

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.30470 of 2017

ORDER:

In this Writ Petition, under Article 226 of the Constitution of India, the petitioner seeks a Writ of Mandamus declaring the proceedings, dated 05.04.2017, of the Revenue Divisional Officer, Narsipatnam Town, Narsipatnam, Visakhapatnam District, 2nd respondent herein, in Rc.No.35/2017/IDT, and the consequential notice, dated 20.07.2017, issued by the Mandal Revenue Officer, Narsipatnam Mandal, Visakhapatnam District, 3rd respondent herein, as illegal, arbitrary, unjust, void and unauthorised and to set aside the same.

2. I have heard the submissions of Sri *G. Chandra Sekhara Rao*, learned counsel appearing for the petitioner, of the learned Government Pleader for Revenue appearing for the respondents 1 to 3 & 6, of the learned Government Pleader for Home appearing for the 4th respondent; and of Ms. *B. Vasantha Lakshmi*, learned counsel appearing for the 5th respondent. I have perused the material record.

3. The case of the petitioner, as per the pleadings and submissions made, in brief, is this: 'She is the daughter of M. Appa Rao and Ramthalli. After the death of her mother, her father married one M. Lakshmi. They had no issues. The 5th respondent is the daughter of her sister by name Sridevi, who is no more. M. Lakshmi, the mother of the petitioner, brought her up by taking care of her. M. Lakshmi, the mother of the petitioner, acquired the house property bearing No.3-2-42, S.C.Colony, Narsipatnam,

Revenue Ward No.5, Narsipatnam, Visakhapatnam District. After such acquisition, she constructed a slabbed house during her lifetime. The parents of the petitioner performed her marriage with one Krishna, who is a private employee. However, the husband of the petitioner abandoned her. Therefore, she used to reside with her parents in the above mentioned property. While so, her mother, M. Lakshmi, executed a Deed of Will, dated 20.02.2006, in a sound and disposing state of mind and bequeathed the above said property in favour of the petitioner. The petitioner's mother died in the year 2006. Her father died in the year 2010. Thus, the petitioner is in possession and enjoyment of the house property, having acquired the same under the Will Deed of her mother. While so, the 5th respondent along with her henchmen tried to encroach upon the house property. Hence, the petitioner filed O.S.No.64 of 2017, on the file of Principal Junior Civil Court, Narsipatnam. The same is pending. The Will Deed of the mother of the petitioner was never challenged by the 5th respondent at any time. Admittedly, this petitioner is in possession and enjoyment of the house property. Having not been satisfied with her attempts, the 5th respondent made a complaint to the revenue authorities for settlement of her share, even though they have no jurisdiction to decide the same. However, the 2nd respondent entertained the complaint of the 5th respondent, and held an enquiry even without notice and opportunity of hearing to this petitioner and highhandedly passed orders, dated 05.04.2017, behind the back of the petitioner, even without having any jurisdiction to pass such order. Pursuant thereto, the 3rd respondent, in the absence of the petitioner in the house, pasted a notice on the house property, on 21.07.2017.

While so, this petitioner complained against the highhanded action of the respondents 2 & 3 to the District Collector, Visakhapatnam District/1st respondent by a complaint, dated 22.07.2017. The same is still pending with the 1st respondent. On the instructions of the respondents 2 & 3, the Station House Officer, Narsipatnam Town, Visakhapatnam District, the 4th respondent herein, is highhandedly interfering with the peaceful possession and enjoyment of the property of the petitioner and threatening to dispossess her. The 2nd respondent, while passing the impugned orders, assumed the role of a civil Court. As such the orders of eviction and the consequential proceedings are, therefore, illegal. The building is in existence in the property since 30 years and the property is acquired by the petitioner under a Will Deed. It is not an assigned land.'

4. The case of the 5th respondent and the submissions made on her behalf, in brief, are as follows: 'The material allegations in the writ petition are false. The allegations that the mother of the petitioner acquired the house plot and she improved the same and that after the death of the mother of the petitioner, the property devolved upon the petitioner by virtue of Will Deed, dated 20.02.2006, are not true. A house patta was issued to M. Lakshmi, for property in Survey No.133/3A1 to an extent of Ac. 0.03 cents. The petitioner and this respondent's mother are daughters of M. Lakshmi. After the death of her mother, this respondent started living with her grandmother, as her father and brother also died and as she became an orphan. Since this respondent is claiming a room in the house property as the legal heir of her grandmother and as she is very poor and is unable to get any livelihood, the petitioner

got her evicted from the house property. Even the village elders and community elders requested the petitioner to allow this respondent to live in the house i.e., in the share of her mother. However, the petitioner did not heed their request. Hence, this respondent filed a petition, on 04.01.2017, before the 2nd respondent for allotment of her share in the house, over the property, which was allotted earlier by the Government to the grandmother of this respondent. After this respondent was forcefully evicted from the subject house property, she is residing with her paternal aunt at Narsipatnam. The contrary allegations that this respondent tried to encroach upon the house property, etc., are all false. The 2nd respondent issued notice to both parties. The petitioner appeared before the said authority and later immediately filed the afore-stated suit and did not attend the further hearings and failed to file her reply in the matter pending before the said authority. The 2nd respondent, having examined the available records including the report submitted by the Tahsildar, noticed that this respondent is below poverty line and that she is an orphan of scheduled caste community and is unable to get any livelihood and is, hence, claiming a share. The orders are passed, as the 2nd respondent, having enquired into the matter after issuing notice to both parties, found that it is inevitable to safeguard the interest of the 5th respondent on humanitarian grounds and that the husband of the petitioner and her son are employees in Food Corporation of India and Electricity Department respectively and that they are above poverty line. Hence, the 2nd respondent held that the petitioner is not entitled to claim rights in the house site assigned by the Government as per provisions of Act 9 of 1977. Accordingly, the 2nd

respondent passed orders cancelling the house patta issued earlier in favour of M. Lakshmi, who is the grandmother of this respondent and directed the 3rd respondent to issue fresh patta in favour of this respondent. A copy of the order was communicated to the petitioner, on 22.04.2017. The order of the 2nd respondent is passed after considering claims of both parties and it is not one passed behind the back of the petitioner. The petitioner is not entitled to challenge the orders of the respondents 2 and 3, as the order of the 2nd respondent is passed after enquiry and as the 3rd respondent had issued the sequential notice to the petitioner to vacate the property in compliance of the orders of the 2nd respondent. The petitioner earlier filed W.P.No.29447 of 2017 before this Court seeking the self-same relief and in that writ petition, notice was issued. A copy of the said writ petition is filed with material papers. Suppressing all the facts, which she admitted in the earlier writ petition, she filed the present writ petition without exhausting the remedy of appeal, which is an alternative remedy. Hence, the Writ Petition is liable to be dismissed.'

5. The case of the 2nd respondent, Revenue Divisional Officer, Narsipatnam Town, Visakhapatnam District, as per his counter affidavit and the submissions made on behalf of the official respondents 1 to 3, in brief, are as follows: 'House patta was issued for Ac. 0.03 cents of land in Survey No.133/3A1 to one Marothi Appa Rao. The petitioner and Vaddadi Sridevi are his daughters. The 5th respondent is the daughter of the said Vaddadi Sridevi, who died 13 years back. After the death of her mother Sridevi, the 5th respondent lived with her grandmother M. Lakshmi. The father of the 5th respondent also expired 5 years back. Her brother, Vaddadi

Venkatesh, died in the year 2016. The 5th respondent is now living in her aunt's house (father's sister's house) at Narsipatnam. The 5th respondent studied upto degree. On the death of her family members, she became an orphan. The daughter of the petitioner burnt the Education certificates, etc., of the 5th respondent and harassed her. The disputed house, thus, belongs to the petitioner and the mother of the 5th respondent. The 5th respondent is the only living legal heir of her mother. The Tahsildar and the Revenue Divisional Officer instructed the petitioner to give to the 5th respondent her mother's share. Even village and community elders also made a similar request. On refusal of the petitioner to do so, the 5th respondent filed a petition before the Revenue Divisional Officer, Narsipatnam, on 04.01.2017, for allotment of her share in the house and the house site issued by means of a patta by the Government to her grandmother, M.Lakshmi. Even the Revenue Divisional Officer, Narsipatnam, requested the petitioner to allow the 5th respondent, who is an unmarried orphan girl, to reside in the share of the house, which fell to the share of her mother. However, the petitioner did not accept the said request. After issuing notices, on 07.01.2017, as per provisions of Act 9 of 1977 to both parties, and after examining the available records and report submitted by the Tahsildar, Narsipatnam, and after considering the plight of the 5th respondent, a request to allot a share to the 5th respondent was made to the petitioner. Then the petitioner filed the suit before the civil Court. The suit is pending. The petitioner is not entitled to get house site, which was assigned, as she is above poverty line. Hence, the Revenue Divisional Officer, Narsipatnam, by the impugned proceedings, cancelled the house site patta issued

in favour of M.Lakshmi and directed the Tahsildar, Narsipatnam, to issue fresh house site patta in favour of the 5th respondent. The copy of the said order was communicated to the petitioner, on 22.04.2017. Pursuant to the orders of the Revenue Divisional Officer, Narsipatnam, the notice, dated 11.07.2017, was issued by the Tahsildar, for eviction of the petitioner from the above house. All the contra allegations made by the writ petitioner are false. Since it has become inevitable to safeguard the interests of the 5th respondent, the order has been passed on humanitarian grounds. If the petitioner is aggrieved of the orders of the Revenue Divisional Officer, Narsipatnam, she ought to have filed an appeal before the Joint Collector. This writ petition is filed without exhausting the said statutory relief. Hence, the writ petition may be dismissed.'

6. I have given earnest consideration to the facts and submissions.

7. From the facts and submissions, the following facts are discernible: 'The subject land is a Government land. The petitioner submits that it was assigned to her mother M.Lakshmi; that her mother, by virtue of a Will Deed, dated 20.02.2006, bequeathed the said property to her; that later she died; that her father also died; that, therefore, she acquired the subject house and plot property by virtue of the Will of her mother; that she is enjoying the same; when the 5th respondent, who is no other than the daughter of her sister, made an attempt to encroach into the property, she is constrained to file a suit; that on the application of the 5th respondent, the Revenue Divisional Officer, Narsipatnam, passed the impugned order and the Tahsildar issued the consequential notice; the

Revenue Divisional Officer, Narsipatnam, passed the impugned order cancelling the patta originally issued in favour of M.Lakshmi and directing issuance of a patta in favour of the 5th respondent on the ground that the petitioner, who is the daughter of M.Lakshmi, is above poverty line and the 5th respondent, who is the granddaughter of M.Lakshmi, is below poverty line; that the Tahsildar issued a notice in consequence of the order of the Revenue Divisional Officer, whereby eviction of the petitioner from the subject property was directed for handing over possession of the same to the 5th respondent. The 5th respondent, having unsuccessfully claimed a half share in the property of the petitioner, filed a complaint before the Revenue Divisional Officer, Narsipatnam, and that the Revenue Divisional Officer passed the impugned orders and the Tahsildar thereafter issued the consequential notice.'

8. Admittedly, the official respondents 1 to 3 are also now not disputing the fact that a patta ~~was~~ originally issued to M.Lakshmi in respect of Ac. 0.03 cents of land. They are further stating that on her death, when the petitioner refused to give a share to the 5th respondent, who is no other than the daughter of her sister, the 5th respondent approached them by filing a complaint and claiming a share and that on enquiry, it was found that the husband and son of the petitioner are respectively employed in Food Corporation of India and Electricity Department and that the petitioner and her family members are above poverty line and that on the other hand, the 5th respondent is an unmarried orphan, as all her family members died. Therefore, it is being stated that the impugned orders have come to be passed and that thereafter, the notice,

which was also impugned, has come to be issued. Admittedly, on the basis of the Will allegedly said to have been executed by her mother M.Lakshmi, who is the original assignee, the petitioner filed a civil suit and it is pending. Therefore, the questions – ‘whether the Will being relied upon by the petitioner is true or not, and whether she would exclusively be entitled to the house property of her mother, or whether the 5th respondent would also be entitled to a share in the property of the original assignee, who is no other than her grandmother’, have to be determined in the civil suit. The reasoning of the Revenue Divisional Officer, Narsipatnam, that after the patta has been issued to M.Lakshmi, the mother of the petitioner, the petitioner and her family members made advancement in life and they are now above poverty line and, therefore, the patta of M.Lakshmi is liable for cancellation, as the petitioner is not entitled to have the benefits of assignment made in favour of her mother by virtue of the fact that she is now above poverty line cannot be countenanced in a Court of law, is one of the contentions of the petitioner. It is also contended that the impugned orders are passed on erroneous, unsustainable & impermissible grounds. Be that as it may. As the impugned orders were passed when the matter is pending before a competent civil Court where all issues would be determined after full-fledged trial, this Court is of the considered view that the impugned orders and the consequential notice are liable to be set aside, leaving all the issues to be adjudicated in the civil suit pending before the civil Court at Narsipatnam.

9. In the result, the Writ Petition is allowed and the impugned proceedings & the notice are set aside. However, it is made clear

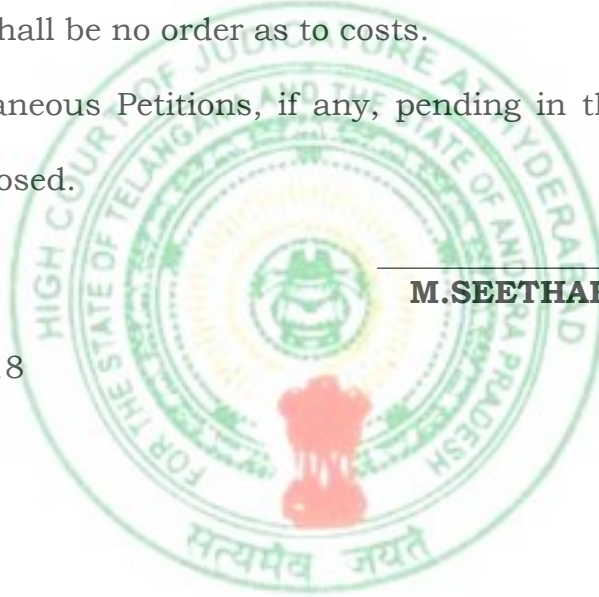
that the civil Court shall dispose of the suit and determine the rights of the parties and the issues as to whether the Will being relied upon by the petitioner is true or not and whether the 5th respondent is entitled to a share in the subject property and other issues involved in the suit as per facts and law and in strict accordance with the procedure established by law notwithstanding the fact that the impugned proceedings and consequential notice are set aside by this Court. It is made clear that this Court did not go into the merits of the matter and has not expressed any opinion on the merits of the matter.

There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

M.SEETHARAMA MURTI, J

16th July, 2018
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