

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 14525 of 2019

Date : 16.7.2019

Between:

Smt Fatima Begum wife of late Mirza Saber Ali Baig
aged about 60 years
resident of H No 5-33 Dargakhali Khan
Kismathpur Village Gandipet Mandal
Ranga Reddy District TS

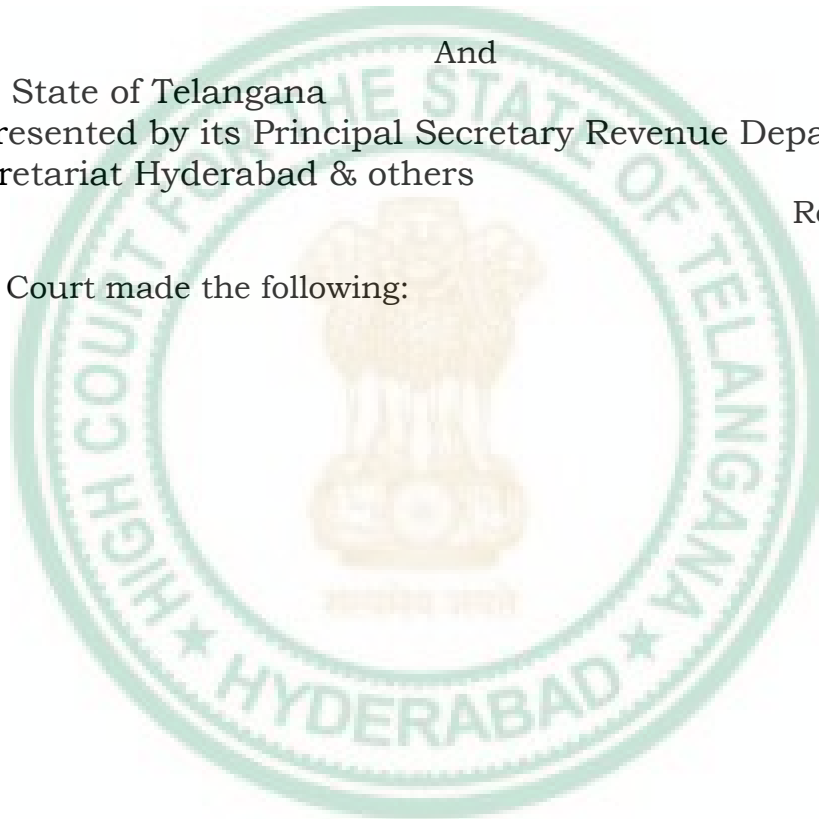
Petitioner

And

The State of Telangana
represented by its Principal Secretary Revenue Department
Secretariat Hyderabad & others

Respondents

The Court made the following:



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ORAL ORDER:

Heard learned counsel for petitioners and learned Government Pleader for Revenue.

2. Petitioners claim that they have constructed small houses in small extents of land in survey No. 20, Darga Khaliz Khan village, Gandipet mandal, Ranga Reddy district. Notice under Section 7 of A.P. Land Encroachment Act, 1905 was issued to them alleging that they have encroached into the Government land and why they should not be evicted from the Government land. It appears there was no response to the notice issued on 8.3.2019 and having waited for suitable time and on consideration of records as it was found that subject land is recorded as 'Sarkari Poramboke' impugned order dated 20.6.2019 was issued directing the petitioners to vacate the Government land within three days from the date of receipt of said notice. On the same day, notice under Section 6 of the Act, 1905 was issued directing the petitioners to vacate the land within seven days and Girdawar was authorized to carry out the eviction and to take possession of the land. These two proceedings challenged in this writ petition.

3. According to learned counsel for petitioners, the entire procedure is nonest in the eye of law as whatever referred to in the proceedings is under A.P. Land Encroachment Act, 1905 whereas that Act is no more in force after formation of State of Telangana and in its place, Telangana Land Encroachment Act, 1905 is introduced, therefore, Telangana land Encroachment Act, 1905 alone is in force and notice

issued referring to Andhra Pradesh Land Encroachment Act, 1905 is illegal. It is further contended that on the same day two separate proceedings were issued and they are not maintainable and liable to be set aside.

4. A.P. Land Encroachment Act, 1905 enables the competent authority to evict persons who are in illegal occupation of the Government land. This Act was in force in the combined State of Andhra Pradesh. Section 101 of the Andhra Pradesh Re-organisation Act, 2014, vests power in the State of Telangana to adopt the existing Acts and to give effect to or modify the provisions of the existing enactments. In exercise of power vested under Section 101 of the A.P. Re-organisation Act, 2014, A.P. Land Encroachment, 1905 was adopted and titled as Telangana Land Encroachment Act, 1905. In terms thereof, provisions of A.P. Land Encroachment Act, 1905 are made applicable mutatis mutandis to Telangana State. Section 7 of the Act, 1905 prescribes issuance of prior notice to persons in occupation and Section 6 prescribes taking consequential steps on not satisfied with explanation, if any, offered and if no explanation is offered, based on material on record and to pass orders. Merely because erroneously there is reference to A.P Land Encroachment Act, 1905 proceedings initiated do not vitiate. More so, having regard to application of A.P. Land Encroachment Act, 1905 in the combined state till 2.6.2014, formation of new state and adoption of laws in force as on 2.6.2014 to new State, the Officer concerned could have possibly issued notice mentioning the title of the Act in Telangana State. Further, as long as power is traceable a wrong mention of provision cannot vitiate the decision. Therefore the contention

of the learned counsel on this aspect is stated to be rejected and accordingly rejected.

5. The further contention of learned counsel that on same day two separate proceedings were issued, is also stated to be rejected. Apparently, notice is issued under Section 7 of the Act, 1905 calling upon petitioners to explain and as no explanation was offered, based on material on record, orders are passed declaring the petitioners as encroachers of the Government land and consequential proceedings are issued directing them to vacate the Government land and authorizing Girdhavar to evict the petitioners and take possession. These two proceedings are necessarily to be issued as required by the Act, 1905. Therefore, merely because two proceedings were issued on the same day, does not mean that they are vitiated. After issuance of Section 7 notice, Act, 1905 does not envisage further opportunity but only requires granting of time for eviction. Further, it is not the case of the petitioners that they were not served with notice before taking action against them. I therefore, do not see any merit in the writ petition warranting interference. Accordingly, the writ petition is dismissed. However, this order does not come in the way of petitioners to prefer appeal under Section 10 of the Act, if so advised. Miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 16-7-2019
TVK

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