

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 13074 of 2012

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 main writ petition is heard at the admission stage itself.

The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the respondents in interfering with the peaceful possession and enjoyment of the petitioner in respect of land admeasuring Ac.2.12 cents in Sy.No.186/4 and Ac.8.60 cents in Sy.No.197 situated at Chinamusidiwada, Pendurthi Mandal, Visakhapatnam, without following due process of law, as illegal, arbitrary and violative of principles of natural justice; and consequently direct the respondents not to interfere with the peaceful possession and enjoyment of the petitioner over the said property.

The averments in the affidavit filed in support of the writ petition would show that about 50 years back the parents of the petitioner namely Simhachalam and Sanyasamma were assigned lands, and since then they are in possession of the same. It is stated that the parents of the petitioner were cultivating the land and later the name of the father of the petitioner was recorded in the revenue records as pattadar. Title deed and pass book were also issued in respect of land in Sy.No.186/4. It is stated that the name of the mother of the petitioner was recorded in the revenue records as pattadar in respect of land in Sy.No.197. After their

demise, the property devolved upon the petitioner as he is the sole legal heir. While things stood thus, the third respondent started interfering with the possession and enjoyment of the petitioner, which lead to filing of O.S.No.1132 of 2009 on the file of the Principal Senior Civil Judge, Visakhapatnam seeking injunction. Initially in I.A.No.1471 of 2009 ad-interim temporary injunction was granted in respect of land in Sy.No.186/4 and dismissed in respect of land in Sy.No.197. However, it is stated that, the petitioner continued to be in possession and enjoyment of the entire land. Thereafter the petitioner made an application for survey of the land so as to regularize his possession. It is stated that, without following the due process of law, the respondents are trying to interfere with the peaceful possession and enjoyment of the petitioner in spite of the pendency of O.S.No.1132 of 2009. The respondents are alleged to have threatened to evict the petitioner from the land. Challenging the said action, the present writ petition came to be filed.

The third respondent filed counter his stating that the respondents never interfered with the possession of the petitioner in respect of land in Sy.No.186/4 which was assigned to his father. The attempts made by the petitioner to grab a part of government land in Sy.No.197 under the guise of the alleged assignment in favour of his mother were prevented many times. It is stated in the counter that on 18.05.2013 the petitioner tried to encroach upon the part of government land in Sy.No.197 along with his family members by planting coconut and mango trees etc. and the same was prevented by the executive staff of the third respondent. At that time, the petitioner and his family members quarreled, abused the executive staff and manhandled the Village Revenue Assistant, for which a case in Crime No.163 of 2013 of

P.S.Pendurthi was registered against the petitioner and his family members for the offences punishable under Sections 447 and 332 read with 34 IPC and Section 3 (i) (x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. It is further stated in the counter that necessary action will be initiated for resumption of land in Sy.No.186/4, if any violation of assignment is noticed.

A perusal of the averments in the counter would show that there is a dispute with regard to the ownership of the land in Sy.No.197. The counter filed by the third respondent show that it is a government land and the petitioner tried to encroach the same. Where as, the learned counsel for the petitioner submits that the petitioner is in possession of the land in Sy.No.197. Such being the position, this Court cannot go into the factual aspects and decide as to who is in possession of the land. However, if the petitioner is in possession of land in Sy.No.197, the respondents shall not take any coercive steps without following the due process of law. In the counter it is stated that action will be initiated for resumption of land in respect of Sy.No.186/4 which was assigned to the father of the petitioner and which is now in possession of the petitioner, if any violation is noticed. If the third respondent seeks to resume the land assigned to the father of the petitioner, he can do so in accordance with law.

With the above directions the writ petition is disposed of. There shall be no order as to costs.

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

**JUSTICE C. PRAVEEN
KUMAR**

14.09.2015
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