

HON'BLE SRI JUSTICE S.V. BHATT

W.P. No.16573 OF 2006

ORDER:

Heard Mr.Naresh Reddy holding for Mr.SNiranjan Reddy for petitioner and the learned Assistant Government Pleader for Revenue.

The petitioner prays for writ of certiorari, call for records in Proceedings No.3995/KK/MF/Q3L of 2002 dated 22.03.2003 of 1st respondent, Orders in C.M.A. No.113 of 2003 dated 12.06.2006 on the file of Chief Judge, City Civil Court, Hyderabad and quash the orders as without jurisdiction, illegal and in violation of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short 'the Act'). The petitioner prays for consequential direction restraining the respondents from interfering with petitioner's rights and possession for land measuring Acs.10-00 in Survey Nos.974 and 1024/2 at Malkaram Village, Shamirpet Mandal, Ranga Reddy District.

The orders are passed under the Act. The circumstances relevant for disposing of the writ petition alone are adverted to.

The Estate Officer-cum-Station Commander, Secunderabad issued notice in Form 'A' dated 23.10.2002 to the petitioner herein treating the petitioner as encroacher of Acs.4-27 gts. in Survey Nos.975 and 1024/1 at Jawaharnagar Village, Ranga Reddy District. The petitioner filed reply dated 07.12.2002 and the gist of the reply is that the Revenue Secretary through letter dated 23.10.1952 agreed to assign an extent of Acs.5977-03 gts in favour of Jawaharnagar

Village Ex-servicemen. The petitioner was allotted an extent of Acs.10-00 land under Ex.B2. The petitioner in furtherance of the allotment/distribution is in possession and relied on land revenue paid under Exs.B3 to B9 to Government. The petitioner incidentally relies on Exs.B10 to B13- notices of demand for payment of cess. Ex.B14- Government memo dated 07.06.1977, Ex.B15-Government Memo dated 21.04.1979, Ex.B16- letter dated 01.08.1979 addressed to Tahsildar and Ex.B17- copy of order dated 13.04.2001 in W.P. No.6936 of 2001. The petitioner claimed exclusive right and ownership basing on Ex.B2 and continuous enjoyment of possession to contend that the petitioner is not in occupation of land belonging to Government of India or the Cantonment Board. The 1st respondent upon consideration of evidence held that the documents relied upon by the petitioner i.e. Exs.B1 to B17 do not indicate that the petitioner became owner and possessor of the land in question and acquired marketable title for retaining possession of the same as absolute owner. Even the assessment in favour of the petitioner was never confirmed by the revenue authority concerned of Government of Andhra Pradesh. The 1st respondent came to conclusion that the petitioner has encroached an extent of admeasuring Ac.2-39 gts. in Survey No.1024/1 and Ac.1-28gts. in Survey No.975 total admeasuring Ac.4-27 gts. in Jawaharnagar Village.

The petitioner filed Civil Miscellaneous Appeal before the Hon'ble Chief Judge, City Civil Court. The appeal was dismissed vide Order dated 12.06.2006. The learned Chief Judge, City Civil

Court while confirming the findings of the 1st respondent held that the petitioner failed to establish his title to Survey Nos.975 and 1024/1 and that the petitioner is an encroacher over the Government Properties. Hence, the writ petition.

The 4th respondent filed counter affidavit and substantially supports the findings recorded by 1st respondent and learned Chief Judge, City Civil Court. It is stated that the petitioner is neither assignee nor was his name found in the list of 102 members who have been allotted land by the Jawaharnagar Co-operative Land Colonization, Malkaram, Hyderabad District and he was not in possession of the land bearing Survey Nos.974 and 1024/2 in Malkaram/Jawaharnagar Village at any point of time and the same is under the custody of Government.

The scope of judicial review under Article 226 of the Constitution of India in writ of certiorari jurisdiction is kept in view while considering the errors pointed out by the petitioner. The petitioner cannot and could not establish the allotment or distribution of Acs.10-00 of land in his favour and that the notice schedule property is different and, therefore, the petitioner cannot be treated as encroacher of Government land. Mr.Naresh Reddy has taken pains by drawing the attention of the Court to each one of the annexures filed along with the writ petition and this Court is of the view that a few of the payments made to Government cannot and could not be treated as conferring right and title on petitioner. Further, on the sub division of property and location of Survey Nos.974 and 1034, there is no proof and documentary evidence in

support of title or possession of petitioner. Therefore, he fairly states that as the enquiry under the Act is summary in nature, though a few of the findings are recorded against the petitioner and that possession was also taken from his client, the petitioner may be given liberty to work out remedies independent of the orders impugned in the writ petition. In other words, the petitioner does not successfully make out a case for interference by this Court against the orders impugned in the writ petition, but seeks liberty to work out remedies in accordance with law.

I have perused the findings recorded by both the 1st respondent and the learned Chief Judge, City Civil Court. I am satisfied that the findings recorded are based on evidence. The petitioner failed to discharge his burden in proving title and possession to the property covered by the notice issued under the Act. No ground warranting interference is made out and the writ petition fails and is dismissed, however, by granting the liberty as prayed for. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date: 06.03.2018

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