

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.9962 OF 2011

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ORDER:

The case of the petitioner is that he purchased landed property after his retirement as Ex-Service Men from his vendor Kancharla Prasad Rao, to an extent of 0.65 cents in Sy.No.64 of Thakkellapadu Village, Kanigiri Mandal by virtue of an agreement of sale and has been in possession and enjoyment of the said property by constructing a thatched house therein and eking out his livelihood by doing carpentry work. While so, on 08.04.2011, the staff of the 1st and 2nd respondents came to his land and demolished thatched house and bore-well high handedly. They also directed the petitioner to vacate the subject land within one week; otherwise, they would evict the petitioner by using police force. The petitioner further states that the Gram Panchayat of Takellapadu Village, Kanigiri Mandal, granted permission to establish carpentry work shop by a resolution dated 24.04.2003 and from then onwards he has been eking his livelihood by doing carpentry work in the subject land. He also states that the respondents have no power, authority or jurisdiction to demolish any private property without prior notice, inviting any objection and conducting enquiry. Aggrieved by the action of the respondents in demolishing the property without following due process of law, present writ petition is filed.

The respondents filed counter denying that they have visited the subject land and issued ultimatum. They state that they never visited the house of the petitioner and that after receiving notice from this Court only they got enquired about the same and that they have also obtained a certificate from the Tahsildar of Kanigiri

Mandal, which reveals that the land in Sy.No.64 belonging to one Kancherla Prasada Rao who has donated the said land for the purpose of school ground and hence it is clear that the petitioner is an encroacher. It is also stated that petitioner filed OS.No.90/2011 on the file of Senior Civil Judge, Kandukur for injunction against Zilla Praja Parishad, Prakasam District and having failed to get any interim injunction in the above said suit, filed the present writ petition suppressing the true facts. It is further stated that though the petitioner relied upon the order dated 28.10.2010 passed by this Court in WP.MP.No.28558/2010 in WP.No.22379 of 2010 stating that that his case is also similarly situated, the facts and circumstances of the said writ petition are different from the present writ petition and finally, the respondents sought for dismissal of the writ petition.

The petitioner did not choose to file any reply affidavit.

Heard learned counsel for the petitioner who reiterated the submission in the writ affidavit and heard Sri G.Seshadri who made submissions in tune with the averments in the counter affidavit.

It is to be seen that the petitioner has filed the suit in OS.No.90/2011 against the respondents and one Kancherla Prasada Rao and though the same is pending, present writ petition is filed. On the sole ground itself, the writ petition is liable to be dismissed. More so, the petitioner states that the subject site was purchased by him by virtue of agreement of sale executed by his vendor Kancherla Prasad Rao, but the same is disputed by the respondents stating that the subject site was donated by Kancherla Prasad Rao and that the same is earmarked for Zilla

Parishad High School. These all are disputed questions of fact which cannot be decided in the writ petition and the writ petition is liable to be dismissed on that ground also.

In view of the above, the writ petition is dismissed. However, this order will not preclude the petitioner from pursuing his other remedies and also suit filed by him. No order as to costs.

As a sequel to the dismissal of the writ petition, Interim Orders, if any passed, shall stand dissolved.

A.RAJASHEKER REDDY, J

08.09.2015
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