

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.6426 OF 2004

ORDER:

This writ petition is filed under Article 226 of the Constitution of India questioning the action of the respondents 1 and 2 and direct them not to interfere with the petitioner's possession and enjoyment of the land of an extent of 1048 square meters (1254 square yards) of land forming part of (old Sy.No.403/1) New Sy.No.120 and Sy.No.102/1 of Hakimpet Village in Ward No.8, Block No.2 bearing Plot No.724-A of Jubilee Hills Co-operative House Building Society, till he is dispossessed by the respondents 1 and 2 by following due process of law.

02. It is the case of the petitioner that the land originally belongs to the Government, it was granted to the third respondent in the year 1964 under Government Grants Act, 1895. The grant is absolute, delivered possession of the property by the Society in the year 1964 itself. Later, the third respondent-Society allotted plots to various members of the Society and one such plot was allotted to one K.Yasodhamma by executing registered sale deed dated 10-09.1991. She was in possession and enjoyment of the same during her life time, and died testate on 03.02.1996, executing a Will dated 05.09.1995 bequeathing the schedule property to the petitioner, who is her grand daughter, thus, the petitioner became the absolute owner of the property as legatee under the Will and the testamentary succession was approved by the third respondent as per bye-laws and the said transfer was approved on 24.08.1998 and the same was received by the petitioner on 26.08.1998. Later, the petitioner applied for sanction of approved plan for construction of house, accordingly, permission was obtained on 03.10.2000 for construction of RCC building in the schedule property. Accordingly, she constructed a building and residing therein till today.

03. The Government, having found that she is in possession of excess land of 48 square feet to the ceiling limit under the Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'ULC Act'), exercising the power under Section 20(1) (a) of the ULC Act passed a G.O. Ms.No.1134 dated 26.12.2002 granting exemption to possess 48 Square Meters in excess of ceiling limit. By virtue of the said G.O., she is continuing in possession, even the excess extent of 48 Square Meters.

04. While the matter stood thus, the respondents 1 and 2 made hectic efforts to dispossess the petitioner from the schedule property. Therefore, the petitioner was forced to approach this Court by filing the writ petition for the above said relief. Hence, the petitioner prayed to issue a writ of Mandamus directing the respondents 1 and 2 not to dispossess the petitioner without following due process of law.

05. The second respondent filed counter denying the material allegations inter alia contending that the Government is the owner of the schedule property and admitted at paragraph 7 of the counter that the petitioner is in possession and their officials went to the property to resist the petitioner from raising construction, inspite of the same, the petitioner proceeded with the construction and completed construction of side walls and a store room with roof. Thus, the respondents did not dispute the petitioner's possession over the property, but trying to take possession without following due process of law on the ground that the Government is the owner of the land.

06. Heard the learned counsel for the petitioner and the learned Government Pleader for Assignment for respondents 1 and 2 and the learned Standing Counsel for the third respondent.

07. The learned Government Pleader for Assignment submits that the possession of the petitioner is illegal, however, they are entitled to recover possession by following due process of law.

08. In the writ petition filed under Article 226 of the Constitution of India, this Court cannot decide the title to the property claimed by the parties either by the petitioner or the respondents. The remedy open to the parties is only to file civil suit in civil court or any other appropriate forum under law. Even this Court while passing interim order in WP MP No.8320 of 2004 in WV MP No.1889 of 2004 in WP No.6426 of 2004 made an observation that the remedy open to the respondents 1 and 2 is to file the land grabbing case. Despite observation, the respondents 1 and 2 did not choose to approach the appropriate forum to evict the petitioner from possession, if the petitioner is in unlawful or illegal possession.

09. When the respondents 1 and 2 admitted that the possession of the petitioner is long continuous possession of the petitioner, tagging the possession with the possession of Yashodamma and Society, her possession cannot be disturbed by unlawful means. However, the respondents 1 and 2 are at liberty to take possession of the property by following due process of law.

10. The Apex Court in **EAST INDIA HOTELS LTD. V. SYNDICATE BANK^[1]**, **MEGHMALA AND OTHERS V. G.NARASIMHA REDDY AND OTHERS^[2]**, and **MARIA MARGARIDA SEQUERIA FERNANDES AND ORS. V. ERASMO JACK DE SEQUERIA (DEAD) THROUGH L.RS.^[3]** specifically held that a person in possession cannot be dispossessed except by due process of law. Thus, the petitioner cannot be dispossessed from the property by the respondents 1 and 2 except by following due process of law.

11. Accordingly, the respondents are directed not to dispossess the petitioner from the schedule property except by due process of law. In case any of the parties approached the civil court

or any other forum for redressal of grievance, it is left open to them to raise any pleas permissible under law.

12. With the above direction, the writ petition is disposed of.
No costs.

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

M. SATYANARAYANA MURTHY, J

Date: 01.07.2016

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[\[1\]](#) 1992 Supp (2) SCC 29

[\[2\]](#) 2011 (2) ALT 8 (SC)

[\[3\]](#) AIR 2012 SC 1727