

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.11043 of 2017

ORDER:

Heard Mr.K.Gopal for petitioners and the learned Assistant Government Pleader for assignment for respondents 1 to 4.

The petitioners pray for mandamus declaring the action of respondents 3 and 4 in threatening to dispossesses and interfere with the possession and enjoyment of petitioners of house plots covered by Sy.No.186 of Modavalasa Village, Denkada Mandal, Vizianagaram District, as illegal, arbitrary and unconstitutional.

Briefly stated, the case of the petitioners is that the respondents keeping in view the eligibility of petitioners and also that the petitioners are land less poor persons assigned small extents of Ac.0.02 cents in Sy.No.186 vide assignment dated 10.11.2003. The petitioners claim to be in possession and enjoyment of house plots assigned respectively in favour of each one of the petitioners.

The 10th petitioner along with few others filed W.P.No.18738 of 2005 and on 24.08.2005, the writ petition is disposed of.

The huts raised by petitioners were either uprooted or damaged by hud-hud cyclone and when the

petitioners tried to reconstruct the houses, the respondent Nos.3 and 4 at the instance of local leaders and realtors started interfering with the possession of petitioners. The proceedings under Section 145 of Criminal Procedure Code were also initiated. The proceedings were challenged in W.P.No.3085 of 2017 and this Court directed the respondents therein not to interfere with the possession and enjoyment of petitioners of respective house sites. Now, the ground of challenge is as long as on, the assignment in favour of petitioners is subsisting, the interference with the enjoyment in any manner is unsustainable. Hence, the writ petition is filed.

On 28.03.2017, this Court granted interim direction restraining the respondents from interfering with the possession and enjoyment of petitioners.

The 4th respondent filed counter affidavit and also petition to vacate the interim order dated 28.03.2017. It is stated that in Modavalasa Village, Denkada Mandal, Vizianagaram District, house site pattas were issued to beneficiaries belonging to SC/BC community between 1995 and 2003 in an extent of Ac.9-30 cents covered by Sy.No.186 of Modavalasa Village. Sy.No.186 is classified as Konda poramboke and a housing colony is existing as

on date. There are serious disputes in the enjoyment of house sites by the assignees in the said survey number. The disputed land is covered by Sy.No.186/2 & 3. A few of the dwellers of colony are claiming possession, on the strength of fake pattas and filing cases in this Court. The respondent No.4 disputes the pattas relied on by the petitioners except the house site pattas standing in the names of petitioner Nos.16, 17, 19, 20 and 23. The possession claimed is also disputed by the 4th respondent. The petitioners on the strength of the fake pattas are changing the physical features of the land. Hence, preventive steps were initiated by the department including initiation of proceedings under Section 145 Cr.P.C. The 4th respondent, in support of the stand taken in the counter affidavit, places annexures along with the counter affidavit.

I have perused the record and also taken note of the limited submission of the learned counsel appearing for the parties. In the circumstances referred to above, what transpires for consideration is whether petitioners are entitled for a direction, as prayed for in the writ petition and in the process, this Court considers examining on one hand the documents relied on by the petitioners and on the other hand by respondent No.4 or

alternatively before a right is accepted or refund, enquiry is conducted in this behalf by authority having jurisdiction.

The petitioners as well as respondents placed Xerox copies of documents in support of their case. The objection of respondent No.4 is that by referring to false documents, the possession claimed ought not to be protected by this Court. Mr.Gopal contends that petitioners are not only relying on pattas filed in the writ petition but also the enjoyment subsequent to the assignment in their favour. That by the assertion of 4th respondent the pattas as fake, the pattas cannot be treated as fake documents. He contends that the petitioners are prepared to face enquiry initiated in this behalf, establish the assignment and also circumstances under which the assignment is granted to petitioners.

Having regard to above submissions, the writ petition is disposed of by this order.

The respondents are directed, not to interfere with the possession and enjoyment of petitioner Nos.16, 17, 19, 20 and 23 except by issuing notice, affording an opportunity, after an order is passed, if circumstances warrant.

As regards, other petitioners, the petitioners are given liberty to file appeal/representation before Revenue Divisional Officer for examination of the record on the assignment made in favour of these petitioners, conduct enquiry and pass orders within four (04) weeks from the date of receipt of copy of this order. The 3rd respondent summons record from the office of 4th respondent and if necessary, undertakes inspection and passes orders on the representation filed by these petitioners. Till a decision is taken and communicated, the petitioners as well as respondent Nos.2 to 4 are directed to maintain *status-quo* as regards possession and physical features of plots claimed by these petitioners. The said exercise is directed to be undertaken and completed within four (04) months from the date of filing of representation by these petitioners. No order as to costs.

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

S. V. BHATT, J

Date: 12.04.2018
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