

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 22402 of 2016

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus, declaring the action of the respondents 2 to 4 in interfering with peaceful possession and enjoyment of the petitioners over the land admeasuring Ac.1.06 cents in Sy.No.162/ 2 of Joharapuram Village, Kurnool Municipality, Kurnool District with the instigation of respondents 5 and 6, as illegal and arbitrary.

2) The petitioners herein claims to be the absolute owners and possessors of land admeasuring Ac.1.06 cents in Sy.No.162/ 2 situated at Joharapuram Village, Kurnool District. They claimed to have been purchased the said property from one S Khadar Hussain and S Apsar Hussain. The above said two persons, who are said to be the owners of the property, gave power of attorney to one Patnam Siva Jyothi and Repalle Udayasen vide document No.6349/ 2009, dated 15.09.2009. The General Power of Attorney holders are said to have executed the sale deed in favour of the petitioners vide registered sale deed bearing document No.10842/ 2010 dated 18.12.2010. Since then the petitioners claim to be in possession of the property without interference from any corners. The averments in the affidavit further show that the petitioners have also erected poles around the land, but now the unofficial respondents 5 and 6 are trying to dispossess the petitioners from their lands with the help of respondents 2 to 4. Challenging the same, the present writ petition came to be filed.

3) By an order dated 19.07.2016, this Court while issuing notice, directed the respondents 2 to 4 not to interfere with the peaceful

possession and enjoyment of petitioners' land in Sy.No.162/ 2 admeasuring Ac.1.06 cents.

4) A counter came to be filed by the official respondents as well as the un-official respondents. The counter filed by the 4th respondent would reveal that the land in Sy.No.162 was classified as Masjid Inam Land. The plea that the petitioners are in possession of the property and that they have purchased the same from their vendors is disputed. It is stated that even if there is a transaction, the same is invalid one since the said land is classified as Masjid Inam Land as per the R.S.R. of Joharapuram Village. It is further stated that as per the R.S.R., the Manager of Budankha Mosque is shown as pattadar of the said land. In support of the same they placed on record the survey and re-settlement register of the said village.

5) The counter filed by the un-official respondents show that the 6th respondent, who is the Secretary of the mosque, authorized the 5th respondent to file the counter. From a reading of the counter, it is clear that the land in the disputed survey number was gifted in favour of various mosques by late Nawab Mohammed Ashraf Khan in the year 1954 vide registered gift deed No.1576/ 1954, dated 24.09.1954. It was stated in the gift deed that the income derived from the said land has to be spent for the maintenance and betterment of the mosque. The averment in the affidavit that the petitioners have purchased the property is false. According to them, the document showing title is a fake one and it has been created only to knock away the property. Since the land grabbers are trying to take away the property, they issued a notification cautioning the general public not to purchase the land. The allegation that the petitioners are being in possession of the

property, erected poles around the property and that respondents 5 and 6 are trying to dispossess the petitioners from the said land are strongly denied. It is stated that the question of interference would not arise since the petitioners are not in possession of the property. It is further stated that a complaint also came to be filed before the Legal Services Authority, who sent a notice to the petitioners. In support of the said plea, the un-official respondents placed on record the certified copy of the registered gift deed bearing document No.1576 of 1954, the entries made in 1-B Register and the certificate issued by the office of the Tahsildar.

6) As seen from the material placed before the court, the petitioners herein claimed themselves to be owners of the property by virtue of the registered sale deed said to have been executed by their vendors. The un-official respondents, who are representing the mosque committee placed on record the gift deed said to have been executed by late Nawab Mohammed Ashraf Khan in the year 1954, 1-B register dated 22.07.2016 and the certificate issued by the Tahsildar, to show that the said land is classified as Masjid Inam Land. The respondents denied the averments in the writ affidavit to the affect that the petitioners herein are in possession of the property. It appears to be a dispute with regard to title and possession between the petitioners and un-official respondents. Apparently, the issues to be decided involve number of factual aspects.

7) In a situation like this, the Apex Court in *SDO, Grid Corporation of Orissa Limited v. Timudu Oram*¹ held as under:

¹ (2005) 6 SCC 156

“It is the settled legal position that where disputed questions of facts are involved a petition under [Article 226](#) of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein.”

8) In view of the judgment referred to above and having regard to the fact that the issue involves disputed factual aspects more particularly with regard to title and possession over the property, this Court is of the view that the same cannot be adjudicated in a writ petition, filed under Article 226 of the Constitution of India.

9) Hence, the writ petition is disposed of giving liberty to the aggrieved person to approach the competent Court, seeking redressal of their grievance. There shall be no order as to costs.

10) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

12.04.2017
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