

HON'BLE SRI JUSTICE S.V. BHATT

W.P. No.16771 OF 2017

ORDER:

Heard Mr.Subba Reddy for petitioners and the Assistant Government Pleader (Revenue) for respondents.

The petitioners pray for the following relief:

“...Writ of Mandamus declaring the action of the 4th respondent in interfering with the possession of agricultural lands of an extent of Ac 1-40 cents in old R S No 1 new S No 82 and Ac 3-33 cents in old R S No. 1. T. D. No 1405 new S. No 82 of Vellamilli Village Ungutur Mandal West Godavari District without passing any order under Sec 6 of the Land Encroachment Act 1903 or any other Act in vogue as illegal arbitrary violative of Principles of Natural Justice and Art 300-A of the Constitution of India and consequently direct the respondents specially the 4th respondent not to interfere with the agricultural lands referred to supra...”

The petitioners take recourse to the remedy under Article 226 of the Constitution of India on the assumption that the respondents are not following the procedure for removing the alleged encroachment of petition land.

The counter affidavit of 4th respondent is filed. The counter affidavit refers to passing orders/serving notice under Section 6 of the Land Encroachment Act (for short 'the Act'). According to respondents, notice was issued in Roc.No.1062/2016/B, dated 16.02.2017.

Mr.Subba Reddy vehemently contends that these notices suffer from monotony and at least to satisfy this Court that notice under Section 6 has been served on petitioners not a copy of notice

is filed along with the counter affidavit. According to him, the respondents did not follow the procedure much less procedure stipulated by law and at every stage proceedings are taken up and concluded behind the back of the petitioners thereby the petitioners are also deprived working out the remedies before the appellate authority. Mr.Subba Reddy made a few submissions on long and uninterrupted possession of respective extents by the petitioners to contend that the settled possession of a citizen cannot be dispossessed in this fashion.

The Assistant Government Pleader submits that the writ prayer is limited and now that an order is passed under Section 6 which is appealable, the petitioners ought to be directed to work out the remedies by filing appeal. On the allegation of not serving notice under Section 6, he submits when the petitioners choose not to receive or refuse, the notice is pasted on a pole erected in the subject land. In the case on hand, such procedure is followed and if there is failure in having the copy of the notice under Section 6, the petitioners have to blame themselves. According to him, the petitioners ought to be directed to file appeal and the writ petition dismissed.

I have gone through the record and taken note of the submissions of learned counsel appearing for the parties.

This Court having regard to the stand taken in the counter affidavit namely, that procedure for removing encroachment was initiated and orders are passed, is in agreement with the stand taken by respondent No.4. As things stand and from the material

now placed before the Court nothing is there to conclude that the petitioners have copies of the notices/order made under Section 6 of the Act, if any, passed by respondent No.4. With a view to enabling petitioners to avail the remedy of appeal, the writ petition is disposed of by this order:

Status quo granted by this Court on 04.05.2017 is directed to be maintained for a period of four months from today. Respondent No.4 is directed to send the notice or order issued under Section 6 by registered post with acknowledgement due to petitioners within 15 days from the date of receipt of a copy of this order. The petitioners thereafter are given liberty to file appeal within 30 days from the receipt of notice. The appellate authority either disposes of appeal or hears and passes orders on the interlocutory application filed by petitioners within the four months period stipulated above.

No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date:24.04.2018
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