

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.23481 of 2016

ORDER:

This writ petition is filed under Article 226 of Constitution of India seeking a writ of mandamus declaring the action of respondent Nos.2 to 5 in interfering with the possession and enjoyment and threatening to evict the petitioner from the land admeasuring Ac.0.04 cents in survey No.463/16-AI (463/16-A1-D) of Adavuladeevi Village, Nizampatnam Mandal, Guntur District, as illegal, arbitrary and violation of principles of natural justice and consequently direct the respondents not to interfere with the possession and enjoyment of the petitioner.

2. Heard the learned counsel for the petitioner and learned Government Pleader for Panchayat Raj and Rural Development (A.P.) representing respondent Nos.2 and 3.

3. The case of the petitioner is that the Government granted patta in his favour on 11.12.1988 in respect of an extent of Acs.0.04 cents of land in survey No.463/16-AI-D of Adavuladeevi Village, Nizampatnam Mandal, Guntur District. The contention of the learned counsel for the petitioner is that at the instance of sixth respondent, respondent Nos.1 to 5 are making hectic efforts to dispossess the petitioner from his patta land. A perusal of the record reveals that the petitioner and sixth respondent have filed civil suits against each other. They have also approached the Revenue authorities.

4. As per the averments made in the writ affidavit, the petitioner has been in possession and enjoyment of the land in an extent of Ac.0.04 cents in survey No.463/16-AI (463/16-A1-D) of Adavuladeevi Village, Nizampatnam Mandal, Guntur District. The learned counsel for the petitioner submitted that respondent Nos.2 and 3 have no right whatsoever to take possession of the patta land of the petitioner without following the procedure as contemplated under Section 59 of the A.P. Panchayat Raj Act, 1994. A perusal of Section 59, at a

glance, mandates that Gram Panchayat is not entitled to acquire the land of the villagers without resorting to the procedure contemplated under the Land Acquisition Act. It is a settled position of law that a person, who is in possession of the land, though an encroacher, cannot be dispossessed except by due process of law (see **East India Hotels Ltd v Syndicate Bank**^[1], **Meghmala v G.Narasimha Reddy**^[2] and **Maria Margarida Sequeria Fernandes v Erasmo Jack De Sequeria (Dead) through L.Rs**^[3]).

5. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, respondent Nos.2 and 3 are hereby directed not to dispossess the petitioner from the land in an extent of Ac.0.04 cents in survey No.463/16-AI (463/16-A1-D) of Adavuladeevi Village, Nizampatnam Mandal, Guntur District without following due process of law.

6. With the above direction, the writ petition is disposed of. Miscellaneous petitions, if any pending in this writ petition, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 20.7.2016.

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^[1] 1992 Supp (2) SCC 29

^[2] 2011 (2) ALT 8 (SC)

^[3] AIR 2012 SC 1727