HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION NOs.25836 of 2011 and 19964 of 2012

COMMON ORDER:

Heard Sri T.C.Krishnan for petitioner, Sri Subba Rao learned Government Pleader for Revenue and Sri Gopala Krishnan for Pangaluru Seethammagari Satram Private Trust (for short 'the Trust').

Sri C.Athisayanathan is the petitioner in these two writ petitions.

On 14.09.2011, the petitioner filed W.P.No.25836 of 2011 for Mandamus declaring the action of respondents in dispossessing petitioner from an extent of Ac.0-05 cents in Sy.No.302 abutting door No.7-94, Shanthi Nagar, Muthyalareddypalli Tirupathi Urban, Chittoor District, as arbitrary and unconstitutional.

The petitioner also prayed for consequential direction not to dispossess the petitioner from an extent of Ac.0-05 cents in Sy.No.302 abutting door No.7-94, Shanthi Nagar, Muthyalareddypalli Tirupathi Urban, Chittoor District.

On 02.07.2012, the petitioner filed W.P.No.19964 of 2012 praying for Mandamus declaring the action of the Trust in dispossessing petitioner from an extent of Ac.0-05 cents in Sy.No.302, Shanti Nagar of Ullipatteda Pathamadigapalli Cillage, M.R.Palle of Tirupathi Urban Mandal, Chittoor District, basing on the order in O.A.No.23 of 2003, dated 09.07.2003, as arbitrary, violative of principles of natural justice and unconstitutional.

The averments in these two writ affidavits are substantially same and similar and for convenience, the counsel for petitioner referred to the pleadings in W.P.No.19964 of 2012. Hence, the pleadings in W.P.No.19964 of 2012 are adverted to,

The petitioner is an ex-serviceman (howldar) and was retired from service in the year 1982 and settled in Tirupathi. The petitioner admits to have occupied an extent of Ac.0-05 cents in Sy.No.302 of Ullipatteda (for short 'the subject matter of writ petition') spent money and efforts to make the land even, cultivate and reside in the subject matter of writ petition. The petitioner through registered sale deed, dated 02.02.1989 purchased 124 sq. yards in Sy.No.301. The petitioner constructed a pucca building in the house plot purchased through sale deed, dated 02.02.1989. The petitioner under the belief that the subject matter of writ petition is Government land applied to the Collector, Chittoor, Chittoor District, for assignment of the subject land in his possession. According to him, the efforts of petitioner resulted in proceedings L.Dis.No.E6/14988/2000, dt.31.10.2000, wherein the Collector, Chittoor, Chittoor District, directing the Tahsildar, Tirupathi Urban Mandal, to take necessary steps for grant of assignment in favour of petitioner. In continuation thereof, the petitioner relies on Possession Certificate ROC.No.3/1540/2004, dated 11.12.2004. Therefore, the case of petitioner is that the possession and enjoyment of petitioner of the subject matter of writ petition is lawful and the respondents purportedly in implementing the directions issued in W.P.No.25836 of 2011 are interfering with petitioner's possession and enjoyment of the subject matter of writ petition. The further legal objection raised by petitioner is that even assuming that orders are passed in

O.A.No.23 of 2003 under Section 85(1) of the A.P.Charitable and Hindu Religious Institutions and Endowments Act 30 of 1987, firstly the petitioner is not a party and secondly, by referring to the order in O.A.No.23 of 2003, removing encroachment of the subject matter of writ petition is illegal, arbitrary and unconstitutional. Hence, the writ petition, for the prayers referred to above.

The sum and substance of petitioner's case is that assuming the subject matter of writ petition as belonging to Government, the petitioner occupied the subject matter of writ petition under orders from Revenue Department. The petitioner applied to Government for assignment and the request resulted in issuance of proceedings, dated dt.31.10.2000 and also Possession Certificate, dated 11.12.2004. Therefore, the possession is lawful and the petitioner shall not be dispossessed or evicted at the instance of the Trust.

Respondents 1 to 3 filed counter affidavit in W.P.No.25836 of 2011 and the Government Pleaders report that the same stand is adopted in W.P.No.19964 of 2012.

The 3rd respondent, on the primary documents relied on by the petitioner submits that the subject matter of writ petition is private patta land belongs to the Trust. The petitioner has no right to encroach private land. Likewise, the respondents do not exercise any authority to grant patta or deliver possession. It is stated that the respondents have no right to grant patta to petitioner in private land or to any individual even if the applicant is an ex-serviceman. It is stated that the proceedings dated 11.12.2004 were not issued by the office of Tahsildar, Tirupathi Urban

Mandal and this statement, it is averred, is made on verification of records. The respondents pray for dismissing the writ petitions.

Sri T.C.Krishnan contends that once the possession of petitioner is accepted by the Tahsildar, the objection raised in the counter affidavit is one of convenience. The prayer of petitioner is limited that the petitioner shall not be dispossessed either highhandedly or by referring to the order passed in O.A.No.23 of 2003. He prays for disposing of the writ petitions by protecting the possession of petitioner.

Sri Subba Rao appearing for respondents submits that the writ prayer insofar as Government and its officers are concerned, is not maintainable. According to him, the respondents are admitting the subject matter of writ petition is part of Sy.No.302 and it belongs to the Trust. Therefore, firstly the respondents do not have jurisdiction to pass orders of assignment in respect of private patta land and secondly that the very proceedings, relied on by petitioner, since have not emanated from the office of 3rd respondent, no credence can be attached to such proceedings in considering the prayer under Article 226 of the Constitution of India. He further submits that the proceedings on which the petitioner is relying on are required to be investigated by the Revenue Divisional Officer and appropriate action taken.

Sri K.S.Gopala Krishnan submits that the cause against respondents 1 to 3 in W.P.No.25836 of 2011 is not maintainable. The 4th respondent in W.P.No.25836 of 2011 is a Trust, granting any prayer or considering any relief against a Trust under Article 226 of

Constitution of India firstly is not maintainable and secondly, no extra ordinary case is made out by petitioner for showing indulgence by this Court. He further submits that the documents on which the petitioner is relying upon are too sketchy, the description in the writ prayer is also nebulous and granting protection in such circumstances amounts to presuming possession in a way not known in the Indian Evidence Act, 1872, which this Court may not be doing under Article 226 of the Constitution of India. He prays for dismissing the writ petitions.

I have taken note of the submissions of counsel appearing for parties and perused the record.

The petitioner seeks protection of this Court against the threatened action of dispossession by respondents 1 to 3 in W.P.No.25836 of 2011 or by Trust or at the instance of Trust. The sheet anchor of petitioner's case is Proceedings dated 31.10.2000 and Possession Certificate, dated 11.12.2004 said to have been issued by the District Collector and Tahsildar. The consideration of prayer would have been different if the Revenue Department/Tahsildar is supporting the proceedings and the Possession Certificate relied on by petitioner. The stand of respondents, as already noted, is denying the genuineness of these proceedings and needs no reiteration while considering the writ prayers. Suffice to note that in all fours the case of petitioner is disputed by respondents 1 to 3. This Court in exercise of its judicial review either in deciding the dispute presented for consideration in these two writ petitions or atleast for protecting the right claimed by petitioner in the peculiar facts and circumstances of this case, is not prepared to assume the veracity of the documents on which the petitioner is relying upon and protect the possession to the extent law enables.

Sri T.C.Krishnan, on this aspect of the matter, contends that when this Court is not treating the case pleaded by the petitioner as true and correct, and at the same time, the stand taken in the counter if treated as axiomatic and refuse prayer to petitioner, he submits that petitioner suffers prejudice, therefore to prove the veracity of documents on which the petitioner is relying upon, the petitioner is prepared for the enquiry into this aspect by the Revenue Divisional Officer, Tirupathi, Chittoor District.

After taking note of the alternate submission, as the petitioner is confident and assertive of his stand vis-à-vis the documents on which the petitioner is relying upon, the writ petition is disposed of by this order.

(a) The petitioner is given liberty to file representation before the Revenue Divisional Officer, Tirupathi, Chittoor District, by enclosing a copy of this order, and the originals of proceedings dated dt.31.10.2000 and Possession Certificate dated 11.12.2004 within four weeks from today.

(b) The Revenue Divisional Officer, Tirupathi, Chittoor District, calls for a status report from the Collector, Chittoor, on the proceedings relied on by the petitioner, and also from the Tahsildar, Mandal

Revenue Office, Tirupati Urban Mandal, Chittoor District, affords opportunity to petitioner and passes orders as are deemed fit and proper in this behalf.

(c) The Revenue Divisional Officer and the Tahsildar are directed to complete the said exercise within a further period of two months there from.

(d) The parties are directed to maintain *status-quo* as on date for a period of three months from today.

(e) If the Revenue Divisional Officer in the enquiry ultimately comes to the conclusion that the proceedings are either valid or otherwise, he communicates the same to the Trust as well.

(f) The Endowment Department is free to evict petitioner after three months from today.

Miscellaneous petitions, if any, pending, shall stand closed. No order as to costs.

S. V. BHATT, J

Dt: 20-10-2017
Prv