

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION NO. 10932 OF 2017

ORDER:

Heard Dr. P.B. Vijaya Kumar, counsel for petitioner and Assistant Government Pleader for respondents 1 to 3.

2. The subject matter of Writ Petition is an extent of Ac. 0.23 cents in Survey No. 955 of Chinna Chowk Village of Kadapa District.

3. The petitioner prays for Mandamus declaring the action of respondents in erecting a notice board showing the property as Government property as arbitrary, illegal and unconstitutional.

4. The case of the petitioner is that on 23.9.1986, the third respondent granted assignment of subject matter of writ petition in favour of one L. Laxma Naik S/o Sri Champla Naik. The petitioner claims to be brother's son of original assignee. According to petitioner, the assignee died in the year 1988 un-married. The petitioner claims to have succeeded to the subject matter of the writ petition. The cause of action for filing the writ petition is that the respondents without authority of law have installed the notice board claiming the property as belonging to Government and the land as if is continuing to be in possession of Government. The assertion or interference amounts to arbitrary exercise of power, illegal and unconstitutional. Hence, Writ Petition.

5. The third respondent filed counter affidavit. Briefly stated, the reply of third respondent is that S.No. 955 covers an extent of Ac. 0.23 cents and is classified as water spread area. Sy.No. 955 was not sub-divided and assigned to anybody. According to third respondent, assignment of water body is prohibited under Board Standing Order. The third respondent denies assignment in favour of and possession of L. Laxma Naik. Third respondent filed the extract of land record for the fasli 1426 and also re-survey and resettlement register in support of his case that the subject matter is classified as water spread area and assignment could not have been granted. Though the counter affidavit refers to so many other circumstances, this Court is satisfied that reference to the reply of third respondent on the primary circumstances on which the petitioner relied upon is sufficient for disposing of the Writ Petition.

6. The learned counsel appearing for parties have substantially reiterated the stand taken by the respective parties in the pleadings.

7. I have taken note of the submissions and perused the material available on record. The petitioner claims to be son of assignee's brother. The property is claimed under Will Deed dated 8.6.2016 executed by one Lavide Thippamma w/o Lavide Krishna Nayik (assignee). Respondents, if are admitting the assignment and the possession of assigned land either by the assignee or a person claiming through assignee can be presumed. The very basic

document of assignment is stoutly disputed. Further, there is no evidence of actual enjoyment of property either by the assignee or his wife and or the legal heirs of assignee at the time of his demise. The claim of petitioner is though a Will executed by assignee's wife, the allegations *per se* do not encourage this Court to accept case of petitioner and detailed enquiry into relationship of petitioner to show the title etc., have to be necessarily enquired.

8. In view of all these disputed circumstances, though the prayer is limited, still this Court is of the view that the petitioner has not made out a case for consideration by this Court.

9. Writ Petition fails and accordingly dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

JUSTICE S.V. BHATT

DATE: 07.07.2017

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