

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

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CASE NO. **WRIT PETITION Nos.31779 and 40680 of 2012**

Between:

Sode Lakshmaiah and others

...Petitioners

And

Government of Andhra Pradesh,
represented by its Principal Secretary,
Department of Forest, Hyderabad and others

...Respondents

DATE OF JUDGMENT PRONOUNCED: 06.08.2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

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Counsel for the petitioners: Mr.Kondaparthi Srinivasa
for Mr.Nagesh Bheemapaka

Counsel for the respondents: Government Pleader
for Forests (TS)

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The Court made the following:

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COMMON ORDER:

These writ petitions are filed by eighty four persons, who claimed to belong to schedule tribe 'koya' community, for a *mandamus* to declare the action of the respondents in trying to dispossess them from unsurveyed lands to an extent of Acs.3.00 of Mondikunta Village, Aswapuram Mandal, Khammam District, in respect of each of the petitioners in W.P.No.31779 of 2012 and to an extent of Ac.1.00 near Pochavaram Colony, Kunavaram Mandal, Khammam District, in respect of each of the petitioners in W.P.No.40680 of 2012, as illegal and arbitrary.

The petitioners pleaded that they belong to schedule tribe 'koya' community and that their forefathers used to reside in the agency area. They further pleaded that they migrated to the interior forests and occupied small extents of lands; that more than eighty four families have been cultivating the said lands by raising crops and they have been totally dependent upon the said lands. The petitioners also averred that they have made applications to the respondents requesting for issuing possession certificates under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (for short 'the Act') and the Rules made thereunder and that without disposing of their applications, the forest department has been illegally interfering with their possession and trying to evict them.

On behalf of the respondents, separate counter-affidavits have

been filed by respondent No.2 in W.P.No.31779 of 2012 and respondent Nos.2 and 4 in W.P.No.40680 of 2012. In his counter-affidavit, respondent No.2 in W.P.No.31779 of 2012, *inter alia*, denied that the petitioners have been the forest dwellers. He further averred that the petitioners have not been in possession of any forest land but they used to cultivate small patches of water stagnated trenches in road margins along the road connecting Manuguru to Kothagudem by broadcasting paddy seeds and that they attempted to encroach the forest land in anticipation of their getting ROFR title deeds during the second phase of implementation of the Act; however, they were informed by the respondents that they are not entitled to get ROFR title deeds for fresh encroachment of the forest land and that only the persons, who were in possession of any forest land for their livelihood before 13.12.2005, are entitled to get forest rights under the Act. It is further stated that the petitioners have been residing in and around the villages of Mondikunta, nearby Mondikunta reserve forest, in rented houses and that they have migrated from Chattisgarh State and been living in the said villages as agricultural labourers. It is also stated that as the petitioners have started fresh encroachment attempts in the year 2012 i.e., on 28.02.2012 and 19.07.2012, they are not eligible for any title deeds under the Act. The counter-affidavit filed by respondents No.2 and 4 in W.P.No.40680 of 2012 is also on similar lines.

At the hearing, learned counsel for the petitioners has relied upon the copies of *Form A* applications stated to have been sent by the petitioners to respondent No.2 for grant of title deeds.

Learned Government Pleader for Forests (TS), while stating that the petitioners filed undated applications in *Form A*, invited this Court's attention to the dates borne on the postal receipts filed in W.P.No.31779 of 2012 showing '12.09.2012' and submitted that a few days before filing of these writ petitions, the petitioners might have sent

applications in *pro forma* with a view to mislead this Court that they have made applications and that they are pending. Learned Government Pleader further submitted that under Section 4(3) of the Act, for grant of title deeds, the applicant must prove that he was in possession of the forest land before 13.12.2005. Learned Government Pleader has relied upon Section 6 of the Act and Rule 12(9) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 (for short 'the Rules') and submitted that as per the procedure laid down in the said statutory provisions, it is only the Gram Sabha, which has to first consider the claims of any forest dweller and place the same before the Sub-Divisional Level Committee, which after scrutiny, will place the same before the District Level Committee, which shall examine the claims of each applicant and grant the title to cultivate the forest land.

From the facts pleaded and the material filed by the petitioners, it is evident that no attempt was made by them for securing the title deeds from the competent authority. As rightly pointed out by the learned Government Pleader, a few days before filing of these writ petitions, the petitioners might have sent their applications in prescribed *form* to respondent No.2, who is not the authority competent to receive such applications. No explanation is forthcoming from the petitioners as to why they have not approached the Grama Sabha as per the Act and the Rules for grant of title deeds.

In the above facts and circumstances of the case, the claim of the petitioners that their applications for grant of title deeds are pending cannot be accepted. In the absence of any proof by the petitioners that they have been in occupation of forest lands prior to 13.12.2005, no *mandamus* can be issued to the respondents to protect their possession.

These Writ Petitions are accordingly dismissed.

As a sequel to dismissal of the writ petitions, interim orders, dated 10.10.2012 in W.P.No.31779 of 2012 and dated 04.01.2013 in W.P.No.40680 of 2012 are vacated and W.P.M.P.s and W.V.M.Ps. pending, if any, in these writ petitions shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

06th August, 2015

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