

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.18558 of 2005

ORDER:

This writ petition is filed seeking to issue a writ of mandamus declaring the notice in Rc.No.B/2140/2005 dated 10.8.2005 of the 2nd respondent as arbitrary, illegal, unjust and to set aside the same and consequently to direct the respondents not to evict the petitioner from the land and house to an extent of Ac.0.17 gts., in Sy.No.57 of Mandalapalli village, Dammapeta Mandal of Khammam District.

Heard Sri Badana Bhaskara Rao and the learned Government Pleader for Revenue.

It has been contended by the petitioner that he is in peaceful possession and enjoyment of Ac.0.17 gts., in Sy.No.57 of Mandalapalli village, Dammapeta Mandal. He is a landless poor person and that he has no other properties except the above said property. It has been further contended that the petitioner is residing in the said land since 1970 and he had cleared the trees and bushes and constructed a pucca house for residing and he had also started a small hotel to eke out his livelihood. The petitioner is claiming the ownership of the said land by way of adverse possession. While the matter stood thus, the 2nd respondent i.e. Mandal Revenue Officer, Dammapeta, had issued a show cause notice vide proceedings in Rc.No.B/2140/2005 dated 10.8.2005 under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905. Challenging the said show cause notice, the present writ petition is filed.

This Court while admitting the case on 24.8.2005 was pleased to grant interim stay and by virtue of the said interlocutory order, the petitioner is in possession of the said land.

Learned counsel for the petitioner contends that during the pendency of this writ petition, the land of the petitioner was acquired for road widening and, as on today, he is having only three guntas of land in which he is residing. He further contends that the Andhra Pradesh Land Encroachment Act, 1905 cannot be invoked in the case of the petitioner as the petitioner is occupying the land of the Government and the said portion of the land is not forming part of any nalas or poramboke land and, therefore, issuance of show cause notice itself is bad, arbitrary and illegal, and that the writ petition should be allowed.

Learned Government Pleader contends that the land which is occupied by the petitioner is a government poramboke land and the authorities have rightly issued show cause notice under the Andhra Pradesh Land Encroachment Act, 1905 and, therefore, there is no illegality in issuing the said show cause notice. He further contends that the petitioner without submitting any explanation to the said show cause notice, straight away approached this Court and obtained stay and, hence, the respondents are not in a position to finalise the proceedings issued under the A.P. Land Encroachment Act.

I have considered the rival submissions of the parties. This Court is of the view that the ends of justice would be met, if the petitioner is directed to submit his explanation to the show-cause notice dated 10.8.2005.

Accordingly, the petitioner is directed to submit his explanation to the show-cause notice within a period of four weeks from the date of receipt of a copy of this order. Upon such explanation being submitted, the respondents shall pass final orders after giving opportunity to the petitioner. It is needless to say that the respondents also take into account that the petitioner is a landless poor person and he is in

occupation of three guntas of land using for residential purpose. It is further made clear that the respondents shall not dispossess the petitioner till final orders are passed in pursuance of the show-cause notice dated 10.8.2005.

With these directions, the writ petition is disposed of. No order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 13/03/2018

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