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HON'BLE SRI JUSTICE M. SATYANARAYANA
MURTHY

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W.P. No. 18556 of 2005

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DATE: 01.04.2016

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Between:

Katralla Mallaiah
Petitioner

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And

The Agent to Government and Project Officer
and two others
Respondents

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ORDER:-

This writ petition is filed seeking to declaration that the order dated 22.01.2005 in C.M.A. No. 37 of 2003 passed by the

1st respondent – Agent to Government and Project Officer confirming the order dated 28.06.1988 of the 2nd respondent – Special Deputy Collector in Case No. 636/88/KMP, as illegal, arbitrary and violative of the provisions of A.P. Scheduled Areas Land Transfer Regulations, 1959 (for brevity “the Regulations”) and set aside the same.

The petitioner allegedly purchased an extent of Ac.9.20 guntas of land in Sy.No.185/206 situated in Maddulapalli village, Kamapalli Mandal, Khammam District under an agreement of sale dated 27.09.1962, and since then, he has been in possession and enjoyment of the property. While so, the 2nd respondent initiated Case No. 636/88/KMP on the ground that the

petitioner is in possession and enjoyment of the property and sought for his eviction, but the petitioner did not receive any notice in the said proceedings and the 2nd respondent passed the order without giving notice to him and the order under challenge is an *ex parte* order. It is specifically contended that the petitioner was in possession and enjoyment of the property even prior to 1962, but he obtained an agreement of sale on a stamp paper on 27.09.1962. He purchased Ac.5.25 guntas in Sy.No. 185 and is in possession and enjoyment of the same, and therefore, he cannot be evicted by any proceedings without serving any notice on him and claimed aforesaid relief.

Respondent Nos.1 and 2 filed counter affidavit denying material allegations including the ownership of the petitioner while contending that notice was served on the petitioner in the proceedings initiated against him by the 2nd respondent and that he was already evicted by due process of law. It is further contended that C.M.A.No. 73 of 1988 filed before the Agent to Government, Khammam which was transferred to Additional Agent to Government & Project Officer, I.T.D.A., Bhadrachalam was renumbered as C.M.A.No. 37 of 2003. However, there was nothing on record to show that he purchased the property and was in possession of the property as on the date of the proceedings, therefore, the petitioner is not entitled to claim any relief.

Sri J.Prabhakar, learned counsel for the petitioner, has contended that the petitioner was already evicted and requested that the possession of the property is to be restored to the petitioner.

None appears for of the respondents and no argument is advanced on their behalf.

Heard the learned counsel for the petitioner and perused the material placed on record.

As the petitioner himself admitted that he was evicted by due process of law in pursuance of the order dated 28.06.1988 passed by the Special Deputy Collector (T.W), Paloncha which was confirmed by the 1st respondent – Agent to Government and Project Officer in C.M.A.No. 37 of 2003, no cause of action would survive and at best the remedy of the petitioner is to file a petition for restoration. The petitioner could not substantiate his contention that the order under challenge was passed without notice of any material. Hence, on the ground of violation of principles of natural justice, the order is not liable to be set aside. Even otherwise, according to the petitioner, he was allegedly in possession of the property, and later, he purchased the same under an agreement of sale dated 27.09.1962 and continuing in possession of the same. When the petitioner admitted that the 3rd respondent was the owner of the property and purchased the same from him under an unregistered agreement of

sale dated 27.09.1962, he is not entitled to claim title over the property till execution of registered sale deed in his favour, however the property is situated in the Scheduled Area and it is governed by the Andhra Pradesh Scheduled Areas Land Transfer Regulations, 1959. Even assuming for a moment that the petitioner is in possession of the property in pursuance of the agreement of sale dated 27.09.1962, he is entitled to protect his possession under Section 53-A of the Transfer of Property Act subject to fulfillment of other requirements, viz., readiness and willingness to perform his part of obligation, done something in furtherance of agreement of sale or contract of sale, but the petitioner did not plead and prove that the possession was delivered to him under the agreement of sale by the 3rd respondent and that he was ready and willing to perform his part of obligation or did something in furtherance of the contract. In the absence of pleading to protect possession with the aid of Section 53-A of the Transfer of Property Act i.e. pre-requirement, he is not entitled to claim any protection from his eviction from the petition scheduled property. At best, he is entitled to claim for specific performance of agreement of sale if the agreement is true and valid before the Agent to Government and obtain a registered sale deed compelling the 3rd respondent to execute registered sale deed in accordance with law subject to permissibility under the relevant provisions of the Regulations. Instead of

approaching the appropriate authority under the provisions of Regulations seeking specific performance of the agreement of sale, the petitioner tried to protect his possession in pursuance of the agreement of sale which is impermissible under law. Hence, the petitioner is not entitled to claim any protection, however he is already evicted by due process of law. Hence, I find no ground to set aside the impugned order dated 22.01.2005 passed by the 1st respondent declaring it as arbitrary and illegal since there is no violation of any statutory provision or rule by the 1st respondent in passing the order. Therefore, the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs.

As a sequel to the dismissal of the writ petition, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

M. SATYANARAYANA

MURTHY,J

01.04.2016

bcj