

HON' BLE SRI JUSTICE S. V. BHATT

Writ Petition No.6921 of 2014

ORDER:

Heard Mr. M.M.M. Srinivas for petitioners and the learned Government Pleader for respondents.

2. The petitioners pray for *mandamus* declaring the action of respondents 3 to 5 in interfering and trying to dispossess the petitioners from agricultural land in Sy.No.356/ 1 (Ac.15.00), Sy.No.256/ 1 (Ac.5.00) and Sy.No.301 (Ac.10.55), situated at Arugolanupeta Village, Chatrai Mandal, Krishna District, without issuing notice of initiating any proceedings, as illegal, arbitrary and unconstitutional.

3. Briefly stated, the case of petitioners is that the Forest Settlement Officer in Rc.No.925/ 72B(c) dated 08.10.1974 considered the claim of Devineni Raja Ram and six others and accepted the claim through the order dated 08.10.1974. The operative portion of the order reads thus:

S. No.	Name	R.P.No.	R.S.No.	Extent grant
01	Sri Devineni Raja Ram	284/ 66	282,288	Ac.19.33
02	Sri Devineni Nagabhushanam	287/ 66	282, 287	Ac.19.00
03	Sri Devineni Ramanamma	286/ 66	294	Ac.20.00
04	Sri Chalasani Anjaiah	277/ 66	294, 277	Ac.18.65
05	Smt.Chalasani Venkamma	105/ 63	294/ P	Ac.15.48
06	Chalasani Sasisrekhamma	279/ 96	290, 294	Ac.15.41
07	Chalasani Sreemannarayana	278/ 66	294, 275 & 276	Ac.18.96

xxx

xxx

xxx

“From the above facts and from the documents produced by the petitioners at the time of enquiry it is obvious that the claimants have established, beyond doubt their conclusive title over the land in question. Further during the field inspection it is observed that the land in question was included in the Arugolanupet block towards west of Claim No.35 to 55 and in the result the claim of the petitioners is allowed and the S.No. included in the block are

hereby ordered to be eliminated from the block. The District Forest Officer, Khammam is requested to get the revised patta lands which stand already located in the Block sketch with the field book for preparing the Notification U/ Sec.15.”

4. The petitioners, through registered sale deeds either from the claimants before the Forest Settlement Officer or their successors-in-interest claim to have purchased the property and the Tahsildar, Chatrai Mandal issued pattadar pass books in favour of petitioners to the land the petitioners purchased from these claimants. Adverting to the cause of action for filing of writ petition, petitioners allege that they are in possession and enjoyment of petition land and claim right, title and possession through order of the Forest Settlement Officer, registered sale deeds and pattadar pass books, therefore dispossessing petitioners from the petition land without recourse to law is illegal, arbitrary and unconstitutional.

5. That on 10.03.2014, this court by accepting *prima-facie* case etc. pleaded by petitioners, granted the following interim direction:

“Heard both sides.

This writ petition is filed stating that petitioners have purchased the subject lands by virtue of registered sale deeds in the year 1982 and 1985 Pattadar Pass Books and Title deeds were issued and their names are also entered in Pahanies.

Learned Asst. Govt. Pleader seeks time for getting instructions.

It is stated that this court in similar circumstances granted interim order in WP MP No.36428 of 2013 in W.P.No.29326 of 2013. In view of the same, there shall be a direction to the respondents 3 to 6 not to interfere with their possession except in accordance with due procedure laid down by law.”

6. The Divisional Forest Officer-3rd respondent filed counter-affidavit on behalf of respondents 1, 2, 4, 5 and 6. The Divisional Forest Officer objects to the maintainability of the writ petition under Article

226 of the Constitution of India. He relies upon the decision reported in '*Divisional Forest Officer, Eluru vs. District Judge, West Godavari & others*',¹ for the proposition that no person can have a right over forest land except when acquired by acquisition or prescription, no protection can be given to petitioners under Article 226 of the Constitution. It is for the persons aggrieved by the action of the Forest Department to initiate legal proceedings for appropriate reliefs before competent civil court.

7. On identity and location of petition land and the land claimed by the Forest Department, the reply of the Divisional Forest Officer, reads thus:

"..In reply to para No.4 of the affidavit it is respectfully submitted that the petitioners contention is not correct. The petitioners stating that the Forest Settlement Officer i/c Nellore allowed their claim by order dated 08.10.1974 u/s 10 of A.P. Forest Act of 1967. But in the said order the claim of the Vendor of the petitioners i.e., Devineni Nagabhushanam was for the extent of Acs.19.90 in RS Nos.282 and 287. But the present writ petition, the petitioners claimed Acs.20.00 in RS Nos.356/ 1 & 301 of Arugolanupeta village. Hence the petitioners are misleading the Hon'ble court and trying to grab the valuable forest lands. The forest staff took the Geo-coordinates of the petitioners claiming land and prepared topo map with reference the Argugolanupeta Forest Block Map which was notified u/s 4 of A.P. Forest Act. The said map reveals those lands are fallen within the boundary line of Arugolanupeta forest block. Since it is forest land, the forest department has right over the subject land.

In reply to para no.5 of the affidavit, it is respectfully submitted that the petitioners contention is not correct. As part of Community Forest Management programme, Arugolanupeta Vana Samrakshana Samithi was formed in the year 2009 with 311 members. The VSS members involve in forestry activities, raising plantations besides the protection of forest wealth of nearby forest. Thereby the President of Arugolanupeta Vana Samarakshana Samithi i.e, the 6th respondent herein had

¹ 2011(2) ALD 147 (DB)

interfered to safeguard the forest wealth. In respect to the forest staff, it is the legitimate duty to protect the forest wealth. As part of performing their legitimate duties, the respondents 3 to 5 visiting the encroached lands by the petitioners. Hence the action of the respondents is not illegal, arbitrary and not violative of principles of natural justice and not violation of Art 300 (A) of Constitution of India.”

8. Counter-affidavit of the Divisional Forest Officer joins the issue on the identity or location of property claimed by petitioners through registered sale deeds and the property which is tried to be protected by the Department as separate and distinct.

9. Be that as it may, the Divisional Forest Officer has not stated the details on petitioners' encroachment of forest land, or who is enjoying, what is the forest land in the total extent claimed by the petitioners etc. It is suggestively informed the petitioners, in fact, are enjoying the forest land. The petitioners, if are in possession and enjoyment of the forest land, this court is of the view that the Forest Department is required to issue notice with required details on the land enjoyed by encroachers/ petitioners, the classification of land, receive the explanation and pass orders.

10. With a view to providing reasonable opportunity and also to meet the ends of justice, I am satisfied, the writ petition can be disposed of by this order.

- (a) The parties are directed to maintain *status-quo* as on today as regards possession and physical features of the petition land for a period of three months from today.
- (b) The respondents are directed to issue notice, give opportunity to the petitioners or any other encroachers

of the forest land, if necessary conduct field enquiry and pass orders on or before the expiry of period of *status quo* granted by this court.

11. The writ petition is, accordingly, disposed of. No order as to costs. Pending miscellaneous petitions if any in this writ petition shall stand dismissed in consequence.

S.V.BHATT, J

Date: 07.08.2017
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