

THE HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITIOIN No.16707 of 2019

ORDER:

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

2. In this writ petition the petitioners challenge the orders of Tahsildar dated 31.07.2019 made under Section 6 of the Land Encroachment Act, 1905 (for short 'the Act').

3. Against such orders, remedy of appeal to the District Collector is provided by Section 10 of the Act. Without availing such remedy of appeal, this writ petition is filed challenging the orders of the Tahsildar on merits and the findings recorded by the Tahsildar on the status of the land as not valid in law and contrary to the revenue records.

4. Learned counsel for the petitioners contended that though the remedy of appeal is available and in normal course aggrieved person should approach the appellate authority, but having regard to the earlier orders of the Collector, where he has already expressed his view on the status of the land and issued directions to the Commissioner, Kothakota Municipality, the petitioner cannot expect a fair hearing and decision from him.

5. The proceedings of the Commissioner, Kothakota Municipality, dated 26.07.2019 are filed as Ex.P-21 in the writ

petition paper book. In reference No.2, the letter of Collector dated 22.07.2019 is recorded. The proceedings dated 26.07.2019 go to show that the Collector issued orders to take steps to cancel the building permissions granted. Accordingly, the building permissions were cancelled by the Commissioner by order dated 26.07.2019 which is challenged in WP No.16679 of 2019 and the said writ petition is separately disposed of. According to the learned standing counsel for the Municipality and the learned Government Pleader, the constructions are made in tank bed and the same is illegal. The court is not expressing any opinion on this issue. It is for the appellate authority to consider it in the appeal that may be preferred by the petitioners.

6. In view of the same, the apprehension expressed by the petitioners that they may not have a fair hearing from the Collector cannot be brushed aside. Quasi Judicial authority has to adjudicate the matter objectively without bias and without any prejudicial mind. Thus, in the facts of this case, while directing the petitioners to avail the remedy of appeal, and on preferring such appeal, the District Collector, Wanaparthi District, is directed to forward the same to the District Collector Mahaboobnagar, who in turn, shall consider the appeal preferred under Section 10 of the Act by affording due opportunity to the petitioners and decide the matter on merits. It is also open to the petitioners to file an application seeking interlocutory orders pending consideration of the appeal. Having regard to the fact

that the petitioners are in possession, applied for building permission and also made some constructions, I deem it necessary to direct the parties to maintain *status quo* obtaining as on today. However, such order shall be subject to the orders that may be passed by the Collector in the interlocutory application and valid till that date. It is open to the District Collector to objectively consider the interlocutory application and take a decision.

7. The writ petition is accordingly disposed of. No order as to costs. Miscellaneous Petitions, if any pending, shall stand dismissed.

P. NAVEEN RAO, J

August 07, 2019

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