

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 34748 of 2018

ORDER:

The present writ petition came to be filed seeking issuance of a writ of *mandamus*, declaring the action of the respondents in resorting to the provisions of the Land Encroachment Act to evict the petitioner from the land in Survey No. 98 of Kampa Samudram village, as illegal, arbitrary and unconstitutional.

2. A perusal of the material on record would show that initially, a notice under Section 7 of the Land Encroachment Act (hereinafter mentioned as the 'Act') came to be issued on 16.08.2018, directing the petitioner to submit his explanation within three days. The case of the petitioner is that even before he could submit his explanation to the said notice, notice under Section 6 of the Act came to be issued on 20.08.2018, seeking to evict the petitioner within a period of three days. Challenging the same, an appeal came to be filed by the petitioner under Section 10 of the Act, which is pending consideration.

3. Learned Government Pleader for Revenue would submit that since an appeal is filed challenging the order of the Tahsildar, the appellate authority may be directed to deal with the said appeal, after considering all the above aspects.

4. As seen from the record, the grievance of the petitioner appears to be that, before his explanation, to the notice under Section 7 of the Act could reach the Tahsildar, notice under

Section 6 of the Act came to be issued, directing the petitioner to vacate the premises. According to the petitioner, he received the notice dated 16.08.2018 on 23.08.2018, and immediately thereafter, he sent his explanation dated 29.08.2018 to the Tahsildar. As the Tahsildar did not receive the same, he sent it through Registered Post, which was served on the Tahsildar on 30.08.2018, i.e., much prior to the notice under Section 6 of the Act, which was received by the petitioner on 07.09.2018.

5. Having regard to the above, and since the appeal filed by the petitioner under Section 10 of the Act is pending consideration, the Revenue Divisional officer shall deal with the appeal filed by the petitioner, after hearing him, and pass orders in accordance with law, as early as possible, preferably, within a period of two to three months from the date of receipt of a copy of this order. Till such time, *status quo* as on today to be maintained with regard to possession.

6. With the above direction, the writ petition is disposed of. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

26.09.2018
DMG