

• THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

± WRIT PETITION No.25022 of 2015

% 5th of June, 2018

WRIT PETITION No.25022 of 2015

Ms. Inaganti Sirisha, D/o. I. Prabhakar Rao,
Aged : 22 years, Occ : Software Engineer,
R/o.H.No.8-208, Allwyn Colony, Miyapur,
Hyderabad.

... Petitioner

Vs.

\$ The State of Telangana,
(Represented by its Secretary),
Municipal Administration and Urban
Development Department, Secretariat,
Hyderabad and others.

... Respondents

! Counsel for the petitioner : Sri V. Venkata Ramana.

^ Counsel for the 1st respondent : The learned Government Pleader for
Municipal Administration;

^ Counsel for 2nd respondent : Sri Y. Rama Rao, learned standing
counsel for Hyderabad Metropolitan
Development Authority;

^ Counsel for respondent nos.5
& 6 : Sri Ch. Laxminarayana.

< Gist:

> Head Note:

? CITATIONS:

1. 2009 (6) ALD 524
2. 1969 (3) S.C.C 415

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

WRIT PETITION No.25022 of 2015

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(Represented by its Secretary),
Municipal Administration and Urban
Development Department, Secretariat,
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... Respondents

DATE OF JUDGMENT PRONOUNCED: 05.06.2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**W.P.No.25022 of 2015****ORDER:**

The petitioner filed the Writ Petition on 07-08-2015 seeking initially a Writ of Mandamus to declare the action of respondent Nos.2 and 6 in interfering with the peaceful possession and enjoyment of the petitioner of a plot bearing No.525/1, admeasuring 150 sq. yds. in Sy.No.150, Hafeezpet village Serilingampally Mandal, Ranga Reddy District situated at Deepthi Sree Cooperative House Building Society, as illegal, arbitrary and violative of Articles 21 and 300-A of the Constitution of India and to restrain the respondents from interfering with her alleged possession of the same.

2. Petitioner claims title to the said plot of land on the basis of a registered sale deed bearing doc. No.1339/2015 dt.12-05-2015 and alleges that the plot purchased by her forms part of land admeasuring Ac.20.18 gts in sy. No.150 of Hafeezpet village, which was purchased by Deepthi Sree Cooperative House Building Society, under registered doc. No.3885/1988. She also claims that her predecessor in title had obtained permission for construction from GHMC on 22-11-2012, that the said permission was valid till November 2015, that she started construction of a residential house therein, but the officials of the Hyderabad Metropolitan Development Authority (2nd respondent) (for short 'HMDA') interfered with her construction activity.

W.P.No.15871 of 2015 :

3. Petitioner filed W.P.No.15871 of 2015 alleging that the Revenue officials and HMDA officials started interfering with her possession and enjoyment of the property. The said Writ Petition was disposed of on 08-06-2015 permitting the petitioner to give a detailed representation to the HMDA and Revenue officials and the said representation was directed to be acted upon by the HMDA and the Revenue officials expeditiously.

The case of petitioner in the present W.P. :

4. Petitioner alleged in the instant Writ Petition that she completed ground floor portion and erected pillars for the first floor by the date of filing of the Writ Petition, but the 6th respondent, who is employed as Tahsildar with the HMDA came to the property and threatened the labour to stop the construction activity. She alleged that though she gave representation on 25-07-2015 to the HMDA stating that she was entitled to proceed with the construction activity, no action was taken thereon by it; that on 04-08-2015, the Village Revenue Officer and other Revenue officials came to her plot and threatened to demolish her construction; and on 06-08-2015, they demolished the staircase constructed by her and also threatened to demolish the entire construction.

THE DEMOLITION BY HMDA ON 8.8.2015 :

5. Before the Writ Petition could be taken up for hearing for admission by this Court, on 08-08-2015, the HMDA and the Revenue officials came at around 8 am and they demolished the entire construction made by the petitioner. Petitioner alleges that this was done without any prior notice and opportunity in gross violation of provisions of law.

W.P.M.P.No.3460 of 2016 TO AMEND THE PRAYER IN THE W.P :

6. She therefore filed W.P.M.P.No.3460 of 2016 narrating these events and sought amendment of the prayer in the Writ Petition challenging the action of the respondents in demolishing the construction made by her in the subject plot without following procedure of law and sought damages of Rs.15.00 lakhs and a further direction to the respondents to reconstruct the structure demolished by them in accordance with the sanctioned plan. This application was allowed on 05-08-2016.

7. Petitioner alleges that the respondents were claiming that the plot of the petitioner is located in Sy. No.100 of Miyapur Village while it was actually located in Sy. No.150 of Hafizpet village and the respondents cannot unilaterally decide the identity of the plot without any notice to her.

THE OTHER EVENTS PENDING W.P. :

8. Prior thereto on 10-08-2015, while ordering notice before admission, the Court noted the demolition undertaken by the respondents on 08-08-2015 and directed the HMDA to enquire into (i) nature of the construction made by the petitioner, (ii) whether she has valid building permission, (iii) whether she was served with any notice alleging making of unauthorized and illegal construction and (iv) whether due process of law was followed before such demolition.

It was further directed that if no orders were passed, the HMDA should explain under what authority respondent Nos.5 and 6 demolished the entire building and file a report before the court. In the meantime, respondents were directed to maintain *status quo* obtaining as on that day.

9. Thereafter, case was listed to 27-08-2015, 08-09-2015, 13-10-2015, 26-10-2015 and 04-11-2015.

10. On 04-11-2015, the in-charge Director of HMDA filed a counter affidavit stating that an order was passed on 24-07-2015. But this Court observed that the counter affidavit was silent as to who passed the said order and under what provision of law that order was passed. It also noted that it did not disclose as to whether any notice was given to the petitioner before it was passed and that it *prima facie* discloses that there was a lawless approach by the officials of the HMDA. It directed respondent Nos.5 and 6 and the functionary who passed the order dt.24-07-2015 directing

demolition of the building constructed by the petitioner to be personally present before the Court and explain their conduct by filing separate affidavits.

11. Matter was then directed to be listed on 13-11-2015. On that day, further time was requested and the matter was adjourned to 04-12-2015. But the matter was again adjourned at the request of respondents to 18-12-2015. Matter was then listed on 29-01-2016 and on that day, their presence was dispensed with and the request for grant of further time for filing counter affidavit by HMDA and respondent Nos.5 and 6 was granted.

THE ADDITIONAL COUNTER OF THE HMDA :

12. The in-charge Director filed an additional counter on 22-01-2016 taking a plea that the land in Sy. Nos.100 and 101 of Miyapur, Serilingampally Mandal is a Government land and it was handed over to HMDA through the District Collector, Ranga Reddy District, vide letter No.LC1/5779/D3 dt.20-08-2003; that the local Site Officer of HMDA has reported about an encroachment and construction of residential building in Sy. Nos.100 and 101 of Miyapur, Sirilingampally Mandal by the petitioner; there was an enquiry caused with the assistance of the Surveyor of the HMDA; that the report was submitted on 20-07-2015 for issuing suitable orders to remove illegal structures; the 6th respondent was directed to analyse the facts with reference to the ground position; that he visited the site on 23-07-2015 and confirmed that the petitioner was making

construction in the land belonging to HMDA in Sy.No.100; and the 6th respondent submitted a report which was forwarded by the Estate Officer to the Secretary of the HMDA on 24-07-2015 for approval. It is stated that 'Note Orders' were passed by the Secretary on 24-07-2015 not to allow construction in the said survey number; that there were no 'orders' passed specifically on 24-07-2015, and in fact it was only a 'Note Order'.

13. It is also stated that show cause notice was issued on 24-07-2015 under Section 4 (1) of the A.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1968 to petitioner; when the Site Officer made efforts to serve the show cause notice on the petitioner, she refused to take it and that it was served on 26-07-2015 by *affixing on 'the subject site'*; that petitioner did not submit any explanation to the said show cause notice; thereafter order of eviction was passed by the Estate officer of the HMDA on 04-08-2015 under Section 5 (1) of the said Act and thereafter encroachment was removed on 08-08-2015.

REPLY AFFIDAVIT OF PETITIONER TO THE SAID ADDITIONAL COUNTER :

14. Reply affidavit is filed by the petitioner stating that the respondents cannot unilaterally come to the conclusion that the petitioner had encroached the land belonging to the HMDA in Sy.No.100 of Miyapur, that they have not issued any prior notice before conducting survey and the petitioner was not aware of any

survey having been conducted by the respondents. The petitioner denied that the show cause notice dt.24-07-2015 under the A.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1968 in Form-A was refused to be received by her and she also denied that it was affixed to the site as is alleged by the respondents. It is further contended that the eviction order in Form B dt.4-8-2015 itself granted 15 days' time to the petitioner to vacate the property, but the demolition was done by the HMDA on 08-08-2015 itself, four days after the eviction order was passed on 04-08-2015. It is alleged that the whole story of issuing notice under the A.P. Public premises (Eviction of Unauthorized Occupants) Act, 1968 is an invented story and in the report sent on 28-08-2015 by the HMDA to its Standing Counsel, there is no mention of the said show cause notice or order at all.

SECOND ADDITIONAL COUNTER AFFIDAVIT FILED BY ESTATE OFFICER OF RESPONDENT NO.2 :

15. After the prayer in the Writ Petition was amended, the Estate Officer of 2nd respondent filed another additional counter affidavit.

16. It is contended that in the approved layout of the Deepthi Sree Cooperative Housing Building Society granted by HMDA on 14-06-1996, there did not exist plot No.525/1 as claimed by the petitioner.

17. It is contended that the Surveyor of the HMDA and the Site Officer (lands) of HMDA got the land demarcated and thereafter, superimposed the layout plan of the Deepthi Sreenagar Cooperative House Building Society and came to a conclusion that plot No.525/A is falling in Sy.No.150 of Hafizpet village, but land in question falls in Sy.No.100 of Miyapur and is vacant HMDA land; that the land purchased by the petitioner is located on the West Boundary of Deepthi Sreenagar layout and plot Nos.525 and 525/A are shown as extension to the plot No.525 on the south ward direction. It is alleged that the shape of the plot No.525/A is triangular but the land in question is square in shape. It is alleged that though as per the layout, plot Nos.525 and 525/A are continuous, as per the present ground position, there is a 40' road falling on southern side to plot No.525 leading through the northern part of plot No.525/A. It is contended that the boundaries of the HMDA land in Sy. No.100 and that of the Deepthi Srinagar layout were fixed on the ground with reference to the boundaries and final layout as well, and as a result, the subject land is found to fall in HMDA open land. She therefore contended that the construction made by the petitioner is not in Sy.No.150 of Deepthi Sri Nagar layout and is in Sy.No.100 of Miyapur village. The liability to pay any compensation is denied and it is alleged that the procedure prescribed under the Act is followed.

THE COUNTER OF THE RESPONDENT NO.5

18. The 5th respondent filed separate counter affidavit including some documents adopting the stand taken by the in-charge Director and the Estate Officer of the HMDA in their respective counter affidavits.

19. According to him, the Estate Officer, acting on complaint dt.20-07-2015 of the Site Officer to the HMDA, ordered for survey through HMDA Surveyor by taking assistance of the 6th respondent; that both of them visited the site on 23-07-2015 by obtaining official layout copy of the Deepthi Srinagar layout; that the Surveyor identified the land in occupation of the petitioner in Sy.No.100 of Miyapur village and submitted the report on 24-07-2015 to the Estate Officer; thereafter, the file was circulated to the Secretary, HMDA on 24-07-2015 and he directed petitioner's eviction; that the show cause notice dt.24-07-2015 under Section 4 (1) of the A.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1968, was refused by the petitioner and so *it was affixed to the site*; thereafter, order of eviction was passed on 04-08-2015 in Form-B under sub section (1) of Section 5; and on 08-08-2015, the structures were demolished.

20. He stated that he and the 6th respondent were only assisting the authorities as per the orders of the Estate Officer, HMDA. He also referred to certain cases pending in the Supreme Court of India. It is alleged that the petitioner should have preferred appeal under Section

9 of the Act to the Principal District Judge and therefore, the Writ Petition filed by the petitioner is not maintainable.

21. I have noted the contentions of both sides.

THE CONSIDERATION BY THE COURT :

22. The petitioner is claiming title to the subject plot No.525/1 admeasuring 150 sq yds in Sy. No.150 of Hafizpet village, Serilingampalli Mandal alleged to be in the Deepthi Sree Cooperative House Building Society layout having purchased the same under registered sale deed dt.12-05-2015 being doc. No.1339 of 2015 on the file of the Joint Sub Registrar, Balanagar. According to her, her vendor also obtained LRS proceedings no.4298/Cir/12/West Zone/GHMC/2008 dt.27.4.2009 from the GHMC regularizing the subject plot.

23. The HMDA (2nd respondent) however contends that the land claimed by the petitioner is located in Sy.No.100 and 101 of Miyapur village allegedly handed over to Hyderabad Urban Development Authority, the predecessor of the HMDA by the District Collector, Ranga Reddy vide letter No.LC1/5779/D3 dt.20-08-2003. It is contended that the subject land is not in Sy. No.150 of Hafizpet village, but in Sy.No.100 of Miyapur village. They contend that the LRS proceedings dt.27.4.2009 were obtained by petitioner's vendor from the GHMC by misleading the GHMC authorities.

24. Since it has come to light from the additional counter-affidavit of the In-charge Director of the HMDA that there was an order passed on 04-08-2015 by the Estate officer of the HMDA under the A.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1968, the said officer is *suo motu* impleaded as 7th respondent in the Writ petition. The Estate officer of the HMDA (7th respondent) has filed a separate addl.counter affidavit of the HMDA stating how she discharged her functions under the said Act, the same has been considered while passing this Order.

25. The counter affidavit of the Estate Officer of the HMDA (7th respondent) states in para-12 that she has invoked the A.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1968, though the show cause notice dt.24-07-2015 issued by her as well as the order dt.04-08-2015 passed by her mention the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. However, in view of her statement, I am proceeding on the basis that the 2nd respondent/7th respondent has acted under the A.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1968.

NO EVIDENCE THAT THE LAND BELONGS TO RESPONDENT No.1 OR 2:

26. Though the respondents have raised a specific plea that land in Sy..No.100 and 101 of Miyapur Village, Serlingampally Mandal, Ranga Reddy district is Government Land, no title deed/acquisition

proceeding/ revenue record showing that this land is Government land is filed by any of the respondents.

27. Along with the counter affidavit of the 5th respondent, only the copy of the Panchanama prepared on 20-08-2003 handing over possession of Ac.277.00 gts in Sy. No.100 and Ac.277.34 gts in Sy. No.101 of Miyapur village including certain encroached area therein is filed. The proceeding No.LC1/5779/2003 dt.20-8-2003 of the District Collector, Ranga Reddy District, has not been filed.

28. Thus no evidence to even *prima facie* establish title of the Government and consequently that of HUDA/HMDA is filed by the respondents.

29. Under the A.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1968, unless the land in question is proved to 'belong' to the State Government, procedure under the said Act cannot be invoked.

30. In **Podduturi Vasantha Reddy Vs. Estate Officer, Airport Authority of India, NAD¹**, this Court considered the definition of the term "public premises" defined in Section 2 (e) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and in particular, the words "*belonging to the Government*" therein (which is identical with the definition of the said term "public premises" in Section 2 (d) of the Andhra Pradesh Public Premises (Eviction of Unauthorized

¹ 2009 (6) ALD 524

Occupants) Act, 1968) and held that the definition presupposes that the premises shall *belong* to the Government. It held that having regard to the objective of the said Legislation and the provisions contained therein, it is designed and intended for ordering evictions and removal of encroachments in cases *where there is no dispute with regard to title and possession of the property in question*. It declared:

“12.....The powers conferred on the authorities under the said legislation are only to order eviction and removal of constructions with regard to premises which belong to them. But in cases, where there is a bona fide dispute with regard to title/boundaries of the land belonged to the Government or its Corporations or Companies, such disputes are outside the scope of said legislation, and the authority constituted under the said enactment cannot be said to have jurisdiction to embark upon the domain of the Civil Court for the purpose of adjudicating civil disputes, the power of which, is exclusively vested in such Courts, and it would be unreasonable to allow such authority to decide such disputes by invoking the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, which provides for a summary procedure to conduct inquiry and order for eviction and removal of constructions. In that view of the matter, when the said provisions are read with reference to the object of the legislation, it is clear that the said piece of legislation never intended to give its authorities the power to decide such complicated questions of title disputes, so as to decide the same by passing orders under Section 5 of the said Act.” (emphasis supplied)

31. The above principle clearly applies to the instant case as well.

32. In the instant case, no evidence that the land in Sy.No.100 of Miyapur ‘belongs’ to the State of Telangana or it’s predecessor the State of Andhra Pradesh, has been adduced by the respondents. Therefore, I hold that the very invocation of the procedure under the

A.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1971 by the 2nd respondent/7th respondent is without jurisdiction.

SURVEY OF RESPONDENT NO.2'S SURVEYOR DOES NOT BIND PETITIONER :

33. The Estate Officer of HMDA in her counter affidavit claims to have got a survey done by the Surveyor of HMDA prior to 24-07-2015 demarcating the subject land by superimposing the layout plan of the Deepthi Sree Nagar Cooperative House Building Society with the HMDA land.

34. No where do the respondents state that prior to such a survey, any notice was given to the petitioner. Therefore any such survey conducted behind the back of the petitioner, does not bind the petitioner, and cannot form the basis of any action for petitioner's eviction by demolition of the structures erected by her under Section 5 of A.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1968.

SHOW CAUSE NOTICE DT.24-07-2015 DOES NOT INDICATE GROUNDS FOR PETITIONER'S EVICTION

35. Under Section 4 of the A.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1968, show cause notice should specify *the grounds on which the order of eviction is proposed to be made.*

36. In the present case, in the show cause notice dt.24-07-2015, it is stated as under:

“To

Shri/Shrimati/Kumari Inaganti Sirisha, D/o. Prabhakar Rao, Plot No.525/A, Deepthi Sree Nagar, Hafeezpet, Hyderabad.

Whereas I, the undersigned, am of opinion, on the ground specified below that you are unauthorized occupation of the Public Premises mentioned in the Schedule below and that you should be evicted from the said premises.

Grounds

Now, therefore, in pursuance of sub-section (1) of Sec. 4 of the Act, I hereby call upon you to show cause on or before the 31-07-2015 why such an order of eviction should not be made.

*And in pursuance of Cf.(b) (ii) sub-section (2) of Sec.4, I also call upon you to appear before me in person or through a duly authorized representative capable to answer all material questions connected with the matter along with the evidence which you intend to produce in support of the cause shown, on 31-07-2015 at 11.30 am for personal hearing. In case, you fail to appear on the date and time, the case will be decided *ex parte*.”*

37. As can be seen from the above, in the show cause notice dt.24-07-2015, no ‘grounds’ on which the order of eviction is proposed to be made, are mentioned.

38. In the schedule mentioned in the show cause notice, no doubt in the remarks column, it is mentioned “as per the final layout, the plot Nos.525 is falling away from the encroached land”. This does not convey any meaning.

39. Accordingly, it has to be held that the show cause notice dt.24-07-2015 is vague and does not fulfill the requirements of a valid notice under the Act. On the basis of such a vague and meaningless

show cause notice dt.24-07-2015, there could not have been any order of eviction passed under Section 5 of the Act on 04-08-2015 by the 7th respondent.

SHOW CAUSE NOTICE DT.24-07-2015 NOT SERVED ON PETITIONER

40. Moreover, under sub section (3) of Section 4, such show cause notice is required to be served *by having it affixed on the outer door or some other conspicuous part of the public premises, and in such other manner as may be prescribed, where upon the notice shall be deemed to have been duly given to all persons of concerned.*

41. In the instant case, according to the additional counter of the In-charge Director dt.22-01-2016, the petitioner allegedly refused to receive the show cause notice dt.24-07-2015 when it was offered to her in person and so on 26-07-2015, *the show cause notice was affixed on the subject site.* This is also mentioned at the bottom of the show cause notice dt.24-07-2015 in handwriting of some official of HMDA. The petitioner denied that any such show cause notice was offered to her and that she refused to take it.

42. The procedure of physically serving show cause notice by offering the same in person is not mentioned in sub Section (3) of Section 4. Affixture of show cause notice *on the site* is also not mentioned therein.

43. When admittedly there were structures erected in the subject plot by the petitioner by 24-07-2015 and it is claimed by the petitioner

that ground floor had already been constructed, why the respondents did not affix the show cause notice on *a conspicuous part of the premises*, or sought to serve the notice by registered post acknowledgment due to the petitioner, whose address for correspondence is available with them (as mentioned in the order dt.08-06-2015 in W.P.No.15871 of 2015 to which the HMDA is a party), since that is another reasonable method of service of show cause notice on petitioner , is not explained by the respondents.

44. A Constitution Bench of the Supreme Court held in **M/s.Wire-Netting Stores and another Vs. The Delhi Development Authority and others**² while construing an identical provision in Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1958 [*in pari materia* with Sec.4(3) of the A.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1968] that only after the procedure prescribed in Section 4 is complied with that eviction of unauthorized occupants under Section 5 can take place. It held that if the Estate Officer did not follow the procedure of Section 4 and did not give a notice which would comply with its terms, it has to be held that he has acted in a high handed manner. It declared:

“8.If the authority wished to evict the petitioners from the occupation of these premises, it behoved them to follow strictly the procedure laid down for their action. It is a matter of great regret that authorities constituted to take such drastic steps without recourse to civil Court should be so oblivious of their own duties as laid down in the Act. We accordingly allow the petitioner an

² 1969 (3) S.C.C 415

order the restoration of the premises to the petitioners and return of all the machinery and other goods and parts of their factory which have been seized from them.”

45. Therefore, the deeming provision in Section 4 (3) of the A.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1968 will not operate. It has therefore to be held that there is no service of the show cause notice dt.24-07-2015 on petitioner as per Section 4 (3) of the A.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1968.

REPRESENTATION DT.25.7.2015 OF PETITIONER NOT CONSIDERED BY 7TH RESPONDENT BEFORE PASSING ORDER DT.4-8-2015, DIRECTING EVICTION OF PETITIONER :

46. It is admitted by 7th respondent in her additional counter-affidavit filed on 19.9.2016 at para 13 that representation dt.25.7.2015 of petitioner was rejected by the Commissioner of the HMDA on 14.8.2015. Why the said representation was not taken into account by the 7th respondent before passing the order dt.4-8-2015 is not explained by 7th respondent.

47. Admittedly in the said representation, petitioner did plead title to the plot claimed by her. No effort was made by respondents to verify even prima facie the claim of the petitioner with reference to her documents of title before proceeding under the Act.

ORDER DT.08-08-2015 OF RESPONDENT NO.7 IN FORM-B NOT SERVED ON THE PETITIONER :

48. Even the order dt.08-08-2015 in Form-B passed by the 7th respondent under Section 5 (1) of the Act (which is filed along with the counter affidavit of the 5th respondent) states “*the copy of this notice is served by affixing on the site as the person is not taken and refused to take.*”

49. This order is also required by sub Section (1) of Section 5 to be *affixed on the outer door or some other conspicuous part of the public premises*. The procedure of serving in person is not mentioned in the Act. Admittedly there is no affixture of the order dt.04-08-2015 on the structure erected by the petitioner in the subject plot. Affixture on the site, as was done by the respondents, is not permitted by the Act. Why this order was not sent by registered post acknowledgment due to the petitioner is not explained by respondents. Thus, even the said order cannot be said to be served on the petitioner and does not therefore bind the petitioner.

ORDER DT.04-08-2015 REFERS TO MATERIAL NOT SERVED ON THE PETITIONER :

50. Moreover, the order dt.04-08-2015 mentions about survey report of the surveyor of the HMDA which is not served on the petitioner. Though reference is made to the proceedings LC1/5779/03 dt.20-08-2003 of the Collector, Ranga Reddy, handing over land in Sy.Nos.100 and 101 of Miyapur to HMDA for protection, even this document has not been furnished to the petitioner or to this Court.

The Estate Officer of HMDA thus relied upon material not supplied to the petitioner while passing the order dt.04-08-2015 and thus violated principles of natural justice.

DEMOLITION DONE ON 08-08-2015 BY RESPONDENT NO.2, 5 AND 6 WITHOUT WAITING FOR 15 DAYS PERIOD MENTIONED IN FORM-B ORDER DT.04-08-2015 :

51. The order dt.04-08-2015 in Form-B passed under Section 5 (1) of the A.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1968 by 7th respondent itself gives 15 days time to the petitioner to vacate the premises. Without waiting for this period to expire, the structure erected by the petitioner was demolished admittedly on 08-08-2015 by 2nd respondent and its employees i.e., the Site Officer, Miyapur and Dy. Superintendent of Police, Enforcement Cell, HMDA (5th respondent). This is a blatant and arbitrary action violating Article 14 and the said Act.

PETITIONER'S RIGHT TO FILE APPEAL UNDER SECTION 9 OF THE ACT DEFEATED BY RESPONDENT NO.2 :

52. The petitioner has a right to challenge the order dt.4-8-2015 in a statutory appeal under Section 9 of the A.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1968 to the designated Court within 15 days from the date of publication of the order under Section 5 (1) of the Act. Since the order dt.04-08-2015 in the manner required under Section 5 (1) was not served on the petitioner, the petitioner was deprived of an opportunity to challenge the said order under Section 9. Copy of the said order was filed in the Court only on

22-01-2016 and was deliberately suppressed by the 2nd respondent till then in order, to deprive the petitioner of the right to file appeal.

53. This gives rise to a strong suspicion that the said order dt.04-08-2015 and the alleged show cause notice dt.24-07-2015 were manufactured by the 2nd respondent after the Writ Petition was filed only to mislead this Court by giving a false impression that some procedure was allegedly followed by the 7th respondent before demolishing the structures erected by the petitioner.

54. Having regard to the above facts, the conclusion that respondent no.s 2 and 5 to 7 have not acted in good faith and have deliberately acted in gross violation of law is inescapable.

OTHER CONTENTIONS :

55. In this view of the matter, it would be a travesty of justice to give any credence to the contention of respondents about maintainability of the Writ Petition on the ground of availability of alternative remedy of appeal under Sec.9 of the Act. Having demolished the structure erected by petitioner without serving the order dt.4-8-2015 on her before appeal time is completed, it does not lie in the mouth of the 2nd respondent to raise such a specious plea. The said contention is accordingly rejected as one without any merit.

56. A contention was raised on behalf of the respondents that there is no specific challenge by the petitioner to the order dt.04-08-2015 under Section 5 (1) of the Act. This contention is equally without

merit for the reason that it was never served on the petitioner in the first place. Secondly it was disclosed to the petitioner and to the Court only on 22-01-2016 after the structure erected by the petitioner was demolished on 08-08-2015 after the Writ Petition was filed by the petitioner on 07-08-2015. So the Court is entitled to take into account the subsequent events and mould relief accordingly. Thirdly, the relief as amended by the petitioner through filing of W.P.M.P.No.3460 of 2016 to '*declare the action of the respondents in demolishing the structure erected by the petitioner as arbitrary, illegal..*' covers the challenge to the order dt.04-08-2015 by implication, in my opinion, and even if there is no specific challenge to the same, this Court is not precluded from setting it aside for the several reasons mentioned above. The said order is accordingly set aside.

CONCLUSION :

57. The Writ Petition is accordingly allowed with costs of Rs.1,00,000/- (Rupees One Lakh only) payable by 2nd respondent to the petitioner within four weeks; the order dt.04-08-2015 passed by the 7th respondent/Estate Officer of the 2nd respondent under Section 5 (1) of the A.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1968 is declared as illegal, arbitrary and violative of Article 14, 300-A and the said Act; the very recourse by the 2nd respondent to the provisions of the said Act is held to be without jurisdiction; the 2nd respondent is directed to restore *status quo ante as on 05-08-2015*,

and re-erect the structures demolished by it's employees at its expense and cost within six months from today and restore possession of the subject plot to the petitioner; the 2nd respondent shall recover the same and the costs from respondent no.s 5 and 7 as also it's Dy. Superintendent of Police, Enforcement Cell and any other official who is found responsible for the illegal demolition of structure erected by petitioner; the 2nd respondent shall also initiate disciplinary action against them for acting blatantly illegally and arbitrarily and demolishing the structures erected by the petitioner. None of the respondents shall interfere with the possession and enjoyment of the subject land by the petitioner without obtaining a declaration of their title from a competent Civil Court and obtaining possession through such Court in accordance with law.

58. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 05-06-2018

Note:-

Mark the L.R. copy.

B/o.

kvr