

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.4411 OF 2011

ORDER:

Heard learned counsel for the petitioners and learned Government Pleader for respondents.

The petitioners claim that they are in possession and occupation of the lands of an extent of Acs.3.00 each situated adjacent to survey No.63 in between the forest land and the revenue lands of Tamaram Revenue Village, Makavaripalem Mandal, Visakhapatnam District for the last sixty years. They have been making requests to the revenue authorities for issuance of pattas. They have developed the waste lands by spending the amounts and developed cashew garden and mango trees. While so, when the fifth respondent issued a notice on 08.09.2009, though the land does not belong to Forest Department, the petitioners submitted a reply. Thereafter, a Panchanama was conducted by the forest officials on 30.12.2009 and a report was forwarded to the Divisional Forest Officer stating that the petitioners have been in possession for several years and revenue authorities can grant pattas in their favour. It is their further case that thereafter no action was taken and a new Divisional Forest Officer came to the post. He again issued a fresh notice at the instance of the local political leaders. The petitioners also stated that no specific survey number was assigned to the land in their occupation. When there was a threat of dispossession, the petitioners filed the present writ petition seeking a direction to the respondents not to evict them from the lands in their occupation.

This Court, by order dated 18.03.2011, granted *status quo* with regard to the possession and the said order has been in operation till today.

The fourth respondent filed a counter affidavit stating that the land in survey No.63 of Tamaram Revenue Village, Makavaripalem Mandal, Visakhapatnam District was originally classified as 'Zeroithy land' and the total extent of the said land is Acs.50.00. It was surrendered by the declarant in land ceiling proceedings as he was found to be the surplus landholder and it was assigned in favour of certain beneficiaries duly making sub divisions 342 to 345. There is a reserve forest land by name 'Theeda Forest Block' situated towards northern boundary of survey No.63 as well as survey No.78 of Tamaram Revenue Village. There is a land of an extent of Acs.16 to 17 situated in between the forest land and revenue boundaries of survey No.63. It is called as 'Gap Area'. The petitioners are not residents of Tamaram Village and originally some people belonging to Scheduled Caste community tried to encroach upon the said land and planted some cashew plants. Since the land was situated near reserve forest land, forest officials warned them and they left the land. When the cashew plants grew, the writ petitioners tried to encroach the said land, but they were never in possession of the said land. The present writ petition was mischievously filed by the petitioners to grab the land. The petitioners are residents of Rachapalli Village of Makavaripalem Mandal. The allegation that the petitioners raised the cashew plants is also denied. The possession of the petitioners is also denied. However, it is stated that the action will be taken under Land Encroachment Act duly following the procedure since there was an illegal encroachment on the subject land. It is also stated that action will be taken for assignment of lands in favour of the original ryots as per the Rules under the Assignment Laws.

The possession of the land by the petitioners is disputed by the fourth respondent but the fourth respondent admitted that there is a land of an extent of Acs.16 to 17 in 'Gap Area' between the forest land and the land situated in survey No.63. In view of the same, it cannot be held that

the said land belongs to Forest Department. If any land of the Forest Department is encroached by any person, it is always open to the Forest Department to take appropriate action in accordance with law. But since the land claimed by the petitioners is stated to have been situated in 'Gap Area' and in view of the statement made by the fourth respondent, if it is found that the land is in unauthorized encroachment, action should be taken under the Land Encroachment Act or if the petitioners are found to be eligible for assignment of land, they should be granted pattas under the relevant laws. Hence, the matter is remanded to the fourth respondent for appropriate action as per the statement made by him in the counter affidavit filed in the present writ petition. In order to initiate said action, the petitioners are given liberty to submit a representation to the fourth respondent within a period of three months from the date of receipt of copy of this order evidencing their possession with any documentary proof if their claim is for assignment. The fourth respondent shall take necessary action in accordance with law after receipt of the representation from the petitioners. It is made clear that if the petitioners do not submit any representation to the fourth respondent, it is always open to the fourth respondent to take necessary action in accordance with law.

The writ petition is accordingly disposed of. The *status quo* granted by this Court, by order dated 18.03.2011, shall continue till an order is passed by the fourth respondent.

Miscellaneous petitions, if any, pending in the writ petition shall stand closed.

A.RAMALINGESWARA RAO, J

06.06.2017
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