

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.32633 OF 2017

O R D E R

The 2nd respondent – Estate Officer vide proceedings No.SCB/EB/PPE/4877 114 dated 13.09.2017, in exercise of jurisdiction under sub section (1) of Section 5 of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short 'the Act'), ordered the petitioner to vacate the subject property within fifteen days, with a default clause. Aggrieved by the same, the present writ petition is filed.

Learned counsel appearing for the petitioner, based on the averments made in the affidavit filed in support of the writ petition, submits that the petitioner purchased the subject property from her vendor, under registered sale deed dated 19.10.2001, and after obtaining permission from the office of Cantonment Board vide proceedings dated 21.06.2004, made constructions and has been paying taxes regularly. While so, the respondent No.2 issued notice dated 15.12.2009, calling upon the husband of the petitioner to show cause why an order of eviction shall not be passed. Petitioner and her husband filed their written version. Eventually, the 2nd respondent holding that the petitioner has occupied the subject land earmarked for road, passed the impugned proceedings. Learned counsel submits that the petitioner has not been provided with opportunity of hearing and thus the impugned order has been passed in violation of principles of natural justice.

On the other hand, Sri K.R.Kotewara Rao, learned Standing Counsel appearing for respondents would submit that the subject property belong to the Central Government and original vendor, who is alleged to have

sold the property, is tracing the title under a 'Government Grant', which does not confer absolute title and hence the subsequent purchasers also do not get any title. He stated that after issuing notice and considering the case of the petitioner and her husband, who have been issued with notice, the 2nd respondent found that the construction has been made by the petitioner on the land earmarked for road and accordingly the petitioner was directed to vacate the subject property. He stated that there are no merits in the writ petition. He submits that under Section 9 of the Act, against the impugned proceedings, petitioner has alternative remedy of appeal to the Principal District Court. Therefore, he seeks to dismiss the writ petition.

This court on 21.09.2017, taking into consideration that the petitioner has been in possession of the subject property since 2009, initially granted interim stay for a period of four weeks and thereafter, it was extended from time to time.

As per the averments noted above, there are disputed questions of fact regard extent, which this court cannot go into and as per the submission of the learned Standing Counsel for respondents, there is an effective alternative remedy of appeal under Section 9 of the Act and petitioners can raise all the objections raised herein. Therefore, without going into merits of the case, writ petition is disposed of directing the petitioner to avail the alternative remedy of appeal within a period of two months from the date of receipt of a copy of this order. Till then, the interim stay granted by this court on 21.09.2017, shall continue.

In case of default in availing the said alternative remedy within the time granted above, the interim stay stands vacated and the respondents

are at liberty to proceed with execution in terms of the impugned proceedings dated 13.09.2017.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:25—06—2018

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