

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.32305 of 2017

ORDER :

Petitioners had filed this Writ Petition challenging the action of respondents in trying to dispossess them from the land admeasuring Ac.10.13 gts in Sy.No.2 of Lakkaram village, Utnoor Mandal, Adilabad District without following due process of law.

PETITIONERS' CASE

2. According to petitioners, this land has been in possession and enjoyment of their family for the past 80 years and after the death of their father, they partitioned the land among themselves. They contend that the Revenue authorities mutated their names in respect of the schedule land and the same was continued till 2011-12 and that thereafter the Revenue officials stopped entering their names in the revenue records for the reasons best known to them.

3. Petitioners contend that they filed O.S.No.39 of 2005 on the file of the Junior Civil Judge, Utnoor against the Mandal Revenue Officer, Utnoor Mandal for temporary injunction against the Mandal revenue Officer, Utnoor and another, that such injunction was granted initially on 07-01-2006 in I.A.No.62 of 2005 in the said suit, but ultimately on 23-12-2013, the Civil Court took a view that it had no jurisdiction to entertain the suit because the subject land was located in agency area and then returned the plaint.

4. Petitioners contend that the Transmission Corporation of Telanagana Ltd and it's officials (respondent Nos.1 to 3) intended to erect a sub-station in the subject land; and on 15-09-2017, entered the land without authority of law and damaged the standing crop therein. They contend that the respondents cannot be allowed to dispossess the petitioners from this land.

5. Petitioners have filed adangals from 2005-06 upto 2011-12 in support of their possession of the subject land. They have also filed proceedings No.B/195/2016 dt.16-02-2016 issued under Section 6 of the A.P. Land Encroachment Act, 1905 (for short "the Act") by the Tahsildar, Utnoor Mandal (5th respondent) simply stating that since petitioners are in occupation of the Government land, they should vacate it within 48 hours.

THE STAND OF THE TAHSILDAR (RESPONDENT NO.5)

6. In the counter-affidavit filed by 5th respondent, it is stated that the land claimed by petitioners is Government land, that they are non-tribals and they had no right whatsoever in the subject land, which falls in the agency area.

7. It is stated that on 19-05-2016 it was taken into Government custody under panchanama and handed over to respondent Nos.1 to 3 on 09-06-2016. It is contended that under the guise of the present Writ Petition, petitioners are trying to grab the Government land, which is earmarked for a public purpose.

8. It is also stated that since the civil suit filed by petitioners is dismissed on 23-12-2013, the present Writ Petition also should be dismissed.

**THE STAND OF THE TRANSMISSION CORPORATION OF
TELANGANA (RESPONDENTS 1-3)**

9. Respondent Nos.1 to 3 filed a counter-affidavit stating that the subject land was allotted to the T.S.Transco, that it is within agency area and petitioners being non-tribals are not entitled to hold any land in the agency area.

10. It is stated that 5th respondent issued notice under Section 7 of the Act on 16-02-2016 to the petitioners, but the petitioners did not vacate the land; thereafter 5th respondent issued proceedings dt.12-05-2016 authorising the Mandal Revenue Inspector to evict the petitioners; and on 19-05-2016 petitioners were evicted and subsequently the land was allotted to the T.S.Transco under a panchanama dt.09-06-2016 and possession was delivered to it.

11. It is also stated that construction of the sub-station in the subject land was commenced from 27.4.2017 by entrusting the work to a contractor and that the project would be completed within one year. It is also contended that the land being the Government land, the question of acquiring the same from the petitioners does not arise.

REPLY AFFIDAVITS OF PETITIONERS

12. Reply affidavits have been filed by petitioners to these counter-affidavits contending that even if the subject land belong to the Government, due process of law has not been followed for their alleged eviction by the 5th respondent.

13. It is also contended that the suit O.S.No.39 of 2005 has not been dismissed on merits, but only on the ground of lack of jurisdiction and the title of the Government of the land has not yet been decided.

14. It is also denied that non-tribals are not entitled to hold any land within agency area and it is asserted that since petitioners have been in possession for more than 80 years, they cannot be said to be ineligible to hold the land.

15. It is specifically asserted that 5th respondent did not issue any notice under Section 7 of the Act and simply issued order under Section 6 of the Act asking the petitioners to vacate the land and this is impermissible in law. It is also contended that the panchanama conducted is behind the back of petitioners and in flagrant violation of the law.

THE CONSIDERATION BY THE COURT

16. I have noted the contentions of petitioners and respondents.

17. From the facts narrated above, it is clear that while petitioners contend that the subject land, though located in agency area, is their ancestral property for the last 80 years, respondents contend that the subject land is Government land.

18. As regards possession of the petitioners, pahanis filed by petitioners show possession of petitioners upto 2011-12. It is also not in dispute that on 07-01-2006, a temporary injunction was granted in favour of petitioners against 5th respondent by the Junior Civil Judge, Utnoor in I.A.No.62 of 2005 in O.S.No.39 of 2005, which ultimately came to be vacated only on 23-12-2013 when the said Court took a view that it had no jurisdiction to entertain the suit since the property is located in agency area and returned the plaint.

19. The notice No.B/195/2016 dt.16-02-2016 issued under Section 6 of the Act by 5th respondent in the name of petitioners' father itself admits the possession of petitioners. So till that date at least the respondents cannot deny that petitioners are in possession of the subject land.

20. Under the scheme of the Act, it is necessary that a notice under Section 7 thereof should be issued to the person in possession of the alleged Government land inviting his explanation as to why he should not evicted therefrom, it should be served on him and after receiving such explanation, an order under Section 6 thereof should be passed and then only the occupant can be evicted therefrom.

21. In **Ravipudi Abbayya vs. State of Andhra Pradesh represented by Collector, Guntur and Ors**¹, it was held by this Court as under:

“18. ... It is clear from the reading of sections 6 and 7 that the following conditions and steps of procedure have to be fulfilled and followed before a person could be legally evicted from the occupation of Government land.

(1)First the land must be shown to be Government property in which Government have a subsisting right on the date of the proposed eviction; (2) notice should issue under Section 7 and should be served on the person concerned to show cause before a date to be fixed why he should not be proceeded against under Section 6 of the Act, and (3) on service of such notice and if sufficient cause is not shown, serving a notice requiring him within such time as the Collector may deem reasonable to vacate the land and (4) if such notice is not obeyed directing removal of the person from the land and (5) if such person in occupation resists or obstructs, a summary enquiry by the Collector shall be held and only after the Collector is satisfied that the resistance or obstruction is without any just cause, he could issue a warrant for his arrest and on his appearance commit him to close custody.

*19. In this case the learned counsel for the appellant contends that none of the steps laid down by the Act have been taken in this case excepting service of notices periodically under Section 7 of the Act, and that such service is ineffective and does not give rise to a cause of action. (Vide **Secretary of State for India in Council v. Illikal Assan** ILR Mad 727 : (AIR 1917 Mad 480 IFB). It is pointed out that any act or attempt at summary eviction with out following the procedure is totally illegal and cannot be recognised as valid and that in this case*

¹ AIR 1960 AP 134

according to the evidence of D W. 7 the so-called delivery of possession on 4-3-1951 has no legal effect whatsoever in view of the fact that the procedure under the Act had not been followed at all and that this so-called delivery of possession was in derogation of the stay order issued by the Collector of the District even in February, 1951 ordering stay of further proceedings and of delivery of possession, this order having been in force at least till 14-3-1951.

20. I am fully in agreement with the conclusions reached by the learned District Munsif which, in my opinion, are fully justified on the material placed on record in this case, that the so-called delivery of possession to the Village Munsif by the Deputy Tahsildar is both illegal and ineffective and cannot be given any recognition whatsoever and that the same cannot be regarded as eviction within the meaning of the Madras Land Encroachment Act. Even assuming that the so-called delivery said to have been effected by D. W. 7 is true, it cannot, in my opinion, affect the plaintiffs right to remain in possession of the suit properties, which right is based on long user extending over 60 years or thereabouts prior to 1951.”

22. This decision was followed and applied in **B.N.Manga Devi v. State of Andhra Pradesh and another**².

23. In the counter-affidavit filed by 5th respondent strangely there is no mention of any proceeding initiated by him against petitioners under the Act though petitioners have filed proceedings No.B/195/2016 dt.16-02-2016 issued by him under Section 6 of the Act. It is incumbent on the part of the 5th respondent to establish that he followed due process of law i.e. he issued notice under Section 7 of the Act to the petitioners inviting objections for their eviction, that it

² (2011) 6 ALT 34

was served on the petitioners and that he then passed a reasoned order under Sec.6 and then evicted the petitioners.

24. This suppression of fact by 5th respondent shows that he violated the provisions of the Act brazenly and took possession of the land from petitioners on 19-05-2016 and handed over the land on 09-06-2016 to respondent Nos.1 to 3. Such alleged dispossession is both illegal and ineffective and cannot be given any recognition whatsoever and the same cannot be regarded as eviction within the meaning of the A.P Land Encroachment Act, 1905.

25. Another important aspect of the matter is that the Supreme Court in **Government of Andhra Pradesh Vs. Thummala Krishna Rao and another**³ has held that where persons are in long standing possession of the land claimed to be Government land, summary process of eviction under the Act cannot be resorted to and the State has to approach the Civil Court and take possession of the land and not under the Act. The Court observed:

“9. ...What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether the claim of the occupant is bona fide. Facts which raise a bona fide dispute of title between the Government and the occupant must be adjudicated upon by the ordinary courts of law. The Government cannot decide such questions unilaterally in its own favour and evict any person summarily on the basis of such decision. But duration of occupation is relevant in the sense that a person who is in occupation of a property openly for an appreciable length of

³ AIR 1982 SC 1081

time can be taken, prima facie, to have a bona fide claim to the property requiring an impartial adjudication according to the established procedure of law.”

26. This legal position is not disputed by any of the respondents.

27. According to 5th respondent, the subject land consisting of Ac.8.32 gts in Sy.No.2 and Ac.0.28 gts in Sy.No.13 was allegedly handed over to 2nd respondent on 09-06-2016 and that the land in Sy.No.2 is recorded in revenue records as “*Government Kharij Khata*”. But strangely not a single revenue record is filed by 5th respondent in support of the said plea that the land is “*Government Kharij Khata*”.

28. Even assuming for the sake of argument without conceding that subject is Government land, since revenue records show possession of petitioners from 2005-06 till 16-02-2016 and the contentions of the petitioners that their family has been in possession for more than 80 years is not disputed in the counter-affidavits filed by the respondents, it has to be taken that 5th respondent could not have invoked the summary provision of eviction under the Act to dispossess the petitioners and deliver possession of the land to respondent Nos.1 to 3 in view of the decision in **Thummala Krishna Rao** (3 supra).

29. It is clear that 5th respondent has acted arbitrarily and highhandedly in violation of Articles 14 and 300-A of the Constitution

of India and provisions of the Act as well as judgments referred to above.

30. So the panchanamas filed by respondents evidencing taking of possession from petitioners cannot be sustained and accordingly they are set aside.

31. Though respondent Nos.1 to 3 claims to have handed over construction work to a Contractor and states that the latter has commenced work for the sub-station, no document in respect of the said plea is filed. It therefore cannot be accepted that any construction work has started in the said land.

32. As per A.P.Schedule Areas Land Transfer Regulation 1 of 1959 as amended by Regulation 1 of 1970, non-tribals cannot purchase land belonging to tribals, but if the land has been in possession of non-tribals for a long time, such possession does not become illegal. So merely because the land fell in agency area and merely because petitioners are non-tribals, it cannot be said that the subject land is Government land and that petitioners are not entitled to hold it.

33. Accordingly, the Writ Petition is allowed with costs of Rs.5,000/- (Rupees Five Thousand only) to be paid by 5th respondent to the petitioners; and all the respondents are directed to restore the land to petitioners within four (04) weeks from the date of receipt of copy of the order. They are granted liberty to approach the competent

Agency Court to recover possession of the property from the petitioners.

34. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date : 19-01-2018

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