

Date of Decision : 30.01.2015

..... **Petitioners**

..... Respondents

Mr. Shivendra Swaroop, AAG, Haryana.

The petitioners are aggrieved by the endorsement of the Deputy Commissioner on an application made by one Nassrudeen for intervention of the Deputy Commissioner to protect his possession and that of 20-25 others, who are living in the property. The endorsement is to the effect that the case should be registered against the persons who had broken the *Chaddars* and *Jeena* forcibly. The petitioners' names do not find place either in the complaint or in the endorsement made by the Deputy Commissioner.

The writ petition is filed by 4 persons who describe themselves as persons in possession of the property and for whose benefit the property was reserved at the time of consolidation. The petitioners would refer to an application said to have been filed on 17.01.1954 to the Tehsildar, that the property should be reserved for their benefit and they were ready to bear the appropriate cost for the residence. An endorsement of the Kanungo on this application was said to have been made for appropriate consideration to higher authority. Independently, thereof, application is said to have been presented in the year 1980 that bears the seal of Kanungo which also makes a reference about an application filed on 17.11.1954 (sic) as consigned to records.

The petitioners would also refer to some proceedings of the Gram

Panchayat said to have been drawn on 28.09.1955 that Harijans of the Village Pali may be given residential sites which had been reserved. The subsequent Jamabandi entry for the year 1965-66 records the property as *abadi* and *gair mumkin* and in column to set out the name against cultivator, it is stated that it is Makbooja Gair Malkan Balmikis.

The petitioners would contend that this property is reserved for Balmikis of the Village Pali and this endorsement made by the Deputy Commissioner without any form of notice to any Balmikis residents of the Village is arbitrary and could not be sustained.

I must observe that pursuant to an application said to have been filed in 1954, there is no particular order of authorization to any of the members of the Balmiki Community to put up construction although the recommendation of the Gram Panchayat at a general meeting was that Harijans of Village Pali may be given residential sites. I see this to be intended action and not a *fait accompli*. If credence could be given to the entry made in Jamabandi for the year 1965-66, it is pointed out by the counsel appearing on behalf of the respondents that it was a stray entry making reference to Balmikis in the year 1965-66 and there is no entry either before or after, referring to this property as reserved or transferred to the Balmikis. On the other hand, I may not be able to vouch for any of the contentions made, other than the fact that the application filed by the 5th respondent-Nassrudeen revealed that he was in possession of the property, the State, in its written statement, has submitted that the applicant before the Deputy Commissioner has reconstructed house at the property which is in dispute. If the State has allowed for some persons other than the petitioners to remain in possession but the petitioners have a claim that the property must be reserved only to them, the right could be protected only, if, there is a transfer made in favour of the Community of persons by the State or authorization to be in possession of property by any proceedings of the State in

accordance with law. I cannot protect the possession of the property of the petitioner by the only entry found in the Jamabandi for the year 1965-66. The counsel for the petitioners asserts that they are in possession of the property. The State denies the same in its reply. It shall be open to the petitioners to file their own suit, if, they have any legal right to the property or if they can establish possession in any manner that is judicially acceptable. There is nothing for an intervention on an endorsement made by Deputy Commissioner who has only stated that appropriate complaint be registered against the persons who have removed *Jeena* and some other constructions. He has noted the fact that a person who has been dispossessed, must be restored. There is an affirmation made by the State that the applicant before the D.C., namely, 5th respondent has been restored in possession. The counsel for the petitioners submit that they had filed a suit against some persons and a decree was obtained. Admittedly, it was not against the 5th respondent on whose application the Deputy Commissioner had made an endorsement. If any suit has to be filed, the endorsement of the Deputy Commissioner could be used only as an evidence of what he has observed and it could not conclude any right or assertion made by either the petitioners or the 5th respondent. I will find no cause for an intervention which is innocuously made by Deputy Commissioner who is also an Executive Magistrate and he is bound to protect the law and order situation and hence competent to make a formal order to protect the possession of a residential hutment.

With these observations, the writ petition is disposed of.

January 30, 2015
ps-I

(K. KANNAN)
JUDGE