

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 13223 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 heard at the admission stage itself.

The present writ petition is filed seeking issuance of a writ of mandamus declaring the action of the respondents in issuing notice in the month of February, 2011, to the petitioner trust and conducting enquiry pursuant to the said notice, as illegal, arbitrary, without jurisdiction and the same is violative of Sections 40 and 85 of the Wakf Act, 1995; and consequently set aside the said notice.

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

Five persons constituted the petitioner trust on 19.02.2007, to organize Peerla festival every year at Peerla Devasthanam, A.S.Peta, Nellore District and to undertake other religious and social activities. The said trust was registered on 22.02.2011. It is stated that the trust is having lands admeasuring Ac.23.92 cents in Sy.Nos. 520, 409, 410, 425 and 426 of Srikolanu Village and Ac.15.02 cents in Sy.Nos. 864 and 865 of Anumasamudrampeta Village, Nellore District. While things stood thus, the third respondent issued a notice on 10.01.2011 directing the petitioner to appear before him on 19.01.2011 for investigation with regard to the complaint made by one Moghul Masthan Baig and others. The allegation is that the petitioner trust sold away the land to an extent of Ac.15.02 cents situated in Sy.Nos. 864 and 865 of Anumasamudrampeta Village, Nellore District to one

Shaik Samdhani. An explanation to the said notice was submitted by the trust stating that the said lands belongs to the trust and the same was recognized by the revenue authorities by issuing pattadar pass book and title deeds. Later, the third respondent issued a notice in the month of February, 2011 directing the petitioner to appear before him on 05.03.2011 for enquiry with regard to a complaint made by S.G.Gouse Bastha and another. It was stated that under the influence of Sajjadanasheen Hafeez Pasha, the petitioner acquired pattadar pass book in respect of the land to an extent of Ac.15.02 cents in Sy.Nos. 864 and 865 of Anumasamudrampeta village by misleading the revenue officials. It was further stated that the lands which are subject matter in this writ petition fell in the name of Peerla devasthanam and not in the name of the petitioner, hence, the present writ petition.

When the matter is taken up for hearing, it is brought to the notice of the Court by the Government Pleader that on 30.03.2011 itself the enquiry was completed and third respondent recommended for cancellation of pattas granted to the petitioner.

The material on record discloses that though the notice was issued in the month of February, 2011 asking the petitioner to appear before him on 05.03.2011, none appeared before the third respondent. Hence, the third respondent proceeds with the enquiry basing on the material available on record and recommended for cancellation of pattadar pass books issued in favour of the petitioner. In view of the above, the appropriate remedy available to the petitioner is under Records of Rights Act and not by way of writ petition. It is to be noted that the present writ petition was filed on 24.04.2011, by which time the third respondent completed his enquiry and recommended for cancellation of pattadar pass books issued in favour of the petitioner. The Apex Court in **Commissioner of Income Tax v.Chhabil Dass Agarwal**^[1] held that “*the High Court will not entertain a petition*

under Article 226 of Constitution, if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

In view of the judgment referred to above and having regard to the facts and circumstances of the case, I see no merit in the writ petition and the same is accordingly dismissed, leaving it open to the petitioner to avail the remedies available under law. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

05.08.2015
gkv

[\[1\]](#) (2014) 1 SCC 603