

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.14754 OF 2005

ORDER:

This writ petition is filed under Article 226 of Constitution of India to declare the action of the respondents in making attempts to dispossess the petitioner from the land of an extent of Ac.04.00 cts in Sy.No.31 situated at the sivals of Burhanpur Village near Bela Village and Mandal, Adilabad District as illegal, arbitrary and unjust and consequently direct the respondents not to dispossess the petitioner without following due process of law.

It is the case of the petitioner that he is in possession of the land of an extent of Ac.4.00 cts. in Sy.No.31 situated at the sivals of Burhanpur Village, Bela Village and Mandal, Adilabad District for the last 30 years without any interruption by anybody and that he belongs to BC-D community and eking out his livelihood by cultivating the above said land.

While the petitioner is in continuous possession and enjoyment of the property, 3rd respondent made an attempt to dispossess the petitioner from the said land of an extent of Ac.4.00 cts in the year 1995. Thereupon the petitioner made a representation to 1st respondent narrating all the facts and highlighting that he is eking out livelihood by cultivation and he is a landless poor person and requested the 1st respondent to direct the 3rd respondent not to dispossess him from the land while praying for grant of assignment proceedings in his favour.

It is further contended that the property is situated on the banks of Godavari river and it is not fit for weekly bazaar. Thus, the petitioner is in possession and enjoyment of the property as on the date of filing the writ petition and he cannot be dispossessed from the property without following due process of law and the attempts made by the respondents to dispossess the petitioner from the land in question are

illegal and arbitrary. Hence, the writ petition.

Respondent No.3 filed counter-affidavit contending that the property is a Gouthan land for cattle (santha) i.e. weekly Bazaar at Bela Village and that the petitioner has encroached the land of an extent of Ac.4.00 cts forming part of Gouthan and adjacent Nala land.

Having found that the petitioner encroached the Gouthan and Nala land, proceedings under Land Encroachment Act have been initiated vide letter No.A/431/2003, dated 26.03.2003 and served on N.Undru, S/o. Bairuju, resident of Bela Village, the petitioner herein, on 26.05.2003 and later the possession of the property was taken by following due process of law and as on the date of filing the writ petition the Government alone is in possession and enjoyment of the property in question. The subject land is intended for construction of market yard.

It is further contended that Sy.No.31 to the extent of Ac.8.03 cts. situated at Burhanpur village was recorded in Revenue records as "Gothan" Government land and the Burhanpur village is a notified village under A.P. State Land Transfer Regulation 1 of 1959 and the petitioner being a non-tribal, who encroached the property, is not entitled to claim assignment of land. Therefore, the petitioner is not entitled to continue in possession and enjoyment of the land in question, consequently, he was dispossessed from the property by following due process of law. Finally, the 3rd respondent prayed for dismissal of the writ petition.

During the course of hearing, learned counsel for the petitioner would contend that the petitioner is in possession and enjoyment of the land in question and denied the dispossession of the petitioner from the land by initiating proceedings under Land Encroachment Act and requested this Court to direct the respondents not to dispossess the petitioner without following due process of law.

Whereas learned Government Pleader for Revenue contended

that the petitioner was already dispossessed from the land on 26.05.2003 and submitted a copy of the representation of the villagers for perusal of this Court.

According to the petitioner, he is in possession and enjoyment of the property in question and he is a non-tribal encroached the land of an extent of Ac.4.00 cts in Sy.No.31 situated at the sivals of Burhanpur Village, Bela Village and Mandal. The encroachment is not in dispute as the 3rd respondent himself admitted in the counter-affidavit as well as in the proceedings under the Land Encroachment Act, the petitioner being a non-tribal encroached the land in agency, which is governed by A.P.State Land Transfer Regulation 1 of 1959. The only dispute is with regard to dispossession of the petitioner violating the procedure under Land Encroachment Act. Though the learned Government Pleader for Revenue contended that the petitioner was removed from possession of land of an extent of Ac.4.00 cts in Sy.No.31 situated at the sivals of Burhanpur Village, Bela Village and Mandal, Adilabad District, did not file any piece of paper, more particularly the proceedings initiated under Land Encroachment Act and the panchanama prepared at the time of taking possession of the property from the petitioner under the provisions of the Land Encroachment Act. In the absence of any material to show that the petitioner was dispossessed from the land in question, it is difficult to believe the dispossession of the petitioner from the property.

It is a settled position of law that a person, who is in possession of the land, though an encroacher, cannot be dispossessed except by due process of law. However, the petitioner is contended that the 3rd respondent is making attempts to dispossess him without following due process of law. When the respondents admitted that the petitioner is in possession and enjoyment of the property, but failed to produce any evidence showing that the petitioner was dispossessed by initiating proceedings under the Land Encroachment Act, this Court

has no option except to direct the respondents not to dispossess the petitioner without following due process of law.

The writ petition is, accordingly, disposed of by directing the respondents not to dispossess the petitioner without following the due process of law, if not dispossessed so far by initiating proceedings under the Land Encroachment Act. No order as to costs. The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:24.06.2016

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