

**THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**WRIT PETITION No.23430 OF 2011**

**ORDER:**

This writ petition is filed seeking to issue a writ or order or direction more particularly, one in the nature of writ of *Mandamus* declaring the action of respondent No.3 in issuing notice vide Rc.No.B/3078/2011, dated 09.08.2011, without following the due process of law as illegal and arbitrary, and consequently, to set aside the same.

2. Case of the petitioner is that he belongs to Schedule Tribe Community (Koya) and is doing cultivation by residing at Tadvai Village and Mandal, Warangal District. Being tribals, himself and his brother occupied Government land nearly to an extent of Ac.10.00 guntas in Sy.No.32/1 of Tadvai Village long back and have been cultivating the same without any hindrance by raising seasonal crops. The said land is within the Agency Track and it will not be of any benefit to a non-tribal like respondent No.5. Respondent No.5 hatched an evil plan with a view to grab the above land by misrepresenting before respondent Nos.2 and 3. On the representation of respondent No.5, local enquiry was conducted through Mandal Revenue Inspector, Tadvai on 15.7.2011 and the M.R.I. has submitted his report that the petitioner and his brother are in possession and enjoyment of the said land by raising cotton crop therein. The M.R.I. also examined the neighbouring farmers and stated that they have been cultivating the above said Government land. Respondent No.5 was never in possession and enjoyment of the same. Though respondent No.3 has given instructions to respondent No.4 under the impugned notice dated 9.8.2011 stating to evict the petitioner and other residents of Tadvai Village and Mandal at Sy.No.32/1, respondent No.3 has no

jurisdiction to issue such instructions to respondent No.4 and the same is illegal. Respondent No.3 served the notice to evict him from the said land and also directed him to hand over the said land to respondent No.5 and others and further, instructed him not to enter into the said land. Admittedly, the said schedule property is under the Agency Area a non-tribal like respondent No.5 is not entitled to cultivate the land. Respondent Nos.2 to 4 are protecting the illegal claim of respondent No.5. Under the guise of the impugned notice, respondent No.5 is trying to trespass into the said land and dispossess him by illegal methods at any point of time with the assistance of respondent No.4 without having any right and title over the said land. Respondent No.5 is also trying to trespass into his patta land situated in Sy.No.15/4 to an extent of Ac.5.00 guntas of dry land at Bodigudem Village, Tadvai Mandal, which is very adjacent to the encroached land in Sy.No.32/1 of Tadvai Village.

3. Counter-affidavit is filed by respondent No.2 stating that the land in Sy.No.32/1 of Tadvai Village is a Government Land classified as Khariz Khata with a total extent of Ac.104.36 guntas. The petitioner and his brother have been cultivating the same without any let or hindrance till date by raising seasonal crops. The petitioner has not produced any documentary evidence in support of his claim. Further, from the office records, no proof of occupation by the petitioner and his brother in respect of the said land is available. Respondent No.5 is also liable for summary eviction as he is a non-tribal and in a tribal village, a non-tribal has no right to encroach upon the Government land and in this regard, the process for eviction has been initiated. The action of respondent No.2 in ordering respondent No.3 to evict the petitioner from the said land is not arbitrary. The petitioner does not fall under the category of landless poor person. Hence, the eviction notice issued by respondent No.3 is within jurisdiction and also under due process of law. The petitioner has been assigned Ac.5.00 guntas

of land in Sy.No.15/4 of Bodigudem Village and besides this, he has encroached into the Government land. The wife of the petitioner is working as Village Revenue Officer, Tadvai and drawing a salary of Rs.15,006/- per month. The petitioner is an ineligible encroacher liable for ejectment subject to final orders from this Court. Neither the petitioner nor respondent No.5 are eligible for encroachment of the Government lands and hence, he prayed to dismiss the writ petition.

4. Counter-affidavit is filed by respondent No.4 stating that this respondent did not take any action against the petitioner as well as respondent No.5, as the dispute between them is purely civil in nature, and this respondent has nothing to do with it. This respondent is not the competent authority to evict the petitioner from the subject land even though the Tahsildar, Tadvai Mandal addressed this respondent. Unless and until there is any specific direction from this Court, police protection cannot be given to the subject land and hence, he prayed to dismiss the writ petition.

5. Heard the learned counsel for petitioner and the learned Government Pleader for Revenue (Telangana) appearing for respondent Nos.1 to 3 and the learned Government Pleader for Home (Telangana) appearing for respondent No.4.

6. Though notice was served on respondent No.5, there is no appearance for respondent No.5.

7. In this case, it is to be seen that no prior notice was issued to the petitioner before the impugned order was passed and it does not say as to under which provision of law, the same was issued. I do not understand how respondent No.3 can direct the petitioner to hand over the possession to respondent No.5. Even in the counter, it is stated that respondent No.5 is also liable to be evicted since he is a non-tribal. The impugned notice is absolutely without any application of



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**DATE: 15.02.2016**

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