HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.10685 OF 2017

ORDER:

Heard Mr.B.Chandrasekhar, learned counsel for petitioners and the learned Assistant Government Pleader for Revenue.

The petitioners pray for Mandamus declaring the action of respondents in dispossessing/demolishing the petitioners' residential houses bearing plot Nos.43-317, 43-316 and 43-267 and 268 respectively at Mannam Anjaneya Nagar, Madhurawada, Visakapatnam, as illegal, arbitrary and unconstitutional.

The case of petitioners is that the petitioners are owners and possessors of small extents of land measuring 60 sq. yards having purchased from lawful owners. The petitioners claim to have constructed small residential houses and residing therein. The Municipal Corporation taking note of the enjoyment by petitioners and also construction of small houses subjected the houses to assessment bearing I.D.Nos.20160511951, 20160511950 and 20150511634. The property tax is collected at Rs.148/- for each house. The water and electricity connections, it is stated, are also given and, therefore, the petitioners are in settled possession. The cause of action for filing the writ petition reads thus:

> "It is submitted that while the matters stood thus, now the respondents 3 and 4 herein are making hectic attempts to make the petitioners evict from the said residential houses, as such the respondents 2 and 3 herein with their men and servants came to the residential houses of the petitioners herein directing the petitioners to evict from the premises on 17.03.2017, it is submitted that when the petitioners resisted them and they went away

> stating orally that they are giving one week time for eviction, it is further submitted that the respondents 3 and 4 herein did not issue any notice in advance seeking the petitioners to evict from the said premises, which is quite contrary to the principles of natural justice, if at all the respondents 3 and 4 intends to initiate any proceedings they might have issued any prior notice under the provisions of law, failing which the inaction on the part of the respondents 3 and 4 cannot be holds good in the eye of law".

Hence, the writ petition.

Mr.Chandra Sekhar submits that the petitioners are entitled for protection from highhanded and illegal acts of respondents. Even assuming without admitting that the petitioners are encroachers of small extents of land covered by plot Nos.43-317, 43-316 and 43-267 and 268, according to him, one authority accepts possession and enjoyment and subjects the petitioners to property tax assessment orders and another authority is coming and dispossessing the petitioners without recourse to law and such approach is unconstitutional. This Court is protecting by way of interim order similarly situated persons and there ought not to be discrimination in protecting possession by this Court.

The learned Assistant Government Pleader contends that the affidavit is bereft of details of date of sale, whether it is registered or unregistered and the names of vendors and the documentary evidence showing that the vendors of petitioners had right, title and interest in the property covered by plot Nos.43-317, 43-316 and 43-267 and 268. According to him, there is no reference to survey number in which these houses are constructed or property tax levied and whether it is part of layout, much less a sanctioned layout. On the receipts relied on by the petitioners, the Assistant Government Pleader contends that the property tax receipts cannot be treated as documents evidencing actual and physical possession of property by a person. At this stage of the matter, it is not clear whether the receipts are voluntary physical payments by petitioners to corporation or not and if the Court assumes everything in favour of petitioners and issues directions, the same leads to multiplicity of proceedings, whether or not the respondents will be called upon to issue notice to petitioners etc. He prays for dismissing the writ petitions.

I have taken note of the contentions urged by the learned counsel appearing for the parties.

The petitioners seek protection of this Court by way of Mandamus restraining the respondents from in any way interfering with petitioners' possession and secondly, if necessary, to interdict with such possession in accordance with law. It is well settled that a Court presumes possession of a party from the circumstances pleaded and proved with documentary evidence. The case of the petitioners is not that they are encroachers of subject matter of the writ petition, but the petitioners claim to have purchased from lawful owners. At this stage of the matter, this Court considers it appropriate to take note of the sketchy pleadings and also lack of evidence in support of transfer and title in favour of petitioners of any extent for the property covered by plot Nos.43-317, 43-316 and

43-267 and 268. Therefore, the first plea of the petitioners is liable to be rejected and is, accordingly, rejected.

The next document on which the petitioners rely on is stray and solitary house property tax assessed by the municipal corporation. The solitary physical payment without supporting documents cannot be relied on by a Court even for a limited purpose of appreciating the physical possession. Hence, the second plea is also liable to rejected and is, accordingly, rejected.

The third submission is pendency of similar writ petition and issuing similar directions by this Court. There could be cases which are filed wherein orders are granted protecting possession of petitioners by this Court. Even assuming such orders are there while protecting possession of a party, the Court exempts individual merits with which the case is pleaded. Examined from that perspective, this Court is of the view that the petitioners failed to make out case and the third ground is also liable to be rejected and is, accordingly, rejected.

For the above reasons, the writ petition fails and is, accordingly, dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending stand closed.

S.V.BHATT, J

16th April, 2018
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