

(2013) 09 AP CK 0065

In the Andhra Pradesh High Court

Case No : Writ Petition No. 26421 of 2013

Syed Hafeez

APPELLANT

Vs

The Govt. of A.P. and two Others

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Citation : (2013) 6 ALD 658 : (2014) 1 ALT 455 : (2014) ALT(Rev) 95

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : N. Ashwani Kumar, for the Appellant;

Final Decision : Partly Allowed

Judgement

C.V. Nagarjuna Reddy, J.—Notice bearing No. B/615/2013, dated 07.09.2013, of respondent No. 3 issued purportedly u/s 23(1) of the Andhra Pradesh Water, Land and Trees Act, 2002 (for short "the Act") is assailed in this Writ Petition. It is the pleaded case of the petitioner that he is in occupation of the premises bearing No. 19-5-8/3/A admeasuring 66.6 square yards or 56 square meters in Survey Nos. 68 and 69 of Bahadurpura Village and Mandal, having purchased the same under registered sale deed, dated 05.12.1980 from one K. Veeraswamy, who purchased the said property under a Court decree for specific performance of agreement of sale. The petitioner claimed to have obtained permission for construction from the erstwhile Municipal Corporation of Hyderabad, vide permit No. 56/93 of 1984, dated 11.07.1984. Respondent No. 3 has issued a notice under the Andhra Pradesh Encroachment Act, 1905 on 04.05.2013 for eviction. On 16.05.2013, the petitioner has submitted his reply. The petitioner pleaded that on receiving the reply, respondent No. 3 sought for a copy of the judgment and decree, dated 19.10.1976 in O.S. No. 1213 of 1976 on the file of the VI Assistant Judge, City Civil Court, Hyderabad and the petitioner has, accordingly, furnished the same and that without passing any order u/s 6 of the Act, respondent No. 2 has chosen to issue the impugned notice in purported exercise of his power u/s 23(1) of the Act.

2. At the hearing, Sri Ashwani Kumar, learned counsel for the petitioner, submitted that the provisions of Section 23 of the Act have no application to the present case and that had respondent No. 3 issued a proper notice, the petitioner would have satisfied him on the above aspect.

3. The learned Assistant Government Pleader for Revenue (Telangana Area), on instructions, submitted that the impugned notice has been issued in pursuance of a judgment, dated 18.02.2013, of this Court in PILs, vide Writ Petition No. 25820 of 2010 and batch.

4. A perusal of the impugned proceeding shows that even though the same is styled as a "notice", it contains a mandatory direction to the petitioner to remove the encroachments stated to have been made on Musi river within one day. Even if this Court in Public Interest Litigations has given directions to clear the encroachments on Musi river, that does not cloth respondent No. 3 with the power to high handedly remove the alleged encroachments without giving the alleged encroachers a reasonable opportunity of putting forth their case. By mere terming of the proceedings as "notice", they would not part-take the character of the notice in real sense. A notice in law means the person against whom the action is proposed to be taken must be informed of such proposed action and be given an opportunity to resist such action.

5. It is indeed regrettable that the executive apparatus have not been understanding the true purport of a notice in law and respondent No. 3 is not an exception in this regard. A fair procedure warrants that respondent No. 3 should give a notice to the petitioner by indicating the proposed action and call for objections to such action. It is only after considering the objections that may be filed by the petitioner, respondent No. 3 would be entitled to pass an order. Thus, respondent No. 3 failed to follow this fair procedure and has straightaway mandated the petitioner to vacate the above-mentioned premises threatening further action in case of his failure to do so.

6. Ordinarily, this Court would have quashed the impugned proceeding. However, considering the facts and circumstances of the case, the petitioner is permitted to submit his objections to the impugned proceeding within ten days from today. Respondent No. 3 shall consider such objections, pass appropriate order giving reasons in support thereof and communicate the same to the petitioner. Till this exercise is completed, respondent No. 3 shall not interfere with the petitioner's possession of the above-mentioned property.

7. The Writ Petition is, accordingly, allowed in part to the extent indicated above. As a sequel to disposal of the Writ Petition, W.P.M.P. No. 32695 of 2013 is disposed of as infructuous.