

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.18674 of 2009

ORDER:

Heard learned counsel for the parties.

The present writ petition came to be filed seeking the following relief:

“For the reasons stated in the accompanying affidavit, it is further prayed that, the Hon’ble Court may be pleased to issue an order, direction or writ in the nature of writ of Mandamus declaring the action of respondents in dispossessing the petitioner from the property in H.No. 1-2-71, admeasuring 20 X 50 feet situated at Ward No.2 Durganagar, Kagaznagar without issuing any notice or opportunity as illegal, arbitrary and unjustified, consequently direct process of law and without considering the representations of petitioner dt. 6-11-2004 and dt. 4-7-2008 and pass such further other order or orders as the Hon’ble Court may deem fit and proper in the circumstances of the case.”

In the affidavit filed in support of the writ petition, it is stated that one Mr. Yaseen Khan was the owner and possessor of premises bearing Municipal No.1-2-71 admeasuring 20 x 50 ft., situated at ward No.2, Durganagar, Kagaznagar Municipality, having been allotted on nominal charges as he was landless poor. Mr. Yaseen Khan died in December, 1987 leaving behind his wife Smt. Qamar Bee and son Mohd. Yousuf Khan. The husband of the petitioner purchased the said property from the legal representatives of the said Yaseen Khan by sale deed dated 28.03.1995. Later, he died in the month of March, 1999 and, thereafter, when municipal officials

were interfering with the said property, the petitioner filed O.S.No.9 of 1999 on the file of the Junior Civil Judge, Sirpur, which was dismissed vide judgment dated 18.02.2000.

Though the said suit is said to have been dismissed, petitioner claims to be in possession of the property. The petitioner also filed W.P.No.14048 of 2003 seeking regularization of the property, which was dismissed on 24.09.2004, with the following observations:

“The writ petition, therefore, cannot be entertained. However, liberty is given to the petitioner to approach the municipal authorities, if she is in possession of the property. It is also made clear that if the petitioner is in possession of the property, she may be dispossessed only in accordance with law after giving notice and opportunity to her. The writ petition, with the above observation, is dismissed. No costs.”

It is urged that, as petitioner was in possession of the property, she approached respondent No.3 and submitted representations dated 06.11.2004 and 04.07.2008 seeking regularization of the land to an extent of 20 x 50 ft., with a wooden *thella* (wooden bunk), however, no action is said to have been taken pursuant thereto. Meanwhile, on 28.08.2009, at the instance of respondent No.3, respondent Nos.1 and 2 visited the site in question and tried to remove the wooden *thella* and dispossess the petitioner therefrom. Challenging the same, the present writ petition came to be filed.

This Court while admitting the writ petition on 07.09.2009 issued interim directions as prayed for.

A counter-affidavit came to be filed by respondent No.3, disputing the averments made in the affidavit filed in support of the writ petition. It is stated that, in view of the earlier order of this Court dated 24.09.2004, filing of second writ petition for the same relief would be abuse of process of law. In any event, it is stated that as the petitioner is not in possession of the property, the relief as sought for cannot be granted.

A perusal of the counter-affidavit filed by respondent No.3, particularly, para-13, would show that that after Yaseen Khan left the site in question, it was vacant except one wooden *thella* which is in a dilapidated condition and the same is nothing but encroachment over the road and no one works in the wooden *thella*. The same is disputed by the petitioner, stating that she is still in possession of the property and representations dated 06.11.2004 and 04.07.2008 filed by her pursuant to the orders of this Court dated 24.09.2004 in W.P.No.14048 of 2003, seeking regularization of the land to an extent of 20 x 50 ft., with a wooden *thella*, are said to be pending consideration, and, as such, petitioner seeks direction for disposal of the said representations.

Having regard to the facts and circumstances of the case, if the petitioner is still in possession of the property in question, respondents shall not dispossess her without following due process of law. Meanwhile, if the representations dated 06.11.2004 and 04.07.2008,

said to have been made by the petitioner, pursuant to the orders of this Court in W.P.No.14048 of 2003, are still pending consideration, the same shall be disposed of in accordance with law, within a period of two to four weeks from the date of receipt of this order.

Subject to the above, the writ petition is disposed of. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, stand closed.

C. PRAVEEN KUMAR, J

March 20, 2017
MRR

