

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.44141 of 2017

ORDER:

This Writ Petition is filed by the petitioner challenging the action of the respondents, particularly respondents 5 and 6, in preventing him from erecting fencing around his lands and thereby interfering with his possession and enjoyment of the petitioner lands to an extent of Ac.41-05 cents and an extent of Ac.01-70 cents, situated in Sy.Nos.11/1 and 18/1 of Pudi village respectively, Vadamalapet Mandal, Chittoor District.

2) It is the case of the petitioner that as against the common order, dated 28.05.2009, passed in R.P.Nos.49 and 50 of 1997, by the 4th respondent-Joint Collector-cum-Settlement Officer, Chittoor District, under the A.P. (.A.) Estates (Abolition and Conversion into Ryotwary) Act, 1948 (in short "the Act"), he filed a Revision before the 3rd respondent-Director of Survey and Settlements (A.P.), Velagapudi, in 2010. The said Revision was numbered as R.P.No.3 of 2010 and the same is pending till date. It is further submitted that the land in issue is in an extent of Ac.20-00 cents; Ac. 21-05 cents and Ac.1-70 cents (in total Ac.42-75 cents) situated in Sy.Nos.11/1, 11/1 and 18/1 respectively, of Pudi Village, Vadamalapet Mandal, Chittoor District. Pending disposal of the Revision Petitions, as the respondents were causing obstruction to the roof work of the motor-shed situated in Sy.No.11/1, the petitioner filed W.P.No.7703 of 2005 and this Court disposed of the same with a direction to both the parties to maintain *status quo*, with regard to possession of the subject land pending disposal of the revision before the authorities concerned. Even thereafter,

when the respondents were trying to dispossess the petitioner from the subject land, he filed another W.P.No.25323 of 2010 and the same also came to be disposed of on 08.10.2010 with a direction to the respondents not to dispossess him from the subject land pending disposal of the revision before respondent No.1 therein. When the respondents tried to disturb his power-supply through the officials of the Electricity Board, the petitioner filed W.P.No.17154 of 2001. This Court, while allowing the said Writ Petition on 16.08.2005, directed the 3rd respondent therein- Divisional Engineer (Operation), A.P. Transco, not to disconnect the supply of power based on the letter of the Mandal Revenue Officer-2nd respondent, therein, except by following due process of law. All these proceedings would go to show that the respondents have been interfering with the possession and enjoyment of the petitioner over the subject land though the Revision Petition is pending.

3) Now, the petitioner, in order to protect the land from being encroached and the standing crop therein, when is attempting to fence the land, the respondent authorities have been obstructing the same. It is also the assertion of the learned counsel for the petitioner that the petitioner will not claim any equities in the event of ultimately finding in the legal proceedings that he does not have any legal right in the land, and will leave the fencing to the Government as it is.

4) Learned Government Pleader for Revenue (A.P.), on the other hand, would point out that in the order dated 28.05.2009, passed by 4th respondent, it was categorically found that the land in

Sy.No.11 in an extent of Ac.42.30 cents is recorded as 'Kotha Cheruvu' (Tank Poramboke). The MRO had incorporated the changes in the accounts and also submitted copies of record on 28.11.2008. As the land is recorded as 'Tank Poramboke', in terms of the Judgment of the Supreme Court there is a prohibition to alter the nature of the water resources or tank. He would also submit that so far as the land in Sy.No.18/1 is concerned, the same has been surrendered by the petitioners themselves and the authorities had recorded that the petitioners had never made any claim with regard to the said land which assertion is disputed by the learned counsel for the petitioner. Learned Government Pleader also would assert that the so-called Revision filed by the petitioner is not maintainable, on account of Section 15(2) of the Act, before the 2nd respondent and as a matter of fact, it would lie only to the District Judge under Section 15(2) A.

5) Having considered the respective submissions, there being no dispute with regard to the pendency of Revision Petition before the Commisisoner-2nd respondent and in view of the fact that on earlier occasion, the petitioner was given protection, considering the submission of the learned counsel for the petitioner that he would not claim any equities with respect to the fencing, which is being erected now, and would not claim any expenditure incurred for the same, this Court is of the view that the petitioner shall not be prevented from putting up the fencing pending disposal of the Revision Petition before the 2nd respondent. Considering the fact that the Revision Petition, admittedly, pending from 2010 before the 3rd respondent and considering the specific assertion of the 4th respondent that the same is a water body, there is no justification

for the 3rd respondent in keeping the revision pending for seven years.

6) In those circumstances, 3rd respondent shall pass appropriate orders in R.P.No.3 of 2010, after giving opportunity to the petitioner and after hearing on the merits of the matter, within a period of eight weeks from the date of receipt of a copy of this Order.

7) The observations made in the present Writ Petition shall not be construed as expressing any opinion with respect to the rights of the parties, as they are only made for the purpose of disposal of the Writ Petition to a limited extent after taking into consideration of the respective submissions of the parties. No costs.

8) Consequently, Miscellaneous Petitions, pending if any, shall stand closed.

Date: 26.12.2017.

CHALLA KODANDA RAM, J.

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