

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE MS JUSTICE J.UMA DEVI

WRIT PETITION No.23618 of 2017

Date:28.7.2017

Between:

Shaik Mahaboob Jan,

W/o Shaik Dastagiri and antoher.

..... Petitioners

And:

The Special Tribunal constituted under
The A.P. Land Grabbing (Prohibition)
Act-cum-Principal District and
Sessions Judge, Nellore and seven others.

.....Respondents

Counsel for the petitioners: Mr. Rajagopallavan Tayi

Counsel for respondent No.3: Mr. P.Gangarami Reddy

The Court made the following:

ORDER: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

Feeling aggrieved by order, dated 20.3.2017, in LGOP.No.1 of 2011 on the file of the Special Tribunal constituted under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1989-cum-Principal District and Sessions Judge, Nellore (for short 'the Special Tribunal'), respondent Nos.2 and 5 therein filed the present Writ Petition.

For convenience, the parties are referred to as they arrayed in the said L.G.O.P.

One Jagannati Narasaiah, represented by his General Power of Attorney-Nuthalapati Prasad, instituted the said LGOP before the Special Tribunal seeking eviction of one Shaik Dastagiri. His case was that a patta was granted to him by the Tahsildar in respect of Plot No.76 in Survey No.2060/1, Bit-1, near Podalakuri Road, Laxminarasimhapuram Girijana Colony, Nellore, on 27.10.1978, and that, in pursuance thereof, he was in possession of the said Plot. It was his further case that the said Shaik Dastagiri, without any manner of right, has occupied 16 ankanams of site in Plot No.77 and also the schedule property and constructed a temporary house over a part thereof. During the pendency of the said LGOP, both Jagannati Narasaiah and Shaik Dastagiri died, and in place of Jagannati Narasaiah, his grand daughter-Jagannati Victor Lilly Hephshibah was brought

on record and in place of Shaik Dastagiri, his legal representatives, who are the writ petitioners and four others, were brought on record. On behalf of the petitioner, P.Ws.1 to 3 were examined and Exs.A-1 to A-6 were marked. On behalf of the respondents, R.Ws.1 and 2 were examined and Exs.B-1 to B-12 were marked.

It was the pleaded case of the original respondent that he has been in possession of Plot No.4(A) to an extent of 33 1/3 ankanams in Survey No.2016, in respect of which patta was granted to one Shaik Khadar Basha, who is his elder brother, and that, therefore, the original petitioner has no right to disturb his possession. He has also pleaded that he has filed O.S.No.377 of 2010 before the competent Court seeking injunction against the original petitioner and the same is pending.

On appreciation of the oral and documentary evidence, the Special Tribunal has allowed the said LGOP by holding that the schedule property situated in Plot No.76 was allotted to the original petitioner under Ex.A-1-original patta; that the original respondent has illegally encroached the same; and that after his death, his legal representatives are in illegal occupation of the said Plot. The eviction order was, accordingly, passed by the Special Tribunal. Feeling aggrieved by the said order, two of the legal representatives of the original respondent, who were

arrayed as respondent Nos.2 and 5, respectively, in the said LGOP, have filed the present Writ Petition.

At the hearing, Mr. Rajagopallavan Tayi, the learned counsel for the writ petitioners, submitted that when there is a serious dispute about the identity of the property, the Special Tribunal has committed an error in disposing of the said LGOP without directing localisation of the property by appointing a Commissioner. He has further submitted that when O.S.No.377 of 2010 filed by the original respondent was pending, the Special Tribunal was not justified in entertaining the said LGOP and ordering eviction.

Mr. P.Gangarami Reddy, the learned counsel for petitioner-respondent No.3 submitted that the oral and documentary evidence adduced by his client clinchingly established that the original respondent during his life time and later, his legal representatives, including the writ petitioners, have illegally encroached Plot No.76 and that, the Special Tribunal has rightly ordered their eviction.

We have carefully considered the respective submissions of the learned counsel for the parties.

A perusal of the record shows that in support of the case of the original petitioner, P.W-3-Tahsildar was examined, who has categorically deposed that Plot No.76, which is in

occupation of the original petitioner, is covered by Ex.A-1-original patta issued in favour of the latter. Through P.W-3, his letter, dated 22.5.2010, addressed to the Station House Officer, I Town Police Station, Nellore was marked as Ex.A-5, a perusal of which shows that P.W-3 has informed that patta in respect of Plot No.76 was granted in favour of the original petitioner.

As regards the case of the respondents, as noted above, they have pleaded that the Plot in their occupation is Plot No.4(A). However, as rightly observed by the Special Tribunal, no effort was made by the respondents, who are the legal representatives of the original respondent, to get the said Plot surveyed and to adduce evidence on their side supporting their plea in that regard. They have also failed to file an application for taking out a commission by appointment of a Surveyor to substantiate their plea.

In the face of Exs.A-1 and A-5 and the evidence of P.W-3-Tahsildar, the Special Tribunal is justified in holding that the Plot claimed by the original petitioner is Plot No.76, in respect of which Ex.A-1-original patta was granted to him as far back as 27.10.1978. This Court exercising its extra-ordinary jurisdiction under Article-226 of the Constitution of India does not examine the impugned order of the Special Tribunal as a Court of appeal. Considering the impugned order within the

limited parameters of writ jurisdiction, this Court has no hesitation to hold that the same does not suffer from patent illegalities or jurisdictional errors warranting interference of the same.

For the afore-mentioned reasons, we do not find any merit in this Writ Petition and the same is, accordingly, dismissed.

As a sequel to dismissal of the Writ Petition, WAMP.No.29204 of 2017 filed for interim relief is dismissed as infructuous.



JUSTICE C.V.NAGARJUNA REDDY

JUSTICE J.UMA DEVI

28th July 2017
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