

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
WRIT PETITION Nos.28347, 28360, 28366 & 28367 of
2007

COMMON ORDER:

These four writ petitions are filed questioning the judgments and decrees, all dated 27.09.2004, passed in A.S.Nos.52, 95, 56 & 69 of 1998, on the file of the District Judge, Srikakulam, whereby the learned District Judge, dismissed the appeals while confirming the eviction order passed by the 2nd respondent-Estate Officer, East Coast Railways, Visakhapatnam, dated 27.03.1998.

2. These four writ petitions are disposed of by this common order, as the issue raised in these writ petitions is one and the same. The facts in W.P.No.28347/2007 are being discussed and in respect of other writ petitions, the facts are similar.

3. Heard Sri S.V.S.Chowdary, Sri B.Gajender Reddy, learned counsels, appearing for the petitioners and Sri R.S.Murthy, Additional Standing Counsel for Railways.

4. It has been contended by the learned counsel for the petitioners that the petitioners are in peaceful possession and enjoyment of their respective properties in question, having purchased the same from their respective vendors by way of registered sale deeds, that they are not the trespassers of the properties, that the Railways have no right to claim the said properties and that the 2nd respondent has no right or jurisdiction to issue eviction orders. It has been further contended that the petitioners have become the owners by adverse possession.

5. The learned standing counsel for the Railways contends that since 1982 the petitioners were in unauthorized possession of the Railway

properties without having any right or title over the same, that the 2nd respondent, after following due procedure, had issued eviction orders and that the learned District Judge, having considered the rival contentions of both parties was pleased to dismiss the appeals filed by the petitioners.

6. The material on record would disclose that the petitioners were found in unauthorized occupation of Railway Plot Nos.25, 22, 24 and 3 respectively of different extents of area at Nowpada since 01.01.1982. On the report submitted by the 1st respondent-Assistant Engineer, S.E.Railways, Srikakulam Road, the 2nd respondent-Estate Officer had issued notice on 10.12.1985 to the petitioners under Section 4(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short "the Act") to show cause why an order of eviction should not be made against them, directing them to appear on 29.01.1986. As the petitioners did not appear on 29.01.1986, the 2nd respondent had passed an *ex parte* order, dated 30.06.1986, directing the petitioners to vacate the subject premises.

7. The petitioners, against the said orders dated 30.06.1986, preferred appeals before the District Judge, Srikakulam under Section 9 of the Act. The learned District Judge, vide orders dated 18.02.1988, remanded the matter to the 2nd respondent for fresh disposal.

8. The 2nd respondent, pursuant to the order of the learned District Judge, dated 18.02.1988, had given an opportunity to the petitioners to produce documentary evidence in proof of their right and title over the properties in question. Except oral pleadings, the petitioners did not produce any documentary evidence to prove their title over the properties in question. Therefore, the 2nd respondent issued eviction proceedings under Section 5(1) of the Act. Challenging the same, the petitioners again

filed appeals before the learned District Judge, Srikakulam, but they were unsuccessful. Questioning the same, the present writ petitions are filed.

9. A perusal of the records shows that the 2nd respondent, vide orders dated 27.03.1998, had specifically recorded that the petitioners herein were given several opportunities to produce documents to establish their title, but the petitioners could not produce the same.

10. The 2nd respondent had relied upon a certified land plan, dated 31.07.1941, showing the area in the occupation of the petitioners in Red colour, which was duly signed by the Collector, Visakhapatnam, the District Engineer on Special Duty, B.N.Railway, and the Assistant Director, Survey No.2, Survey Party Nellore. The unauthorized encroachments are situated between Chainages 411.813 to 413.083 and there are boundary pillars in between these two chainages. A joint survey was also conducted in the year 1980 by both Railway department and Revenue department and fixed the boundaries of Railways and found that the petitioners were in unauthorized possession of some extents of land in Plot Nos.25, 22, 24 and 3 of Naupada respectively. After thorough survey and enquiry, the 2nd respondent-Estate Officer issued eviction proceedings, dated 27.03.1998. The learned District Judge, Srikakulam after re-appreciating oral and documentary evidence, dismissed the appeals filed by the petitioners.

11. The contention of the petitioners that they have become owners of the property in question by adverse possession cannot be accepted, for the reason that the petitioners are alleged to have entered into possession of the subject premises in 1973 and the 2nd respondent had initiated proceedings under Section 4(1) of the Act way back in the year 1985, which would demonstrate that by which time, the petitioners

have not completed possession of 30 years so as to claim adverse possession.

12. This court while issuing notice before admission, vide orders dated 31.12.2007, granted *status quo*. By virtue of the said interim order, the petitioners have been enjoying their unauthorized occupation of the Railway lands.

13. Having considered the rival submissions of both the parties and having gone through the entire record, I have no hesitation to come to the conclusion that the petitioners in these four writ petitions are unauthorized occupants of the premises in question belonging to the Railways. I see no reason or merit to interfere with the impugned judgments of the learned District Judge, Srikakulam, dated 27.09.2004.

14. Accordingly, these four writ petitions are dismissed. However, the petitioners are given 3 (three) months time from today to vacate the premises in question and handover vacant possession of the same to the respondents. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

ABHINAND KUMAR SHAVILI, J

Date: 06.04.2018
Dsr

Note:

Registry is directed to communicate the copy of this order to all concerned in two days.

B/o
Dsr