

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 22898 of 2011

ORDER:

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Heard learned counsel for the petitioner and Government Pleader for Revenue.

With the consent of both the parties, the main writ petition is disposed of.

The present writ petition came to be filed seeking issuance of a writ of mandamus declaring the memo issued by the third respondent vide R.C.No.B/873/2011 dated 29.06.2011 as illegal, arbitrary and violative of principles of natural justice and consequently direct the third respondent to conduct survey of the plots of the petitioner and that of the fourth respondent and then issue necessary orders.

The averments in the writ petition would show that the petitioner is in peaceful possession and enjoyment of the house site admeasuring 121 square yards situated in Marrigudem Village, Garla Mandal, Khammam District, which was allotted to the petitioner on 24.02.2007 under "Indiramma Housing Scheme". It is stated that the petitioner erected a small hut in the said land and her name was included in the beneficiaries list. While things stood thus, the fourth respondent claims that she was allotted the said plot and the petitioner is alleged to have encroached on to the said plot while she was in Rajahmundry in view of her employment. In view of the dispute over the plot, the petitioner and the fourth respondent approached the third respondent to conduct enquiry. The third respondent is alleged to have issued a memo stating that none of them are having any right over the said land. Assailing the said memo issued by the third respondent the present writ petition came to be filed.

Learned counsel for the petitioner submits that the very memo issued by the third respondent itself would indicate that the petitioner is in possession of the said plot, therefore the question of alienating the property does not arise.

No counter filed by the official respondents but the Government Pleader, basing on the instructions received by him submits that the disputed land is a government land and it is under the custody of the government. A memo was also issued to both the parties stating that none of them have any right or title over the property and without permission no body can alienate the said plot.

The instructions received by the Government Pleader would show that an enquiry was conducted and it was found that the fourth respondent got assignment patta to the house site bearing plot No.59 in Sy.No.1259 in the year 1980 by the Tahsildar. After assignment, he got a government job in the railway department. After 30 years, he came to the disputed plot, which was not assigned to him by the Government. Even though he is having assigned house site, he is trying to encroach on to another plot. Similarly, an enquiry was also conducted with regard to the claim made by the petitioner and it was found that she is the beneficiary of Indiramma Housing Scheme. On verification of records it was found that she has already withdrawn the bills at different stages of construction of the house. The disputed plot and the plot allotted to the petitioner are not one and the same. Hence, the petitioner cannot claim any right upon the disputed land. It was also found that the present disputed land is vacant plot and there are no constructions in the said disputed plot. From the above, it is clear that all the parties ie., writ petitioner, fourth respondent and the Government are claiming right over the plot. Though the petitioner herein claims to be in possession of the property, but the instructions dated 18.08.2011, which are placed before this Court by the Government Pleader, would show that the Government already took possession of the said plot. Since the issue involves

disputed questions of fact and also right over a property the same cannot be adjudicated in this writ petition. However, if the writ petitioner or fourth respondent are in possession as on today in respect of the plot which is subject matter of the present writ petition, respondent Nos.1 to 3 shall not take any coercive steps without following due process of law.

With the above direction, the writ petition is disposed of. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

21.07.2015
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