5. A perusal of the notices dated 12.11.2007 and 04.12.2007 issued by the second respondent, it is clear that they are in printed formats showing that they were issued under Sections 5 and 6 of the Madras Act, 1905, which is not applicable to the State of Andhra Pradesh and the State of Andhra Pradesh is having separate Land Encroachment Act i.e., The Andhra Pradesh Land Encroachment Act, 1905 which came into force from 23.12.1904. The second respondent, before passing the second notice dated 04.12.2007, did not consider the legal notice issued by the petitioner dated 30.11.2017 and issued the second notice as if the subject lands belong to the Government and were in illegal possession of M/s.Balaji Aqua and Agro Products Pvt. Limited, Vijayawada and accordingly denied the opportunity of hearing to the petitioner. Though the petitioner had submitted the document under which his forefather purchased the subject lands, the second respondent did not consider the same and issued the second notice dated 04.12.2007, which has no basis to deny the right and title of the petitioner and the notices, *prima facie*, are pre-determined in nature. All these acts of the second respondent show his

non-application of mind in issuing the impugned notices and hence the same are liable to be set aside.

6. Accordingly, the writ petition is allowed, setting aside the notices of the second respondent in VBK/14-11 and VBK/14-42 dated 12.11.2007 and 04.12.2007, respectively (wrongly mentioned the dates as 17.11.2007 and 07.12.2007 respectively). No costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Date: 03-08-2018
TJMR

T.AMARNATH GOUD, J

