

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.33278 OF 2012

ORDER:

This writ petition is filed questioning the action of the respondent-Devasthanam in attempting to dispossess the petitioner from his house site over an extent of 849.65 sq. yards in Plot Nos.54 to 56, Sy.No.39/1A1/1A of Madhavadhara, Visakhapatnam, without issuing any notice and without following the due process of law.

The grievance of the petitioner is that the respondent-Devasthanam authorities are interfering with the above said property of the petitioner without issuing any prior notice or without following the due process of law.

The averments in the writ petition are that the petitioner is a owner and possessor of the above said property having acquired the same through a registered sale deed dated 25.01.2000 from one Sanapala Anand Rao. The vendor of the petitioner in turn had acquired the same on account of the family partition list prepared on 24.08.1975 and which came to the share of the vendor's father in terms of the registered will dated 14.05.1976. The respondent-authorities merely because the property of the petitioner situated adjacent to the temple property are claiming that this property belongs to Devasthanam and interfering with the same without there being any authority and without following due procedure.

A counter-affidavit is filed by the Executive Officer of the respondent-Devasthanam stating that the land claimed by the

petitioner is adjoining to the land situated in S.No.318 of Adavivaram Village for which a rythwari patta was granted to the respondent-Devasthanam for the land to an extent of Ac.76.20 cents vide order of the Mandal Revenue Officer, Visakhapatnam Rural dated 18.05.1996. By taking advantage of the adjoining land, the petitioner is trying to encroach the property under the guise of fake documents taking advantage of the fact that the value of the land in Sy.No.318 of Adavivaram Village is abnormally increased. It is further stated that after approaching this Court, the petitioner is trying to make constructions in the property in Sy.No.318 of Adavivarm Village instead of confining to the extent claimed by him. It is also further stated that the petitioner's land is situated in Sy.No.39 of Madhavadhara Village but not in Sy.No.318 of Adavivaram Village.

Heard the learned counsel for the petitioner and the learned Government Pleader for Endowment.

A perusal of the writ affidavit as well as the counter-affidavit filed by the respondent disclose that even from the averments of the counter-affidavit of the respondent, the land which is being claimed by the petitioner is in Sy.No.318 of Adavivaram Village. In other words, the land in Sy.No.39 of Madhavadhara Village, petitioner claiming is distant from the land of the respondent-Devasthanam. However, in the event of the petitioner trying to encroach the land of the respondent-Devasthanam, the proper course of action that is required to be adopted by the respondent-Devasthanam is to seek protection from the appropriate Forum and not to interfere with the possession and enjoyment of the petitioner. Even assuming that

there is a dispute with regard to the identification/location of the land, the respondent-Devasthanam would have to get resolved through appropriate legal proceedings and not by interfering with the property of the petitioner.

In those circumstances, the writ petition is allowed with a direction to the respondent-Devasthanam not to interfere with the property of the petitioner situated in Sy.No.39 of Madhavadara Village, without following due process of law. The disposal of the writ petition to follow due process of law shall not be construed as expressing any opinion about the title in favour of the petitioner with respect to the property claimed in the writ petition and the writ petition is being disposed of on the limited ground of the respondent-Devasthanam not following the due process of law. In the event the respondent-Devasthanam comes to a conclusion that the property in occupation of the petitioner is that of the respondent-Devasthanam, the authorities are at liberty to take appropriate steps for recovery of the same in accordance with the law. No order as to costs.

Miscellaneous Petitions, if any pending in this writ petition shall stand closed.

CHALLA KODANDA RAM,J

Date:03.11.2016,
Gk.

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM



WRIT PETITION No.33278 OF 2012

Date:03.11.2016

Gk