

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.18943 OF 2005

ORDER:

This Writ Petition is filed to issue a mandamus declaring the action of the respondent in threatening to dispossess the petitioner from the land in Survey Nos.683/1 and 629/B1 admeasuring Ac.0.95 cents and Ac.0.20 cents respectively situated at Gudur Village and Mandal, Nellore District as illegal and arbitrary and consequently to direct the respondent not to dispossess the petitioner except by following due process of law.

It is the case of the petitioner that he is in possession of an extent of Ac.0.95 cents in Survey No.683/1 and Ac.0.20 cents in Survey No.629/B1 situated at Gudur Village and Mandal, Nellore District assigned by the Tahsildar, Gudur vide Dis.1436/91 dated 22.12.1981 and Dis.444/91 dated 12.12.1981 respectively. Ever since the petitioner is in possession and enjoyment of land and paying land revenue to the authorities and obtained pattadar pass book bearing No.63 dated 25.01.1997. He also obtained loan of an amount of Rs.29,800/- from the Primary Agricultural Cooperative Society in the year 1998 by mortgaging original D Form patta and title deeds issued in his favour. While the matter stood thus, a cinema theatre in the name and style 'Saraswathi Mahal Cine Theatre' was constructed on the Eastern side of the land and subsequently, APSRTC bus station was constructed to the east of the Gudur Town and hence, agricultural lands were being converted into residential plots. In the process of development of Chillakur Anilkumar Memorial Educational Institution and Shirdi Sai Temple, NG-5 road was widened and due to unexpected strides of development in the eastern extremity of Gudur at Chillakur and in the road junction, several hotels including lodges and other aqua culture offices etc., suddenly cropped up. Since then some people began to harass the petitioner to sell the land for house site plots, for which he did not agree. Thereupon, political quarters tried to

put pressure on the petitioner.

In the month of February 2004, the Mandal Revenue Officer (MRO) demanded the petitioner to produce the documents. The petitioner produced documents to establish that he has been in possession and enjoyment of the property but even after verifying the documents, the MRO threatened to evict the petitioner from the schedule property. The petitioner made several representations to the MRO bringing to his notice about issuance of pattas etc, but no purpose was served and continued threat to dispossess him from the schedule property. Therefore, the petitioner, having no other alternative, approached this Court for grant of writ of mandamus declaring the action of the MRO, the respondent herein, as illegal and arbitrary.

The only contention of the learned counsel for the petitioner is that when a patta was granted in his favour by Tahsildar/MRO and he has been paying land revenue and mortgaged the property by depositing D Form patta with PACS in the year 1988 for obtaining loan of Rs.29,800/-, the respondent could not treat the petitioner as encroacher and threaten to dispossess him from the schedule property. Even if the petitioner is an encroacher, the respondent is not entitled to dispossess him forcibly without following due process of law. It is settled law that a person in possession of property cannot be dispossessed except by following due process of law. Admittedly, the petitioner has been in possession of the property and no steps were taken to evict him from the schedule property by issuing necessary proceedings under the Land Encroachment Act. Therefore, the act of the respondent to dispossess the petitioner without initiating any proceedings as per law is illegal and arbitrary. However, the petitioner is permitted to produce proof of title before the first respondent. On such production, the respondent may consider his request dated 23.03.2004 and pass appropriate order.

With the above direction, the Writ Petition is disposed of. There

shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(M.SATYANARAYANA MURTHY, J)

18th March 2016

RRB