

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.27940 of 2016

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking a writ of Mandamus declaring the action of the respondents in interfering with the peaceful possession and enjoyment of the petitioner's land, as illegal and arbitrary.

2. Heard the learned counsel for the petitioner and the learned Government Pleader for Forests (Telangana).

3. It is the case of the petitioner that he is the owner of agricultural land to an extent of Ac.5.00 in Survey No.99/16 of Challa Samudram village, Yellandu Mandal of Khammam District. It is the further case of the petitioner that the revenue officials have issued Pattadar Pass Books and Title Deed in his favour. A perusal of the record, *prima facie*, reveals that the petitioner has been in possession and enjoyment of the land in an extent of Acs.5.00 survey Nos.588 and 478/1 of Challa Samudram Village.

4. The learned Government Pleader submitted that the petitioner herein has occupied the forest land without any right whatsoever.

5. Whether the land in question belongs to the Forest Department or Revenue Department is purely a disputed question of fact, which cannot be gone into while exercising the jurisdiction under Article 226 of the Constitution. Even assuming but not conceding that the land in question belongs to the Forest Department, it has to follow the due procedure and evict the petitioner. It is a settled principle of law that a person, who is in

possession of the land, though an encroacher, cannot be dispossessed except by due process of law (see **East India Hotels Ltd v Syndicate Bank**^[1], **Meghmala v G.Narasimha Reddy**^[2] and **Maria Margarida Sequeria Fernandes v Erasmo Jack De Sequeria (Dead) through L.Rs**^[3]).

6. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, the respondents are hereby directed not to evict the petitioner from the land to an extent of Ac.5.00 guntas in Sy.No.99/16 of Challa Samudram Village, Yellandu Mandal of Khammam District without following due procedure.

7. Accordingly, this writ petition is disposed of. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

T.SUNIL CHOWDARY, J

August 22, 2016.

Rns

^[1] 1992 Supp (2) SCC 29

^[2] 2011 (2) ALT 8 (SC)

^[3] AIR 2012 SC 1727