

THE HON'BLE SRI JUSTICE P.KESHA RAO

WRIT PETITION NO. 27289 OF 2013

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader appearing for respondent Nos. 1 to 4.

2. The prayer sought in the Writ Petition is as under:

“...to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the impugned action of the respondents in interfering with the petitioners right and possession over the property bearing No. Block No.2, Ward No.2 in Samarlakota, East Godavari district and further the action of the respondents 3 and 4 in not taking any action in spite of representations made by the petitioner is highly illegal, arbitrary and violative of Article 14 and 300 (A) of Constitution of India.”

3. Learned counsel for the petitioner would submit that the petitioner purchased an extent of 345 Sq. Yards with old tiled house situated at Pitapuram Road, Block No.2, Ward No.2 in Samarlakota, East Godavari district vide document bearing No.3227/2008 dated 6.8.2008 for a valuable consideration. The said tiled house is existing in the land in a dilapidated condition. Therefore, the petitioner undertook renovation

work. When the renovation work was going on, the beat constables of respondent No.4 station, intervened and manhandled the workers. The petitioner also submitted detailed representations to respondent No.3 on 2.4.2009 and 13.7.2009 by enclosing all the documents. In spite of the same, respondent No.4 was not allowing the petitioner to proceed with the work. Therefore, the present Writ Petition is filed.

4. Respondent No.4 filed a counter affidavit denying the averments made in the affidavit filed in support of the writ petition and contended inter-alia that the subject property was gifted to the police department by Pithapuram Maha Raja to establish a police station, in the year 1935. Since the old premises was in a dilapidated condition, wherein the old police station was existing, it was locked and the property is in possession of Samalkota police station. It is also stated in the counter affidavit that on the complaint of one P. Chitti Babu, PC-462 of Samalkota Police Station, a case in Cr.No.76 of 2009 under Sections 447, 427, 332, 506 read with 34 IPC was registered against the petitioner and others who criminally trespassed into the building which is under the control of Police Department and removed the tiles and broke the inaugurated stone of the building with a crowbar and further they caught

hold of the collar of the complainant and fisted him with hands on his chest and abused him in filthy language and threatened him with dire consequences. After investigation, a charge sheet was filed. The Court below, after taking cognizance of the offence, numbered the case as C.C.No.452 of 2009. Though the petitioner along with some others filed Criminal Petition No.10018 of 2010 before this Court seeking to quash the criminal proceedings in the above said CC, for obvious reasons, it was withdrawn on 21.3.2013. It is also stated in the counter affidavit that the old police station buildings beside Tahsildar's office, Samalkot, at Block No.8, Ward No.2 in Sy.No. 344/2 was classified as Grama Kantam i.e., village site comprising of 345 Sq.Yards in Samalkota Revenue village under Samalkota Municipal Limits. To that effect, a certificate dated 28.10.2013 was issued by the Tahsildar, Samalkot mandal. Further, 10(1) Adangal also shows that the said property belongs to Grama Kantam. The same are filed along with the counter affidavit as material papers.

5. However, the petitioner filed a reply affidavit denying the contents in the counter affidavit. In the reply affidavit, it is mentioned that the petitioner along with others got acquitted in C.C.No.847 of 2011 dated 1.5.2015 on the file of the Court of the Special Judicial First Class Magistrate, Prohibition and

Excise, Kakinada. The certificate issued by the Tahsildar is subsequent to filing of the Writ Petition. Therefore, the said documents cannot be relied upon.

6. Learned counsel for the petitioner strenuously contended that the respondents have not filed any iota of evidence before this Court to show that the said property belongs to the Police Department, Samalkota, East Godavari district.

7. On the other hand, learned GP appearing for respondent Nos. 1 to 4 would submit that the said property was gifted to the police station by Pithapuram Maha Raja in the year 1935 and since then it is in the exclusive possession of P.S. Samalkota. It is also submitted that since the old police station was in a dilapidated condition, it was locked and a new premises has been constructed.

8. Having heard both the counsel and from the perusal of the material on record, it is apparent on the face of the record that the subject property is being claimed by the petitioner as well as the respondents. The petitioner is claiming title through a registered sale deed dated 6.8.2008. Per contra, the respondents are claiming title to the subject property through a gift deed said to have been executed by Pithapuram Maha Raja along with a certificate dated 28.10.2013 issued by the Tahsildar to the effect that the subject property is situated in

Block No.8, Ward No.2 in Sy.No.344/2 and is classified as Grama Kantam i.e., village site. Along with the counter affidavit 10 (1) Adangal of Samalkot mandal is also filed showing the subject land as Grama Kantam. Thus, both the parties have set up their claim to the very same subject property.

9. This Court is conscious of the scope of the Writ Petition under Article 226 of the Constitution of India. It is settled proposition by this Court and the Hon'ble Apex Court in a catena of decisions that disputed questions of fact cannot be decided in a Writ Petition under Article 226 of the Constitution of India. Further, the genuineness or otherwise of the documents produced by the parties in the Writ Petition cannot be gone into and ascertained whether genuine or not, by this Court. To adjudicate the said issue, the proper Forum is a competent civil Court where the rival claims can be considered.

10. Therefore, this Court is of the opinion that there are no merits in the Writ Petition and the same is liable to be dismissed.

11. Accordingly, the Writ Petition is dismissed. It is needless to observe that both the parties are at liberty to seek redressal in the appropriate Court as per law.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

P. KESHA VA RAO,J

Date: 9.11.2018
KPM

