

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 39664 OF 2018

ORDER :

The order dated 25.10.2018 passed by the 4th respondent Tahsildar directing the Mandal Revenue Officer, Ponnaluru to evict the encroachers and hand over possession of the land to the government and the notice dated 26.10.2018 under Section 6 of the Land Encroachment Act, 1905 are questioned in this Writ Petition.

The petitioners claim to be the owners of the land over an extent of Ac.2.00 in Survey No. 787, an extent of Ac.3.00 in Survey No. 787 and Ac.1.00 in Survey No. 757 situated at Thimmapalem Village, Ponnaluru Mandal, Prakasam District and that they have raised paddy, jama, maize and grass crops thereon. It is their case that on 29.10.2018, when the staff of the 4th respondent came to their agricultural lands and prevented them from working therein, they filed Writ Petition No. 33859 of 2018 and the same was disposed of on 19.09.2018 directing them to submit the explanation to the notice dated 13.09.2017, served on them on 14.09.2018, in a week and in such an event, the authority concerned should pass appropriate orders in accordance with law, if no orders were passed already. Pursuant to the said order, it is stated, the petitioners had submitted their explanation on 05.10.2018, asserting that themselves and their predecessors are in possession of the land for more than 30 years and cultivating the same; that power connection was given for the bore well which was dug up in the suit land in support of which the petitioners had also filed electricity bills; that land revenue was being collected

from them and as on date, there is a standing crop in the land from which they were sought to be evicted. But however, on 12.10.2018, the respondent authorities came to the subject land and warned the petitioners to stop the work therein. It is the further case of the petitioners that they had therefore, filed Writ Petition No. 38024 of 2018 which was disposed of on 19.10.2018 directing the 4th respondent to consider and dispose of the explanation dated 05.10.2018 submitted by the petitioners, in accordance with law, preferably within two weeks and till then, they should not be evicted from the subject land. However, it is stated, the 4th respondent issued notices to the petitioners on 26.10.2018 stating that they should vacate the land within 15 days.

Learned counsel for the petitioners submits that the order impugned is virtually a non-speaking order, devoid of any reasons. Hence, he submits that the Writ Petition is maintainable and the petitioners may not be relegated to the remedy of appeal.

On the other hand, learned Government Pleader for Revenue (Andhra Pradesh) vehemently opposes the Writ Petition and further submits, on instructions from the Tahsildar, that there is no standing crop, excepting in Ac.1.00 of land wherein there is jawar crop. She raises objection with regard to the maintainability of the Writ Petition.

Considered the respective submissions. The fact that the land alleged to have been occupied by the petitioners is an agricultural land is not in dispute. The very submission of the respondent authorities that over an extent of Ac.1.00 there is jawar crop itself fortifies the contention of the petitioners that they are

cultivating the subject land and there is a crop standing thereon. As can be seen from the very pleadings and the order passed by the respondents, an effort was being made by the respondent authorities from 2013, which had forced the petitioners to approach this Court on earlier occasion by filing Writ Petitions. These facts, *prima facie*, indicate that the petitioners' possession was over the years.

In this context, it may be noted that in ***Government of Andhra Pradesh v. Thummala Krishna Rao***¹, the Supreme Court had categorically held that if the possession of a particular individual is over a long period and there is a contestable right, no resort can be taken to by the authorities to the provisions under the Land Encroachment Act. These are all aspects, which are required to be considered by the authorities while making an order, as it is the specific contention of the petitioners that the impugned order is devoid of merit. Though the same can be dealt with by this Court, in view of the fact that there is an effective alternative remedy of appeal available to the petitioners, interests of justice would better be served if liberty is granted to them to file an Appeal within the period of limitation, with a further direction to the Appellate Authority to dispose of the same after consideration of merits in accordance with law.

As it is the specific assertion of the petitioners that there is a standing crop of paddy, eucalyptus and also taking into consideration the admission on the part of the Tahsildar that there is a jawar crop, it is made clear that till disposal of the Appeal that might be filed by the petitioners, the respondent authorities shall

¹ AIR 1982 1081

not interfere with the agricultural operations of the petitioners in the subject lands. It is also made clear that if the petitioners fail to file the Appeal within the stipulated time, the respondents shall be at liberty to proceed further.

With this, the Writ Petition stands disposed of. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

02nd November 2018

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