

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.40451 of 2012

ORDER:

Heard Mr. M. Saleem, learned counsel for petitioners and learned Government Pleader for Endowments and Forests.

2. I have perused the material available on record and taken note of submissions of learned counsel appearing for the parties, which are substantially disputed questions of fact for consideration and determination by competent authority.

3. The petitioner prays for the following relief:

“... to issue a writ, order or direction more in the nature of mandamus declaring the action of the respondent 1 and 2 interfering with the possession and enjoyment of the lands of the petitioner in an extent of Acres 8.00, 7.00 acres, 6.00 acres, 5.00 acres, 8.00 acres, 9.00 acres, 7.00 acres 8.00 acres 9.00 acres, 8.00 acres, 9.00 acres, 8.00 acres, 9.00 acres, and 7.00 acres, situated in compartment I No. 1 Block, Mangapet Beat, Range, Eturunagaram of Warangal District in spite of the Statutory protection available under sub-section (5) of section 4 of the scheduled Tribes and other Traditional Forest Dwellers (Recognition of forest Rights) Act, 2006 during the pendency of the verification of recognition of forest rights of the petitioners before the authorities constituted under Act as arbitrary, illegal and contrary to the provisions of the Act ...”

4. The writ petition is filed on the assumption and assertion of right under the Schedules Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (for short ‘the Act’).

By placing strong reliance upon the social status certificate issued by the competent authority to the petitioners, copies of ration card, copies of applications filed in Form-A under Rule 11(1)(a) of the Rules framed under the Act and the confirmation statements issued by the Chairperson/Secretary, Forest Rights Committee, the petitioners claim to be in actual and physical possession of subject matter of the writ petition as on

13.12.2005.

5. The Divisional Forest Officer filed counter affidavit substantially joining the issue on material allegations in the writ affidavit. Petitioners have filed reply rebutting the stand taken by the contesting respondents.

6. On 10.03.2016 and 15.03.2016 the following docket orders were passed:

10.03.2016:

“Heard learned counsel for petitioners and the Government Pleader.

The documents filed by the parties are contradictory to each other and this Court is not prepared to accept the claim of the petitioners that they are in possession and enjoyment of compartment No.1 of Mangapet Beat of Puredupally forest area. With a view to find out the veracity of documents filed by the petitioners and to consider the allegation of respondents that there is systematic de-forestation, this Court is of the view that the Special Government Pleader ensures the presence of the Special Deputy Tahsildar, Office of the Special Deputy Collector (Tribal Welfare), Eturnagaram, Warangal District, and the Project Officer, ITDA, Eturnagaram, with all the records relating to the subject matter of the writ petition.

Office is directed to communicate a copy of the docket order to the learned Government Pleader for forwarding it to the concerned officers.

Post on 15.03.2016.”

15.03.2016:

“Pursuant to the order, 10/03/2016, the Sub-Divisional Forest Officer and Forest Range Officer of Eturnagaram, Warangal District, are present in the Court. They request time till 30/03/2016 to produce the entire record relating to confirmation of forest rights under the provisions of the Schedules Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

Post on 30/03/2016.”

7. The respondents have personally attended the hearing of the writ petition on both the occasions and have placed before the Court documents in support of their contentions, firstly, that the petitioners are not natives of

the village and secondly, they were not in possession of subject land as on the cut off date and thirdly, the ITDA Department has not received the applications of the petitioners for consideration under the Act.

8. Learned Government Pleader to prove the probability of assertions of the department placed before the Court the records from ITDA, voters list for the Assembly elections of 2004 and 2014 etc.

9. The petitioners in the instant writ petition pray for declaration against the alleged action of respondents in interfering with petitioners' possession and enjoyment of subject matter of the writ petition, while the alleged applications are being considered under the Act as illegal and unconstitutional. On the other hand, the respondents deny the factum of possession, entitlement of petitioners and that the department has not received any applications from the petitioners.

10. The rival submissions, as already noted, require detailed examination of record, physical inspection and determination of nativity/residence of the petitioners as on 13.12.2005. This Court is of the view that instead of taking upon itself the responsibility of deciding these keenly contested allegations, the Revenue Divisional Officer, Mulugu, is impleaded as respondent No.4 in this writ petition with a view to issue appropriate direction to him to enquire into the disputed issues between the parties. The writ petition is disposed of by this order.

11. The second respondent is directed to forward to the fourth respondent/Revenue Divisional Officer the pleadings and material papers relied upon by the petitioners and the department along with the copy of this order and request the fourth respondent to personally inspect the subject matter of the writ petition, enquire into the residence of petitioners, occupation as on 13.12.2005 and whether the applications have been submitted to the revenue department and if so, what action on these

applications has been taken. On receipt of such request/communication, the Revenue Divisional Officer/fourth respondent is directed, within eight (8) weeks thereafter, to undertake the exercise, as indicated above and determine the issues by passing a speaking order and communicate to the petitioners as well as to the department. During and in the course of enquiry, if it transpires that the petitioner(s) is entitled to consideration, the fourth respondent is directed to forward to ITDA such application(s) for further decision in accordance with law. The respondents are directed to undertake this exercise forthwith, as indicated above and complete the same within a period of three (3) months from the date of receipt of a copy of this order.

With the above directions, the writ petition is disposed of.

As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

S. V. BHATT, J

March 30, 2016
DSK