

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.17725 and 17765 of 2016

COMMON ORDER:

Both these writ petitions have been filed by the legal heirs of one Sri T.K. Khader Mohiddin of Palamaner Village of Chittoor District, essentially, claiming protection in respect of the lands in Sy.Nos.5; 7/7; 609/1&2; 348 Part; 7/8 part; 788/2; 788/3; 787 of Kothapalli Village, Gangavaram Mandal from the respondent authorities' interference without following due process.

Though separate writ petitions have been filed, the relief claimed by both the parties being with respect to the same property and their claim also being based on the same proceedings, it is not necessary to refer to the facts in both the cases separately, except to summarize the admitted and undisputed facts, in brief.

As per the petitioners, one Sri T.K. Khader Mohiddin, the father of the petitioner in W.P.No.17765 of 2016 and grandfather of the petitioner in W.P. No.17725 of 2016 was in possession of vast extents of lands in Chittoor District and in particular, he was in possession and enjoyment of the land, which is the subject matter of the present writ petitions. In the year 1994, when the State authorities represented by the District Collector and the District Forest Officers tried to interfere with the possession and enjoyment of the land, the father of the petitioner in W.P.No.17725 of 2016 viz., T.K. Mohamad Ali S/o T.K. Khader Mohiddin approached the Court of Principal Senior Civil Judge, Chittoor by filing O.S.No.113 of 1994 and the same came to be decreed, granting injunction against the State authorities represented by the District Collector as well as the District Forest Officer, Chittoor. The said authorities filed A.S. No.5

of 2004 on the file of the IX Additional District Judge, Chittoor and the same also came to be dismissed. While holding that the plaintiff did not have title to the land the question whether the land is a forest land or Government land was left open. However, considering the limited relief claimed in the suit being one for simplicitor injunction, granted injunction while leaving it open to the respondent authorities to evict the plaintiff and recover the possession by following due process of law. The judgment in O.S.No.113 of 1994, as affirmed by the appellate Court, has become final. In spite of the said judgment and decree, the respondent authorities highhandedly interfered with the possession and enjoyment of the petitioners, who are legal heirs and successors-in-interest of the said T.K. Khader Mohiddin. It is the contention of the petitioners that having raised the crops, they are cultivating the paddy, ragi, tomato, beans in some portion of the land and also planted mango, coconut, tamarind and sapota saplings, which in fact, have started giving fruits. The respondent authorities without dispossessing the petitioners from the property in their possession, by following due process, and contrary to the judgment and decree in O.S.No.113 of 1994, have issued a public notification proposing to auction the mango crop. The proposed action of the respondents, in highhandedly interfering and threatening the petitioners with dire consequences, is arbitrary and in violation of Articles 14, 300 and 300-A of the Constitution of India.

A counter affidavit has been filed in both the writ petitions, sworn to by one Smt. K. Ramani, W/o M. Mohan, Tahasildar, Gangavaram Mandal, refuting the allegations and averments in the writ petitions. The stand of the 3rd respondent-Tahasildar, on behalf of the State, is that the ancestors of the petitioner i.e., T.K. Khader

Mohiddin, Mrs. Khairunnisa, W/o T.K. Khader Mohiddin and others had filed applications before the Settlement Officer, Chittoor seeking grant of ryothwari pattas with respect to the lands in question and the said applications were rejected by an order dated 28.12.2009. Consequent upon the rejection of the applications made by the petitioners' predecessors and by operation of law, in particular, Section 3 (d) of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (in short "the Act"), the subject land, over which the petitioners' predecessors had claimed right, had vested with the Government and thereby the claim of the petitioners that they are in possession and enjoyment of the subject land is false and untenable. It is also further asserted that the aspect of the possession having been taken over by the respondent authorities is evident from the communications sent by the then Tahasildar, Gangavaram Mandal to the District Collector vide proceedings in Roc.No.DT/SR/8 to 11/11(4)/71, dated 24.04.2010. It is further asserted that by orders dated 28.12.2009, the Settlement Officer, Chittoor, had rejected the claims made by the legal heirs of T.K. Khader Mohiddin viz., One N.K. Masthan Saheb, S/o Khadar Saheb, V.M. Abdull Subhan, S/o Mohammen Usman Saheb, T. Khair Unnisa, W/o T.K. Khader Mohiddin and T.K. Khader Mohiddin S/o Khadar Meeran Saheb. It is further asserted that the orders dated 28.12.2009 of the Settlement Officer have been implemented on 24.04.2010 in Village Accounts such as S.L.R. and Adangal of Kothapalle village and the possession of land in Sy.No.7/7-A in an extent of Ac.38.80 and the land in Sy.No.7/7-B in an extent of Acs. 27-00 has been taken over under Section 3 (d) of the Act. Inasmuch as the petitioners are not in possession of the subject land, the allegation that their peaceful possession and enjoyment over the

property is interfered with, is not tenable and the writ petitions are liable to be dismissed.

Learned Senior Counsel Sri K.G. Krishna Murthy, appearing in W.P.No. 17725 of 2016 and Sri M.R. Mohammed Irfan, learned counsel appearing in W.P.No.17765 of 2016, reiterated the contentions in the writ petitions and further assert that the factum of the petitioners being the legal heirs of T.K. Khader Mohiddin is not in dispute and further they were never evicted from the subject lands by following due process. Further, both the learned counsel assert that both the proceedings dated 28.12.2009 referred to by the 5th respondent-Tahasildar in her counter do not pertain to the subject lands in the present writ petitions and as a matter of fact, neither T.K. Khader Mohiddin nor Smt. Khairunnisa made any applications under the Act with respect to the lands in issue by making a specific reference to the Survey numbers and correlating to the paimsh numbers. They dispute the specific contention of the learned Advocate General appearing on behalf of the respondents. They would also assert that even the Tahasildar's reference vide letter dated 24.04.2010 do not relate to the petitioners and the same relates to one Sri Masthan and others. They also specifically deny that they have anything to do with N.K. Masthan Saheb, V.M. Abdul Subhan and T.Khari Unnisa and the orders passed in their cases. They further assert that there were never any proceedings under Estates Abolition Act or in relation to the lands which was the subject matter of the O.S.No.113 of 1994.

Learned Advocate General Sri Srinivas, by making a reference to Section 3 (d) of the Act, would assert that there is no other procedure as such contemplated for taking possession and once a

determination is made by the Settlement Officer that a particular applicant is not entitled for grant of settlement patta in their favour, the land would vest in Government and the claimants would lose possession automatically by operation of law. He would also further assert that at any rate the petitioners had failed to establish that they are the legal heirs of T.K. Khader Mohiddin. He would also further submit that notwithstanding the judgment and decree in O.S.No.113 of 1994, there is no bar for determination of the entitlement for grant of pattas under the Act and as a matter of fact, the applications made by T.K. Khader Mohiddin and his wife have, in fact, been rejected. Learned Advocate General also, by making reference to the legal notice got issued by the petitioner in W.P.No.17765 of 2016, would contend that in the legal notice itself, a reference is made to the petitioner therein filing O.S.No.27 of 2016 on the file of VIII Additional District Judge, Chittoor seeking partition and possession, which is proof positive that the petitioners are not in possession of the property. Learned Advocate General also would submit that the writ petitions are liable to be dismissed as the petitioners had failed to mention about O.S.No.27 of 2016 and in that view of the matter, the interim order granted by this Court was infructuous on account of the fact the possession was already taken over by the respondent authorities pursuant to the orders dated 28.12.2009. Therefore, he prays for dismissal of the writ petitions.

A perusal of the record and after considering the respective arguments, majority of the facts are not being in dispute, the question that is required to be considered in the present Writ Petitions is that "Whether the action of the respondent authorities in trying to dispossess the petitioners by use of official machinery and

police is valid and that their contention that the respondents came to take over possession of the land by virtue of operation of Section 3(d) of the Act without there being any proceedings whatsoever is tenable”.

At the outset, it becomes necessary for this court to ascertain whether the claim of the respondents that the land in survey numbers, which is in dispute, is the subject matter of the proceedings dated 28.12.2009 of the Settlement Officer, in the cases of N.K. Masthan Saheb, V.M. Abdul Subhan, T.Khair Unnisa and T.K. Khadar Mohidden.

Name of the Claimant	Paimsh No.	Extent of land	Corresponding Sy.No.
N.K. Masthan Saheb S/o Khadar Saheb Proceedings No. SR.No.8/11(a)/71	43	0-4-0	Sy.No.7/7 of Kothapalle Revenue Village with an extent of Acres 65-80. (Except Paimsh No.48)
	44	0-20-0	
	45	12-5-0	
	46	3-34-0	
	47	49-10-0	
	48	30-0-0	
	Total	95-54-0	
V.M. Abdul Subhan S/o Mohammad Usman Saheb Proceedings No. SR.No.9/11(a)/71 dt.28.12.2009	110	10-00-0	Sy.No.348 of Kothapalle Revenue Village with an extent of Acres 115-27. (Except Paimsh No.118)
	113	1-23-0	
	114	4-25-0	
	115	1-10-0	
	116	3-03-0	
	117	3-00-0	
	119	6-73-0	
	120	1-60-0	
	121	8-30-0	
	122	0-68-0	
	123	5-00-0	
	124	1-94-0	
	125	0-50-0	
	126	2-26-0	
	Total	49-62-0	
T. Khairunnisa W/o T.K.Khadar Mohidden Proceedings No. SR.No.10/11(a)/71, dt.28.12.2009	48	28-30-0	P.Nos. 48 to 58 are correlated to Sy.No.7/8 of Kothapalle Revenue Village with an extent of Acres 173-86
	49	5-0-0	
	50	4-20-0	
	51	0-30-0	
	52	6-18-0	
	53	1-10-0	
	54	1-00-0	
	55	1-10-0	
	56	0-15-0	
	57	1-20-0	
	58	1-20-0	
	59	10-0-0	
	60	5-00-0	
	61	0-38-0	
	62	0-30-0	
	63	0-21-0	
	4	25-0-0	
	Total	90-62-0	

Name of the Claimant	Paimsh No.	Extent of land	Corresponding Sy.No.
T.K.A Khadar Mohidden S/o Khadar Meeran Saheb Proceedings No. SR.No.11/11(a)/71 dt.28.12.2009	65	Though mentioned the boundaries, not mentioned the extent specifically.	Sy.No.347 of Kothapalle Revenue Village is survey group of Keelapatla Village, with an extent of Acres 718-80 acres.
	66		
	67		
	68		
	69		
	70		
	71		
	72		

A glance at the above tabular form would make it clear that the lands, which are subject matter of the present writ petitions, were not subject matter of any of the proceedings above. It may also further be noted that in case of N.K.Masthan Saheb S/o Khadar Saheb, the corresponding paimsh numbers 33 to 46 and part 49, which are correlated to Survey number 7/7 and the extent involved is Acs.65-80 of Kothapalle Revenue Village and in case of V.M. Abdul Subhan the lands in paimsh numbers 110, 113 to 126, except 118, are correlated to Sy.No.348, and the extent involved is Acs.115.27. In case of Khair Unnisa, the relevant paimsh numbers 48 to 58 are correlated to Sy.No.7/8 and the total extent involved was Acs.173-86 of Kothapalle village and in case of T.K. Khader Mohiddin the relevant paimsh numbers 65 to 72 are correlated to Sy.No.347 and the extent involved is Acs.718-80. Further, N.K. Masthan Saheb S/o Khadar Saheb had claimed pattas to be granted in his favour with respect to paimsh Numbers 43 to 48, for a total extent of Acs.95.16. The said paimsh numbers correlated to Sy.Nos. 7/7. It may be noted that the paimsh number 48 consists of Acs.30-00 correlate to Sy.No.7/8, as admitted by the learned Government Pleader for the respondent on verification of the record, leaving an extent of 65-80 acres in Sy.No.7/7. It may be noted that civil courts in its judgment and decree had categorically found that the petitioners are in possession of said survey numbers apart from other survey numbers. This finding is not disturbed by the appellate court. Even if one takes the

claim made by N.K. Masthan Saheb for grant of pattas as rejected on account of his failure to satisfy the conditions for grant of pattas, it cannot automatically be assumed that the petitioners were not in possession of the suit schedule lands, as the civil court had categorically recorded that the petitioners are in possession.

Further, it may also be noted that though the applications have been made by T.K. Khader Mohiddin and Khair Unnisa for grant of pattas, admittedly, there is no application made with respect to the land in survey numbers over which possession is claimed and found in the suits and also in the present writ petitions. In other words, it can be safely stated that there was neither any claim made with respect to the land in suit schedule lands before the Settlement Officer nor any determination as such was made with respect to the same at the instance of the petitioners. In those circumstances, it cannot be said that the settlement officers have made any order for or against the petitioners with respect to the land in subject survey numbers. In the absence of any proceedings before settlement officer with respect to suit schedule lands, even if one accepts the legal argument of the learned Advocate General, there was no vesting and no taking possession in the facts of the case. However, it may be pointed out the fallacy in the argument advanced by the learned Advocate General as the same is contrary to the Rule 27 sub rule (7) and (8) of the A.P. (A.A.) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (in short “the Rules”) and G.O.Ms.No.1634, dated 20.07.1955, which prescribed a particular mode of taking over possession on culmination of the proceedings under Section 3 of the Act. It is well-settled that if a statute prescribes a particular thing to be done in a particular manner, the same is to be done in that

manner or not at all (**Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and others**¹). Further, it is admitted in the counter affidavit filed by the respondents themselves that so far as Sy.No.5 is concerned, the same is a patta land and the respondent authorities have no right over the same.

Even with respect to the factual basis, there is a controversy with regard to taking possession. While in the letter referred to by the learned Advocate General dated 24.04.2010, possession alleged to have been taken on 24.04.2010, in para 9 of the counter affidavit, the respondents have merely asserted that the petitioners are not in legal possession. It may also be noted that in the news item published on 20.05.2016, filed by the respondents themselves, it has been reported that the respondent authorities have got evicted the encroachers from the land in an extent of Acs.65.80 situated in Sy.No.7/7 of Kothapalle (V) on 19.05.2016. A bare perusal of the record relating to the case placed before this Court discloses that the file was maintained in a haphazard manner and there is no pagination, thereby providing an opportunity for the respondent authorities to insert or take out papers as and when they choose to do so. Yet another important document, which is part of the record, is the legal opinion furnished by the learned Government Pleader, Chitoor, placed before the authorities on 16.06.2015. In the said legal opinion it has been categorically opined that the petitioners can be evicted only by following due process and suggested to the Tahasildar to take legal recourse under law for eviction of the family members or any persons claiming right under them. This clinchingly establishes that the petitioners were in possession of the property even as on 16.06.2015. Contrary to this legal opinion, the deponent

¹ 2003 (2) SCC 111

of the counter repeatedly misinformed the Collector that possession has been taken over by the respondents. When the legal opinion, placed before the Tahasildar on 16.06.2015 and the news item published on 20.05.2016 show that the possession has been taken over only on 19.05.2016, it leaves no manner of doubt that the authorities have acted highhandedly in interfering with the peaceful possession and enjoyment of the petitioners and that too they had forcibly entered into the possession for the first time on 19.05.2016.

The Writ Petition came to be filed on 06.06.2016 and an interim order of stay was granted. The 2nd writ petition also came to be filed subsequently, in which also the order of status quo was granted. The petitioners had also filed a contempt case against the incumbent officer of the 3rd respondent alleging violation of the interim orders and the same is required to be dealt with separately as to whether there is a willful violation on the part of the respondent therein or not. While the writ petition was pending, the respondent had harvested the mango crop and alleged to have sold in public auction, which has fetched an amount of Rs.25,50,000/-. Inasmuch as, the respondents have acted high-handedly and they have no manner of right with respect to the usufruct of the subject land and their act of entering into the possession forcibly being arbitrary and illegal, they cannot have any claim for the said amount. In those circumstances, the money rightfully belongs to the petitioners only. In the facts of the present case, the petitioners are the ones who had cultivated the lands and as such they are the ones who are rightfully entitled to the said amount.

Admittedly, as the legal heirs of T.K. Khader Mohiddin are the persons, who are in possession and cultivating the land, they are entitled for the said amount of Rs.25,50,000/- with interest at the

rate of 8% per annum from 09.06.2016, the date on which the amount was remitted to the treasury account. The State is directed to pay the said amount within four weeks from the date of receipt of a copy of this Order.

Hence, it is directed that the respondent authorities shall restrain themselves from interfering with the peaceful possession and enjoyment of the petitioners with the lands in Sy.Nos. 5; 7/7; 609/1&2; 348 Part; 7/8 part; 788/2; 788/3; 787 of Kothapalli Village, Gangavaram Mandal.

In the facts of the present case, record discloses that the hasty decision taken by the 3rd respondent-Tahasildar is only on account of a news item said to have been published on 20.05.2015 alleging that the authorities are not taking action in spite of settlement proceedings having become final, no effort was made by the 3rd respondent-Tahasildar or any other superior officers to verify whether there were any proceedings in relation to the lands (referred to herein) and further the 3rd respondent-Tahasildar apart from acting negligently had also mislead the Collector and acted highhandedly with the help of Forest and Police officials in interfering with the petitioners' possession and enjoyment, forcing the petitioners to approach this Court and seek protection. In the circumstances, petitioners are entitled for costs.

The costs are quantified at Rs.10,000/- in each writ petition and as the entire proceedings have taken place on account of the negligent and callous attitude of the 3rd respondent-Tahasildar (5th respondent in W.P.No.17725 of 2016), the same is liable to be collected from the personal account of the incumbent Tahasildar-3rd respondent. At the first instance the State to pay the costs to the

petitioners and thereafter collect the same from the 3rd respondent-Tahasildar.

Accordingly, these writ petitions are allowed, directing the respondent authorities not to interfere with the petitioners' peaceful possession and enjoyment over the lands in Sy.Nos.5; 7/7; 609/1&2; 348 Part; 7/8 part; 788/2; 788/3; 787 of Kothapalli Village, Gangavaram Mandal, with costs.

Consequently, the Miscellaneous Petitions pending, if any, shall stand closed.

Date:28.02.2017
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CHALLA KODANDA RAM, J

