

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.11295 of 2008

ORDER:

This writ petition is filed under Article 226 of the Constitution of India, for the following relief:

“to issue a writ order or direction particularly a writ in the nature of Mandamus declaring to issue a Writ Order or Direction particularly a writ in the nature of Mandamus declaring the action of the respondents herein in demolished the petitioner house in land of an extent of Ac 0.03 cents in Sy.No. 125/3 part of Rampachodavaram Village, East Godavari District as illegal, unauthorized and un consequential direct the respondents to restore the petitioner house by reconstructing the same as it is.”

2. According to the petitioner, she belongs to Schedule Tribe Community and is a resident of Rampachodavaram village, East Godavari District and is a landless poor and by virtue of proceedings Ref.No.D/1638/1992, dated 08.07.1992, issued by the Revenue Divisional Officer, Rampachodavaram/third respondent herein, she was given an extent of Ac.0-03 cents situated in Sy.No.125/3 part of Rampachodavarm village and in the said possession certificate she was given No-Objection for construction of house in the said land under Weaker Sections Housing Programme. It is also the case of the petitioner that she constructed a house and residing peacefully for the last 35 years. It is also stated that there are houses on either side of the petitioner's house.

3. The Revenue Divisional Officer/third respondent herein issued an order dated 24.03.1999 ordering eviction of the petitioner from the said property while cancelling the possession certificate and the said order was appealed against and the District Collector, East Godavari District, rejected the said appeal, and assailing the same, the petitioner filed WP.No.21179 of 1999, and this Court dismissed the same, by way of an order dated 02.08.2001, and the operative portion of the said order reads as under:

“It is brought to my notice that during the pendency of the Writ Petition, the petitioner voluntarily vacated the site and the same fact is also not controverted by the petitioner.

In the counter also it is stated that the petitioner would be provided an alternative government land also for construction of a pucca house and the same will be assigned in her favour if she has eligibility.

In view of the fact that during the pendency of the Writ Petition, the petitioner has vacated the property in question, I do not see merit in the Writ Petition and it is accordingly dismissed. However, the authorities may consider the case of the petitioner for providing alternative site to the petitioner if any government land is available for the said purpose and if she is eligible for such assignment. No order as to costs.”

4. According to the petitioner, after dismissal of the above writ petition, the respondents again handed over the possession of the land on 27.09.2004 vide handing over letter and since then her possession was not disturbed and Door No.1-131 was allotted to the house by the Grampanchayat and she obtained the electricity service connection and paying house taxes regularly. The fourth respondent/Tahsildar issued a notice under Land Encroachment Act on 13.11.2007 and the same was withdrawn by the Tahsildar vide proceedings Ref.No.B/429/07 dated 15.11.2007 due to certain procedural lapses.

5. Thereafter, the fourth respondent made a complaint before the third respondent/Revenue Divisional Officer to initiate the proceedings under the Land Transfer Regulations and issued a notice dated 22.03.2008 in Form-E proposing to hold enquiry on 10.03.2008 at about 1-30 A.M. As per the petitioner, she attended the enquiry on 10.03.2008 along with the counter and vakalat and the Court did not function on that day and case was posted to June 2008. It is also averred in the writ affidavit that since the third respondent/Revenue Divisional Officer refused to receive the counter on 22.05.2008 the petitioner sent it by Registered Post with acknowledgment due and the case is still pending. It is also further averred that as the petitioner belongs to Schedule Tribe, the question of contravention of Land Transfer Regulations would not arise.

6. The fourth respondent/Tahsildar issued a notice vide reference B/429/07 dated 13.05.2008 under Section 7 of the Land Encroachment Act calling upon the petitioner herein to show-cause and to offer explanation for the proposed eviction. As per the petitioner, she orally informed to fourth respondent with regard to the proceedings under the Land Transfer Regulations as such the fourth respondent did not take steps to evict her but again vide notice in Ref.B/429/07 dated 23.05.2008,

the fourth respondent directed the petitioner to vacate the property within two days.

7. It is alleged in the writ affidavit that on 25.05.2008, the fourth respondent/Tahsildar came along with his staff to the subject property and demolished the petitioner's house without touching the other portions in the vicinity. Assailing the said action of demolition, the present writ petition came to be filed.

8. This Court on 28.05.2008, in WPMP.No.14656/2008 granted interim direction, directing the respondents not to take possession of the subject property.

9. A counter affidavit is filed by the fourth respondent herein and one Smt Nekkala Subba Lakshmi filed WPMP.No.32407 of 2014, seeking to implead herself as the fifth respondent and also filed WPMP.No.2041 of 2015 to vacate the interim order.

10. The writ petitioner herein filed a counter in the said WPMP.No.32407 of 2015, and this Court by way of an order dated 23.06.2015, allowed the implead application. Counter filed in support of the implead petition which is also adopted for WVMP.No.2041 of 2015 denies the allegations and averments made in the affidavit filed in support of the writ petition.

11. Heard Sri T.Simhadri, learned counsel for the petitioner and the learned Government Pleader for the respondents 1 to 4 and Sri Mangena Sri Rama Rao, learned counsel for the fifth respondent.

12. It is contended by the learned counsel for the petitioner that the questioned action is illegal, arbitrary, unreasonable and violative of Articles 14 and 300-A of the Constitution of India. It is also submitted that the respondents herein grossly erred in resorting to the impugned action pending the proceedings under the Land Transfer Regulations and the impugned action ought not to have been resorted to by the respondents in view of handing over letter dated 27.09.2004. It is further submitted that having withdrawn the earlier notice under the Land Encroachment Act, the fourth respondent herein grossly erred in issuing the notice once again.

13. Per contra, it is contended by the learned Government Pleader that the respondents herein did neither commit any illegality nor irregularity nor breached any statutory or constitutional provision, as such, the present writ petition is not maintainable and the petitioner herein is not entitled for any relief from this Court under Article 226 of the Constitution of India. It is also the submission of the learned

Government Pleader that having lost the earlier writ petition, it is not open for the petitioner to maintain the present writ petition and the activities of the petitioner are causing lot of inconvenience to the public at large. It is further submitted that the handing over letter sought to be pressed into service by the petitioner is a false and fabricated one.

14. While adopting the arguments of the learned Government Pleader, it is argued by the learned counsel for the fifth respondent that the present writ petition is a patent abuse of process of law and the entire effort of the petitioner is to mislead this Court by creating confusion and ambiguities. It is further strenuously argued by the learned counsel that the initiation of proceedings under the Land Transfer Regulations is of no significance and the said initiation itself is not necessary, as such, the pendency of the same cannot be a ground to the petitioner to approach this Court in the absence of statutory and constitutional violation on the part of the authorities.

15. The material available before this Court reveals that earlier the Revenue Divisional Officer cancelled the possession certificate issued by the Mandal Revenue Officer by way of an order dated 24.03.1999 and directed the Mandal Revenue Officer to evict the petitioner from the subject land and in the event of the petitioner being found eligible for assignment of house site directed the consideration of the case of the petitioner for assignment and to allot alternative land as per the Rules in the event of the petitioner being found eligible for the same. Assailing the said action, petitioner filed an appeal before the District Collector and the District Collector after inviting the report from the Project Director, ITDA, Rampachodavaram, rejected the said appeal by way of an order dated 30.08.1999. Assailing the said orders, petitioner filed WP.No.21179 of 1999 and this Court dismissed the said writ petition by way of an order dated 02.08.2001. A perusal of the said order makes it abundantly clear that during the course of hearing, it was brought to the notice of the Court that pending the said writ petition, the petitioner herein voluntarily vacated the said land and the same was not controverted by the petitioner. Obviously, taking into account the said aspect, this Court in the said order, issued a direction to the authorities to consider allotment of alternative land. It is an undisputed reality that the said order passed by this Court attained finality. Now in the affidavit filed in support of the present writ petition, it is averred that subsequently the respondents again handed over the possession of the subject land to the

petitioner on 27.09.2004 and in support thereof the petitioner herein seeks to press into service the handing over receipt dated 27.09.2004.

16. In the counter affidavit filed by the Tahsildar/the fourth respondent herein the issuance of the same is disputed by referring to the same as a fake document. There is no reply filed by the petitioner for the same. The writ affidavit is also absolutely silent as to the circumstances under which the authorities handed over the site when the reality remains that the petitioner lost the writ petition in the year 2001. The justification sought to be offered by the fourth respondent in the counter affidavit for issuing the subsequent notices under the Land Encroachment Act is that though it was stated at the time of dismissal of the earlier writ petition that the petitioner vacated the premises voluntarily, she did not vacate the premises which prompted the fourth respondent to issue the notice under Section 7 of the Land Encroachment Act.

17. According to the counter affidavit, the fourth respondent/Tahsildar accompanied by his staff removed some of the huts raised by the petitioner and her husband on 25.05.2008. It is further averred in the counter affidavit that subsequently the petitioner herein got interim orders and again showing the orders passed by this Court, petitioner raised the huts in the place from where the huts were removed. In the facts and circumstances of the case, the said averments in the counter affidavit need not be doubted and according to the respondents the subject land is a road margin and the activities of the petitioner are causing hurdles to the traffic.

18. Yet another submission of the learned counsel for the petitioner that in view of the pendency of the Land Transfer Regulation proceedings the respondents cannot proceed with the impugned action, holds no water and this Court finds sufficient force in the contention of the learned counsel for the fifth respondent that the proceedings initiated under the Land Transfer Regulations are not required as the said proceedings have no relevance in the facts and circumstances of the case. It is also required to be noted that in the counter affidavit filed by the fourth respondent it is stated that the Government will provide house sites to an extent of Ac.0-03 cents in ST Colony, Rampachodavaram in the name of the petitioner.

19. Therefore, in the facts and circumstances of the case, the relief sought in the writ petition cannot be granted and the petitioner is not entitled for discretionary remedy

under Article 226 of the Constitution of India.

20. For the foregoing reasons, Writ petition is accordingly dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:27.01.2016

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Dated: 27th January, 2016

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