

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 34486 of 2012

ORDER:

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Heard learned counsel for the petitioners 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 came to be filed seeking issuance of writ of mandamus declaring the action of the first respondent in issuing impugned Notice No.A/4868/2012 dated 26.10.2012, as illegal and arbitrary and consequently to set-aside the same.

The averments in the affidavit filed in support of the writ petition would show that the petitioners claim themselves to be the pattadars and possessors of land admeasuring Ac.2.20 gts., in Sy.No.401/U, Ac.2.20 gts., in Sy.No.401/UU and Ac.2.19 gts., in Sy.No.401/RU, situated at Chityala Village, Wanaparthy Mandal, Mahabubnagar District. It is stated that one Balaiah and Papaiah were original pattadars of the said land having equal rights in the property. Balaiah is the grandfather of the petitioners and Papaiah is the grand father of respondent Nos.2 to 4 and father of respondent No.5. It is further stated that when the respondent Nos.2 to 5 were trying to interfere with the possession of the property, the petitioners filed O.S.No.77 of 2011 before the Junior Civil Judge, Wanaparthy, who by an order dated 24.06.2011 the said Court granted ad-interim injunction. Thereafter, written statement was filed and the matter is still pending consideration before the said Court. Pending the said suit, respondent Nos.2 to 5 herein made an application dated 20.07.2012 with regard to correction of entries in the revenue records. On 26.10.2012 the Tahsildar issued the impugned notice to the petitioners informing them about the spot inspection for conducting

enquiry with regard to the possession of the applicants in Sy.No.401, 402, 405 and 408 and directed them to be present on the spot on 31.10.2012 at 11.00 a.m. Challenging the said notice, the present writ petition is filed.

It is to be noted that the present writ petition is filed questioning the issuance of notice on the ground that the Tahsildar has no jurisdiction to decide the issue of possession.

By an order dated 06.11.2012 this Court while issuing notice before admission passed the following order:

“Prima facie, it is evident that the petitioners filed O.S.No.77 of 2011 in the Court of the Junior Civil Judge, Wanaparthi against respondent Nos.2 to 5, an order of temporary injunction was granted in I.A.No.207 of 2011 and the suit is pending. It is not at all competent for the revenue authorities to alter the entries in the revenue records, when suit is pending. Hence, there shall be interim stay of further proceedings in pursuance of the notice, dated 26.10.2012.”

In **Erukala Uma V. Government of Andhra Pradesh and another**^[1] a Bench of this Court while dealing with the aspect of challenging a notice under Article 226 of the Constitution of India, held as under:

“The act provides a complete mechanism in respect of making entries in the revenue records. The Act contains a prescribed procedure and lays down the powers of the authorities in relation to passing orders and making entries. The provision envisages that whenever an application is filed before the authorities intimating them about the acquisition of rights and seeking amendment of the entries, the authorities have to put all such persons to notice, whose names are entered in the record of rights, who are interested and who are going to be affected by the amendment. When a person receives a show-cause notice from the authorities, it is incumbent upon him to appear before

the authorities and by way of a reply, submit before the authorities all relevant facts including pendency of civil suit, if any. But he cannot straightaway approach this Court under Article 226 of the Constitution of India and seek a writ of mandamus. In such cases, this Court should refrain from exercising the extraordinary jurisdiction under Article 226 of the Constitution of India.”

Situation on hand is identical to the case referred to above. In view of the above and having regard to the judgment of this Court referred to above, the Tahsildar, Wanaparthi shall pass appropriate orders by taking into consideration the counter/objections filed by the petitioners, at the earliest, preferably within a period of six (06) weeks from the date of receipt of a copy of this Order after giving notice to all the parties.

With the above direction, the Writ Petition is disposed of. No costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

30.12.2015
gkv

[\[1\]](#) (2014) 2 ALD 228 (DB)