

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4348 of 2014

ORDER:

This revision petition under Article 227 of the Constitution of India by the petitioner/plaintiff is directed against the orders dated 09.07.2014 of the learned I Additional District Judge, Karimnagar passed in I.A.No.19 of 2014 in O.S.no.3 of 2014 filed under Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity) requesting to issue directions to respondents to deposit Rs.11,26,400/-, being half of the suit claim of Rs.22,52,800/-, pending final disposal of the suit in the interests of justice.

2. I have heard the submissions of the learned counsel for the plaintiff and the learned Government Pleader for Arbitration appearing for the official respondents. I have perused the material record.

3. The introductory facts, in brief, are as follows;

The plaintiff brought the suit against the State and the officials concerned of the State for recovery of damages in a sum of Rs.22,52,800/- with future interest at 12% p.a on Rs.15,40,000/- from the date of the suit till date of payment and for costs. The 6th defendant, who is the Tahasildar of Karimnagar had filed a written statement on behalf of the defendants and is resisting the suit. In the said suit, the plaintiff had filed the aforementioned interlocutory application. The said application is resisted by the contesting defendants. On merits, the trial Court had dismissed the petition *inter alia* holding that unless the issues involved in the suit are finally adjudicated, the direction sought for by the plaintiff cannot be granted.

4. The case of the plaintiff, in support of the request in the interlocutory application, in brief, is this:

The father of the plaintiff filed a declaration under the provisions of A.P. Land Reforms Ceiling on Agricultural Holdings Act, 1973 in regard to his ancestral properties in various villages of various revenue mandals and

revenue sub-divisions. In that declaration, the plaintiff was shown as 2nd declarant. The plaintiff is having four other brothers. The plaintiff, G.V.Laxmikantha Rao and G.V.Kishan Rao who are two of the brothers of the plaintiff and who are elders were given one standard holding each; and, another brother G.V.Ranga Rao being a minor as on the date 01.01.1975 is not entitled to one standard holding; therefore, his holding is included in the family unit of the father and the mother. The Additional Revenue Divisional Officer, Land Reforms, Karimnagar by order dated 21.05.1988 has determined the surplus in the holdings of the family unit of the father of the plaintiff and the plaintiff as 4.2640 standard holdings. By notice in Form No.VI dated 06.6.1988, he had directed the father of the plaintiff to give surrender statement of the lands. For non-compliance of the demand in the said notice, a further notice in Form No.VIII dated 22.07.1988 was issued as to why *suo motu* selection of lands under Section 10(4) of the A.P. Land Reforms Ceiling on Agricultural Holdings Act, 1973 shall not be undertaken. Thereafter, the 6th defendant in the suit, i.e., the Tahasildar had selected certain lands totally admeasuring Ac.68.51 cents equivalent to 1.4532 Standard Holdings. The proposal of *suo motu* selection made by the 6th defendant was approved by the Additional Revenue Divisional Officer, Land Reforms, Karimnagar by orders dated 8.9.1989. Consequent on abolition of the office of Additional Revenue Divisional Officer, Land Reforms, Karimnagar, the 4th defendant has been entrusted with the enquiry in matters coming within the jurisdiction of Revenue Division, Jagtial. The 4th defendant has requested the 6th defendant to take possession of the lands selected earlier. The 6th defendant had directed the Revenue Inspector II, Karimnagar to take possession of the lands. The said inspector had taken possession of the lands on 30.09.2006 under a cover of panchanama and kept the properties under the control and supervision of the Village Panchayat Secretary. The said Mandal Revenue Inspector II, Karimnagar had taken possession of the lands on 01.10.2006 under the cover of panchanama and had kept the properties under the control and supervision of Panchayat Secretary of Bommakal village. Since then, the properties are

in the custody of the 6th defendant and he is the custodian of the lands till date. While so, the 4th defendant had re-determined the holdings of the father of the plaintiff as per the orders of this Court dated 22.9.2006 passed in W.P.No.19636 of 2006; and, deleted certain lands as per the orders of Land Reforms Appellate Tribunal-cum-III Additional District Judge, Karimnagar in LRA no.39 of 1993 dated 29.07.1993 and by orders dated 13.4.2007 in C.C.no.1052/J/75 held that the surplus holding of G.V.Sashiva Rao, the father of the plaintiff, as Ac.27.91 cents equivalent to 0.5664 standard holding. Accordingly, the 4th defendant has directed the 6th defendant to re-deliver the lands in Sy.No.584 measuring Ac.1.44 cents, Sy.No.442 measuring Ac.4.37 cents of Nagnur village of Karimnagar Revenue Mandal and Sy.No.113 measuring Ac.7.58 cents, Sy.No.115 measuring Ac.8.42 cents of Bommakal village of Karimnagar Revenue Mandal to the declarants and to send Form XI along with panchanama effecting delivery of possession immediately. Thus, the said lands are not vested in the Government as they are free lands. The 6th defendant had not complied with the said orders and had failed to deliver possession of freehold lands. He, being the custodian of the property, had failed to discharge his duties in leasing out the lands for cultivation, and had further failed to deposit the proceeds in the Government treasury. The father of the plaintiff had expired on 01.11.2007. The plaintiff had filed an application before the 6th defendant on 21.4.2012 for delivery of possession of the lands in Sy.nos.442, 584 of Nagnur village and Sy.Nos.113 and 115 of Bommakal village, which are no more required as surplus lands as per the orders dated 13.04.2007. The 6th defendant had not delivered possession of the lands. As such, the plaintiff had filed W.P.no.16895 of 2012 in this Court on 04.6.2012 seeking a writ of mandamus against defendants 3, 4 and 6 and to declare that their action in not delivering possession of the said lands as bad, illegal, arbitrary. This Court, by orders dated 14.8.2012 passed in W.P.M.P.No.21672 of 2012 had directed the 6th defendant to deliver the said lands. The plaintiff had filed an application on 25.8.2012 before the 6th defendant enclosing a copy of the order in W.P.M.P.No.21672 of 2012 and

requesting him to deliver the lands. The 6th defendant, by memo dated 30.8.2012 has informed the plaintiff that the lands are suitable for house sites and 357 beneficiaries/landless poor persons of Bommakal village have been identified for providing house sites under 3rd phase of Indiramma Housing scheme and that in case, the orders in appeal are given in favour of declarants, the lands will be acquired under the provisions of the Land Acquisition Act by paying compensation. In the circumstances, the plaintiff had filed a contempt case in C.C.No.1441 of 2012 on the file of this Court for committing breach, violation and disobedience of orders dated 14.8.2012 in W.P.M.P.No.21672 of 2012. The plaintiff had further filed a writ petition in W.P.No.11475 of 2012 in this Court on 19.4.2012 against the defendants 3, 5 and 6 and Revenue Secretary of Nagnur village questioning the action of the 6th defendant in not leasing out the subject lands for cultivation. The 6th defendant had filed a counter with similar allegations that the lands are required for providing house sites under Indiramma Housing Programme and possession of the lands cannot be given. The writ petition is admitted on 20.4.2012 and is pending. The plaintiff then filed an application dated 26.5.2012 before the 4th defendant, i.e., the District Collector, Karimnagar for delivery of possession of the subject lands subject to the result of LRA 2 of 2007. The plaintiff had also stated that he would give written undertaking for delivery of possession of the lands in the event of the appeal being dismissed. That representation was not considered. Hence, W.P.No.26082 of 2012 is filed before this Court. The writ petition is admitted and is pending. When the 6th defendant had failed to deliver possession of the land on the ground that they are needed for providing house sites, the plaintiff had filed another writ petition in W.P.no.38990 of 2012 before this Court on 17.12.2012 against the defendants 2,3, 4 and 6 praying for a writ of mandamus declaring that their action in not initiating proceedings under the Land Acquisition Act as bad, illegal, arbitrary and for paying compensation in respect of the lands in Sy.No.442 (Part) and 584 of Nagnur village of Karimnagar Revenue Mandal and Sy.Nos.113 and 115 of Bommakal village of Karimnagar Revenue Mandal or alternatively to deliver possession of

lands in terms of orders dated 14.8.2012 in W.P.M.P.no.21672 of 2012 in W.P.No.16985 of 2012 and to pay damages/compensation for unauthorized use and occupation of the lands since 2006. This Court, while observing that the contempt petition is already filed against the 6th defendant for violation of orders of this Court, had given liberty to the plaintiff to avail remedy for damages for unauthorized use and occupation. Hence, the suit is filed for damages. This plaintiff requested the defendants to continue to pay Rs.2,20,000/- every year for the agricultural year 2014-2015 onwards till possession of lands is delivered to the plaintiff. In the suit, a total sum of Rs.22,52,800/- is claimed from the defendants with interest. Hence, the present petition is filed seeking a direction to the defendants to deposit half of the suit claim pending final disposal of the suit.

5. The 6th defendant had filed a counter resisting the application and *inter alia* contending as follows:

The material averments in the application are false. It is true that pursuant to orders dated 26.9.2006 of this Court in W.P.No.2006 of 2006, the Revenue Divisional Officer, Jagtial has enquired into the matter and issued order vide procs. No.1052/1161/J/75 dated 13.4.2007 and had declared the declarants as surplus holders as on 01.01.1975. The Tahasildar has reported that due to existence of a medical college building in Sy.Nos.114 and 115 of Bommakal village in an extent of Ac.8.90 cents and Ac.6.60 cents, totaling Ac.15.50 cents, possession has not been taken into Government custody and the same was reported to the Revenue Divisional Officer. The Revenue Divisional Officer, Jagtial passed orders on 13.04.2007 by re-determination of holding afresh to an extent of Ac.27.91 cents (0.5664 standard holdings) in Sy.Nos.383, 438, 439, 549, 550, and 584 situated at Nagunoor village only and ordered to transfer the remaining balance lands in the following survey numbers.

Name of the Mandal	Name of the village	Sy.No	Extent in Ac. cents	Transfer to whom
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Karimnagar	Nagunoor	584	1.44	To the Declarant and his (3) Majors sons
Karimnagar	Bommakal	113	7.58	
Karimnagar	Bommakal	115	8.42	
Karimnagar	Nagunoor	542	4.37	To the concerned pattedar

The Collector (land reforms), Karimnagar has issued instructions vide C.C.No.1052/J/75, dated 21.5.2007 to keep the orders of RDO, Jagtial, in abeyance until the outcome of the orders on appeal from LRAT, Karimnagar.

In the circumstances, the 6th defendant has not delivered back the possession of the lands vested with the Government. The plaintiff has already filed writ petition for a direction in regard to non-consideration of his application for grant of lease of lands for cultivation for the agricultural year 2013-14 in the sy. Nos. 383, 438, 439, 442, 443, 549, 550, 581 and 584 situated at Nagunoor village of Karimnagar Mandal and District and also to direct the respondents to consider the request of the applicant in regard to enabling him to cultivate the lands and raise crops for his livelihood. In the writ petition, this Court has come to a conclusion that no statutory provision confers a right on the petitioner or an obligation on the respondents to grant such a lease, has been brought to the notice of the Court and that in the absence of a statutory right or constitutional right, the petitioner cannot invoke the public law remedy under Article 226 of the Constitution of India. The Tahasildar had already disposed of the application of the plaintiff stating that it is not possible to give the lands on lease as the Tahasildar, Karimnagar is only a custodian of said lands until the case is disposed of by the LRAT, Karimnagar.

6. At the time of enquiry before the trial Court, no oral and documentary evidence was adduced. As already noted, the trial Court had dismissed the application of the plaintiff.

7. The learned counsel for the plaintiff/revision petitioner and the learned Government Pleader for Arbitration appearing for the official respondents had advanced arguments in line with the pleadings.

8. Since the pleadings are stated in detail supra, there is no need to dilate or reiterate the stands of the parties. From the pleadings and contentions, the following aspects emerge: 'The father of the plaintiff and other family members of the plaintiff had filed declarations as required under the Act. At the initial stage, by appropriate orders, the surplus land was determined as 4.2640 standard holdings. However, after directions of this Court in a writ petition, the surplus land was determined at Ac.21.97 cents equivalent to 0.5664 standard holdings. Pursuant to the earlier declaration that the surplus land is 4.2640 standard holdings, the surplus land as stated in the pleadings of the plaintiff was taken possession and was kept in the custody of the 6th defendant under the control and supervision of the Panchayat Secretaries concerned. Since, by later orders, the surplus holding was held to be Ac.21.97 cents, equivalent to 0.5664 standard holdings, the 4th defendant had directed the 6th defendant-Tahasildar concerned to re-deliver the lands in Sy.No.584 measuring Ac.1.44 cents, Sy.No.442 measuring Ac.4.37 cents of Nagnur village of Karimnagar Revenue Mandal and Sy.No.113 measuring Ac.7.58 cents, Sy.No.115 measuring Ac.8.42 cents of Bommakal village of Karimnagar Revenue Mandal to the declarants and to send Form XI along with panchanama affecting delivery of possession immediately. However, the 6th defendant did not deliver the possession of the properties though there are no stay orders granted by the superior authorities or any court of law. The contentions of the 6th defendant and the other official defendants and the State for not re-delivering possession of the surplus lands to the plaintiff are as follows: (1) It is not possible to redeliver the lands as the lands are suitable for house sites and 357 beneficiaries/landless poor persons of Bommakal village have been identified for providing house sites under the 3rd phase of Indiramma housing scheme; and, in case, orders in appeal are given in favour of the declarants, the land will be acquired under the provisions of the Land Acquisition Act by paying compensation; and (2) The Collector (Land Reforms), Karimnagar has issued instructions vide C.C.No.1052/J/75, dated 21.5.2007 to keep the orders of RDO, Jagtial, in

abeyance until the outcome of the orders in appeal before LRAT, Karimnagar. Thus, for the above said two reasons, the lands were not re-delivered to the declarants as ordered by the 4th defendant in the proceedings under the Land Reforms Act. It is pertinent to note that there are no stay order/s granted by a superior authority under law or a Court of law as observed by this Court in W.P.M.P.21672 of 2012. Therefore, this Court, by an interim order dated 14.8.2012 had directed the 6th defendant to deliver the said lands. In spite of the said order of this Court, the property was not delivered. Therefore, a contempt case is filed and several other writ petitions are also filed and the same are pending. The most pertinent point to be noted is that the 6th defendant did not either lease out the land to anybody or re-deliver the property to the plaintiff but had kept the land in his custody without getting the lands cultivated. However, this Court held that the 6th defendant is not obligated to lease out the land as the plaintiff could not bring to the notice of the Court any provision in that regard. Neither crops were raised by getting the lands cultivated through the machinery of the State under the supervision of the 6th defendant nor were the lands delivered to the plaintiff by giving temporary possession to enable them to cultivate the lands and realize the produce. The lands which were supposed to be redelivered to the plaintiff were kept in the custody of the 6th defendant without cultivating the lands. Therefore, a huge extent of land, i.e., the subject land is kept fallow since several years for no fault of the plaintiff. Had crops been raised by putting to use the machinery of the State under the supervision of the Tahasildar, some income would have been realized from the lands every year. Keeping a cultivable land in the custody of the Tahasildar and leaving it fallow without cultivating the land had resulted not only in the loss of agricultural produce and income, but also in damage to the land due to dis-use and non-cultivation. Be that as it may. Having considered the grievance of the plaintiff that the plaintiff is suffering damages for not redelivering the land as per the orders of the 4th defendant, this Court gave liberty to the plaintiff to avail the remedy, which the law permits, for recovery of damages for unauthorized use and occupation. The damages being claimed are in a

huge sum. Under what authority, the Collector (Land Reforms), Karimnagar could have issued the direction to the RDO not to deliver the property till disposal of the appeal could not be explained by the learned Government Pleader. Since the responsible government officers are keeping huge extents of land in their custody without either putting the same to any beneficial use or without re-delivering the property to the plaintiff, despite the interlocutory orders passed in pending writ petitions, this Court is of the view that the plaintiff has made out a *prima facie* case for granting the relief and that the balance of convenience is also in favour of the plaintiff.

9. Viewed thus, this Court finds that the order impugned brooks interference.

10. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, I.A.No.19 of 2014 is allowed and to meet the ends of justice, the defendants are directed to deposit to the credit of the suit before the trial Court a sum of Rs.11,26,400/-, within one (01) month from the date of the receipt of a copy of this order, however, without prejudice to the rights and contentions of both the parties. On such deposit, the trial Court shall invest the same in a fixed deposit in a Nationalized Bank of its choice so that the ultimate successful party will have the benefit of receiving the said amount along with the interest accrued thereon.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

1st June, 2016
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