

HON'BLE SRI JUSTICE S.V. BHATT

W.P. No.28442 OF 2009

ORDER:

Heard Mr.Mukunda Reddy for petitioners and the Assistant Government Pleader (Assignment) for respondents.

The petitioners pray for Mandamus declaring the action of respondents in dispossessing the petitioners from Survey No.68/2 in an extent of Ac.2-33 cents, Johara Puram Village, Kurnool Mandal and District without recourse to law, as illegal, arbitrary and unconstitutional.

The circumstances relevant for disposing of the writ petition are as follows:

B.Rayappa/1st petitioner filed the writ petition alleging that he purchased the subject matter of writ petition through registered sale deed dated 12.07.1971 from one Mala Madanna and ever since claimed to be in possession and enjoyment of the petition land. The respondents in recognition of his right issued pattadar pass book and the name of 1st petitioner was entered in the revenue records as well. During the pendency of the writ petition, 1st petitioner passed away and his son has come on record as petitioner No.2.

The grievance of petitioners is that without issuing notice, conducting enquiry and passing an order or communicating the same, the respondents are trying to interfere with petitioners' possession and enjoyment of subject matter of writ petition.

This Court on 30.12.2009 granted interim direction restraining respondents from dispossessing 1st petitioner from subject matter of the writ petition.

The respondents filed petition to vacate the interim order and in the counter affidavit filed by 2nd respondent/Tahsildar, the reply is that the subject matter of writ petition is "Assessed Waste Land" and the land was assigned in favour of Mala Madanna s/o. Madanna. On coming to know that the said assignee sold land contrary to assignment conditions and also provisions of Act 9 of 1977, the 2nd respondent alleges that notice in Form-I was issued on 17.02.2006 to the assignee. According to 2nd respondent, the notice is received, no explanation was filed and finally the 2nd respondent through proceedings Rc.B.646/2005 dated 15.03.2006 resumed possession of the subject matter of writ petition. On 10.08.2006, it is alleged that the possession was handed over to respondent No.4. The 2nd respondent justifies resumption order and claims that the petitioners are not in possession of subject matter of writ petition.

I have heard the counsel appearing for the parties and also perused the record. The admitted circumstances are that (i) one Mala Madanna is stated to be an assignee of the subject matter of writ petition, (ii) on 12.07.1971 the assignee through registered sale deed sold the subject matter in favour of 1st petitioner, (iii) pattadar pass book was issued to 1st petitioner, thereby it can be presumed that the 2nd respondent accepted the 1st petitioner as owner of subject land and (iv) even assuming that the alienation in favour of

1st petitioner contravenes assignment conditions and provisions of Act 9 of 1977, the 1st petitioner is entitled to notice, opportunity in the enquiry conducted in this behalf and orders are communicated to 1st petitioner who is a transferee from original assignee.

In the case on hand, notice in Form-I alone is issued to assignee but not to 1st petitioner. The counter affidavit is silent on issuing a notice either in Form-I or Form- II to 1st petitioner. But proceeding dated 15.03.2006 is issued resuming the subject land.

Now the complaint of petitioners is that the dispossession is without recourse to law or putting the petitioners on notice. The recapitulation of stand in the counter affidavit *prima facie* establishes that the 1st petitioner was not put on notice before either resuming or claiming possession of Survey No 68/2 by respondents. The grievance of petitioners is that the respondents are trying to dispossess the petitioners without recourse to law is substantiated from the stand in the counter affidavit and the annexures on which respondents are relying upon. The respondents through these behind the back proceedings claim resumption or possession. One of the contentions of petitioners is that the 1st petitioner's vendor/assignee died in the year 1985. If that is the case, the proceeding was initiated and concluded against a dead person. Having regard to above circumstances, I am satisfied that the writ petition can be ordered by directing respondents not to interfere with petitioners' possession and enjoyment in an extent of Ac.2-33

cents in Survey No.68/2 of Johara Puram Village, Kurnool Mandal and District except recourse to law.

The writ petition is ordered accordingly. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date:21.08.2017

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