

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.7087 OF 2017

ORDER:

The case of the petitioner is that the Government of Andhra Pradesh assigned land admeasuring Ac.3.92 cents in Sy.No.367/2, Madhurawada Village, Vishakapatnam under assigned patta No.742 dated 30.10.1970 to petitioner's father and after his demise, petitioner and his mother were in possession and enjoyment of the subject land. While so, the 5th respondent cut down all the eucalyptus tress grown in the subject land and constructed a compound wall and raised sheds therein. When petitioner questioned the same, the 5th respondent stated that he has obtained injunction in respect of the subject land from the District Court, Visakhapatnam. But the petitioner came to known that the Court below granted ex-parte injunction in O.S.No.1693/2007 dated 27.06.2008 on the ground that the respondents did not file written statement and the suit was decreed in favour of the 5th respondent. Immediately, the petitioner made a complaint against the 5th respondent before the 2nd respondent on 26.09.2016. But no action has been taken so far. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner submits that because of the illegal action of the unofficial respondent,

the petitioner is suffering and inspite of the complaint made by the petitioner, no action has been taken by the authorities.

On the other hand, learned Assistant Government Pleader for Revenue submits that because of the pendency of the civil suit between the petitioner and the unofficial respondent, the authorities are unable to take action. By relying on the judgment reported in ***Ch.Ramaiah v. District Collector, Mahboobnagar District and others***¹ he submits that if there is a dispute between the petitioner and the unofficial respondent, the petitioner has to approach the Civil Court.

In this case, if the allegation of the petitioner is that the 5th respondent has encroached the subject land and obtained injunction, the petitioner could have impleaded himself in the suit and got the injunction vacated. No such steps have been taken by the petitioner.

In ***Ch.Ramaiah v. District Collector, Mahboobnagar District and others***² this Court held as follows:

“.....Admittedly, the petitioner left the village in search of livelihood and when he came back to the village, it was found that the fourth respondent encroached upon the land in Survey Nos.778/1 and 778/2. No allegation of any transfer of such land in favour of the fourth respondent by the father of the petitioner or the petitioner himself. In such an event, the provisions of the Act are not attracted. The

¹ 2005 (6) ALT 358

² 2005 (6) ALT 358

petitioner, admittedly, had a possessory title as well as substantive right (see *Land Acquisition Officer-cum-RDO v. Mekala Pandu*). Therefore, when the possession of the owner/possessor is disturbed, it gives rise to a cause of action to a suit for specific relief or permanent injunction or suit for possession simpliciter under Section 5 of the Specific Relief Act, 1963. Further, as the petitioner claims to be a person belonging to Scheduled Caste and as he is allegedly, wrongfully dispossessed by a person not belonging to Scheduled caste or scheduled tribe, the same would amount to cognizable offence under Section 3(1)(v) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 (the Act). Therefore, the petitioner has to seek redressal elsewhere and the writ petition is not maintainable. It is brought to the notice of this Court that the petitioner's representation dated 06.07.2005 and 01.08.2005 have not been disposed of by the respondents 1 to 3. Therefore, without waiting for the response from then, the petitioner is given liberty to approach the civil Court and also lodge a complaint under Section 3(1)(v) of the Act. In this writ petition, no relief can be granted"

In view of the above facts and circumstances, no relief can be granted in the writ petition. Accordingly, writ petition is dismissed granting liberty to the petitioner to avail alternate remedies available under law. No costs.

As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY, J

01.03.2017
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