

HONOURABLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.17350 of 2018

ORDER:

The grievance of the petitioners is with regard to the order dated 03.5.2018 passed by the Tahsildar, Serilingampally Mandal, Ranga Reddy District, in exercise of power under Section 6 of the Telangana Land Encroachment Act, 1905 (for brevity, the Act of 1905'). By order dated 10.5.2018, the erstwhile common High Court granted interim stay of further proceedings pursuant to the impugned order dated 03.5.2018.

During the pendency of this Writ Petition, respondent Nos.5 to 41 got themselves impleaded.

Heard Sri S.Sridhar, learned counsel for the petitioners, learned Assistant Government Pleader for Revenue, State of Telangana, for the respondent authorities and Sri Azeemuddin Farooqui, learned counsel for respondent Nos.5 to 41.

Perusal of the impugned order dated 03.5.2018 demonstrates that even as per the revenue authorities, the subject land was originally assigned to the predecessor-in-title of the petitioners. According to them, the said assignee alienated the land assigned to him without obtaining prior permission from the competent authority contrary to the assignment conditions. It is on this basis that the Tahsildar, Serilingampally Mandal, Ranga Reddy District, purported to treat the petitioners as encroachers over the subject land.

It may be noted that a separate enactment is put in place for dealing with assigned lands and encroachments thereupon in violation of the conditions of assignment, viz., the Telangana Assigned Lands (Prohibition of Transfers) Act, 1977 (for brevity, 'the Act of 1977'). A case which would fall within the ambit of the Act of 1977 would stand excluded from the reach of the Act of 1905 which would operate in a wholly different sphere. This very principle was affirmed by the erstwhile Andhra Pradesh High Court in Prakash Rathode Vs. Asifabad, Adilabad District and others¹.

In that view of the matter, the action of the Tahsildar, Serilingampally Mandal, Ranga Reddy District, in taking recourse to the provisions of the Act of 1905, when the admitted position was that the petitioners claim to be the alienees of an assignee of the land, cannot be countenanced.

In so far as the rival claims put forth by respondent Nos.5 to 41 are concerned, they seem to have already initiated proceedings against the State authorities in relation thereto and an appeal is pending consideration before this Court on the appellate side. Sri Azeemuddin Farooqui, learned counsel, would fairly concede that no litigation has been initiated by his clients against the petitioners herein independently. In any event, this Court cannot undertake resolution of the disputes between these two sets of private parties in a Writ Petition filed under Article-226 of the Constitution. The issues sought to be raised by respondent Nos.5 to 41 are therefore

¹ (1995) 1 ALD 517

left unaddressed and it is open to them to take recourse to appropriate remedies available to them in law before the competent forum for resolution thereof.

The Writ Petition is accordingly allowed only to the extent of holding that the Tahsildar, Serilingampally Mandal, Ranga Reddy District, ought not to have taken recourse to the provisions of the Act of 1905 when the case on hand squarely fell within the ambit of the Act of 1977. In consequence, the impugned order dated 03.5.2018 is set aside. This order shall however not preclude the State from taking recourse to the applicable enactment in relation to the petitioners' occupation over the subject land in accordance with the due procedure.

Pending Miscellaneous Petitions, if any, shall stand closed in the light of this final order. No order as to costs.

06th March, 2019
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JUSTICE SANJAY KUMAR