

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 10282 of 2012

ORDER:

- 1) Heard both sides and perused the record.
- 2) The present writ petition came to be filed seeking issuance of a writ of mandamus questioning the action of the respondents in trying to demolish or dispossess the petitioner from the house bearing Door No.1-26-23, situated in Sy.NO.9 admeasuring Ac.0.15 gts., of Thokatta Village, Thirumalgherry Mandal, Soujanya Colony, Bapuji Nagar, Bowenpally, Secunderabad, without passing any order on the application dated 26.10.2005 made by the petitioner for regularization, as illegal, improper and incorrect.
- 3) The facts in issue are as under:

The averments in the affidavit filed in support of the writ petition would show that the father of the petitioner occupied government land morethan seven decades back and was doing agricultural operations in the said land. He claims to have constructed a house bearing Door No.1-26-23 in the said land. In view of G.O.Ms.No.1601 Revenue Department, dated 29.08.2005, the petitioner herein claims to have made an application for regularization of the land on 26.10.2005. A cheque memo was also submitted to the second respondent on 12.12.2005. Without passing any orders on the application made by the petitioner for

regularization, the authorities are said to have erected a board in the open place area situated in Sy.No.9, stating that the land was allotted to Central Institute of Hindi, Hyderabad Centre. The said Board was erected in the month of January, 2012. A detailed representation was given in the month of January, 2012 saying that the authorities erred in allotting the said land, when the application of the petitioner for regularization is still pending consideration. It is stated that in the month of March, 2012, a notice under Section 7 of the Land Encroachment Act was issued in the name of the mother of the petitioner and an explanation was submitted to the fourth respondent, who, without conducting any enquiry, is trying to pass an order under Section 6 of the Land Encroachment act. Challenging the action of the respondents in trying to take possession of the said land, the present writ petition came to be filed.

4) By an order dated 12.04.2012, this Court granted status quo with regard to possession of the property.

5) A counter came to be filed by the Tahsildar, disputing the averments made in the affidavit filed in support of the writ petition. In Para No.2 of the counter, it is stated that the petitioner made an application for regularization of the land under G.O.Ms.No.1601, dated 29.08.2005. The proposal was sent to the Collector, Hyderabad, but in the meanwhile, G.O.Ms.No.1601 was superseded by G.O.Ms.No.166, dated 16.02.2008. When the same was brought to the notice of the

petitioner, he said to have made another application for regularization under the said G.O. As per the averments in the counter, the District Level Committee has rejected the application of the petitioner made for regularization on 23.12.2010. It is said that merely because the petitioner has paid tax to the Government, the same would not confer any right over the land. Though an averment is made that the petitioner is cultivating the land but the revenue records are silent on the said aspect. The averment that the authorities are trying to demolish the house without passing any order on the application made by the petitioner for regularization is not correct. As per the counter, there are no structures on the said premises.

6) It is to be noted here that the request of the petitioner in the writ petition that the action of the respondent in trying to take possession of the land without passing any orders on the application for regularization said to have been made by him in the year 2005 is illegal, improper and incorrect. The material placed before the Court would show that vide memo dated 26.04.2008, the petitioner was informed about the issuance of new G.O.Ms.No.166 and he was requested to file a fresh application for transfer of rights in terms of the said G.O. Thereafter the petitioner made an application which was rejected on 23.12.2010 vide proceedings in File No.P2/ 5858/ 2008. The record also shows that another notice was issued under Section 7 of the Land Encroachment Act on 31.03.2012. An explanation was said to have been submitted by the petitioner to the said notice,

but no orders are passed on the said explanation till date. Though an attempt was sought to be made that the petitioner is not in possession of the land and that the entire area is now handed over to Central Institute of Hindi, who are in possession of the land, but the petitioner claims to be in possession of the same. This being a question of fact, no finding can be given on the said aspect. By an order dated 12.04.2012, this Court granted status quo as on 12.04.2012 with regard to possession, which was initially for a period of four weeks but later extended to until further orders. Since the explanation given by the petitioner to the notice under Section 7 of the Land Encroachment Act, is still pending consideration, if the petitioner is in possession of the land, no coercive steps will be taken by the respondents till the orders are passed to the notice issued under Section 7 of the Land Encroachment Act, which in any event shall be within a period of four (04) weeks from the date of receipt of a copy of the order.

7) With the above direction, the writ petition is disposed of. There shall be no order as to costs.

8) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

05.09.2017
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