

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.524 OF 2016

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking to issue a writ of *Mandamus*, declaring the action of the 4th respondent in issuing the impugned notice, dated 28.07.2015, under Section 6 of the Land Encroachment Act 3 of 1905 (for short, 'the Act'), without calling for explanation from the petitioner in respect of the petitioner's owning, possessing and enjoying the agricultural land to an extent of Ac.0.27 cents situated in Survey No.182/8 of Kothavalasa Village, Parvathipuram Mandal and Vizianagaram District as illegal, arbitrary and violative of principles of natural justice, contrary to the provisions of the Act and, consequently, direct the respondents not to interfere with the peaceful possession and enjoyment of the petitioner's agricultural land.

2. Heard, the learned counsel for the petitioner, and the learned Government Pleader for Revenue appearing on behalf of the respondents, and perused the record.

3. The case of the petitioner, in brief, is that the impugned notice under Section 6 of the Act was served on the petitioner on 28.07.2015 contending that the petitioner encroached land, to an extent of Ac.0.27 cents, in Survey No.182/8 of Kothavalasa Village, Parvathipuram Mandal and Vizianagaram District, which is classified as Government Poramboke Gorja land *i.e.*, cart track but as per his vendor's title deed No.1423/1945, dated 24.04.1945, the petitioner has been in possession and enjoyment of the cultivable wet land since 75 years, without any interruption from third parties.

4. Learned counsel for the petitioner mainly submits that notice under Section 3 R/w. Section 7 of the Act was not issued to the petitioner prior to issuance of impugned notice under Section 6 of the Act. Learned counsel further submits that, for the last more than 75 years, the petitioner is in peaceful possession and enjoyment of the land, as per his vendor's title deed, bearing document No.1423/1945, dated 24.04.1945, and hence respondent No.4 cannot invoke the jurisdiction to summarily evict the petitioner under the provisions of the Act and, at best, respondent No.4 may approach the competent Civil Court for eviction of the petitioner, as per the procedure. Learned counsel further submits that when the land is classified as 'gorja' i.e., cart track, the width will be around 10 to 12 feet and cultivating the land in an extent of Ac.0.27 cents does not arise and therefore notice issued by the 4th respondent is illegal and prayed to quash the same.

5. At the stage of arguments, learned counsel for the petitioner reiterated the same arguments and requested this Court to quash the notice dated 28.07.2015, issued by the 4th respondent, under Section 6 of the Act.

6. *Per contra*, learned Government Pleader for Revenue produced material before this Court evidencing service of notice under Section 3 R/w. Section 7 of the Act, preceding to the notice impugned in this Petition, issued under Section 6 of the Act. Since the petitioner was not available in the village at the relevant point of time, notice under Section 3 R/w. Section 7 of the Act was served, under Section 64 of Cr.P.C., on the elder son of the petitioner on 19.07.2005. Learned Government Pleader contended that the petitioner did not comply with the pre-requisites under Section 6 of the Act. It is also contended that the remedy available to the petitioner is to approach the competent civil Court to prove his title to the

property by filing a suit for declaration having jurisdiction but cannot invoke the discretionary jurisdiction of this Court, available under Article 226 of the Constitution of India, and prayed for dismissal of the Petition.

7. As seen from the material available on record, the petitioner is cultivating Ac.0.27 cents of land in Survey No.182/8 of Kothavalasa Village, Parvathipuram Mandal, Vizianagaram District. But, it is not the case of the petitioner that he is the owner of the land and admitted that he is in possession and enjoyment of the property for the last 75 years, such enjoyment is disputed by the Government. However, such disputed questions of fact cannot be decided in a Writ Petition, exercising jurisdiction under Article 226 of the Constitution. Therefore, any usage or enjoyment of the property may confer right on the petitioner to claim appropriate relief before the civil Court subject to limitations jurisdiction of competent civil Court under Section 6 of the Act.

8. Most curiously, the petitioner is aged 50 years but claims that he is in possession and enjoyment of the land for the last 75 years, which question cannot be decided in the instant Writ Petition. Though the petitioner contends that he is in possession and enjoyment of the land for the last 75 years, but failed to produce any scrap of evidence in support of his contention.

9. The 2nd contention of the petitioner is that no notice was served under Section 3 R/w. Section 7 of the Act in Form-B but the learned Government Pleader for Revenue produced material establishing service of notice on the son of the petitioner on 19.07.2005 and it clearly establishes that notice under Section 3 R/w. Section 7 in Form-B was served on the petitioner prior to issuance of impugned notice under Section 6 of the Act. According to the explanation to Section 3 R/w.

Section 7 of the Act, a notice must be served in any of the modes prescribed under Section 25 of the Andhra Pradesh Revenue Recovery Act, 1864 (for short, 'the Act of 1864'), which permits service of notice by delivering a copy to the defaulter, or to some adult male member of his family at his usual place of abode, or to his authorized agent or by affixing a copy thereof on some conspicuous part of his last known residence or on some conspicuous part of the land about to be attached.

10. In such case, if the procedure prescribed under Section 25 of the Act of 1864 is applied to the present facts of the case, in view of the explanation to Section 6, notice under Section 3 and 7 in Form-B is served and serving of such notice is held sufficient. Thus, the notice under Section 6, impugned in this Writ Petition, is preceded by notice in Form-B under Section 3 R/w. Section 7 of the Act. Hence, the contention of the learned counsel for the petitioner that non service of the notice under Section 3 R/w. Section 7 of the Act preceding to the issuance of the notice impugned in this Writ Petition does not arise.

11. One of the contentions raised by the learned counsel for the petitioner is that there was no reference about the prior notice to issuance of the impugned notice in the present Writ Petition but the rules prescribe serving proforma *i.e.*, Form-C under the Act and service of notice under Section 3 R/w. Section 7 of the Act is not an illegality and such service cannot be doubted in view of the material placed before this Court.

12. The other contention raised by the learned counsel for the petitioner is that the land is classified as '*gorja*' *i.e.*, cart track, the width of which may be around 10 to 12 feet and thereby the question of encroaching Ac.0.27 cents in Survey No.182/8 of Kothavalasa Village, Parvathipuram Mandal, Vizianagaram District is *ex-facie* false but this

contention cannot be accepted at this stage, it depends upon the length and width of the land classified as '*gorja*' i.e., cart track and such disputed questions of fact cannot be decided in this Writ Petition. However, the jurisdiction of the Civil Court is barred in view of Section 6 of the Act but subject to title dispute under Section 14 of the Act but the jurisdiction of the civil Court is not completely ousted.

13. In ***State of Andhra Pradesh Vs. Guntur Dignumate Neti Kotala Dharam Chalivendra Sangham and others***¹, this Court relied on a decision of the Apex Court in ***Government of Andhra Pradesh Vs. T.Krishna Rao***² wherein it was held that a person who is in an unauthorised occupation of the Government land cannot be evicted summarily by Government where complicated questions of title arise for decision.

14. While considering the explanation of the '*encroacher*', the authorities are required to objectively consider the objections including the nature of occupation, the length of time under occupation of the encroacher etc. In case there is an element of dispute in relation to the title, summary procedure contemplated under the Act cannot be instituted, as the Act is not a short cut for deprivation of a citizens' undisputed possession over a long period. In such cases, the proper remedy would be to approach the civil Court for recovery of possession as held by this Court in ***P.Ravinder Reddy Vs. State of Telangana and others***³.

15. A person in occupation of Government land claiming long standing possession cannot contend that the revenue authorities have no right to

¹ 2003 (3) ALD 349

² 1982 (SCR) 3 (500)

³ 2015 (4) ALD 641

initiate action against him after long lapse of time is no more *res-integra* as held by this Court in ***R.Jayasimha Reddy Vs. Government of A.P.***⁴.

16. As long as a person is continuously in illegal and unauthorized possession of Government land, the Government is always at liberty to avail the multi-fold options available to it for eviction of such illegal and unauthorized occupants from the government land, and no embargo can be placed on its options, and it is not open for the person who is in unauthorized occupation of Government land to contend that the Government for his removal from the unauthorized occupation has to take recourse only to the remedy of civil suit and not the procedure which is provided for under various legislations for dealing with and removal of such unauthorized occupants of the Government land. The petitioner having been found to be an illegal and unauthorized occupant of the 'gorja' i.e., Government poramboke land, the Government has chosen the option of taking steps for eviction of the petitioner under the Land Encroachment Act, and no exception can be taken to such action of the Government.

17. If the principles laid down by the Apex Court in ***T.Krishna Rao***², and this Court in ***P.Ravinder Reddy***³ and ***R.Jayasimha Reddy***⁴, are applied to the present facts of the case, the remedy available to the petitioner is to approach the competent civil Court, to claim appropriate relief, as the disputed questions of fact cannot be decided in a Writ Petition. Hence, I find no ground to quash the impugned notice, issued under Section 6 of the Act, and, consequently, the Writ Petition is liable to be dismissed. However, the petitioner is at liberty to approach the competent civil Court subject to permissibility under Section 14 of the Act.

⁴ 2004 (3) ALT 205

18. In the result, the Writ Petition is dismissed. No order as to costs.
19. In consequence, miscellaneous petitions, if any, pending in this Writ Petition shall stand dismissed.

M.SATYANARAYANA MURTHY, J

Date: 23.04.2018.
Dsh



HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

230



10052018

WRIT PETITION No. 524 OF 2016

Date. 23.04.2018

DSH