

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.26972 of 2017

ORDER:

Heard Mr.Koppula Gopal for petitioner and the learned Government Pleader for Assignment.

The petitioner prays for Writ of Mandamus declaring the action of respondent Nos.3 and 4 in interfering with petitioner's peaceful possession and enjoyment of land in Sy.Nos.454/3A, 454/3B and 455/1 in an extent of Ac.3-00, Ac.2.58 cents and Ac.1.20 cents respectively at Dinndevarapadu Village, Kurnool Mandal and District, as illegal, arbitrary and violative of Article 14 and 300-A of Constitution of India.

The petitioner prays for a consequential direction restraining the respondents 3 and 4 from dispossessing the petitioner from Sy.Nos.454/3A, 454/3B and 455/1 in an extent of Ac.3-00, Ac.2.58 cents and Ac.1.20 cents respectively at Dinndevarapadu Village, Kurnool Mandal & District.

The petitioner along with two other individuals filed O.S.No.156 of 2010 on the file of Additional Senior Civil Judge, Kurnool, for the following prayers:

- (a) declaring the title of the plaintiffs in the plaint A and B schedule properties, as their private properties and not assigned lands; declaring the Circular issued by 2nd defendant dt.22-07-2005 as illegal and void.
- (b) for consequential mandatory injunction directing the third defendant to register alienation in the plaint A and B schedule properties;

- (b.b) for permanent injunction restraining D-1 and D-2 from interfering with possession and enjoyment of plaintiffs in plain schedule properties.
- (c) Award costs of the suit; and
- (d) for such other relief as the Honourable Court may deem fit and proper in the circumstances of the case.

The suit schedule and the survey numbers covered by the present writ petition are same. The petitioner filed an interlocutory application for temporary injunction pending suit. It is not in dispute that the trial court did not pass orders in the I.A. filed by the petitioner. The suit is ripe for trial and from the annexures filed by the petitioner, it is evident that the evidence is substantially completed and the suit is posted for arguments. At that stage of the trial, on 10.08.2017, the petitioner, by referring to the following cause of action, has filed the writ petition.

“I respectfully submit that the staff of the 4th respondent herein informed me to approach the 4th respondent herein and due to which on 04.09.2017 I approached the 4th respondent herein along with all relevant documents including the registered sale deeds which was obtained by me and my vendors and their vendors requesting him not to dispossess me from the land as the Civil suit already sub-judice before the competent civil court and the Judgment yet to pronounced after completion of the arguments and the 4th respondent made deaf ear and also informed me that the land in question is assigned land and immediately I asked 4th respondent herein to give information about the said assignment, but he refused to give the same.”

This Court, on 10.08.2017, directed the parties to maintain *status-quo* obtaining as on that date. The respondents filed petition to vacate the interim direction. The

respondents allege that orders under A.P. Assigned Lands (POT) Act, 1977 were already passed and the subject matter of the writ petition stood vested in the Government. A few more details are submitted to dismiss the writ petition. Though Mr.Gopal has made a few submissions on merits and also alternatively to convince this Court to grant the innocuous prayer of continuing the *status-quo*, this Court is not persuaded to accept the prayers made by the petitioner for the following reasons.

(a) The suit filed by the petitioner along with two other individuals is a comprehensive suit for all the reliefs to which the plaintiffs could envisage or they are required to pray for and seek adjudication from the competent Court one covered.

(b) The plaintiffs in O.S.No.156 of 2010 prayed for temporary injunction against the defendants protecting the possession of plaintiffs, whatever may be the reason, there is no order in favour of the plaintiffs. A cause of action if arises, subsequent to the filing of the suit, the party is required to take steps as are deemed fit keeping in view, the subsequent developments that have arisen during the pendency in the suit. There ought not to be a situation where the civil court is seized of all the comprehensive reliefs and jurisdiction of this Court under Article 226 is invoked as step-in-aid during the continuation of the trial Court for protecting the alleged possession of petitioner.

In the considered view of this Court, further consideration and expressing a view would adversely influence the issues, which are pending before the trial Court. Hence, this Court refrains from making such observation against the petitioner in filing the present writ petition. Even assuming that steps are taken for assigning the subject land to third parties, nothing prevents the plaintiffs to obtain orders in the suit itself.

The writ petition is misconceived on the ground that suit is pending. This Court declines to exercise its jurisdiction under Article 226 of Constitution of India as a writ of mandamus is not a matter of right but Court exercises discretion in granting the prayer. After perusing the stand taken in the counter affidavit, this Court is further persuaded to hold that to accept one or other circumstances by the Court at this stage is unnecessary.

Writ petition is dismissed accordingly. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Date: 04.04.2018
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