

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.9639 of 2009

ORDER:

Heard learned counsel for petitioner and the Assistant Government Pleader for Revenue.

The petitioner prays for Mandamus declaring the action of the respondents in taking steps to evict petitioner from the lands admeasuring Ac.3-00 cents in Sy.No.399-1, Ac.2-96 cents in Sy.No.399-2, Ac.0-75 cents in Sy.No.397-2 and Ac.0-75 cents in Sy.No.397-4 of Pedda Etipakam Village, Satyavedu Mandal, Chittoor District, without recourse to law, as illegal, arbitrary and unconstitutional.

The petitioner claims to be in possession and enjoyment of the subject matter of writ petition. Now, the grievance of petitioner is that the 1st respondent issued Draft Declaration No.154/2007 dated 18.04.2007 proposing to acquire in all Ac.50-77 cents in different survey numbers in Pedda Etipakam Village, Satyavedu Mandal, Chittoor District.

According to petitioner, by referring to that Draft Declaration, the respondents are coming and directing the petitioner to vacate from the subject matter of writ petition. The petitioner relies upon Draft Declaration Gazetted on 18.04.2007

and the order of this Court in W.P.No.10348 of 1998, dated 20.03.2007.

On 01.05.2009, while admitting the writ petition, this Court granted the following interim order :-

“There shall be interim direction to the respondents not to evict or dispossess the petitioner from the lands in question, until further orders.”

The respondents filed petition to vacate the interim order and in the counter affidavit filed by the respondents, the stand of respondents, on the subject matter of writ petition, reads as follows:-

In answer to the averments made by the petitioner in Para 2, it is submitted that as per Village Account No.3 (Adangal) of Peddaitipakem Village of Satyavedu Mandal, the lands in question are classified as Assessed waste dry as detailed below :

Sy.No.	Sub-division No.	Extent Ac.Cts.	Classification
397		4.45	AW dry
399	1	3.00	AW dry
399	2	2.96	AW dry

They are vested with Government for all purposes, since it is a Government land. The Tahsildar who is custodian for the Government lands is not made a party by the writ petitioner. Therefore the W.P. is liable to be dismissed for not impleading necessary party. The petitioner himself has admitted that the land is classified as Assessed waste dry land. The lands in question are also being claimed by several Scheduled Caste People of Peddaittipakem village of

Satyavedu Mandal. It appears that there is a dispute between Scheduled Caste people of Pedda Ittipakam village and Writ Petitioner.

In answers to the averments made by the petitioner in para 3 & 4, I submit that the patta lands situated in Pedda Ittipakam village were notified in 12 Notifications u/s.4(1) and u/s.6 of Land Acquisition Act for establishment of Industrial Park. It is a fact that the subject lands were not notified in any of the above 12 Notifications as the writ lands are not patta lands but Government lands. Hence, the question of acquisition of the writ lands does not arise for establishment of Industrial Park. The said lands have not been taken possession and alienated to the APIIC so far, due to several persons claiming Ex-gratia including writ petitioner for the writ lands. None of them are having title/DKT patta in respect of the writ lands.

In answer to the averments made by the petitioner in Para 5, it is submitted that the writ petitioner himself admitted that the writ lands are Government lands. It is submitted that the writ lands are classified as AW dry land and vests with Government. He is not even the resident of Pedda Ittipakam village. More over the writ lands were not assigned to the writ petitioner or anybody by the Government. Therefore, the writ petitioner is not having any right over the writ lands. Therefore the petitioner is not entitled for any compensation in respect of the said lands."

From the above, it is clear that the respondents are contesting each one of the allegations asserted by the petitioner even to the limited extent of possession claimed by him. The petitioner firstly has not filed a reply rebutting the stand taken in the counter affidavit or discharged initial burden fastened on him in proving actual and physical possession of subject matter of writ petition. Though the counsel appearing for the petitioner

tried to persuade this Court by contending that the respondents are under obligation to follow the procedure stipulated by law for dispossessing a person or for that matter, the petitioner herein, this Court is of the view that the application of said rule arises if the possession which is presumed by a Court of law from the case pleaded and proved is extended to the case of petitioner.

From the material available on record, this Court has no hesitation to hold that the petitioner failed to discharge the burden in proving possession or for that matter settled possession of the subject matter of writ petition.

The writ petition fails and is accordingly dismissed. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

Dt:22.08.2017
Prv

S. V. BHATT, J

THE HON'BLE SRI JUSTICE S.V.BHATT



WRIT PETITION No.9639 of 2009

22-08-2017

Prv

