

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.2349 of 2012

ORDER:

In this writ petition, under Article 226 of the Constitution of India, the petitioner is seeking a Writ of Mandamus declaring the action of the official respondents 1 to 3 in trying to dispossess the petitioner, from the land in an extent of Ac.0.04 cents in Sy.No.889 of Goudapalem, Pedakakani Village & Mandal, Guntur District, without any notice and without conducting any enquiry on the representation of the petitioner with regard to allotment of the same on payment of cost as illegal, arbitrary and violative of the provisions of the Constitution of India.

2. I have heard the submissions of Sri G. L. Nageswar Rao, learned counsel appearing for the petitioner, of the learned Government Pleader for Revenue appearing for the respondents 1 to 3; and of Sri Ch. Praveen Kumar, learned counsel appearing for the respondents 4 & 5. I have perused the material record.

3. The case of the petitioner is this: - 'She is a permanent resident of Goudapalem village. She owns land in an extent of Ac.0.02 cents in Sy.No.890 of Pedakakni. Her said plot is triangular in shape. There is Government proamboke land of an extent of Ac.0.04 cents in Sy.No.889, which is quite opposite to her above said land in Sy.No.890. She is in possession and enjoyment of the said Government poramboke land in Sy.No.889 for the past several years and is utilising the shed raised by her in the said land. The said land is also triangular in shape. If both the triangular pieces of land in Sy.Nos.890 and 889 are joined together, it becomes a rectangular shaped land and will be more useful to the petitioner. Therefore, the petitioner made several representations to the official respondents to allot the said land in

Sy.No.889 to her on payment of its cost. The last representation in that regard was submitted on 28.06.2011. On the representation, dated 26.04.2011, the 1st and 2nd respondents, that is, District Collector and Revenue Divisional Officer, Guntur, instructed the 3rd respondent-Tahasildar, Pedakakani Mandal, to submit a report. Meanwhile, to defeat the legitimate claim of the petitioner and to create ambiguity with regard to the said land in Sy.No.889, the 3rd respondent-Tahasildar, in collusion with the unofficial respondents 4 & 5, seems to have created documents. He did not conduct any enquiry with regard to the property which is in possession and enjoyment of the petitioner for the past several years. If the 3rd respondent intends to allot the same to landless poor people, there are nearly 600 eligible people; but, the 3rd respondent is showing interest in the unofficial respondents for extra ordinary consideration and is trying to defeat the just claim of the petitioner. If the 3rd respondent conducts an enquiry, the truth will surface. The action of the 3rd respondent in trying to dispossess this petitioner from the property with an intention to favour the unofficial respondents is illegal, arbitrary, unjust and violative of principles of natural justice. The unofficial respondents are openly proclaiming that the 3rd respondent, who is in their favour and is in collusion with them, will evict the petitioner by all means from the land in Sy.No.889. When the matter regarding the request of this petitioner is under enquiry and when the respondents 1 & 2 have called for a report from the 3rd respondent, the 3rd respondent ought to have submitted a report; however, he did not submit any report so far in the above regard. Even an encroacher is entitled to notice before the encroacher is evicted from the property encroached; whereas this petitioner is in possession and enjoyment of the property and is willing to pay cost of the land in Sy.No.889 as per market value. The said course generates revenue to the Government. The petitioner is not asking for the allotment of the adjacent land in Sy.No.889 free of cost. There are several Government

lands in and nearby the village for allotment to the people in need. 3rd respondent is misusing his official capacity and doing favour to the unofficial respondents without following the procedure established by law. Hence, the writ petition is filed.'

4. None of the official respondents have filed any counters.

5. On 31.01.2012, this Court, having admitted the writ petition, granted the following interim order in WPMP.No.2919 of 2012: - '*Status quo* obtaining as on today shall be maintained in all respects for a period of four weeks.' By orders, dated 05.03.2012, the said order was directed to continue until further orders.

6. The unofficial respondents 4 & 5 filed a vacate petition supported by the affidavit of the 4th respondent. The case of the said respondents as stated in the counter affidavit and as per the submissions made before this Court, in brief, is this: 'The Government granted pattas in favour of these respondents in respect of land of an extent of Ac.0.02 cents each in Sy.No.889 in Pedakakani Village & Mandal vide proceedings of the Tahasildar in RC.340/ 2010-A in D.K.No.75 & 76/ 1419 F, dated 08.04.2011. As per the terms and conditions mentioned in the pattas, these respondents have to construct houses within one year from the date of grant of respective pattas. When these respondents are making attempts to construct houses in the patta lands granted to them by the Government, the writ petitioner and her husband, who are neighbours of the patta lands on the Eastern side, had interfered with the peaceful possession and enjoyment of patta lands of these respondents and caused inconvenience and obstruction for making constructions by these respondents in their patta lands. Aggrieved thereof, both these respondents respectively filed OS.Nos.48 of 2012 and 44 of 2002 on the file of III Additional Junior Civil Court, Guntur, for perpetual injunctions against the writ petitioner, her

husband and two others. The trial Court decreed the said suits, on 19.08.2015, in favour of the respective plaintiffs, respondents 4 & 5 herein, and the writ petitioner is restrained by way of Decrees for permanent injunctions. The writ petitioner cannot take shelter under the provisions of the Constitution of India. The present writ petition is not maintainable as the petitioner has already preferred appeals against decrees and judgments in the aforesaid civil suits filed by these respondents. And, the writ petitioner can as well raise all the grounds available to her in the said appeal suits. Hence, she cannot continue the writ petition even after the adjudication of the civil suits by the trial Court and during the pendency of the appeals preferred by her.'

7. The case of the writ petitioner in the reply affidavit, in brief, is this:

The averments made in the counter affidavit with regard to the possession of the respondents 4 & 5 over their respective alleged patta lands and the causing of interference with their alleged possession by this petitioner and her husband are all false. This writ petitioner filed the writ petition, on 31.01.2012, and obtained *status quo* orders against the unofficial respondents and is in possession and enjoyment of the disputed property since a long time. When an attempt was made to dispossess her without issuing a notice or following the procedure established by law, she filed the writ petition. Under the guise of pattas issued with ante date, the vacate petitions are filed with an intention to defeat the legitimate claim of this petitioner, which is pending consideration in view of her representations, dated 10.02.2010, 11.06.2010, 27.09.2010, 26.04.2011, and 28.06.2011. The Tahasildar-3rd respondent for reasons best known to him without submitting a report as called for by his superiors created unwarranted litigation. This Court granted interim order, on dated 31.01.2012, after considering all aspects with regard to possession over the disputed land. The said orders were extended, on 05.03.2012, until further orders. In the appeals preferred by this petitioner viz., A.S.Nos.236 & 235 of

2015 against the decrees and judgments in the afore-stated suits, the appellate Court, after hearing both sides, stayed the execution and operation of the decrees of the trial Court *vide* orders, dated 31.10.2015, in IA.Nos.1935 & 1934 respectively. In-fact, the District Collector, Guntur, directed the RDO to enquire on the representation of this writ petitioner for allotment of Government poramboke land in Sy.No.889, which is situated opposite to the site of this petitioner; and, on such directions, the RDO by his letter, dated 30.07.2011, addressed to the Tahasildar, Pedakakani, directed him to send a detailed report along with specific remarks and recommendations and necessary proposals, if it is feasible to allot the site to the petitioner on payment of market value. The copy of the said letter is also submitted along with the material papers.'

8. Learned Government Pleader has not disputed the contention of the writ petitioner that on the request of the petitioner for allotment, on payment of cost, of Government poramboke land in Sy.No.889, which is situated opposite to her house site, the District Collector instructed the RDO to enquire into the matter and that thereupon the RDO addressed letter, dated 30.07.2011, to the Tahasildar and called for a detailed report along with specific remarks and recommendations along with necessary proposals as to whether it is feasible to allot the same and that the matter is under consideration before the Collector as the Tahasildar has not yet submitted a report to the Collector through the RDO. He also does not dispute the issuance of the pattas for an extent of Ac.0.02 cents each in Sy.No.889 to the respondents 4 & 5 in April, 2011, by the Tahasildar, Pedakakani.

9. From the facts and submissions, the following necessary facts for consideration are perceptible: 'The petitioner, who is the owner of Ac.0.02 cents of land in Sy.No.890 in Pedakakani, which is a triangular shaped land, made requests to the Government by several representations to allot about

Ac.0.04 cents of another triangular piece of land in Sy.No.889, which is opposite to her site, on payment of market value. Her submission is that if the two triangular pieces of land are joined together it becomes a rectangular piece of land and that it would be convenient for her use and that she is already in possession and enjoyment of the said extent of land in Sy.No.889 having raised a shed and that allotment of the said land to her would not only be advantageous for enjoying her already owned property but would also fetch revenue to the Government. Per contra, the case of the unofficial respondents is that the said extent of about Ac.0.04 cents of land is assigned on two pattas to them and that therefore they are each entitled to Ac.0.02 cents of land *vide* pattas granted by the Tahasildar to each of them in April, 2011, and that when they are attempting to construct houses in the respective assigned lands, obstruction was raised by the petitioner and her husband and that therefore they filed two separate civil suits in OS Nos.48 of 2012 & 44 of 2012 on the file of III Additional Junior Civil Court, Guntur, and that the said suits are decreed. However, the fact of the matter is that the writ petitioner filed two distinct appeals, viz., AS Nos.236 of 2015 & 235 of 2015 on the file of the Court of the learned IV Additional District Judge, Guntur, and the appellate Court by its orders stayed the execution of decrees and judgments of the trial Court in the afore-said suits. It is needless to state that this Court need not deal with complex issues of fact and determine the issue of possession over the subject land as the said issue is to be resolved in the said appeals. Further, the issue concerning the validity or otherwise of the pattas granted to the unofficial respondents 4 & 5 by the Tahasildar, *vide* his proceedings, dated 08.04.2011, also need not be gone into in this writ proceeding as it is being stated by the petitioner that the said pattas were ante dated and were issued regardless of the fact that the representation of the petitioner with regard to the request for allotment of the subject land to the petitioner on payment of cost is

pending consideration before the District Collector as the report called for by the Collector from the Tahasildar is awaited in the matter. Nevertheless, it is pertinent to restate that it is not in dispute that the petitioner made a request and that on her request the District Collector, Guntur, requested the RDO to cause an enquiry on the request of the petitioner for allotment of Government proamboke land at Pedakakani in Sy.No.889, which is situated opposite to the petitioner site, for usage of passage on payment of market value and that on that request of the Collector, the RDO addressed a letter, dated 30.07.2011, to the Tahasildar to send a detailed report with specific remarks and recommendations with necessary proposals regarding feasibility of allotment of the same and that the Tahasildar has not yet furnished a report to the District Collector in the above regard.'

10. On the above analysis, without going into the merits of the matter, the Writ Petition is disposed of directing the District Collector-1st respondent to examine the matter, in detail, by duly taking into consideration the request of the petitioner as well as the claims of the respondents 4 & 5 pursuant to the pattas said to have been granted to them and take a considered decision in the matter and resolve the dispute once and for all and give a quietus to the controversy notwithstanding the pendency of the appeal suits before the Court of the learned IV Additional District Judge, Guntur.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

16.07.2018
Vjl