

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION NO.5594 of 2007

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Between:

1. Janagama Bapu and others.

PETITIONERS

AND

1. Divisional Forest Officer, East Division, Karimnagar, District
Karimnagar and others.

RESPONDENTS

ORDER:

The petitioners filed this writ petition for issuance of writ of Mandamus declaring the action of the respondents in not regularizing their occupation of the land in Sy.No.15, Mothukupalli Village and Sy.No.1, Domala Madaram Village, Malhar Rao Mandal, Karimnagar District, and threatening to evict them, as arbitrary and illegal.

There are 234 petitioners in the writ petition. As per the averments in the affidavit filed in support of the writ petition, all the petitioners belong to SC, ST and BC communities and are eking out their livelihood through agriculture. They assert that they are in occupation of Ac.600 in Sy.No.15 of Mothukupalli Village and Sy.No.1 of Domala Madaram Village in Malhar Rao Mandal for more than three and half decades. Their forefathers belong to the said two villages, which are forest villages. They abandoned the villages a few decades ago after an outbreak of cholera and migrated to Edlapalli, which is neighbouring village, and started cultivation in the above mentioned lands. The petitioners made representations dated 11.09.2006, 17.11.2006 and 11.12.2006 to the 2nd respondent-District Collector seeking to regularize their occupation of the land in the respective Survey numbers and to grant pattas in their favour. The petitioners assert that in view of Circular No.13-1/90 – FP(1) dated 18.09.1990 issued by the Government of India, Ministry of Environment, Forests & Wildlife, declaring that the encroachers in the Government and Forest lands are entitled for regularization and no action need be taken to evict them, they are entitled to be granted pattas.

This Court on 16.04.2007 directed the learned Government Pleader to file a status report touching upon the claims of the petitioners as to the possession over the land in question. Thereafter on

23.04.2007 this Court while observing that the respondents have filed counter affidavits disputing the claim of the petitioners, asserting that none of the petitioners are in possession of the forest land, specifically directed the District Collector and District Superintendent of Police, Karimnagar, to visit the spot personally or to depute the officers of the concerned division, and file a report reflecting the state of affairs as to the possession or otherwise over the land in question. On 11.10.2007 the report came to be filed before this Court. Thereafter the writ petition was admitted on 2.11.2007 and interim direction was granted in W.P.M.P.No.7127 of 2007 directing the parties to maintain status quo with regard to the possession of the land in question.

Smt. Vasudha Nagaraj, learned counsel appearing for the petitioners by drawing attention of this Court to the panchanama dated 30.11.2005, would submit that the panchanama itself would prove the possession of the petitioners over the land in question and no further evidence as such is required. She also submits that even before filing of the writ petition, in 2006 itself representations have been made for regularization, and further, the fact that in 2005 and 2006 forest offence cases came to be filed against certain of the individuals would leave no manner of doubt that at least some of the petitioners are in possession of the land. Ultimately, she would urge that considering the fact that the petitioners are in possession and enjoyment of the land in question by cultivating the same and their social status and financial inability to protect themselves, even if they are required to be evicted the respondent authorities may be directed to follow the due procedure prescribed under Section 20 (4) of the A.P. Forest Act, 1967.

On the other hand, Smt. Pramada, learned Government Pleader vehemently opposes for granting of such relief. She submits that the land in question admeasuring Ac.4319 in Sy.No.1 of Domalamadaram Village and Ac.1923 in Sy.No.15 of Mothukupally Village was notified as 'Tadicherla Reserve Forest' under Section 18 of the Hyderabad Forest Act, 1326 Fasli vide G.O.No.1144, dated 24.12.1354 Fasli and

published in Gazette No.2, dated 10.01.1355 Fasli. She further submits that none of the petitioners are in possession of the land except 14 individuals in an extent of Ac.36.07 in Sy.No.1 of Domala Madaram Village. As a matter of fact, when certain individuals tried to occupy the forest land by cutting the forest growth, Forest Offence Cases have been booked against them on 30.11.2005. She further submits that the prayer of the petitioners in the writ petition for grant of pattas by regularizing the alleged occupation of the petitioners cannot be granted, as the subject land is a reserve forest and Circular dated 18.09.1990 referred to above by the petitioners, is contrary to the provisions of the A.P. Forest Act, 1967, and hence, no pattas can be granted in favour of anyone, except the eligible persons under Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

Heard learned counsel for the petitioners and learned Government Pleader for respondents.

Though the learned counsel for the petitioners pleaded for regularization of the petitioners' alleged occupation, ultimately she confined her argument to the one that the petitioners shall not be dispossessed without following due process of law, particularly under Section 20(4) of the A.P. Forest Act, 1967.

It may be noted that there are 234 petitioners claiming themselves to be in occupation of the land in Sy.No.15 of Mothukupalli Village and Sy.No.1 of Domala Madaram Village, but no specific boundaries of the area, or specific extents in which each of them alleged to be in occupation, was stated in the writ petition. Except the assertion that they are in occupation of the land in question, there is no prima facie material before this Court to come to a conclusion that the petitioners are in occupation of the land in question.

On the other hand, the assertion of the respondents in the counter affidavit and the documents filed in support of the same, reveal that there was concerted effort by the individuals to destroy the forest

growth for the purpose of cultivation. Even assuming that some of the petitioners are the ones who were sought to be prevented from cutting the forest growth, it cannot be said that they are in possession of the land in question since the very entry into the forest land and the attempt to cut the forest growth being an offence and prohibited by the Statute, and the same cannot be used as a ruse to claim possession, and thereafter, seek protection of land. A person, who seeks to violate law cannot seek protection under law.

In the facts of the present case, there being no material in support of the claim of the petitioners, even the innocuous relief of the petitioners not to evict them without following due process of law cannot be granted.

Accordingly, the writ petition is dismissed. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

CHALLA KODANDA RAM, J.

5th January, 2016
Js.