

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.24401 of 2017 & W.P.M.P.No.30465 of 2017

COMMON ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of respondent Nos.2 to 4 in not providing police protection to the petitioner and to his land admeasuring Ac.0.20 gts., in Sy.No.223/ B situated at Ahmed Nagar Colony, Zaheerabad, basing on the complaint made by the petitioner dated 29.06.2017 and 03.07.2017 as illegal, arbitrary and violative of Articles 14, 21 and 300-A of the Constitution of India.

2) One Mohd. Khaja, filed W.P.M.P.No.30465 of 2017 seeking his impleadment in the writ petition. The reason for his impleadment is that he claims to be in possession and enjoyment of the subject property and as such his presence is very much essential.

3) Since no counter is filed to the implead petition, W.P.M.P.No.30465 of 2017 is allowed.

4) Insofar as the main writ petition is concerned, it is to be noted here that the writ petitioner herein, who claims to be in possession of the property, by virtue of the orders passed by the civil Court in O.S.No.89 of 2001 on the file of the Junior Civil Judge, Zaheerabad and also the findings in A.S.No.61 of 2006 on

the file of the V Additional District and Sessions Judge, Medak at Sangareddy, seeks police protection.

5) Before proceeding further, it would be necessary to note that initially O.S.No.89 of 2001 came to be filed by Khaja Miya, who is the implead petitioner herein, against the petitioner and another for perpetual injunction. After considering the oral and documentary evidence adduced, the trial Court dismissed the said suit on 25.07.2005. Challenging the same, A.S.No.61 of 2006 came to be filed. By its judgment dated 03.01.2007, the appellate authority, while dismissing the appeal, observed as under:

“In this case, the plaintiff does not know where the land to an extent of Ac.0.19 gts., is situated. Further, defendant Nos.1 and 2 have not stated that the said Ac.0.19 gts., belongs to them. So, the extent of Ac.0.19 gts., of land certainly belongs to the plaintiff. When defendant Nos.1 and 2 are not interfering, first the plaintiff has to locate the said land and then ask for perpetual injunction.”

6) From the judgment of the appellate Court, it is clear that there exists a dispute with regard to the location of the land. A partition suit vide O.S.No.12 of 2009 came to be filed by one Nahni Bee and others against the implead petitioner and others. Apart from that the contents of the implead petition would show that subsequent to the order of the appellate Court, the implead petitioner made an application before the Survey and Settlement Department for conducting survey and demarcation. Their

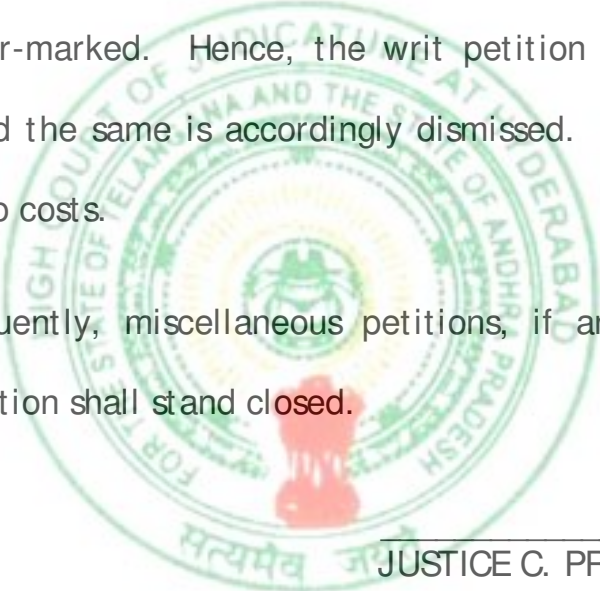
inaction led to filing of W.P.No.31531 of 2011, wherein this Court directed the Surveyor to conduct survey over Ac.0.19 gts., of land and demarcate the same. While conducting survey, the authorities issued notice to the writ petitioner and demarcated Ac.0.19 gts., of land. The report prepared by the surveyor clearly shows that the implead petitioner is in possession of the property. Prior to filing of the present writ petition, the petitioner filed W.P.No.17249 of 2012, questioning the action of the police in interfering with his possession and enjoyment. The said writ petition was closed on 18.04.2012 basing on the representation made by the Government Pleader for Home that no case is registered against the petitioner and respondent Nos.2 and 3 are not interfering with the civil disputes between the petitioner and respondent No.4. Five years later, the present writ petition came to be filed.

7) As seen from the records, suit filed by the implead petitioner was dismissed and an appeal filed was also dismissed. But however, the appellate Court while dismissing the appeal categorically observed that injunction can be granted only if the property is located. Meaning thereby that there is any amount of dispute with regard to identification of Ac.0.19 gts. of land. Both the parties are claiming to be in possession of the property. The report of the Mandal Surveyor, which was prepared in the year 2011-2012, would show that the implead petitioner is in possession of the property. One does not know the situation as on today. In the year 2009, a partition suit was also filed by Nahin

Bee and others seeking partition, in which the implead petitioner was shown as defendant No.10. The said suit is still pending as on today.

8) In view of the rival claims made and in the absence of any positive direction from any civil Court in favour of either of the party, this Court is of the view that the request of the petitioner seeking a direction to the police to give police protection cannot be considered. Apart from that, from the findings of the appellate Court, it is clear that property itself is not yet identified/ ear-marked. Hence, the writ petition is liable to be dismissed and the same is accordingly dismissed. There shall be no order as to costs.

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



JUSTICE C. PRAVEEN KUMAR

02.08.2017
gkv