

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.29589 of 2010

ORDER:

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This writ petition under Article 226 of the Constitution of India is filed seeking the following relief/s:

“to issue an order or direction more particularly on in the nature of writ of mandamus or any other appropriate writ or order declaring the action of the respondents authorities in threatening to demolish the residential houses of the petitioners i.e. H.No.4-59 A (extent of 300 square yards), H.No.4-60 (400 square yards), H.No.4-64 (360 square yards) of the petitioner No.4 situated Gollapalle village, H/o Vaddirala Grampanchayath, Mailavaram Mandal, Kadapa District (YSR District) and dispossess them from the extents of the lands without initiating the land acquisition proceedings and without paying any compensation is nothing but arbitrary, illegal, null and void and violative of principles of natural justice and also violative of Articles 14, 19, 21 and 300-A of the Constitution of India and consequently to direct the respondents not to demolish the houses of the petitioners and not to dispossess them from their existing places”

(Reproduced verbatim)

2. I have heard the submissions of the learned counsel for the writ petitioners, the learned Government Pleader appearing for respondents 1 and 2 and the learned standing counsel appearing for the 3rd respondent.

3. The case of the writ petitioners as set out in the affidavit filed in support of the writ petition, in brief, is as follows:

The 1st petitioner is the absolute owner and possessor of residential house bearing H.No.4-59 A situated in Gollapalle village, H/o Vaddirala Grampanchayat, Mailavaram Mandal of YSR Kadapa District. The 1st petitioner had constructed the said house in the year 1964 by dismantling the existing dilapidated old house, which was constructed about 100 years prior to that year, in a total area consisting of 300 square yards. He is residing along with his

children in the said house since the date of its purchase in the year 1964. The 2nd petitioner's father had purchased house bearing H.No.4-60 with an area of 400 square yards in the year 1919 and he is enjoying the said extent of land and the residential house. The 3rd petitioner is the sister-in-law of the father of the 2nd petitioner and she is the owner of the house bearing H.No.4-64 within a site of 360 square yards. The said house was also purchased by Bali Reddy on 08.06.1945 in the name of the 3rd petitioner; and, since then she and her family members are residing therein and are enjoying the adjacent land. The 4th petitioner's grandfather and grandmother by names Bala Gurappa and Chinna Gangamma had purchased on 19.01.1926 and 27.08.1934 the house in occupation and enjoyment of the 4th petitioner, which is situated in an extent of 450 square yards; and, since a long time the 4th petitioner and his family members are residing in the said property. The copies of the sale deeds, which are filed along with the writ petition, evidence the said facts. There are about 160 houses in the village and all the said houses are old houses and are in existence since long time; and, some of the houses were constructed in the recent past. So far as the petitioners are concerned, their residential houses were acquired by their ancestors; and, the families of the respective petitioners are enjoying their respective properties without any interruption from any quarter. While so, on 20.11.2010, the Mandal Surveyor along with Village Revenue Officer came to their village and started taking measurements of the entire residential locality including the houses of the petitioners. When the petitioners had questioned, they had replied stating that the respondents had issued an auction notice dated 10.05.2010 calling for tenders for selling the land admeasuring Ac.7.06 cents in Survey No.91 of

Gollapalle village, H/o Vaddirala Grampanchayat, Mailavaram Mandal, YSR Kadapa District and that in the said auction one Bala Hussain Reddy became the highest bidder and that as per the revenue record, there is no such survey number 91 and hence, they are suspecting that the residential houses are constructed in the said survey number and that, therefore, they are measuring the properties. The small extents of properties purchased and enjoyed by the petitioners were acquired by their ancestors with their hard earned money and the families of the petitioners are eking out their livelihoods upon agriculture. If the respondents demolish the residential houses of the petitioners and dispossess them, they would be put to serious and irreparable loss. In fact, the officers concerned of the respondents are threatening to demolish the residential houses of the petitioners and dispossess them from their respective houses. The said intended action without even any notice to the petitioners and without initiating any land acquisition proceedings is arbitrary, illegal and is in violation of principles of natural justice. Hence, the writ petition is filed.

4. The averments in the counter affidavit of the 3rd respondent, in brief, are as follows:

The 3rd respondent Mutt was the absolute owner of a vast extent of land admeasuring Ac.130.00 in various survey numbers of Gollapalli village, Mylavaram Mandal, YSR Kadapa District and the 3rd respondent Mutt was the Inamdar of the said land. On 31.03.1985 the Settlement Officer, Nellore in his proceedings vide D.Dis.No.2951/1980 was pleased to issue Ryotwari Patta in favour of the 3rd respondent-Mutt under Section 15 (1) of the Estate Abolition Act, 1948 and the said proceedings have attained finality. The land in Survey No.91 was also included in the said

proceedings. Neither the petitioners nor any other person including the vendors of the petitioners or their predecessors have no manner of right, title or interest over the subject properties. The collusive sale transactions, if any, between the predecessors-in-interest of the petitioners and some other persons, who had executed documents in their favour, are not binding on the 3rd respondent-Mutt. The lands in various survey numbers of Gollapalli village are not fetching any income to the Mutt. The competent authority after following the due procedure contemplated under Section 80 of the Act 30 of 1987, was pleased to sanction permission for sale of those lands. A Gazette publication and a publication in the local newspaper were made. The petitioners did not raise any objection to the said publications. In the auction held, one Bala Hussain Reddy became the highest bidder in respect of the subject land and had offered Rs.32,30,000/- and had deposited Rs.10,30,000/- on the date of auction. Thereafter, the petitioners herein had raised a dispute and had threatened the said bidder. Hence, the said bidder had withdrawn his advance amount by relinquishing his bid. The writ petition is filed suppressing the true facts. The unregistered sale deeds annexed to the writ petition are not true, valid and admissible in law and are not binding on the 3rd respondent-Mutt as the vendors under the said documents have no manner of right, title or interest over the lands covered by the said documents. The petitioners, who are not in legal possession of the subject properties, are not entitled to any relief. There is no merit in the writ petition.

5. In reply to the counter-affidavit of the 3rd respondent, the 1st petitioner had filed a reply affidavit, *inter alia*, stating as follows:

The case of the writ petitioners stands substantiated by the

sale deeds, which are more than 30 years old and the photographs of the residential houses, which were constructed long time back. The writ petitioners had also filed voters list of the Grampanchayat Vaddirala. The Gollapalli village is hamlet of the said Grampanchayat. The voters lists of the years 2006 and 2008 clearly show the numbers of the petitioners' residential houses. No document is filed to show that the 3rd respondent was the absolute owner of the land admeasuring 130 acres in various survey numbers of Gollapalli village. The allegation that neither the petitioners nor their vendors have any right, title or interest in the property is denied. The allegation that the transactions are collusive transactions is also denied. Since the writ petitioners are disputing the rights of the 3rd respondent-Mutt over the subject properties, which are owned and possessed by the petitioners, the only recourse available to the 3rd respondent, in the facts and circumstances of the case, is to approach a competent forum and seek eviction of the petitioners. The 3rd respondent is not entitled to dispossess the petitioners by resorting to a procedure, which is summary in nature or in a highhanded manner. In the counter of the 3rd respondent, it is only stated that the petitioners are not in legal possession of the subject lands and they are not entitled to make any claim in the writ petition. The said allegation would show that the petitioners are in possession of the respective houses, which are subject matter of the writ petition. The writ petitioners have also filed copies of field maps bearing of the fields bearing Field Map Nos.91, 92, and 93 and also the Certificate issued by the Assistant Engineer, Operation Section, APSPDCL, Mylavaram. The said letter document shows that they are having service connections under domestic services and that those services are

regular. The writ petitioners had also filed a document wherein the structures were evaluated by the R & B authorities pursuant to the proposal for acquisition of structures pertaining to Gollapalli village of Jammalamadugu in Kadapa District. In the said document, the names of the petitioners and the value of the structures possessed by them find place.

6. The learned counsel for the parties made their submissions in line with the pleadings, which are extracted supra.

7. The learned counsel for the petitioners contends as follows:

The writ petitioners' possession over their respective houses and sites is admitted by the 3rd respondent-Mutt in view of the specific averment in the counter that the possession of the writ petitioners is not legal. Further, the writ petitioners produced the photographs of their properties, besides sale deeds, which were executed several decades ago in favour of their ancestors/predecessors in interest and also the copies of the voters lists of the years 2005 and 2008, the Certificate from the authority concerned of Electricity Department and estimation of the values prepared by the R & B Department along with village maps to substantiate their case that they are in possession of the subject properties. Their possession cannot be interfered with except in accordance with the procedure established by law. When once the petitioners are able to establish their possession, particularly, long possession over their respective properties, even assuming for a moment that they have no right, title or interest over the subject properties, they cannot yet be evicted from their respective properties except by following the procedure established by law. Therefore, the only recourse open to the 3rd respondent is to initiate

civil proceedings before a competent forum and seek eviction. Even the 3rd respondent cannot invoke the provisions of the Endowments Act and seek eviction by initiating summary procedure in view of the long possession of the petitioners over the subject properties.

7.1 In support of his submissions he had placed reliance on a decision rendered by the Supreme Court in **Government of Andhra Pradesh v. Thummala Krishna Rao**^[1]. The facts of the cited case would show that the Government had initiated action against the persons in occupation for eviction under the provisions of the Land Encroachment Act, 1905. Since the persons in possession are found to be in possession of the respective plots since a very long time, a Division Bench of this Court held that summary remedy provided under Section 7 of the Act cannot be resorted to unless there is an attempted encroachment or encroachment of a very recent origin and that such a remedy cannot be availed of in cases where complicated questions of title arise for decision. The Supreme Court agreed with the view taken by the Division Bench subject, however, to certain observations.

8. On the other hand, the learned counsel for the 3rd respondent-Mutt would submit as follows:

The sale deeds of the petitioners admittedly are unregistered sale deeds. In the sale deeds, there are no recitals as to how the vendors had acquired the properties covered by the sale deeds. The sale deed transferring right, title or interest in immovable property of the value of one hundred rupees and upwards is compulsorily registerable. In the absence of registration, such documents, which are required under Section 17 of the Indian

Registration Act, to be registered, will not affect any immovable property comprised therein. Therefore, no title much less valid title whatsoever had passed under the said documents being relied upon by the petitioners. The said documents do not confer title on the writ petitioners in respect of the properties being claimed by them in the writ petition. Mere entries in the voters lists or any document showing that the service connections were obtained are of no avail to prove lawful ownership of their residential houses.

The document in regard to the estimation of the structures made by the R & B Department in Gollapalli village, which is being relied upon by the petitioners, is inchoate and incomplete document. None of the documents of the petitioners are helpful to advance their case that they are the owners of their respective house properties and house sites. The property of the 3rd respondent is an endowed property. The Mutt had acquired title to the property by virtue of the ryotwari patta issued in the year 1988 by the Settlement Officer, Nellore under the provisions of Inams Abolition Act. The said proceedings that had attained finality cannot be the subject matter of challenge in any civil proceeding or in this writ petition. Since the property is an endowed property, the petitioners have no right, title or interest over the subject properties. The writ petition is misconceived and is not maintainable.

9. I have carefully gone through the pleadings and I have given my earnest consideration to the submissions made by the learned counsel for the parties.

10. Though the petitioners claimed title/ownership to the respective house sites with houses thereon, they could not establish even a prima facie title or interest coupled with ownership in respect of those properties. In other words, they could not

establish any lawful right to remain in possession of their respective house and site properties. As rightly contended, the unregistered sale deeds in respect of immovable properties of the value of one hundred rupees and upwards are inadmissible in evidence and are of no avail. Any such documents, which do not affect any immovable property comprised therein, are not sufficient to establish title, ownership and lawful possession. As the petitioners could not establish their title to the subject house properties, the elaborate contentions advanced that they are in possession of the property for over 30 years and that in view of their settled possession, it is for the 3rd respondent-Mutt to seek eviction in strict accordance with the procedure established by law by initiating appropriate civil proceedings before a competent forum and that the petitioners cannot be evicted by having resort to summary procedure under the Act 30 of 1987 cannot be countenanced. The petitioners neither established their title nor right to remain in possession over the subject properties. Mere long possession does not confer title is the settled law. The petitioners did not make a claim of adverse possession against the 3rd respondent-Mutt. Further, Section 143 of the Act 30 of 1987 lays down that nothing in any law of limitation for the time being in force shall be deemed to vest in any person the property or funds of any charitable or religious institution or endowment which have not vested in such person or his predecessor in title before the 30th September 1951, in the Andhra Area of the State and the 26th January, 1967 in the remaining area of the State. Therefore, the plea of adverse possession is also not open to the petitioners herein. When there is allegedly a threat of dispossession of the petitioners from their respective house properties, for reasons best known to them, they did not approach a competent civil court and

initiate civil proceedings, even though, according to them, they are entitled to continue in possession till they are evicted in strict accordance with the procedure established by law. Section 81 of the Act 30 of 1987 lays down that any sale, exchange or mortgage made prior to the commencement of the Act of any immovable property belonging to any charitable or religious institution or endowment is effected, without the prior sanction of the Commissioner or Government, shall be null and void and shall be deemed never to have been effected and accordingly no right or title in such property shall vest in any purchaser or person acquiring the property by such transaction and any such property shall be deemed to be the property of the institution or endowment concerned and any person in possession of such property shall be deemed to be an encroacher. Further, Sections 83, 84 and 85 of the Act deal with mode of eviction and the proceedings to be taken for eviction. Therefore, even if the possession of the petitioners over the subject properties is established, the petitioners cannot be heard to say that they cannot be evicted in a summary manner and by following the procedure under Act 30 of 1987. It is not in dispute that in view of the dispute raised by the writ petitioners, the auction held for sale of the lands as per the sanction of the competent authority did not fructify and the successful bidder had withdrawn his bid and received back his advance amount deposited by him at the time of auction. Therefore, the short question now is as to whether the 3rd respondent is obliged under law to initiate proceedings for eviction under the provisions of Act 30 of 1987 against the petitioners who are claiming to be in possession of respective house and site properties. To answer this question, it is necessary to advert to one more vital aspect, which is not in dispute.

11. The said vital aspect as it unfolds from the contentions made at the hearing is as follows:

“All the villagers of Gollapalli village had left the village more than 20 years back on account of famine and lack of sources of livelihood, All the villages had left the village, after giving away their lands with the hope that Cement Company would be established and that the members of the families of the landholders and the villagers would get some employment. However, no Cement Company was established and, therefore, none of the villagers are now living in the village and that all the villagers having abandoned their properties and the properties in their occupations have migrated to various other places in search of livelihood.” Though the said aspect is not seriously in dispute, the learned counsel for the writ petitioners would contend that though it is a fact that most of the villagers had abandoned the village, the writ petitioners have not abandoned the village and they are very much in possession of their respective house and site properties. In support of the said contention, he placed reliance on photographs to show that the petitioners are in possession of their respective house properties. On the other hand, the learned counsel for the 3rd respondent-Mutt would contend that all the villagers including the petitioners have abandoned the village and that all the houses are in ruins and that the village is uninhabitable for want of life sources like water and vegetation and that at present the petitioners are not living in the said village and that they are not in possession of the subject properties which are of the Mutt. He had also produced photographs and paper clippings of Cudapah District edition of Eenadu dated 11th & 12th of October 2015 with news items in this regard in support of the contention that all the villagers

including the petitioners have abandoned the village and that all the houses are now in ruins. As rightly contended, none of the petitioners filed property tax receipts and also the certified copies of the extracts of the property taxes demand register to show that they are continuing in possession of their respective house properties and are paying taxes to the local authority. In the light of the above submissions and the submission of the petitioners that most of the villagers have abandoned the village and the photographs filed by both the sides it is difficult to accept that the petitioners are continuing in possession of their respective houses and sites and are still continuing to live in an abandoned village with no sources of water and livelihood. Since the petitioners are contending that they are still continuing in possession of their respective properties and the 3rd respondent-Mutt is contending that the entire village is an abandoned village, now the issue in regard to whether the petitioners are still in possession of the respective houses and sites mentioned in the writ petition is a disputed question of fact. Such a disputed question of fact cannot be resolved in a writ petition. The law is well settled that the real owner can re-enter and regain possession of his property from the trespasser if it is possible to obtain such possession peacefully and with minimum force. The law on this aspect can be succinctly stated in the following words: 'Where the trespasser is not in settled possession, all acts of the trespasser in regard to the property will be considered as only attempts to secure possession. The true and rightful owner can re-enter and reinstate himself by removing the obstruction or the unauthorized construction put up by the trespasser by using the minimum force. Such action by the true owner will be considered as defending his possession and resisting an intrusion into his property and not forcible dispossession of an

unauthorized occupant.’ Since the 3rd respondent-Mutt is contending that the petitioners having abandoned the village are not in possession of its property and that there is no need to seek eviction of the encroachers, it can re-enter the subject property and resume possession peacefully if it be so. If such re-entry and resumption of possession by peaceful means is not possible, it is needless to state that the 3rd respondent-Mutt shall seek eviction of the writ petitioners from their respective properties by following the procedure established by law. Viewed thus, this Court finds that the writ petition can be disposed of accordingly with appropriate directions.

12. In the result, the writ petition is disposed of with the following observations and directions: The 3rd respondent-Mutt is contending that all the villagers including the petitioners herein had abandoned the village about more than two decades back and that the subject properties are in ruins and that the petitioners are not in occupation of the subject properties. If that be so, the 3rd respondent-Mutt is at liberty to re-enter the subject properties and resume possession of the said properties and reinstate itself in possession peacefully. If such resumption of possession by peaceful means by the 3rd respondent-Mutt is not possible, it is needless to state that the 3rd respondent-Mutt, if it so desires and if it so chooses, shall initiate proceedings for eviction of the petitioners and removal of encroachments in strict accordance with the procedure established by law. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

M. SEETHARAMA MURTI, J

Date: 09th March, 2016
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[\[1\]](#) 1982 Law Suit (SC) 81