

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.No.20590 of 2009

ORDER:

This writ is filed stating that the father of the petitioner by name Kallam Pedda Guruvaiah was the owner and possessor of land to an extent of Ac.0-47 cents in Sy.No.86/1, Ac.0-05 cents in Sy.No.86/2 and Ac.01-16 cents in Sy.No.87, total admeasuring Ac.01-68 cents situated at Kambalapadu Village, Podili Mandal, Prakasham District. After the death of the petitioner's father in the year 1978, the petitioner succeeded the subject property including other property of his father. It is stated that on 07-09-1949, the Government took over the Kambalapadu Village and introduced settlement rates on 01-07-1958. At that juncture and during survey and settlement operation, the survey numbers of subject property were wrongly classified as 'Cart Tract' and 'Thopu Poramboku'. In those circumstances, the father of the petitioner filed application under Section 11 (a) of the Estates Abolition Act (for short "the Act") before the Assistant Settlement Officer, Nellore to rectify the said mistake. The Assistant Settlement Officer, Nellore conducted detailed enquiry and passed orders dated 20-02-1966 with S.R.No.197/11(a)/63/PDL by confirming the possession and enjoyment of the father of the petitioner over the subject property. Consequent to the said orders, the name of the petitioner's father was entered in settlement Record by deleting the same as 'Car Tract' and 'Thopu Poramboku.' Since then, the father of the petitioner is in possession and enjoyment of the same. In the 1st week of September, 2009, the petitioner intended to plough the subject property, the 4th respondent commenced leveling the subject property stating that the subject property was allotted to them by the 3rd respondent and as such, they are entitled to proceed with the construction in the said land. Aggrieved by the same, the present writ petition is filed.

Counter is filed by the 3rd respondent stating that the lands in Kambalapadu Village admeasuring Ac.0-47 cents in Sy.No.86/1, Ac.0-05 cents in Sy.No.86/2 are classified as "Topu Poramboku" lands and Ac.01-16 cents in Sy.No.87 is classified as 'Cart Tract Poramboku' land. Since

the 6th respondent-Corporation has given requisition for allotment of land in Podili Mandal for construction of godown, alienation proposals were submitted to the District Collector, Ongole by the Mandal Revenue Officer, Podili in the year 1995. After sub-dividing the lands, "A-1" notice was also issued calling for objections on alienation proposals. As there were no objections, the Government accepted the proposals submitted by the Collector in G.O.Ms.No.406 (Revenue (Assignment-III) Department), dated 27-05-1996. Though the proposals were accepted in the year 1996, the lands were not handed over to the Corporation till 2006, as the Corporation has not paid the market value as fixed by the District Collector. Pending realization of market value from the Corporation, the District Collector, Ongole passed orders for handing over advance possession and accordingly, the Mandal Revenue Officer, Podili handed over the lands to the Corporation on 12-01-2007 and the construction was completed upto roof level. There was no cultivation of the land since 1995, when alienation proposals were initiated. It is also stated that no petitions were filed under Section 11 (a) of the Act before the Assistant Settlement Officer, Nellore.

It is the case of the 3rd respondent that the orders dated 20-02-1966, in SR.No.197/11(a)/63/PDL, which were said to be issued by the Assistant Settlement Officer, Nellore as bogus and they pertain to "Tuvvapadu" village of Konakanamitla Mandal, not pertaining to Khambalapadu Village of Podil Mandal. It is also stated that the name of the father of the petitioner was not found in any record. After filing this writ petition, on 28-11-2009 the petitioner represented to the Joint Collector for implementation of the orders dated 20-02-1966 said to have been issued by the Assistant Settlement Officer, Nellore after a period of (43) years and sought for dismissal of writ petition.

In the implead affidavit filed by the 6th respondent, it is stated that the Corporation has decided to construct godowns for storing essential commodities in order to supply them to various mandal level stock points, in turn to fair price shops. A representation was made to the District Collector for allotment of land for construction of godowns by the Corporation. The Collector has allotted the land admeasuring Ac.1-32 cents in Sy.No.86/3 and 87/1 situated at Kamballapadu Village, Podili Mandal by proceedings dated 06-09-2006. The Collector vide proceedings dated 10-01-2007 directed the Mandal Revenue Officer, Podili to give advance possession to the Corporation and on 12-01-2007,

the possession was handed over to the Corporation. It is also stated that the petitioner is claiming lands in Sy.NO.86/1 and 87/2, whereas the land allotted the Corporation in Sy.NO.86/3 and 87/1, as such the same are not tallying with the land allotted to the Corporation for construction of godown. It is stated that the writ petition is not maintainable and the petitioner has to approach civil Court and other averments are reiteration of counter of 3rd respondent.

Learned counsel for the petitioner submits that there are no sub-divisions of Sy.No.86 i.e. 86/1, 86/2, and there is no Sy.No.87/1, as such the question of handing over of possession of survey No.87, 86/1, 86/2 does not arise. He submits as per Assistant Settlement Officer proceedings of the year 1966, the petitioner is in possession of the subject land and even before that the father of the petitioner and their ancestors are in possession of the subject land in the writ petition. But without any notice, the 6th respondent is making constructions in the said land, which is illegal and arbitrary.

On the other hand, the learned Assistant Government Pleader for Revenue produced record showing sub-division of Survey numbers and handing over the possession to the 6th respondent-Corporation.

Heard learned counsel for the 6th respondent. He reiterated the submissions of learned Assistant Government Pleader for Revenue.

In this case, it is to be seen that the petitioner is relying on the proceedings in SR.No.197/11(a)/63/PDL, dated 20-02-1966 are said to have been issued by Assistant Settlement Officer on the application of father of petitioner for conversion of subject land from 'Topu Poramboku' and 'Cart Tract' to patta land. But no revenue record is produced showing either the name of petitioner's father name or petitioner's name or their ancestors names. The petitioner has not filed any application for implementation of order dated 20-02-1966. In the counter affidavit filed by the 3rd respondent, it is stated that the petitioner filed application only after filing of writ petition and in the counter, they also disputed the said proceedings and stated that they are pertaining to other village. No reply affidavit is filed by the petitioner to the same. No documents are also filed to show that the petitioner is in possession of the land as on today. In the implead petition affidavit filed by the 6th respondent shows that the survey numbers allotted to the 6th respondent-Corporation and survey numbers claimed by the petitioner are different. The

petitioner asserts that he is in possession and the respondent denies the same. It is also stated that the constructions are made upto roof level. These are all disputed questions of fact, which cannot be adjudicated in the writ petition by exercising power of judicial review under Article 226 of Constitution of India. In view of the same, I do not see any merit in the writ petition and it is liable for dismissal.

Accordingly, the writ petition is dismissed. It is stated by learned counsel for the petitioner that the respondent-authorities have filed a criminal case in FIR.No.28 of 2012 in Police Station, Podili, Prakasham District stating that the proceedings vide SR.No.197/11(a)/63/PDL, dated 20-02-1966 produced by the petitioner are forged one and he submits that the police filed final report closing the case by holding that the respondent-authorities could not produce any record showing that the said proceedings are forged one. The petitioner can agitate all aspects in the proper forum.

As a sequel to the disposal of this writ petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

23-03-2016
Nvl

