

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.14341 OF 2005

ORDER:

This Writ Petition under Article 226 of the Constitution of India came to be filed seeking to declare the action of the respondent in making his subordinates to enter into the property belonging to the petitioner admeasuring 5800 Sq. Yards situated in T.S.No.1011 (P) of Waltair Ward, Visakhapatnam (hereinafter called as 'subject property'), on 27.06.2005 and destroy the property of the petitioner and in further to forcibly occupy the said property, as illegal and arbitrary.

The case of the petitioner, as seen from the affidavit filed in support of the writ petition, is that the subject property being a part of land admeasuring Acs.62-00 cents, was possessed by Late Chintakayala Thammaya Naidu, who is the ancestor of the writ petitioner, by virtue of permanent lease deed dated 29.09.1897. The subject property fell to the share of the petitioner in the family partition and the petitioner has been in peaceful possession and enjoyment of the same since 1973. The Visakhapatnam Urban Development Authority (VUDA) obtained possession of land forming part of survey No.1012 situated adjacent to the subject property, from its owner Waltair Club, Visakhapatnam. Under the guise of taking possession of the said land, the authorities sought to trespass into the subject property in the year 1988. Aggrieved by the same, the petitioner filed O.S.No.397 of 1988 on the file of the II Additional Senior Civil Judge, Visakhapatnam, seeking permanent injunction against the Waltair Club as well as VUDA. The trial Court vide its judgment dated 16.03.1998 granted permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the petitioner over the subject property. Challenging the same, both the defendants filed separate appeals vide AS Nos.227 and 118 of 1998 respectively, which were also dismissed by the appellate Court i.e. learned I Additional District Judge, Visakhapatnam vide

common judgement dated 26.08.2004. The petitioner as well as his ancestors have sold certain parts of the land in T.S.No.1011 from time to time and at no point of time, either the Government or the registration authorities have raised any objections. While so, on 27.06.2005 the personnel of the respondent trespassed into the subject property and high handedly demolished the watchman shed situated in the subject property, uprooted the fencing and also erected a board in the subject property to the effect that the said land belongs to Government. Thereafter i.e. on 28.06.2005, the petitioner approached the respondent and brought to his notice the orders passed by the Civil Court, upholding the possession and right of the petitioner over the subject property. Brushing aside the same, the respondent claimed right of the Government over the subject property. Aggrieved by the said action of the respondent and his personnel, present Writ Petition came to be filed.

On 06.07.2005, while admitting the writ petition, this Court granted an order of *Status Quo*, directing the parties not to alter the nature of the subject property.

A counter came to be filed by the respondent denying the right and title of the petitioner over the subject land. It is mainly averred that the lands in T.S.Nos.1011 and 1012 are part of Waltair Estate. Vide G.O.Ms.No.3212 Revenue dt.19.12.1950, a notification under the provisions of A.P. Estates Abolition Act, 1948, was issued taking over the lands of Waltair Estate. From the date of issuance of said GO, all the lands situated in Waltair Estate vested with the Government. As per the provisions of the said Act, the person/s who claim interest, right or title over the lands situated in Estates, shall file an application for grant of patta before the Settlement Officer, who after verification of records and conducting a detailed enquiry, would pass an order either granting patta or rejecting the claim of the applicant. In the instant case, though the petitioner claims to have right over the subject property, has not perfected his title by applying for grant of patta before the Settlement

Officer. It is further contended that since the respondent is not a party to the civil litigation, the finding given by the Civil Courts are not binding on the respondent. Further, the petitioner has filed the civil suit seeking permanent injunction in respect of the subject property, but not for declaration of his title over the subject property. Hence, viewed from any angle, the findings of the Civil Court are not binding on this respondent. Further, the subject property lies in T.S.No.1012, which is a government Poramboke land. As such, the question of respondent or his subordinates trespassing into the said land would not arise. It is further contended that as per the entries made in revenue records, the lands covered by survey Nos.1011 and 1012 are government lands and the petitioner has no right to claim the lands in said survey numbers. Further, the petitioner has not filed copies of the alleged permanent lease deed dated 29.09.1987. Even otherwise, the said permanent lease is not a valid piece of document and the alleged family partition is invalid to claim title or right over the land as the petitioner has not perfected his title over the subject land as required under Section 20 of the said Act. Hence, prayed to dismiss the Writ Petition.

As seen from the affidavit filed in support of the petition, the request of the petitioner is to issue a writ of Mandamus declaring the action of the respondents in making its subordinates to enter into the property belonging to the petitioner without any authority and occupy the same is illegal and arbitrary.

Learned counsel for the petitioner placed on record the orders passed by the civil Court granting injunction in favour of the petitioner, which was confirmed in appeal.

A perusal of the said order *prima facie* indicates that the petitioner is in possession of the property.

Learned Government Pleader would submit that since the Government was not a party to the said proceedings, any orders passed by the civil Court is not binding on them. In any event, he submits that

the petitioner has no right to get property, even assuming that he is in possession as they were taken over as early as in the year 1950 along with Waltair Estates. It is further submitted in the counter that the Assistant Settlement Officer gave pattas to small bits of land in the year 1963 without jurisdiction, which was subsequently cancelled in the year 1966. Hence, it is urged that the entire land in T.S.No.1011 is a Government poramboke land and that the petitioner has illegally encroached on to the same. The same is disputed by the counsel for the petitioner. Even assuming that the petitioner has encroached and is illegally in occupation of the land, the petitioner cannot be dispossessed without following the due process of law.

Accordingly, the writ petition is disposed of directing the authorities to take steps in accordance with law in dispossessing the petitioner, if he is in possession of the same as on today.

Miscellaneous petitions pending in this writ petition, if any, shall stand closed. No costs.

JUSTICE C. PRAVEEN KUMAR

16.08.2017
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