

· **The Hon'ble Sri Justice C.V.Nagarjuna
Reddy**

+ Writ Petition No.13933 of 2011

—
% Dated 18.06.2015

—
Between:

Jala Prabhu Das

... Petitioner

and

The State of A.P., rep. by its Principal
Chief Conservator of Forests, Aranya
Bhavan, Saifabad, Hyderabad and 2 others.

...Respondents

**! Counsel for the petitioner: Mr.TV.Jaggi Reddy for Mr.S.Suba
Reddy**

^ Counsel for the respondents: AGP for Forests (AP)

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Counsel for the respondents: AGP for Forests (AP)

The Court made the following:

Order:

At the interlocutory stage, the Writ Petition is taken up for hearing and disposal with the consent of the learned Counsel for the parties.

This Writ Petition is filed for a Mandamus to declare the action of respondent No.3, in interfering with the petitioner's possession over the land admeasuring Acs.13-20 cents in R.S.No.182 of Gullapudi Village, Musunoor Mandal, Krishna District, as illegal and arbitrary.

In his affidavit, the petitioner stated that his

father late Paramanandam was inducted into possession of the land admeasuring Acs.17-50 cents in Old Survey No.182 in Gullapudi Village, Musunoor Mandal, Krishna District, on payment of rent @ Rs.0-8-0 Anas per acre by the then Mirzapur Zamindar; that on payment of an amount of Rs.875/- in total as nazarana, a patta was granted in favour of his father *vide* patta No.466, dated 07-07-1946; that the entire land is a single block and was full of shrubs and jungle growth; and that his father had made the said land fit for cultivation and continued to cultivate the same till his death in the year 1986. The petitioner further averred that after abolition of estates under the Estates Abolition Act, 1948 (for short 'the 1948 Act'), a survey was held by the officials and sub-division was made, as per which, the old Survey number 182 was divided into Survey Nos.183 and 184 comprising Acs.4-30 cents; that inadvertently, an extent of Acs.13-20 cents was included in R.S.No.182; and that the same was described as Forest land. The petitioner further submitted that RS.No.182 comprised a total extent of Acs.553-05 cents; that the same was classified as Adavi (Forest); that the settlement

authorities, during the Survey and settlements, recognized the possession of the petitioner's father over an extent of Acs.4-30 cents in R.S.Nos.183 and 184; and that on a wrong premise, the remaining extent of Acs.13-20 cents was included in the adjoining R.S.No.182 treating the same as forest land. The petitioner further averred that, after abolition of estates, he has applied for patta under Section 11 of the 1948 Act; that the settlement officer has rejected the said application, which order was confirmed in appeal; that the petitioner has challenged the said order in WP.No.4925 of 2005 wherein an order of *status quo* was granted; that on 02-05-2011, respondent No.3 along with his staff has removed some of the plants, which are six months to one year old, without any notice; that the petitioner has requested respondent No.3 not to interfere with his possession of the property in view of pendency of the Writ Petition before this Court; that respondent No.3 and his staff left that place on that day; and that they again came to the said land on 06-05-2005 and 08-05-2005 and tried to remove the mango sapplings and other plants, which was resisted by the petitioner. The petitioner has,

accordingly, questioned the interference of respondent No.3 and her staff with his possession of the subject land.

This Court, by Order, dated 11-05-2011, granted an order of *status quo* for a limited period and the same was extended until further orders by order, dated 20-06-2011.

Respondent No.2- the Divisional Forest Officer, Krishna Division, filed a detailed counter-affidavit wherein he has averred that the land in R.S.No.182 of Gullapudi Village was classified as Forest in Revenue records; that the same was notified as such under Section 4 of the Andhra Pradesh Forest Act, 1967, *vide* G.O.Ms.No.795 F & A (For.III) Department, dated 19-04-1969, by including the same in Lopudi Forest Block admeasuring Acs.1072.00 cents; that the petitioner and his son trespassed into the undivided forest land situated in R.S.No.182 and removed the Bio-diesel plantation; that a criminal case was registered against them in Musunoor police station by respondent No.3; and that respondent No.2 has issued prosecution order on 11-04-2011. Respondent No.3 has termed patta No.466, dated

07-07-1946, allegedly, issued by the then Mirzapur Jamindari in respect of Acs.17-50 cents in RS.No.182 as fabricated and averred that the learned II Additional District Judge, Vijayawada, in his Judgment, dated 18-12-2012, in OS.No.28 of 1999, filed by the petitioner, categorically held that the patta was forged and that the said finding was based on the opinion of the Director, Forensic Science Laboratory. The counter-affidavit further reiterated the plea that the land claimed by the petitioner is a notified forest and that therefore, the petitioner has no right to remain in possession of the same.

Though the counter-affidavit was filed as far back as 20-07-2011, along with the vacate stay application, no reply-affidavit has been filed.

Along with the counter-affidavit, respondent No.2 has filed a copy of judgment, dated 18-12-2002, in OS.No.28 of 1999, on the file of the Court of the learned II Additional District Judge, Vijayawada. A perusal of this judgment shows that the petitioner herein filed the said suit against seven private persons (defendant Nos.1 to 7), the District

Collector, Krishna District (defendant No.8) and respondent No.2 herein (defendant No.9) for permanent injunction restraining the defendants and their men from interfering with his peaceful possession and enjoyment of Acs.17-50 cents of dry land in R.S.Nos.182, 183 and 184 of Gullapudi Village.

The learned District Court has framed the following preliminary issue:

“Whether this Court has got jurisdiction to try the suit?”

The District Court has also framed the following main issues:

- “1. Whether the plaintiff is entitled for permanent injunction as prayed for against the defendants ?
2. To what relief ?”

While holding on the preliminary issue that the suit was maintainable, the District Court has *inter alia* rendered the following finding on the genuineness of the patta set up by the petitioner:

“Further, I have to state that the ryotwari patta relied on by the plaintiff under Ex.A.1 which was in fact marked as Ex.P.2 in Ex.B.1 before the Settlement Officer, which was referred to the Director of Forensic Science Laboratory, who

opined that there are chemical erasures in the enclosed portions, and the size of patta form and version used by the zamindar of Ex.P.2 is differing from the form, and hence, the original writing could not be deciphered, and it all proved that Ex.P.2 is fabricated document. Therefore, the argument of the learned Counsel for the plaintiff that father of plaintiff or plaintiff have dug well in S.No.182 is not correct.”

The District Court has also taken into consideration notification, dated 30-05-1969, issued under Section 4 of the Andhra Pradesh Forest Act, 1967, reserving an extent of Acs.1072-00 cents as Lopudi Forest Block.

Based on the oral and documentary evidence, the District Court has dismissed the suit by holding that the land claimed by the petitioner falls under R.S.No.182, which was notified as Forest, and that the petitioner is not in possession of the same.

It is consternating to note that the petitioner has not made a whisper of his filing the suit and dismissal of the same in this Writ Petition. He has, thus, indulged in blatant suppression of the material fact and made this Court entertain the Writ Petition and grant an interim order in his favour, despite the

fact that the judgment of the civil Court referred to above is staring at his face disentitling him to grant of any relief in this Writ Petition. His misdemeanor in suppressing the vital fact of his filing the suit and being unsuccessful therein renders the Writ Petition to be thrown out lock, stock and barrel. This apart, for suppression of the factum of his filing the suit and its dismissal, the petitioner is liable to pay exemplary costs.

For the above-mentioned reasons, the Writ Petition is dismissed with costs of Rs.25,000/- payable to the Chief Justice Relief Fund within 30 days from today.

As a sequel to dismissal of the Writ Petition, interim order, dated 11-05-2011, as extended on 20-06-2011, is vacated and WVMP.No.2778 of 2011 in/& WPMP.No.16860 of 2011 are disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 18th June, 2015

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