

HON'BLE SRI JUSTICE S. V. BHATT

Writ Petition No.9373 of 2017

ORDER:

Heard Mr. K.S. Murthy and the learned Assistant Government Pleader for Assignment.

2. Subject matter of the writ petition is an extent of Ac.15.00 cents in Sy.No.192 of Sampathpuram Village, Anakapalli Mandal, Visakhapatnam District. The petitioners pray for *mandamus* declaring the action of the respondents in erecting caution notice claiming the subject matter as 'land belonging to the Government'.

3. The case of the petitioners is that the petitioners have assignment in their favour or their predecessors-in-interest. In recognition of such assignment, 5th respondent issued pattadar pass books and the names of the petitioners are shown in 1-B Register, as well. The petitioners rely upon a copy of *pahani* taken out from the web-land maintained by the respondents, showing the names of petitioners in applicable columns. Therefore, by reference to these documents, the petitioners contend that putting the caution notice in the subject matter of the writ petition, is illegal, arbitrary and unconstitutional.

4. The 5th respondent through written instructions dated 10.04.2017, states as follows:

"..I respectfully submit that the subject land in S.No.192 of Sampathpuyram village of Anakapalli Mandal is classified as Government land 'CHERUVU' (tank) with an extent of Ac.18.24 cts as per Revenue records. The Rajaka community people used to wash clothes from the water of the said tank. They were requesting for assignment of the remaining portion of the land @ one acre for cultivation purpose. But they were informed from this office by my predecessors by way of Endorsement that since

the land is classified as Cheruvu, their request for issue of D-form pattas cannot be considered.

As the matter stood thus, on 3.11.2016, in Andhra Jyothi daily newspaper a news item under the caption "Cheruvunu Mingesaaru-15 acres Prabhutva Bhoomiki Rekkaalu". Immediately, the detailed enquiry was conducted on ground as well as verified the web land online registers. There are no occupations by way of any manner on ground.

On examination of the online Pattadar Adangal, it is noticed that an extent of land Ac.15.00 cts @ ac.5.00 cts each is recorded on the names of the petitioners and Khata Nos.510, 511, 512. But in fact, no patta was issued from this office; the petitioners have never applied for issuance of Pattadar Pass Books in the prescribed forms contemplated under the provisions of A.P. Rights in Lands and Pattadar Pas Books act, 1971. Even they applied, no Pass Book will be issued to Government land or to the D-Form patta land. Therefore, the alleged Patta Nos.510, 511 and 512 are not genuine and not issued from this office. The petitioners may put to strict proof of the same.

Therefore, the land was restored and erected the caution boards on the ground. Photo copy is enclosed herewith for kind perusal.

Since, the petitioners have understood that they have no right over the land, not in possession of the land; they have filed this present writ petition by suppressing all the facts, misrepresented with an ulterior intension to grab the valuable Government land.

I respectfully submit that the averments in para 2 of the affidavit that the respondent authorities in arbitrarily erecting the caution boards and preventing them from entering and enjoying the lands assigned to them without adhering to due process of law and in violation of principles of natural justice is not correct and the same is hereby denied. The subject land belongs to Government Poramboke classified as Cheruvu. The petitioners have tried to grab the land under the guise of fabricated documents. Since the land is objectionable land for assignment, pattas were never issued from this respondent. The Photostat copy web land Pattadar Adangal enclosed herewith clearly shows that the Tahsildar's Digital signature is not done and the entire entries are coloured with RED.

It is respectfully submitted that the averments in para 3 that they were assigned with five acres each in S.No.192 long back; Khata numbers 510, 511 and 512; they are in continuous possession; patta pass books and title deeds were issued during the 2002-2003, the Revenue officials collected D-pattas from them during that time for verification and did not return them and they paid cist for the lands are all false, not true and correct. The petitioners may put to strict proof of the same. No patta was issued in the said S.No.192. The contention that the revenue officials have collected D-Form pattas for verification is totally wrong. The contention that they have paid cist to the lands is totally false. Because, the D-form Pattadars need not pay any tax/ cist as alleged. The D-Form patta issues to the landless poor persons to bring the Government land into cultivation and enjoy the yields. But they never pay any cist to that land.

It is respectfully submit that the averment in para 4 that the Government has paid compensation to them for the mango trees severely damaged during the HUD-HUD Cyclone in 2014, they will be issued with e-pass books is totally wrong. They may be put to strict proof of the same.

It is respectfully submit that it is a fact that this respondent authority being the custodian of Government lands and to prevent the encroachments, some miscreants are making wrongful efforts by creating fabricated documents etc., and to occupy the valuable subject land, the caution boards were erected, and the Village Revenue Officer is kept to have constant vigil on the land. Photo of the erection board is enclosed for kind perusal.

It is respectfully submit that the averment in para 6 that this respondent is not entering the petitioners into their own land, the subject land is Government land, the petitioners were never in possession and enjoying the subject land. They have no right to harvest the mango tope on the Government land and enjoy the yield as contended.

For the foregoing reasons, I humbly pray this Honourable court may be pleased to dismiss the writ petition or to pass such orders deem fit in the interest of the Justice and equity otherwise the Government will be put irreparable loss and damages.”

5. I have perused the material available on record and the written instructions dated 10.04.2017. This court is of the view that the petitioners are relying upon a few documents in support of their case for right or possessing these documents normally available in the office of the 5th respondent. On the other hand, now 5th respondent, is complaining that the subject matter of the writ petition is 'Cheruvu' and there is no record showing that the documents on which the petitioners are relying upon are in fact issued by the office of 5th respondent. The District Collector, under Section 9 of the A.P. Rights in Lands and Pattadar Pass Books Act, 1971, (for short 'the Act') has over all jurisdiction in preparation, maintenance and continuance of record of rights. The issue requires examination of original record vis-à-vis the documents relied upon the petitioners.

6. With a view to afford opportunity to the petitioners to canvass before the Competent Authority, the writ petition is, disposed of, by granting six weeks time from today to the petitioners to file a petition under Section 9 of the Act, vis-à-vis for all the reliefs before the 2nd respondent. The 2nd respondent is directed to call for the records, examine the petition filed by the petitioners and pass orders, within two months from the date of presentation of the petition. This court granted interim order dated 16.03.2017 in favour of the petitioners. To meet the ends of justice, the interim order is directed to be continued for a period of three (3) months from today. The 2nd respondent, if finally comes to the conclusion that the subject matter of the writ petition is 'Cheruvu' (a water body), he not only initiate steps as are required for protecting the water body, but also initiates disciplinary or criminal action against all the concerned who have either tacitly or otherwise colluded with the petitioners for bringing into existence the documents

on which the petitioners are relying upon. If the finding of the 2nd respondent is otherwise, the respondents cannot interfere with the possession of the petitioners, except in accordance with law. The above exercise shall positively be completed in three months from today.

No order as to costs. Pending miscellaneous petitions if any in this writ petition shall stand dismissed in consequence.

S.V.BHATT, J

Date: 09.06.2017
BSS



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