

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.25492 OF 2016

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking a Writ of Mandamus declaring the action of the respondents in interfering with the peaceful possession and enjoyment of the land in question by the petitioner as illegal and arbitrary.

Heard the learned counsel for the petitioner and the learned Government Pleader for Forests.

It is the case of the petitioner that the Government granted patta in her favour in respect of an extent of Ac.5.00 guntas in Survey No.88/1 and Ac.5.00 guntas in Survey No.89/2 of Damaracherla Village and Mandal, Nalgonda District in the year 1973. The further case of the petitioner is that the petitioner has been in possession and enjoyment of the same. The contention of the petitioner is that the Forest Officials are interfering with her peaceful possession and enjoyment over the land in question.

The learned Government Pleader submitted that the petitioner has encroached the forest land.

Even assuming, but not conceding, that the petitioner has encroached the forest land, the respondents have to follow the procedure as contemplated under law. The respondents have no right whatsoever to evict the petitioner without following the procedure. It is not possible to say whether the petitioner has encroached the forest land without conducting survey by the Revenue Officials. If the respondents feel that the petitioner has encroached the forest land, they are at liberty to take steps for demarcation of the land in Survey Nos.88/1 and 89/2 with reference to the notification issued by the Forest Department. 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]).

Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, the respondents are hereby directed not to interfere with the peaceful possession and enjoyment of the petitioner over the land to an extent of Ac.5.00 guntas in Survey No.88/1 and Ac.5.00 guntas in Survey No.89/2 situated at Damaracherla Village and Mandal, Nalgonda District without following the due procedure.

Accordingly, the Writ Petition is disposed of. No costs.

Consequently, Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 01.08.2016

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^[1] 1992 Supp (2) SCC 29

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

^[3] AIR 2012 SC 1727