

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR**

**WRIT PETITION No. 11575 of 2009**

**ORDER:**

1) The present Writ Petition came to be filed seeking issuance of writ of mandamus declaring the action of the first respondent in demolishing petitioner's dwelling house on 09.06.2009 as illegal, arbitrary and unconstitutional and consequently direct the respondents not to interfere with the petitioner's peaceful possession and enjoyment over the property admeasuring 107 sq. yards situated in Plot Nos.1725/A and 1725/B in Sy.No.13/Part of Vadlapudi, R.H. Colony, Kanithi Colony.

2) The facts in issue are as under :-

The petitioner herein claims to be the owner and possessor of the property referred to above. Initially Plot No.1725/A and 1725/B were allotted to one Perla Appa Rao having R.Card No.1683 and Koviri Bapinayya having R.Card No.1654 vide proceedings Rc.No.493/06, dated 15.07.1996 of the Special Officer, L.A. Steel Plant, Visakhapatnam respectively. It is the case of the petitioner that the village Gangavaram was acquired for the purpose of Vizag Steel Plant and the State Government allotted house site plots to the displaced persons. As Perla Apparao and Koviri Bapanayya were displaced persons, the first respondent herein allotted the above mentioned two house plots. Later pattas were also said to have been issued by the Mandal Revenue Officer, Gajuwaka vide Patta Nos.186/2003/ SA/Dt:22.05.2003 and

187/2003/SA/Dt:22.05.2003 respectively. The averments in the affidavit further show that the petitioner purchased these two house plots by way of sale deed Nos.1875/2008 and 2282/2008 respectively and got the same registered in the office of Sub-Registrar, Pedagantyada and that they have been in possession and enjoyment of the property since then. It is the case of the petitioner that substantial amount was spent for the development of the said plots. While things stood thus, on 09.06.2009, the respondent No.1 demolished the petitioner's dwelling house without giving any notice. This highhanded action of the respondent is the subject matter of challenge in the present Writ Petition.

3) While issuing notice, this Court ordered *status-quo* to be maintained.

4) A counter came to be filed by the respondents disputing the averments made in the affidavit filed in support of the Writ Petition. It is the case of the respondents that K.Appala Suryanarayana and Bhayyavarapu Nookamma represented that they are the R.Card holders and have been allotted house-plots in R.H. colony, Vadlapudi village admeasuring 107 sq. yards to each bearing Plot Nos.1725/A and 1725/B vide proceedings Rc.No.72/04/RI/dated:05.04.2005. It is stated that one N. Srinivasa Rao, who purchased the Plot No.1725, encroached the adjacent sites 1725/A and 1725/B with a request to handover the plots duly evicting the encroachers. It is averred in the counter filed by the

Special Grade Deputy Collector, Steel Plant (L.A.), Visakhapatnam that as per physical verification of the land, Plot No.1725 was purchased by Smt. Yerramsetti Gopala Krishna and the said person has encroached into the plots by fabricating pattas which are subject matter of dispute in the present Writ Petition by fabricating pattas. It is the case of the respondents that petitioner and others have unauthorizedly occupied the above plots and are using the same by raising A.C. sheet sheds. The averments in the counter show that a notice dated 16.07.2007 came to be issued to the petitioner asking him to attend an enquiry and produce any documentary evidence. But the petitioner though attended the enquiry failed to produce any documentary evidence. The averments in the counter further show that the house site pattas produced by the petitioner are fabricated and not genuine and that the land was taken possession from the unlawful encroacher on the application of the original assignees and the same was restored to the original assignees on 09.06.2009.

5) This aspect of taking possession of the land and restoring to the original assignees is strongly refuted by the learned counsel for the petitioner. Further, he placed on record the property tax receipts, electricity bills and also the approved plan for construction of the house to show that the petitioner is in possession of the property and also raised a building.

6) On the other hand, the counter filed by the Special Officer would show that they have already taken possession the property in the year 2009 itself and handover the same to the original assignee. It is their case that the pattas relied upon by the petitioner are fake and fabricated. From the averments made in the affidavit and also in the counter, it is clear that there is some dispute over many factual aspects, more particularly with regard to title and possession.

7) Therefore, the question is whether this Court can go into the factual aspects with regard to title and possession in a Writ Petition filed under Article 226 of the Constitution of India?

8) In **S.Lingamaiah v. State of Andhra Pradesh and others**<sup>1</sup> this Court dealt with an issue where a Writ Petition came to be filed against a show cause notice issued under Land Encroachment Act. The petitioner did not respond to the show cause notice, which lead to passing of the final orders and consequently eviction of the petitioner from the land.

While dealing with the dispute over a title, this Court observed as under :

40. So from the above narration of facts, it becomes crystal clear that the petitioner has not only taken inconsistent pleas, but has himself made a candid admission that there is a serious dispute with respect to his title to the land. It is long well settled by a plethora of decisions that where there are serious disputes with respect to title of a property, this Court in exercise of its jurisdiction under [Article 226](#) of the Constitution of India, does not decide such disputed questions, for such questions have to be decided upon leading of evidence by the contesting parties, and unless and until the contesting parties lead evidence in support of their respective claims, such disputed questions cannot be decided or gone into. Therefore,

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<sup>1</sup> 2004(2) ALD 837

the remedy of the parties, if any, is to approach the competent civil Court and get their title disputes to the property settled by leading evidence in support of their respective claims.

49. In the instant case, it is the case of the Government that the land which the petitioner claims to be in his possession, was recorded as Government poramboke land in the revenue records in the survey made during 1964 to 1969 and the same was finally notified in the Gazette on 29-10-1979 and that the petitioner was shown as an unauthorized occupant and Sivai Jamabandi (penalty) was being collected from him. When such is the case of the Government, it is for the petitioner to prove his title to the property by filing a suit for declaration before the competent Civil Court having jurisdiction. Therefore, the contention of the petitioner that inasmuch as he is in possession of the land, the Government cannot evict him therefrom, and it has to approach the competent Civil Court for his eviction and it cannot take recourse to the proceedings under the Land Encroachment Act, is not well-founded and is rejected.

9) Similarly in **State of Assam V. Bhaskar Jyoti Sarma and others**<sup>2</sup> the Apex Court while dealing with the provisions of Urban Land (Ceiling and Regulation) Act, 1976 and the possession of the respondents over the said land observed as under:

The case of the appellant is that actual physical possession of the land was taken over on 7th December, 1991 no matter unilaterally and without notice to the erstwhile land owner. That assertion is stoutly denied by the respondents giving rise to seriously disputed question of fact which may not be amenable to a satisfactory determination by the High Court in exercise of its writ jurisdiction. But assuming that any such determination is possible even in proceedings under [Article 226](#) of the constitution, what needs examination is whether the failure of the Government or the authorized officer or the competent authority to issue a notice to the land owners in terms of [Section 10\(5\)](#) would by itself mean that such dispossession is no dispossession in the eye of law and hence insufficient to attract [Section 3](#) of the Repeal Act. Our answer to that question is in the negative.

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<sup>2</sup> 2015(5) SCC 321

In support of the contention that the respondents are even today in actual physical possession of the land in question reliance is placed upon certain electricity bills and bills paid for the telephone connection that stood in the name of one Mr. Sanatan Baishya. It was contended that said Mr. Sanatan Baishya was none other than the caretaker of the property of the respondents. There is, however, nothing on record to substantiate that assertion. The telephone bills and electricity bills also relate to the period from 2001 onwards only. There is nothing on record before us nor was anything placed before the High Court to suggest that between 7th December, 1991 till the date the land in question was allotted to GMDA in December, 2003 the owner or his legal heirs after his demise had continued to be in possession. All that we have is rival claims of the parties based on affidavits in support thereof. We repeatedly asked learned counsel for the parties whether they can, upon remand on the analogy of the decision in the case of *Gyanaba Dilavarsinh Jadega* (supra), adduce any documentary evidence that would enable the High Court to record a finding in regard to actual possession. They were unable to point out or refer to any such evidence. That being so the question whether actual physical possession was taken over remains a seriously disputed question of fact which is not amenable to a satisfactory determination by the High Court in proceedings under [Article 226](#) of the Constitution no matter the High Court may in its discretion in certain situations upon such determination. Remand to the High Court to have a finding on the question of dispossession, therefore, does not appear to us to be a viable solution.

10) In **State of Rajasthan v. Bhawani Singh**<sup>3</sup>, the Apex Court observed as under:

"Having heard the counsel for the parties, we are of the opinion that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition."

11) In **M.S.N.Raju and others v. M.R.O., Jami Mandal, Vizianagaram and others**<sup>4</sup> this Court held that as the controversy

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<sup>3</sup> AIR 1992 SC 1018

between parties is factual, it is not proper for this Court to take up investigation of such disputed facts and record its finding thereupon. It has been held that factual controversies cannot be taken up in writ petition and that the parties have to work out other legal remedies available to them.

12) From the judgments referred to above, it is clear that when the issue involves disputed questions of fact with regard to immovable property, it shall not be proper for this Court to take up investigation of such disputed factual aspects and record a finding thereon. In other words disputes regarding possession of immovable property cannot be summarily decided under Article 226 of the Constitution of India basing on the affidavits and counter affidavits without examination of the witnesses. As held by this Court in **Syed Kazim Bahadur v. District Collector, Rangareddy District**<sup>5</sup> the parties have an effective, alternative, comprehensive remedy by way of private law review, for declaration, injunction and damages before the Civil Court.

13) In **Sohan Lal v. Union of India**<sup>6</sup> the Apex Court held as under :-

".....We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the appellant and Jagan Nath. If we were to do so, we would be entering into a field of investigation which is more appropriate for a civil court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs. There are questions of fact and law which are in dispute requiring determination before the respective claims of the parties to this appeal can be decided.

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<sup>4</sup> 2011(3) ALT 118

<sup>5</sup> 2002(3) ALT 389

<sup>6</sup> 1957(7) SCR 738

Before the property in dispute can be restored to Jagan Nath it will be necessary to declare that he had title in that property and was entitled to recover possession of it. This would in effect amount to passing a decree in his favour. In the circumstances to be mentioned hereafter, it is a matter for serious consideration whether in proceedings under Article 226 of the Constitution such a declaration ought to be made and restoration of the property to Jagan Nath be ordered....." (emphasis supplied).

"In support of the contention that the respondents are even today in actual physical possession of the land in question reliance is placed upon certain electricity bills and bills paid for the telephone connection that stood in the name of one Mr. Sanatan Baishya. It was contended that said Mr. Sanatan Baishya was none other than the caretaker of the property of the respondents. There is, however, nothing on record to substantiate that assertion. The telephone bills and electricity bills also relate to the period from 2001 onwards only. There is nothing on record before us nor was anything placed before the High Court to suggest that between 7th December, 1991 till the date the land in question was allotted to GMDA in December, 2003 the owner or his legal heirs after his demise had continued to be in possession. All that we have is rival claims of the parties based on affidavits in support thereof. We repeatedly asked learned counsel for the parties whether they can, upon remand on the analogy of the decision in the case of *Gyanaba Dilavarsinh Jadega* (supra), adduce any documentary evidence that would enable the High Court to record a finding in regard to actual possession. They were unable to point out or refer to any such evidence. That being so the question whether actual physical possession was taken over remains a seriously disputed question of fact which is not amenable to a satisfactory determination by the High Court in proceedings under [Article 226](#) of the Constitution no matter the High Court may in its discretion in certain situations upon such determination. Remand to the High Court to have a finding on the question of dispossession, therefore, does not appear to us to be a viable solution."

- 14) Therefore, this Court is of the view that factual aspects with regard to title and possession cannot be decided in the Writ Petition. However, having regard to the claim and counterclaim made with regard

to possession, the present Writ Petition is disposed of holding that if the petitioner is in possession of the property, the authorities shall not dispossess him without following due process of law. On the other hand, if the petitioner is not in possession of the property, the aggrieved party shall approach the civil court and obtain appropriate orders within a period of four months from today. The order of *status-quo* passed by this Court on 15.06.2009 shall be maintained for a period of four months from today.

15) No costs. As a sequel to it, miscellaneous petitions pending if any in this Writ Petition shall stand closed.

Date:24.01.2017

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JUSTICE C. PRAVEEN KUMAR

