

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.16928 OF 2014

ORDER:

The petitioner seeks writ of mandamus declaring the action of the 3rd respondent – Joint Collector, Guntur District, Guntur, in not passing orders in the stay application filed along with the appeal by the petitioner as illegal and arbitrary and consequently, direct the respondents not to interfere with the possession of the petitioner's property pending disposal of the appeal.

2. (a) Petitioner's case, in brief, is that the land in an extent of Acres 0.10 cents in survey No.51/C9 in Nallapadu Village and Mandal, Guntur District, was granted in favour of one Vanama China Swamy in reference No.530/37/1, dated 22.11.1937 by the Tahsildar, Guntur, for market value. Subsequently, the said property was subject matter of sale transactions.

(b) Petitioner's father-in-law Cherukuri Kotaiah purchased an extent of Acres 0.5 cents from Vanama China Swamy, the original assignee and ever since has been in possession of the same. Subsequently, the property was assessed by the 2nd respondent – Municipal Corporation and the said property became an urban property during the Town Survey Operations and at present, the said property is shown as TS No.1690/2011. While so, the 4th respondent issued notice

dated 15.02.2013 under the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short, Act 9 of 1977) for cancellation of the patta granted to Vanama China Swamy.

(c) Assailing the validity of the notice, a civil suit in O.S.No.192 of 2003 was filed by the petitioner and her husband on the file of IV Additional Senior Civil Judge, Guntur and sought for declaration and consequential injunction and the said suit was dismissed on 05.07.2011. Aggrieved, they filed A.S.No.169 of 2011 on the file of District Judge, Guntur, which was dismissed on 12.12.2012. Aggrieved, the petitioner filed S.A.No.33 of 2013 before the High Court. In SAMP.No.1267 of 2013, an injunction was granted in favour of the petitioner on 19.07.2013. Subsequently, the second appeal was dismissed on 13.12.2013.

(d) After dismissal of second appeal, a representation dated 28.12.2013 was made to the respondents stating that the provisions of Act 9 of 1977 were not applicable to the facts of the case and for cancellation of the proceedings. The petitioner was under bonafide impression that the respondents would consider the representation. However, the petitioner came to know that through RC.No._____/2013/G1, dated 01.04.2014, the 2nd respondent tried to evict the petitioners pursuant to the orders in second appeal.

Therefore, the petitioner filed W.P.No.11159 of 2014 challenging the action of the 2nd respondent trying to demolish the house bearing No.3-1-194/25, situated in survey No.51/C9 on the strength of notice dated 01.04.2014 in proceedings RC.No.____/2013/G1 as illegal and arbitrary and the said writ petition was disposed of, giving liberty to the petitioner to file stay application in the revision before the 1st respondent and the 1st respondent shall consider the stay application on its merits and in accordance with law at the earliest. Even before the petitioner could proceed further, the 1st respondent rejected her revision by proceedings Memo No.14/245/ASSN.V(2)/2014-1, dated 09.05.2014 on the ground that appeal lies before 3rd respondent under Section 4 (A)(2) of Act 9 of 1977. Accordingly, the petitioner filed appeal before the 3rd respondent along with stay application dated 06.06.2014, but till today, no orders were passed on the stay application.

Hence, the writ petition.

3. Learned Assistant Government Pleader for Municipal Administration appears on behalf of respondents 1 and 2 and learned Assistant Government Pleader for Revenue appears on behalf of respondents 3 to 5. No counters are filed.

4. Heard.

5. As can be seen from the record, the main grievance of the petitioner is that his appeal is pending with the

3rd respondent, wherein he filed a stay application, but till the date of filing of the instant writ petition, no orders were passed in the said stay application. It appears, the appeal was filed by the petitioner more than four years back. Therefore, it is apposite to give direction to the 3rd respondent to dispose of the main appeal itself on merits instead of taking up the stay application above.

6. In the result, this writ petition is disposed of, with a direction to the 3rd respondent to dispose of the appeal said to be filed by the petitioner before him, by giving an opportunity to both the parties to submit their arguments. The entire exercise shall be completed within three months from the date of receipt of a copy of this order. No costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

19.12.2018
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