

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.17670 OF 2005

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ORDER:

The petitioner filed this writ petition seeking declaration that the action of the respondents in informing the petitioner to dispossess and demolish the compound wall constructed by the petitioner around the land admeasuring 319.25 square yards in Sy.No.1400 of Koratla Village in premises No.1-3-118/4, Ilapoor Road, Koratla, Karimnagar, as arbitrary, illegal and void and also violative of the principles of natural justice and issue necessary direction to the respondents not to dispossess and demolish the compound wall constructed on the petitioner's land of an extent of 319.25 square yards in S.No.1400 of Koratla Village in premises No.1-3-118/4, Ilapoor Road, Koratla, Karimnagar District.

02. It is the case of the petitioner that the husband of the petitioner-Chinna Anjaiah frequently visiting Saudi Arabia to eke-out his livelihood for the last 7 years and occasionally visiting the Village during holidays, after completion of leave period going abroad. As usual, in the month of July 2005, he went to Saudi Arabia and the petitioner alone looking after all the affairs of the land of an extent of 319.25 square yards in S.No.1400 of Koratla Village, which was purchased by her husband under registered sale deed bearing No.3973/2001 dated 12.06.2001, from Beerunandi Laxmi Narayana Chari, since then her husband is in possession and enjoyment of the same paying vacant land tax and obtained pattadar passbook from the second respondent. Thus, the petitioner and her husband are in possession and enjoyment of the said extent of land and they intend to raise house for their living, but on 15.07.2005 the respondents visited the land of the petitioner and threatened that they are going to demolish the compound wall and dispossess the petitioner from the said land. Despite protest of the petitioner, the respondents did not

heed and left the schedule property saying that they will come on any holiday to demolish the wall and dispossess the petitioner from the said land. Again they visited the house to dispossess the petitioner and demolish the compound wall constructed by her husband.

03. It is specifically contended that the respondents has no authority to dispossess the petitioner from the land measuring 319.25 square yards in Sy.No.1400 of Koratla Village and to demolish the compound wall constructed around the premises bearing Door No.1-3-118/4. Thus, the act of the respondents is highhanded, illegal and against the principles of natural justice, since the respondents did not initiate any land acquisition proceedings against the petitioner for acquiring the schedule property, thereby not competent to dispossess the petitioner from the land, hence, sought for the aforesaid relief.

04. The respondents filed counter denying material allegations, while contending that abutting to land in S.No.1400 there is an extent of Ac.11.00 gts., of land in S.No.995, 997, 1492, 1499, 1521 and 1399/1, which belongs to Sri Venkateswara Swamy Vari Temple, Koratla Village and Mandal. The petitioner has encroached the above temple land of an extent of Ac.266.66 square yards in S.No.1399/1 and the said encroachment was demarcated by the Deputy Inspector, Survey & Land records, Karimnagar, and submitted a report to the District Collector, Karimnagar District, to initiate action against the encroacher for removal. In turn, the District Collector, Karimnagar District, instructed the second respondent vide letter in Rc.No.F1/Endt./2005, dated 19-07-2005 for eviction of the petitioner and pursuant to the instructions of the District Collector, the second respondent has dispossessed the petitioner from encroached portion of the land and handed over the possession of the same to the Manager of the Temple. The respondents denied the illegal demolition of the compound wall allegedly constructed by the petitioner and in fact the petitioner's husband constructed the compound wall encroaching the land to an extent of 256.66 square

yards in S.No.1399/1 belonging to Sri Venkateswara Swamy Temple, Koratla Town & Mandal. Therefore, the action of the respondents is in accordance with law and it is not tainted with mala-fides or illegalities and finally prayed to dismiss the writ petition.

05. The petitioner filed reply to the counter affidavit of the 4th respondent denying the removal from encroachment and filed positive photographs to establish that the compound wall is not demolished, the petitioner and her husband were not dispossessed from the schedule property by virtue of the proceedings initiated under the Land Acquisition Act, and still they are enjoying the property paying vacant land tax. The petitioner also filed copy of the permission for construction of compound wall dated 11.12.2002 to establish that they are still in possession of the schedule property.

06. During the course of argument, learned counsel for the petitioner mainly contended that the summary proceedings initiated by the respondents to evict the petitioner from the schedule property are not valid and since the title to the land was in dispute. The matter is to be adjudicated in civil court and the petitioner cannot be evicted in summary proceedings, placed reliance on a judgment reported in **Government of Andhra Pradesh v. Thummala Krishna Rao**^[1]. It is also further contended that the petitioner alone is in possession of the property till today and the same is substantiated by the photographs filed along with the reply affidavit and prayed to declare the action of the respondents is illegal and arbitrary and restrain the respondents from taking forcible possession without following due process of law.

07. Per contra, learned Government Pleader for Revenue (Telangana) contended that the petitioner was already evicted from the schedule property in S.No.1399/1 of an extent of 256.66 square yards as the petitioner encroached and constructed compound wall around the same, the said land belongs to Sri Venkateswara Swami Vari temple, Koratla Village, and after evicting the petitioner from the schedule property, possession of the land to an extent of 256.66

square yards was handed over to the Manager of the Temple as per law and prayed to dismiss the writ petition.

08. Undisputedly, the petitioner's husband purchased an extent of 319.25 square yards in S.No.1400 vide registered document No.3973/2001 dated 21.06.2001. The boundaries of the schedule property are relevant for deciding the real controversy between the parties and they are as follows:

East – 21 feet road and D.No.1-3-140 (old number)
after two plots
West – Plot No.6 and 7
North – 24 feet road
South – Vacant place of Dora Raju

09. Thus, it is evident from the recitals of the sale deed, the petitioner's husband purchased only 319.15 square yards in S.No.1400 not in S.No.1399/1. Whereas the contention of the respondents is that the petitioner encroached into an extent of 256.66 square yards in S.No.1399/1 which is abutting to S.No.1400 and the land in S.No.1399/1 belongs to Sri Venkateswara Swami Vari temple, Koratla Village. Therefore, the petitioner was removed from possession of 256.66 square yards in S.No.1399/1 of Koratla Village treating her as encroacher initiating the proceedings under Land Encroachment Act.

10. The respondents did not dispute the purchase of the land by the husband of the petitioner in S.No.1400, the contention of the petitioner is that the compound wall was constructed around 319.25 square yards in S.No.1400. The said fact was disputed by the respondents contending that the petitioner encroached 256.66 square yards and constructed compound wall around the land. Thus, there is a dispute with regard to the extent in occupation of the petitioner. However, the respondents allegedly initiated the proceedings under Land Encroachment Act and removed the encroacher from the schedule property, since the property belonging to Venkateswara

Swmay Vari temple, more particularly, the petitioner, from the land to an extent of 256.66 square yards in S.No.1399/1 of Koratla Village. The letter dated 19.07.2005 also filed along with the counter. As seen from the said letter, it is a letter addressed by the Collector, Land Reforms, Karimnagar to Mandal Revenue Officer to remove the encroachments and deliver possession of the property of Venkateswara Swamy Vari Temple without issuing specific direction to initiate any proceedings. However, the respondents contended that the proceedings under Land Encroachment Act were initiated and removed the petitioner from encroached land of an extent of 256.66 square yards, but no document is filed.

11. Learned counsel for the petitioner while contending that when there is bonafide dispute regarding title and boundaries to the land, the person in occupation cannot be dispossessed by summary proceedings under Land Encroachment Act and such dispute has to be adjudicated by a civil court. There is no bar to exercise jurisdiction by the Civil Court, placed reliance on a judgment in **Thummala Krishna Rao** referred to supra wherein the Apex Court specifically held that the jurisdiction of civil court is not barred, when there is bonafide dispute regarding title and encroachment of the Government land, more particularly, dispute regarding boundaries, such disputes have to be decided in a civil court and the person in occupation cannot be dispossessed by summary eviction under Land Encroachment Act, 1905.

12. Learned counsel for the petitioner while contending that when there is a title dispute between the Government and the petitioner, the Government is not entitled to initiate proceedings under the Act of 1905 and in support his contention relied on a Division Bench decision of this Court in **The Special Deputy Collector, Land Eviction, Hyderabad and others Vs. Konda Laxman Bapuji**^[2], wherein in Para 3 of the decision, this Court held as follows:

“In this case, if really the Government was keen on summarily evicting the writ petitioners, they should have taken proceedings within a reasonable time after the writ petitioners or their lessor had encroached upon the land. The occupation of the property by the writ petitioners, being open and for an appreciable length of time, can be taken, prima-facie to have a bona-fide claim to the property requiring an impartial adjudication according to the established procedure of law. Since there is a bona-fide dispute of title between the Government and the writ petitioners, it must be adjudicated upon by the ordinary Courts of Law. The Government cannot decide such questions unilaterally in its own favour and evict them summarily on the basis of such decision. Therefore, the proceedings under the A.P. Land Encroachment Act cannot be taken and no enquiry can be held by the Tahsildar and the petitioners cannot be evicted in pursuance of any such enquiry.”

13. If the principle laid down in the above judgment is applied to the present facts, the remedy of the petitioner is to approach the civil court to redress her respective claim by filing a suit to establish her title to the property including title to 256.66 square yards in S.No.1399/1.

14. In fact, the petitioner is not claiming any title in 256.66 square yards in S.No.1399/1, but contending that the land surrounded by compound wall is covered by S.No.1400. Such dispute cannot be decided by this Court while exercising the power of judicial review under Article 226 of the Constitution of India. In such case, it is difficult for me to declare the proceedings, if any, initiated by the respondents evicting the petitioner from the schedule property as illegal and arbitrary, and restrain them from taking possession.

15. It is the contention of the petitioner that the petitioner is still in possession, produced positive photographs to establish the same. But the photographs filed along with the reply to counter affidavit does not disclose the date of taking photographs and therefore basing on the positive photographs, it is difficult for me to conclude that the petitioner is in possession of the property allegedly encroached by her i.e., 256/66 square yards in S.No.1399/1.

16. Yet the petitioner produced property tax receipts issued by the Korutla Municipality in the name of Madisetty Anjaiah, S/o.Narayana, husband of the petitioner, evidencing payment of vacant land tax for the period from 01.04.2015 to 31.03.2016. At best, these documents may establish that the petitioner is paying vacant land tax, but such payment itself is not sufficient to believe actual possession of the land in S.No.1399/1 of an extent of 256.66 square yards.

17. The Tax receipt was issued for House No.1-3-118/4/1. If really the land lying vacant, Municipality is entitled to levy vacant land tax, but when the house was constructed, assigned Door No.1-3-118/4/1, question of collecting vacant land tax does not arise. At this stage, the learned counsel for the petitioner has drawn attention of this Court to passbook issued by the Korutla Municipality, wherein the address of the petitioner, in the column meant for the tax payer, was mentioned as Door No.1-3-118/1/4, but it is not known as collection of tax for vacant land or house tax. In any view of the matter, it is clear that there is bonafide dispute relating the occupation of the land in S.No.1399/1 of an extent of 256.66 square yards by the petitioner. There is a clear boundary dispute, in such case, the remedy open to the petitioner to approach civil court for filing a suit for appropriate relief and such disputes cannot be decided in a writ petition exercising the power of judicial review under Article 226 of the constitution of India, which is purely discretionary in nature.

18. With the above observation, the writ petition is disposed of. No costs.

19. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 07.04.2016

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[\[1\]](#) 1982 Law Suit (SC) 81

[\[2\]](#) AnWR (1984) 404