

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.11579 of 2010

ORDER:

Heard Mr.M.V.Durga Prasad, counsel for petitioners and the Assistant Government Pleader (Revenue) for respondents 1 to 4.

The petitioners pray for *mandamus* declaring the action of respondent Nos.2 and 3 in directing respondent No.4 to take possession through proceedings in Rc.304/08, dated 26.12.2009 and further action of respondents in interfering with possession of petitioners in respect of their lands admeasuring Ac.3.50 cents, Ac.3-00 cents, Ac.3.50 cents and Ac.4-00, total admeasuring Ac.14-00 cents situated in R.S.No.11 of Mallavalli Village, Nuzvid Revenue Division, Bapulapadu Mandal, Krishna District, as illegal, arbitrary and unconstitutional.

The petitioners allege that they are farmers and live by agriculture are owners and possessors of the subject matter of writ petition. According to petitioners, their possession and enjoyment spans over 3 to 4 decades and on account of the fact that the subject village is covered by A.P. Absorbed Enclaves (Hyderabad Jagirdars Commutation Sum and Allowance) Act, 1955, a few of the records, which are maintained by the revenue administration, are not maintained by the respondents herein. Such omission is resulting in hardship to enjoyers.

For the order, I am proposing to pass at this stage of the enquiry, the legal aspects raised in the affidavit or tried to be argued by Mr. M.V.Durga Prasad are not adverted to.

The petitioners rely upon the proceedings dated 26.12.2009 to contend that the respondents are accepting encroachment of land in R.S.No.11 by several individuals. It is stated by respondents that the encroachment by several individuals is reported by the committees constituted by the District Collector in this behalf and notices under Sections 7 and 6 of Land Encroachment Ac were issued removing the encroachment and final proceeding dated 26.12.2009 was issued. Now the objection raised against the above narrative is that once the details of encroachers are available and notices to such encroachers are issued, the burden is on the respondents to discharge that the procedure prescribed by law is followed for removing encroachments. These proceedings or orders are relied to testify interfering with the possession of the petitioners. Mr.Durga Prasad contends that such burden can only be discharged by placing on record proof of service of notices on the encroachers. He further contends that the respondents inspite of deciding the list of encroachers on one hand cannot refuse to disclose the details of encroachers or contents of reports and at the same time, treat the petitioners as encroachers and interfere with their possession.

The Assistant Government Pleader on the other hand contends that the initial burden is on petitioners to *prima facie* show that petitioners are in possession of petition land and

according to him, in this case, the petitioners failed to discharge the burden. Therefore, they are not entitled for any relief under Article 226 of Constitution of India.

I have perused the record and taken note of submissions particularly on proceedings dated 26.12.2009, the correspondence obtained by the counsel of petitioners appointed for securing information under the Right to Information Act and also Annexure P-10.

Prima facie, this Court is of the view that the respondents are accepting encroachment of land in R.S.No.11 of Mallavalli Village, Nuzvid Revenue Division, Bapulapadu Mandal, Krishna District. The simple way of discharging in this behalf is to show that is followed and secondly that the petitioners who are treated as encroachers are put on notice and orders for removing encroachments are passed. On 20.05.2010, this Court granted the following interim order:

“There shall be status quo existing as on this day with regard to the possession in respect of land admeasuring Ac.14-00 cents (Ac.3.50 cents; Ac.3-00 cents; Ac.3-50 cents and Ac.4-00 cents) comprised in R.S.No.11 of Mallavalli Village, Nuzvid Revenue Division, Bapulapadu Mandal, Krishna District.”

The interim order is subsisting as on date. The respondents neither filed counter affidavit nor produced record for perusal by the Court. Keeping in view the short issue of fact for consideration as connected writ petition is already disposed of, I am satisfied the present writ petition can be disposed of by this order

(a) Interim order granted on 20.05.2010 is made final order in the writ petition.

(b) Respondent No.3 or 4 is directed to cause local inspection of petition land, enquire into nature of or persons in enjoyment and if in the local inspection, it transpires that the petitioners are in possession of petition land, and raised mango garden, the respondents are directed to follow the procedure stipulated by law before either interfering with physical possession or enjoyment of mango garden of the petitioners. It is needless to observe that the respondents put petitioners on notice either in the enquiry that is conducted in this behalf or at the time of causing local inspection. The petitioners are given opportunity to file supporting statements or documents in evidence of their claim. The authorities are free to pass orders after considering the material on record in accordance with law and take steps if warranted for removing encroachments. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S.V.BHATT, J

Date: 30.08.2017
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