

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.20979 of 2011

ORDER:

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

With the consent of both the parties the present writ petition is disposed of at the admission stage.

The present writ petition came to be filed seeking issuance of a writ of mandamus declaring the action of the respondents more particularly second respondent in attempting to dispossess the petitioner from the dry land admeasuring Ac.35.61 cents as service inam covered by Ac.18.00 cents in Sy.No.647, Ac.12.25 cents in Sy.No.648 and Ac.5.36 cents in Sy.No.234/2 of Balighattam Village of Narsipatnam Mandal, Visakhapatnam District, as illegal, arbitrary and violative of principles of natural justice.

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

The petitioner claims to be the hereditary Archaka of Sri Satyanarayana Swamy Vari Temple situated on the bank of Uttaravahini of Ballighattam Village, Narsipatnam Mandal, Visakhapatnam. His grand father was original archaka and after him his father became the archaka. Thereafter the petitioner continued as archaka of the said temple from 1973. It is stated that only on festival occasions there would be a little traffic of devotees. It is averred that though there is no income to the temple from the devotees, but with great difficulty the petitioner is

attending Nirya Deepa Dhupa Naivedyam. The temple has dry land admeasuring Ac.35.61 cents as service inam covered by Ac.18.00 cents in Sy.No.647, Ac.12.25 cents in Sy.No.648 and Ac.5.36 cents in Sy.No.234/2 of Balighattam Village of Narsipatnam Mandal, Visakhapatnam District. It is stated that the land is a Konadapodu and unfit for cultivation. Out of the said land, Ac.25.00 was given to cattle grazing which is yielding income of Rs.2,000/- per annum, which is being utilised for the Nitya Deepa Dhupa Naivedyam.

It is stated that during the year, 1990, there was an unprecedented flood in the area and due to floods, the river changed its course of flow and washed away the temple from its basement. It is stated that with great difficulty, the petitioner could trace the idols in the river sands and raised a thatched hut on the newly formed bund of river, kept the idols in it and resumed Nitya Pooja. While things stood thus, in the year 1998 the Executive Officer and the Trust Board Chairman were threatened to dispossess the petitioner from the possession and enjoyment of the temple lands. At that time the petitioner approached this Court in W.P.No.2642 of 1998 and this Court on 03.02.1998 passed an interim order directing the respondents not to dispossess the petitioner except due process of law. In the year 2002 when the respondent officials started measuring the lands, the petitioner questioned them stating that the same cannot be done in view of the order of this Court. They replied that the said order is not binding on them as the survey numbers were not properly mentioned in the order. The petitioner got verified and found that there is typographical mistake appearing in the extents and description of land. Thereafter, the petitioner filed W.P.M.P.No.7097 of 2003, which was dismissed by an order dated

24.07.2003 on the ground that if the same is allowed there will be total change even in the extent of land apart from the very schedule of the land. In the year 2005, there was again an attempt to dispossess the petitioner from the said lands, the petitioner filed W.P.No.25162 of 2005 before this Court. At the admission stage the petitioner withdrew the same as the respondents promised that the salary would be fixed to him. It is now stated that on 13.07.2011 the second respondent visited the lands and threatened the petitioner stating that they would dispossess him from the possession and enjoyment of temple lands. It is stated that none of the respondents have any right to deprive the petitioner from the lands of the temple since the annual income of the temple is less than Rs.5,000/- and no salary was paid to him for doing the Archakatvam. The action of the respondents lead to filing of the present writ petition.

The Government Pleader on instructions submits that the allegations made in the writ petition are false. He placed on record the cases filed by the writ petitioner raising disputes over the said land. The details of which are as under:

1. W.P.No. 16087 of 1987
2. O.S.No.41 of 1987 on the file of the Sub-Court, Yelamanchili,
3. A.S.No.65 of 1992 on the file of the III Additional District Judge, Visakhapatnam,
4. S.A.No.710 of 1995
5. W.P.No.2642 of 1998
6. W.P.M.P.No.7097 of 2003
7. W.P.No.21468 of 2002
8. W.P.No.25162 of 2005

9. W.P.No.20979 of 2011

A perusal of the documents placed before the Court would show that the petitioner was a teacher in primary school and worked as such for a period of 30 years and retired from service on 31.05.2005 on attaining the age of superannuation. He is getting a pension of Rs.13,307/- per month. Suppressing the said fact the petitioner filed the writ petitions claiming himself to be the Archka since last 35 years. According to him the land admeasuring Ac.35.61 cents is dry land relating to the temple and it is under the control of the Endowment Department. In view of the above he submits that the question of R.D.O. interfering with the possession of the petitioner would not arise. The said fact is not seriously disputed by the learned counsel for the petitioner. That being the position, it is very difficult to believe that the Revenue Divisional Officer and his would try to dispossess the petitioner from the land. If at all any action is to be initiated, it is the endowment department which has to take the action and not by revenue authorities. It is placed on record that the petitioner is not the cultivator of the said land as per the revenue records. When the lands are never in possession of the petitioner, the question of dispossessing him from the temple lands does not arise.

In view of the above and having regard to the facts and circumstances of the case, I see no grounds to entertain the writ petition and the same is accordingly dismissed. No order as to costs. _

As a sequel thereto, Miscellaneous Petitions, if any, pending shall stand closed.

C. PRAVEEN KUMAR, J

14.08.2015

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