

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 13850 of 2012

ORDER:

Challenging the action of the respondents in taking steps for demolition of structures and eviction of the petitioners from land admeasuring Ac.0.69 cents in Survey No.452/B of Ayyeluru village, Nandyal Mandal, Kurnool District as illegal and arbitrary, the present Writ Petition is filed under Article 226 of the Constitution of India.

The averments in the affidavit filed in support of the Writ Petition are as under :

The first petitioner is the father of the second petitioner. It is stated that since last 3 decades they are in possession and enjoyment of the property referred to above. Basing on their possession and enjoyment, the Mandal Revenue Officer vide his proceedings dated 17.10.1987 granted temporary permission to the first petitioner for cultivation of the said land as he is a landless poor. The permission was granted for a period of one year. Along with the first petitioner, three others were also assigned small pieces of land on a condition that the same would be to the concurrence of the authorities of K.C.Canal Department. Again for the year 1988-89,

permissions were granted on early basis. In the year 1996, when the first respondent tried to evict the first petitioner and others from permitted land, W.P.No.24662 of 1996 came to be filed before this Court. While issuing notice, this Court granted interim stay of all further proceedings of the first respondent. Thereafter, on 04.03.1997 the first respondent is alleged to have informed the 3rd respondent about the interim orders passed by this Court and the likelihood of taking over a portion of the said land under road widening of the National Highway and requested the 3rd respondent to consider the alienation of the land to first petitioner and others on market value. The Executive Engineer vide his Letter L.R.No.DB/D3/LS9A/908M, dated 30.05.1998 expressed no objection for alienation of land on market value to the first petitioner and others, who are Sivoijamadars, observing that as the land is in low laying area the same requires more expenditure for reclamation and lifting the land to the road level for starting any construction. It is stated that the first respondent made proposals for transfer of land in favour of the first petitioner and others and informed the same to the second respondent vide letter dated 15.10.1997. It is said that the proposals were submitted to the District Collector on 15.11.1997 and the same are still pending consideration. While things stood thus, the Writ Petition No.24662 of

1996 filed by the petitioner was disposed of on 01.02.2006 observing that the petitioner cannot be dispossessed from the land without taking recourse to due process of law. In respect of the orders passed by this Court, the first respondent, at the instance of local M.L.A. and other leaders, issued a notice under Section 7 of the Land Encroachment Act to the first petitioner as well as to the Second Petitioner alleging that 34 cents of land which is in their possession should be surrendered within seven days from the date of receipt of the said notice. Similar notices were issued to the 3rd and 4th petitioners also. An explanation came to be submitted on 15.03.2001 to the show cause notice. Thereafter there was no communication to the petitioners about the fate of their explanation. However, on 05.05.2012 the respondents 1 and 3 along with their staff came to the land of the petitioners and tried to demolish the existing structures. When they resisted, the respondents left the place stating that they would demolish the same within 10 days. The proposed highhanded action of the respondents is challenged in the present Writ Petition.

The unofficial respondent who got impleaded as sixth respondent filed a vacate stay petition stating that the land was allotted to him by the government under Ex-Serviceman quota by the then Tahasildar, Nandyal Mandal, Kurnool District vide proceedings

No.RC.B5.4806/76 dated 17.12.1976 and that he is in possession of the land by constructing the shed and enjoying the said property. It is his case that writ petitioners were never in possession of the property at any point of time and he is also paying cist to the Government. It is also stated that O.S. No.159 of 1977 filed by the petitioner against the sixth respondent (Implead petitioner) seeking declaration of the easement right of passage to reach their plots directly was dismissed on 09.07.1979 with costs. The said order has become final as it was never challenged by the petitioners. It is stated that the documents filed by the petitioners are forged, fabricated and bogus, for which the Tahasildar issued an endorsement in Rc.B/356/2014, dated 09.09.2014 stating that no such documents are existing in their records. He further submits that the lease was granted to the petitioners on year to year basis commencing from 17.10.1987 to 16.10.1988 and no document is placed before this Court to show extension of lease after 16.10.1988. In view of the above, he submits that there are no merits in the present writ petition and the same is liable to be dismissed.

The Tahasildar, Nandyal Mandal, Kurnool District also filed a counter stating that the Deputy Executive Engineer, I & CAD, KCC Sub Division, Allagadda and Nandyal have reported to him about the occupation of

land by some unauthorized persons and also raising shops and sheds in the disputed site and accordingly requested the Tahasildar to evict them from the said place. The Mandal Suraveyor, Nandyal was directed to survey on the encroachments in KCC poramboke land and submit report to the office. The Mandal Surveyor after conducting the survey on encroachments, reported that 14 persons have encroached the KCC poramboke land to an extent of Ac.1.00 in Sy.No.452/B of Ayyalur village of Nandyal Mandal by establishing various sheds and shops in the land. In view of the previous orders passed by the High Court in W.P.No.24662/1996 dated 01.02.2006, notices under Section 7 were given to all the 14 encroachers on 03.03.2012 including the petitioners herein. In response to Section 7 notice, the petitioners submitted an explanation. As their explanation was not convincing, final orders came to be passed on 02.04.2012 evicting the petitioner from the encroachments made in KCC poramboke and accordingly directed the V.R.O., Nandyal to serve the orders on them. The averments in the counter would further shows that when the V.R.O. went to serve the copies of the order, the writ petitioners rejected to receive the copies of the order, which lead to affixing the copies of the order on the shops belonging to the encroachers including the petitioner. Thereafter, on 05.05.2012, the Mandal Surveyor, Mandal Revenue Inspector and Village Revenue Officer, Ayyalur village

proceeded to demolish the constructions on the KCC poramboke and evict the encroachers from the said KCC poramboke land. At that point of time the encroachers sought a weeks time to vacate the same. Taking advantage of the time granted, the petitioners filed the Petition before this Court. It is specifically contended that the petitioners were never granted any assignment patta and no alienation was made to the petitioners in respect of lands in Sy.No.452/B of Ayyalur village. The averment that the petitioners are cultivating the land is also false. According to him, all the writ petitioners have raised shops and are eking out their livelihood by giving the shops on rent. However, it is admitted that the petitioners were granted temporary patta for one year in 1987 for agricultural purpose only, which was renewed upto 1989 and thereafter it was not renewed. In violation of the temporary patata granted, the petitioners raised structures in the land. In view of the above, it is submitted that there are no merits in the Writ Petition and the same is liable to be dismissed.

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

A perusal of the material placed before this Court would show that pursuant to a notice dated 03.03.2012 issued to the writ petitioners under Section 7 of the Land Encroachment Act, explanations came to be submitted.

After considering the explanation made by them, the Tahasildar Nandyal, passed an order on 02.04.2012 directing them to evict the above encroachments from the above said KCC poramboke i.e., land in Sy.No.452/B of Ayyalur village. A perusal of the said order which came to be passed after giving notice to the writ petitioners shows erection of welding shop, electrical shop, Kotha Mission shop, Tractor mechanic shop, chicken centre and welding trally works etc. etc., in the said land. Therefore, in the absence of any reply being filed to the Counter and having regard to the letter dated 02.04.2012 issued after taking into consideration the representation made, it is clear that the averments in the affidavit that the land was used for agricultural purpose appears to be incorrect. Even assuming for argument sake that the land was assigned to the petitioners, they have no authority or right to raise structures and give them on rent to others. Normally, land will be assigned to landless poor for agricultural purpose. The counter filed by the Tahasildar show that the land was leased on yearly basis from 1987 to 1989 and thereafter the same was not renewed. The counsel for the implead petitioner would submit that under the guise of the order passed by this Court, the petitioners are trying to encroach on to his land which is also situated in same survey number and hence, he got impleaded. In any event it is to be noted that notice was given to the

petitioners and after considering their representation, an order came to be passed. The record further reveal that when the Village Revenue Inspector went to serve the copy of the order on the petitioners, they refused to take the same. Even accepting the argument of the learned counsel for the petitioner that they are using the land only for agricultural purpose and that it is false to state that they have raised the structure, the said issue cannot be decided in this Writ Petition as the same involves disputed questions of fact. Apart from that, the petitioners are provided with a remedy of filing an appeal under Section 10 of the Act against the final orders passed by the Tahasildar. Without availing the alternative remedy, the petitioners have approached this Court directly under Article 226 of the Constitution of India.

In **Union of India v. T.R.Varma**^[1], a 5 Judge bench of the Apex Court held as follows :

“It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ.”

The Apex Court in **Commissioner of Income Tax v.Chhabil Dass Agarwal**^[2] also held that “ *the High Court will not entertain a petition under Article 226 of Constitution, if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.*”

In view of the judgments referred to above and having regard to the circumstances stated above, I see no ground to entertain the present Writ Petition. However, if the representation alleged to have been made by the petitioners on 15.03.2001 is still pending for consideration before the Government, it is always open to the petitioners to pursue the same in accordance with law.

With the above direction, the Writ Petition is disposed of. No order as to costs. Miscellaneous Petitions pending if any in this Writ Petition shall stand closed.

C. PRAVEEN KUMAR, J

Date:30.09.2015

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[\[1\]](#) AIR 1957 Supreme Court 882

[\[2\]](#) (2014) 1 SCC 603