

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.10451 of 2012

ORDER:

Heard learned counsel for the petitioner and the Government Pleader for Revenue. With the consent of both the parties, the writ petition being heard at the admission stage itself.

The present writ petition came to be filed seeking issuance of writ of mandamus, declaring the inaction of the respondents in measuring and demarcating the boundaries of the land admeasuring Ac.1.00 situated in Survey No.169 of Joharapuram Village, Aspari Mandal, Kurnool District, as illegal, improper, arbitrary and violatives of Articles 14, 19 and 21 of the Constitution of India.

The averments in the affidavit filed in support of the writ petition are as under:

The President of the petitioner society filed the affidavit in support of the writ petition. He submits that one Sri Sri Sri Gudikallu Alipera Swamulavaru used to live in Joharapuram Village and the villagers attracted by his deeds and acts considered him as a Swamiji. The said Swamiji expressed to have a separate burial ground for burying dead bodies of Hindu Devotees of Allipera Swamulavaru. It is stated that one Mastan Sab, who is the faithful devotee of Swamiji, came forward and donated a piece of land admeasuring Ac.1.00 in Sy.No.169 for the purpose of burial ground and executed a gift deed in favour of the petitioner Darga on 08.06.1954 vide document No.283/1954. There were several samadhis of Hindu devotees of Allipera

Swamulavaru but there is no compound wall and in view of threat of encroachments, the members of the petitioner darga wanted to construct a compound wall. It is stated that in the year 1981 Government attempted to acquire the land in question for the purpose of providing house sites to weaker sections though there are Samadhis. Pursuant thereto a notification was also issued. Aggrieved by the notification, the petitioner filed W.P.No.826 of 1981 and the same was allowed quashing the notification. The petitioner made several representations to the respondents to measure the land and to fix boundaries. A notice under Section 80 C.P.C. was also issued. It is stated that in spite of best efforts made by the petitioner, none of the authorities are co-operating for fixing the boundaries. The inaction of the respondents in fixing the boundaries led to filing of the present writ petition.

A counter came to be filed by the respondents stating that the writ petitioner and other devotees of petitioner Darga filed a representation to survey and to fix the boundaries in respect of land admeasuring Ac.1.00 in Sy.No.169. The Mandal Surveyor gave notice to the petitioner to attend the measurement work on 13.09.2012. It is stated that on the said date the Mandal Surveyor, Aspari, conducted the survey and a panchanama was also prepared. The statement of the petitioner was also recorded on the said date. It is also stated that during the survey it is found that out of Ac.1.00 of land, Ac.0.24 cents has been covered with tombs of devotees and Ac.0.19 cents of land covered with the houses of Scheduled Caste people whereas the remaining extent of Ac.0.57 cents was covered with hayricks. It is also stated in the counter that Ac.1.00 was not separately sub-divided for Allipeera Swamy Samadhulu. Hence, the said land could not

be demarcated.

A perusal of the material placed before the Court would show that the Mandal Surveyor gave a notice to the petitioner asking the petitioner to be present at the site on 13.09.2012 at 10.00 a.m. for measurement and fixation of boundaries. Apart from that the interested and concerned persons were also directed to attend either personally or with their agents. It is stated that on the said date the statement of the President of the writ petitioner was also recorded. A perusal of the statement would show that the land was measured and it was found that out of total extent of Ac.1.00, Ac.0.24 cents was covered with Samadhis (tombs) and Ac.0.19 cents with houses of Scheduled Caste people. The remaining extent of Ac.0.57 cents could not be shown as it was covered with hayricks. The gifted land of Ac.1.00 was not separately sub-divided and hence it is difficult to fix the boundaries to the land Ac.1.00 belonging to the petitioner Darga. The affidavit which has been placed before the Court would show that the petitioner was not able to show the land Ac.1.00 which he is claiming to be demarcated. Since the land is not sub-divided and the petitioner is not able to show the exact location the Mandal Surveyor could not fix the boundaries of Ac.1.00 of land. In view of the above, I see no merits in the writ petition. At this stage the learned counsel for the petitioner submits that he has a remedy by way of filing a revision before the Survey Settlement Officer and that he has to avail the said remedy.

Accordingly, the writ petition is dismissed, leaving it open to the petitioner to avail the remedy available under law. However, it is made clear that the observations made in this

order are only for the purpose of deciding the case on hand and the same shall not influence any other authorities.

There shall be no order as to costs. Miscellaneous Petition, if any, pending in this writ petition, shall stand closed.

**JUSTICE C. PRAVEEN
KUMAR**

04.09.2015

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