

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION NO. 10571 of 2005

ORDER :

The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of respondent Nos.1 to 3 in taking steps to evict the petitioner from the possession of the property in Survey No.7/P, Kummidi Village, Visakhapatnam Rural Mandal and District, as illegal and arbitrary.

2. The petitioner claims to be an assignee in respect of the land admeasuring Acs.5.00 in Survey No.7/P, Kummidi Village, Visakhapatnam Rural Mandal and District vide D.R.No.414/94, dated 01.12.1994. The said land was assigned to him on the ground that he was Ex-Serviceman. The action of the respondents in trying to dispossess the petitioner from the said land, is challenged in the present writ petition.

3. A counter came to be filed by respondent No.4 denying the allegations made in the writ affidavit. As per the counter, the said land was classified as Hill Poramboke and as such the question of assigning the Hill Poramboke would not arise. It is stated that pursuant to the G.O.Rt.No.1606, MA&UD(H2) Department, dated 01.12.2005, a request was made to the then District Collector, Visakhapatnam to hand over vacant Government lands to VUDA. As per the request of the then Vice Chairman, VUDA, the District Collector, Visakhapatnam in their proceedings Rc.No.5938/2004/E2, dated 09.12.2004 has allotted Acs.86.15 cents in Survey No.7 of Kommadi Village. As per the report of the MRO, Visakhapatnam Rural, the subject land was classified as Hill Poramboke. Pursuant to the instructions of the District Collector, MRO Visakhapatnam Rural Mandal, handed over the land to representative of VUDA vide Delivery Receipt No.01/2005/Spl(RI), dated 07.01.2005. While handing over the land, the MRO

Visakhapatnam (Rural) has certified that the land is free from encroachments, assignments, Court litigation.

4. At the time when the matter is taken up for hearing, learned counsel for the petitioner would submit that the petitioner is still in possession of the property and that any action taken by the respondents shall be in accordance with law. The same is strenuously refuted by the learned Standing Counsel appearing on behalf of respondent No.4 stating that the said land being classified as 'Hill Poramboke', there cannot be assignment of the land to the petitioner. According to him, the certificate which is placed on record, in support of the plea, is fake and bogus as no other document has been placed on record evidencing assignment of the land in favour of the petitioner.

5. Even assuming that there was no assignment, if the petitioner has encroached on to the land and if he is in possession of the land, still the authorities have to follow due process of law to evict him. It is not in dispute that the land is classified as 'Hill Poramboke' and the question of assigning the said land appears to be doubtful.

6. Having regard to the above circumstances, if the petitioner is in actual and physical possession of the land in dispute, respondent authorities shall take steps to dispossess the petitioner, by following due process of law.

7. Accordingly, the writ petition is disposed of. No costs.

Consequently, miscellaneous petitions, if any pending, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

02.08.2017
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