

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.11373 of 2009

ORDER:

The grievance in the present writ petition filed under Article 226 of the Constitution of India is the alleged interference by the respondents with the petitioner's possession and enjoyment of the land admeasuring Ac.1.50 cents in R.S.No.451 of Pattisam Village, Polavaram Mandal, West Godavari District and the writ petition consequentially prays for a direction to the respondents not to dispossess or interfere with the petitioner's possession and enjoyment in respect of the said land.

Heard Sri K.Chidambaram, learned counsel for the petitioner, Sri Ravi Chimalapati, learned Standing Counsel for respondent Nos.1 and 2 and learned Government Pleader for Revenue for respondent No.3.

The case of the petitioner as per affidavit filed in support of the writ petition is that his father late Vempati Satyanarayana along with Sri V.Suranna, Sri Annamreddy Suranna and Sri Boppana Narayana purchased various properties including the land to an extent of Acs.2.49 cents in Patta No.38 in R.S.No.444 of Pattisam Village by way of a registered document bearing No.372 of 1944, dated 16.06.1944 from Sri T.Dharma Raju, S/o.T.China Laxmanna and they continued in possession of the land purchased under the said sale deed. During the course of partition among the said four persons, the property admeasuring Acs.2.49 cents in Patta No.38 in

R.S.No.444 fell to the share of the father of the petitioner late Vempati Satyanarayana, and he continued in possession of the said land. It is averred in the writ affidavit that in the year 1953, due to heavy floods to River Godavari and as a consequence of the same, part of the village land and residential houses did undergo submergence and the Panchayat and Revenue Authorities requested the father of the petitioner to give the land in Patta No.38 for rehabilitating the families of the victims due to floods and his father accepted to give Acs.1.69 cents and accordingly, he gave the said land and retained remaining Ac.0.80 cents with him. It is further averred that the Panchayat and Revenue authorities allotted land admeasuring Ac.1.50 cents in Survey No.451 of Pattisam Village classified as Gramakantam land in favour of the father of the petitioner as exchange for the land given by him. Since then, the father of the petitioner continued in possession and enjoyment of the said land and paid necessary taxes. It is further stated that the father of the petitioner died and after his death, the petitioner and his three brothers have inherited the property and have been in possession and enjoyment of the said land by raising seasonal crops and paying taxes also.

The complaint in the present writ petition in the above background is that a week back prior to the filing of the writ petition, the Secretary of respondent No.1-Gram Panchayat came to the subject land and asked the petitioner not to plough the land and directed to vacate the land and on being questioned, he replied that

they got instructions from their higher officials saying that there is a proposal to allot the land to the Tourism Department for construction of Hotel and Guest House. In the above background, the present writ petition came to be instituted.

This Court, while ordering Rule nisi on 11.06.2009, granted an order of *status quo* in WPMP No.14625 of 2009.

By way of WVMP No.1241 of 2010, respondent No.3 in the writ petition, prays for vacating the said order passed by this Court.

Reiterating the contents of the counter-affidavit filed in support of the said vacate application, it is submitted by the learned Government Pleader that the subject land does not belong to the petitioner and there is no record also to the said effect nor the petitioner made the same available before this Court and the writ petition is not maintainable, as the petitioner is attempting to establish his right in the property, which is purely a matter of civil nature.

In paragraph 3 of the counter-affidavit filed by respondent No.3, it is specifically stated that the land admeasuring Ac.1.50 cents in R.S.No.451 of Pattisam Village and Mandal is registered in the village accounts as village site and it does not belong to the petitioner. It is further stated in the said counter-affidavit that the land was never under the possession and enjoyment of the petitioner and had it been a fact that the land was given as an alternative site for the land taken from the father of the petitioner,

there must be a record and the orders of the Collector need to be obtained for such alteration of the Government land, if there is such a transaction between the father of the petitioner and revenue authorities. The said counter-affidavit specifically averred that no such orders were passed by the Collector and the land was never given by the revenue authorities to the petitioner.

In fact, no reply affidavit is filed disputing the said averments in the counter-affidavit.

Having regard to the nature of controversy and in the facts and circumstances of the case and in the absence of any semblance of evidence to show prima facie title of the petitioner in the subject property, the request of the petitioner in the present writ petition cannot be considered by this Court under Article 226 of the Constitution of India.

For the aforesaid reasons, the writ petition is dismissed and the interim order granted by this Court is vacated.

Consequently, Miscellaneous Petitions, if any pending in this writ petition shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Dt:03.11.2016.

kdl

