

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION Nos. 7547 and 7806 of 2015

COMMON ORDER:

1) W.P.No.7547 of 2015 came to be filed seeking issuance of writ of mandamus declaring the action of respondent Nos.2 and 3 in trying to dispossess the petitioners from their patta land admeasuring Ac.2.01 gts., in Sy.Nos. 174/ VU, VOO, ROO, LU, LOO, situated at Gundlapalli Village, Yadagirigutta Mandal, Nalgonda District, without prior notice and opportunity, as illegal, arbitrary, malafide intention and abuse of powers; and consequently direct the respondents not to claim the land of the petitioners basing on the decree passed in O.S.No.600 of 1989.

2) W.P.No.7806 of 2015 came to be filed seeking issuance of writ of mandamus declaring the action of the Joint Collector, Nalgonda District, in dismissing the revision petition vide proceedings No.F2/ 6593/ 2013 dated 28.02.2015 without considering the material on record, as illegal, arbitrary, malafide and intentional; and consequently set aside the same.

3) Since the issue involved in both the writ petitions is one and the same, the same are being disposed of by way of this common order.

4) The facts in issue are as under:

The petitioners claimed themselves to be owners and possessors of land admeasuring Ac.2.01 gts., in Sy.Nos. 174/ VU, VOO, ROO, LU, LOO, situated at Gundlapalli Village, Yadagirigutta Mandal, Nalgonda District, having purchased the same jointly through registered sale deeds bearing document Nos. 11120, 11121, 11122, 11123 of 2012 and 1670 of 2013. It is stated that originally one late Mohd. Momin Ali possessed land admeasuring Ac.18.06 gts., in Sy.No.174. Out of which an extent of Ac.11.00 of land is under possession and enjoyment of protected tenants. Subsequently, a certificate under Section 38/ E was issued in favour of protected tenants on 14.02.1975 vide proceedings No.M/ 4239/ 75 in favour of Vangapalli Shanthaiah and Vangapalli Kistaiah and the remaining land is in possession and enjoyment of pattadar Mohd. Momin Ali. After the death of Mohd. Momin Ali, his legal heirs sold away land admeasuring Ac.2.01 gts. to the petitioners. It is stated that the names of legal heirs of Mohd. Momin Ali was recorded in the revenue records and the revenue authorities also issued pattadar pass books and title deeds. Being satisfied with the title and possession, the petitioners purchased the said land. In the month of March, 2015, the petitioners opened chalivendram in the said land for the purpose of providing water to the pilgrims. While things stood thus, Sri lakshmi Narasimha Swamy Devasthanam (hereinafter referred to as "respondent temple") authorities wrongly claiming the said property as the said property belonged to the respondent temple. On a request made by the petitioners, the Sub-Registrar provided information stating that there is no

property owned by the respondent temple in Sy.No.174 of Gundlapalli Village. When the employees of the respondent temple are trying to grab the property by using the name of the respondent temple with the help of respondent Nos.4 and 5 and prevented the petitioners from enjoying the property, the petitioners made an application for conducting survey and fixing boundaries. Pursuant to which the Deputy Inspector of Survey, Bongir, issued notice on 14.11.2012 to the petitioners as well as the temple. Because of non-co-operation of the respondents, the survey could not be conducted. Thereafter, the petitioners brought the same to the notice of the Sub-Collector, Bhongir. Pursuant to which, he addressed a letter to the respondent temple to furnish any orders from the Court. Then, the Executive Officer of the temple produced a copy of the decree passed in O.S.No.600 of 1989 on the file of the Pri. District Munsif Court, Bhongir. After perusing the same, the Sub-Collector having found that the land covered in the said judgment and decree is different from the land purchased by the petitioners, gave instructions for conducting a survey. Accordingly, a survey was conducted on 03.04.2013. The petitioners made a representation before the revenue authorities seeking mutation, but the Tahsildar, rejected the application through Memo No.B/ 5400/ 2012, dated 25.02.2013. Aggrieved by the same, the petitioners filed an appeal before the Sub-Collector & Sub-Divisional Magistrate, Bhongir, which was dismissed vide orders dated 20.05.2013. Challenging the same, the petitioners preferred revision before the Joint Collector, Nalgonda. The said

revision was dismissed on the ground that Ac.6.29 gts. of land was purchased by the temple from the father of vendors of the petitioners and that protected tenants executed registered gift deed in favour of the temple in respect of land admeasuring Ac.2.00. Thus, the temple is in possession of Ac.8.29 gts. When a dispute arose between the temple and the legal heirs of protected tenants, O.S.No.600 of 1989 came to be filed seeking injunction. It is stated that as on today the vendors of the petitioners are holding pattadar pass books and title deeds and the respondent temple never challenged the same and when the petitioners made an application for mutation of land in their name, the respondent temple raising the dispute and opposing for mutation. Since the officials of the respondent temple are high handedly trying to dispossess the petitioners without following due process of law, W.P.No.7547 of 2015 came to be filed. The petitioners also filed W.P.No.7806 of 2015 questioning the proceedings issued by the Joint Collector, Nalgonda.

5) By an order, dated 20.03.2015, this Court ordered *status quo* in W.P.No.7547 of 2015. In W.P.No.7806 of 2015 also this Court granted *status quo* on 25.03.2015 and further ordered that pending disposal of the writ petition, the nature of the subject property shall not be altered in any manner.

6) A counter came to be filed by the Deputy Collector-cum-Executive Officer denying the averments made in the affidavit filed in support of the writ petition. It is stated in the counter that the

subject property along with other extents totaling Ac.8.29 gts., in Sy.No.174 is in physical possession and enjoyment of the respondent temple for the last several decades. The part of subject property which is the schedule property in O.S.No.8 of 2011, wherein the temporary injunction sought against the respondent temple was dismissed vide order dated 22.03.2012 in I.A.No.205 of 2011 and the C.M.A. filed against the said order was also dismissed. In an extent of Ac.2.00 of land, huge structure was raised during June-August, 2013 for maintaining Goshala in the name of Gokulam, for feeding cows. An inauguration ceremony and Gopooja was conducted on 28.08.2013. On the said day, the petitioners came to the subject land and attempted to interfere with the ceremony and also committed other offences, for which a case in Crime No.210 of 2013 came to be registered against them for the offences punishable under Sections 447, 427, 342, 120-B read with 34 IPC, against which some of the petitioners filed CrI.P.No.14483 of 2013 seeking quashing of the investigation. It is also stated that the respondent temple is holding total extent of Ac.8.29 gts., in Sy.No.174 of Gundlapalli village, which includes the subject land in O.S.No.600 of 1989. The sale deeds produced by the petitioners are created subsequent to rejection of injunction in O.S.No.8 of 2011 and basing on the fraudulent transactions, the petitioners are claiming rights over the property. It is urged that the petitioners suppressed all the material facts and filed the present writ petition with all false and untenable allegations. It is also urged that the petitioners were never in

possession of the subject land and as such they are not entitled for any relief.

7) The main ground urged by the learned counsel for the petitioners is that the documents furnished by the respondent temple and also by the authorities does not anywhere indicate that the property which is subject matter of dispute in the present writ petition belong to the temple.

8) It is to be noted that in O.S.No.600 of 1989, the trial Court relied upon Exs.A1 and A2 and found that these two documents cannot confer or create any title in favour of the temple, though it may be sufficient to prove possession of the plaintiff. Having regard to Exs.A1 and A2 and other material on record, the trial Court granted injunction in favour of the temple.

9) At this stage it would be useful to note that the vendors of the petitioners herein filed O.S.No.8 of 2011 for injunction. The averments in the said plaint show that the 1st plaintiff therein is son of late Momin Ali. His father and other pattadars were the owners of land admeasuring Ac.18.06 gts., in Sy.No.174 of Gundlapalli Village. Out of Ac.18.06 gts., an extent of Ac.11.01 was transferred to P.T.Certificate Holders under Section 38 (E) of Hyderabad Tenancy Act (for short "the Act") and the remaining land Ac.7.05 gts., in Sy.No.174 was orally divided among Mohd. Momin Ali, Mukkerla Narsaiah and Talla Narsaiah. With the above averments he sought for an injunction in I.A.No.205 of 2011. The said I.A. came to be rejected on 22.03.2012. Against which

C.M.A.No.362 of 2012 came to be filed which was also rejected. Subsequent to the orders in C.M.A., wherein the vendors of the petitioners lost their case, sale deeds came to be executed in favour of the petitioners, basing on which a dispute is now sought to be raised.

10) A perusal of the record would show that the declarant Mohd. Momin Ali, made a statement, stating that out of Ac.23.29 gts., an extent of Ac.6.29 gts., in Sy.No.174 was sold to Narasimha Swamy Temple Committee, Yadagirigutta in the year 1970 and Ac.2.00 of land was given to Panchayat Board, Yadagirigutta for construction of water tank under protected water supply scheme. That being the position, a doubt would arise with regard to sale of land by the son of Mohd. Momin Ali to the petitioners. It is to be noted that said Mohd. Momin Ali made a declaration in the year 1970 itself, alienating Ac.6.29 gts., in favour of Narasimha Swamy Temple Committee, Yadagirigutta and Ac.2.00 of land was given to Panchayat Board for construction of a water tank. Therefore, the question of his son selling the very same land in favour of the petitioners cannot be accepted. Be that as it may, it is to be noted that there was no injunction in favour of the vendors of the petitioners. The C.M.A. filed by them was also dismissed. Having lost in both forums, the registered sale deeds which were executed after the dismissal of C.M.A. are made the basis for initiating the present proceedings. On the other hand, the respondent temple placed on record documents to show that they are in possession of the property, constructed huge structures and a compound wall

around the said structure, which is being used as a Goshala. Further, the order passed by the Joint Collector, Bhongir also show that the Tahsildar issued pattadar pass books in favour of the vendors of the petitioners without examining the physical possession of the land. It was further held that on detail examination of the records and evidence filed by the parties, it stands established that the vendors of the petitioners are not having any land in Sy.No.174 of Gundlapally village as Ac.11.01 gts., which was transferred in favour of the protected tenants under Section 38-E of the Act was sold in favour of the respondent temple, by the father of the vendor of the petitioners. The Joint Collector also directed the Revenue Divisional Officer, Bhongir, to submit proposals to initiate disciplinary action against the then Tahsildar and his staff, who have issued illegal pattadar pass books to the vendors of the petitioners without considering physical possession, title and right.

11) For the aforesaid reasons, I see no merits in the writ petitions and the same is liable to be dismissed.

12) Accordingly, both the writ petitions are dismissed. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

27.03.2017
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