

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.14272 OF 2011

ORDER:

The writ petition is filed by the petitioner seeking the reliefs as under:

- a) to direct the respondents not to interfere in any manner with the petitioner's possession and enjoyment of the property over an extent of Ac.8.13 cents and Ac.3.48 cents respectively situated in Sy.Nos.59 and 60/2, Kamavarapukota Village;
- b) to direct the respondents not to cut and damage Neem and Babul Trees situated on the boundary line between puntha (passage) land covered by Sy.No.58 and the petitioner's lands situated in Sy.Nos.59 and 60/2, Kamavarapukota Revenue Village.
- c) to direct the respondent to protect puntha (passage) land situated in Sy.No.58, Kamavarapukota Village for public passage purpose, without allowing any encroachments or construction of houses thereon.

The brief averments in the writ petition are that the petitioner is the owner of the property over an extent of Ac.8.13 cents and Ac.3.48 cents situated in Sy.Nos.59 and 60/2, Kamavarapukota Village and Mandal, West Godavari District and he has been in physical possession and enjoyment of the same. Petitioner had also obtained pattadar pass books in his favour and got entered the same into revenue records. On earlier occasion when some villagers were occupying the passage way in Sy.Nos.59 and 62/2, Kamavarapukota Village, petitioner approached this Court by filing W.P.No.21094 of 2010 seeking relief against the inaction on the part of the official respondents in acting on the representation dated 14.06.2010 for removal of encroachments made by the private respondents on the road margin between the petitioners' land and the land covered on the road leading from Kamavarapukota Village to Borrampalem Village.

It is further stated that taking into consideration of the submissions made on behalf of the 4th respondent-Gram Panchayat that the petitioner has encroached the Government land, necessary instructions have been issued to the Mandal Revenue Officer to remove the encroachments. Thereafter at the instance of the disgruntled parties in the village, the 3rd respondent-Tahsildar had visited the premises of the

petitioner and threatened him with dire consequences and directed him to vacate a portion of the land alleging that the petitioner had encroached into the Government land particularly the puntha (passage) land. The 3rd respondent-Tahsildar had no basis whatsoever to make such allegation and in fact the petitioner even volunteered to abide by the survey, if the survey is ordered to be conducted. Even today the petitioner is ready for conducting of a survey to determine the alleged encroachment, if any.

A counter-affidavit has been filed by the respondents 1 and 3 denying the allegations of interference in any manner. However, it is asserted by the 3rd respondent-Tahsildar that R.S.No.58/2 of Kamavarpukota Village is classified as puntha (passage) land and in the revenue record, the same is recorded as 'Government land'. It is also alleged that certain portion of the land was encroached by the petitioner taking advantage of the fact of his ownership of land in S.No.59. It is further asserted that the land in Sy.No.58/2 being a puntha (passage) land, there is no need and necessity to issue any notice to the petitioner to survey the Government land and prayed for dismissal of the writ petition.

Heard Sri K. Venkata Purushothama Rao, learned counsel for the petitioner, the learned Assistant Government Pleader for Revenue and the learned standing counsel for the 4th respondent-Grama Panchayat.

The facts are not in dispute and they are in narrow compass. In the present case though there are no proceedings as such initiated against the petitioner particularly in writing, now it is clear from the counter-affidavit filed by the respondents 1 and 3 that there was an attempt by the 3rd respondent to interfere with the possession and enjoyment of the property of the petitioner in Sy.No.59, Kamavarpukota Village on the allegation that there was an encroachment by the petitioner into the Government Puntha land which is in Sy.No.58/2. In that view of the matter, the writ petition cannot be said to be filed on a mere apprehension as now it has become clear that there was an attempt by the 3rd respondent-Tahsildar and the allegations of the petitioner as made in the sworn affidavit filed in support of the writ petition have to be accepted. In normal circumstances as a law abiding officer, the 3rd respondent ought to have issued notice to the petitioner even if the 3rd respondent has material in his possession or even suspecting that there are encroachments by the petitioner into

Government land. Without issuing any proceedings and without any notice, conducting of survey and issuing proceedings in writing, the 3rd respondent-Tahsildar could not have threatened the petitioner with dire consequences and could not have interfered with his peaceful possession and enjoyment of his property.

In the facts of the present case, considering the allegations made by the petitioner in the writ affidavit, there shall be a direction to the respondent-authorities not to interfere with the peaceful possession and enjoyment of the property over an extent of Ac.8.13 cents and Ac.3.48 cents situated in Sy.Nos.59 and 60/2, Kamavarapukota Village and Mandal, West Godavari District without following due process of law. However, this order shall not be construed as interdicting or preventing the respondent authorities from initiating action against the encroachers including the petitioner, if they are otherwise occupying the Government land, after giving notice to the parties.

With regard to the 2nd prayer of the petitioner seeking a direction to the respondent authorities to prevent encroachment of construction of either pucca houses or temporary tenements occupying the road margins, it is needless to mention that every citizen has a right of a free passage and road margins cannot be converted into dwelling units especially creating obstruction to the free passage to the public. There is duty cast on the respondent authorities to ensure that the public property is protected by all means including by use of necessary force, in accordance with law. This Court hopes and trusts the authorities entrusted with maintaining the civil society shall sure take notice of encroachments of any and take necessary remedial steps in accordance with law.

Interestingly, this Court has noticed on many occasions that the respondent authorities are interfering with the proprietary rights of the citizens without initiating any proceedings in writing and merely visiting the property of the citizens. It was also brought to the notice of this Court instances where the authorities are collecting money under the threat of dispossession without passing any orders in writing. Such conduct and action on the part of the authorities is totally out-side the purview of the procedure established by law, even assuming a citizen is an encroacher. These instances have been cited here only to sensitize the 1st respondent and other authorities holding responsible positions to put in place a mechanism and clearly lay

down a procedure for protecting the property of the Government in accordance with law, even in cases where there is material with regard to encroachments of Government property by the citizens. This Court hopes and trusts that necessary steps would be taken to create a clear mechanism and lay down clear rules to avoid unnecessary litigation. It is also desirable to lay down clear mechanism to make clear the consequences of violation of the procedure prescribed for taking action in cases of unlawful interference of the citizens property.

With the above observations, the writ petition is disposed of. No order as to costs.

Miscellaneous petitions, if any pending in this writ petition, shall stand closed.

CHALLA KODANDA RAM,J

Date:04.06.2015.

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HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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