

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.704 of 2016

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner with the following relief :

“to declare the action of respondent No.2 in passing impugned Order in R.Dis.No.3365/2015-F2 dt. 14.10.2015 by confirming the Order of respondent No.3 in Rc.Dt/328/2015 dt. 09.06.2015 in Gramakantam Land without jurisdiction as illegal, arbitrary and contrary to G.O.Ms.No.187, dt. 27.05.2015 and violative of Articles 14,21 and 300-A of Constitution of India and consequently set aside the impugned Order of respondent No.2 in R.Dis.No.3365/2015-F2, dt. 14.10.2015 and order of respondent No.3 in Rc.Dt/328/2015 dt. 09.06.2015”.

It is the case of the petitioner that he is the absolute owner and possessor of a house in an extent of 647 sq.yards in Sy.No.183/B of Nidumukkala Village, Tadikonda Mandal, Guntur District. He succeeded the said house from his maternal grandfather, who acquired the same from his maternal grand father in the year 1976 under registered sale deed. During his life time, his predecessors are in peaceful possession and enjoyment of the property without any interruption by anybody and after his maternal grand father, the petitioner is continuing in possession and enjoyment of the property. While the matter stood thus, respondent No.3- Tahsildar without any jurisdiction initiated the proceedings against the petitioner voluntarily under the Andhra Pradesh Land Encroachment Act, 1905 and issued Notice under Section 7 of the Act on 14.05.2017. In response to the notice, he submitted a detailed explanation through his counsel contending that it is Gramakantam land and thereafter respondent No.3 without considering his explanation issued notice under Section 6 of the Act vide RC Dt/328/2015 dt. 09.06.2015 without applying

mind and without answering his prime contention regarding classification of the land as Gramakantam.

Aggrieved by the Order passed by respondent No.3, the petitioner preferred an appeal before respondent No.2 vide Appeal RDis.No.3365/2015-E2 and the same was dismissed by respondent No.2 without considering various contentions urged in the appeal. Thus, respondent Nos. 2 and 3 passed the impugned Orders without any basis. Recently, the Government of Andhra Pradesh relinquished its right in favour of citizens by observing that Gramakantam lands are not vested with the State. In that lines, the Government of A.P. issued G.O.Ms.No.187, dt. 27.05.2015 by Revenue (Assn.I) Department stating that Gramakantam lands are not vested with the Government and the villagers having long standing possession of the lands is having right to continue and claim right in the property. The Gramakantam lands are not communal lands. Moreover, the two authorities nowhere in the impugned Orders answered the explanation and bypassed the contention as the land is classified as Gramakantam and passed the impugned order by the respondent No.2 without considering the objections raised by him without applying mind.

During hearing, learned counsel for the petitioner reiterated the contention that in view of G.O.Ms.No.187, dt. 27.05.2015 when the land is classified as Gramakantam, the petitioner, who is in possession of the property is entitled to continue in possession and enjoyment of the property and he cannot be evicted invoking provisions of Land Encroachment Act contrary to the above said Government Order and requested to pass appropriate orders.

The Government Pleader for Revenue appearing for the State of Andhra Pradesh contended that in pursuance of the notice issued under Section 6 of the Act after dismissal of the appeal, the possession of the

property was taken by respondent No.4 and given to Grampanchayat for safe custody in the presence of mediators and therefore, now the land is in the possession of grampanchayat.

As seen from the material on record, it is the contention of the petitioner that his predecessors in title purchased the subject property under Registered Sale Deed in the year 1976 and after their death, this petitioner succeeded the land but according to Government, it is classified as Gramakantam and even if it is a Gramakantam land, the Government of Andhra Pradesh relinquished its right in the Gramakantam lands by issuing G.O.Ms.No.187 dt. 27.05.2015. As seen from the Government Order, as per G.O.Ms.No.100, Revenue (Assn.) Dept, dt. 22.02.2014, certain guidelines were issued for issuance of 'No Objection Certificates' for registering the lands relating to 'Gramakantam' lands and thereafter it is brought to the notice of the Government that after cancellation of the G.O.Ms.No.100, certain problems regarding the registration of the 'Gramakantam' have not solved as these lands were included in the prohibited list furnished by the District Collectors to the Registering Officers/authorities under Section 22-A of the Registration Act and finally issued a direction in view of the Orders in Writ Petition No.553 of 2012 in *Nagarala Nivasithula Welfare Association v. The Government of Andhra Pradesh's*. On consideration of guidelines therein, ordered that the lands classified as 'Gramakantam' were vested in Gram Panchayats, there is a need to withdraw these lands from the purview of Section 22-A of the Registration Act to remove hardship of general public. Therefore, the Government ordered that the District Collectors shall withdraw 'Gramkantam' lands from the lists of prohibited property from registration furnished to the Registering Officers under Section 22-A of the Registration Act and it is the responsibility of the Grampanchayat to take appropriate

steps in respect of Gramakantam lands including the protection to the extents of lands meant for community purpose.

Even as per the explanation submitted by this petitioner to the Notice issued under Sections 7 and 6 of the Act, the contention of the petitioner is that the land in dispute is a Gramakantam land, but this fact was not decided either by RDO or Joint Collector despite raising such contention whether the land is part and parcel of Gramakantam and whether the land is vested on the Grampanchayat. Even assuming for a moment that the land in dispute is a Gramakantam land, such land is excluded from the list of lands notified under Section 22-A of the Act, but not totally given up the rights by the Governments while directing the Grampanchayat to take care of those lands vested on the Grampanchayat.

It is the duty of respondent Nos. 3 and 4 to decide whether the land in dispute is 'Gramakantam' land or a patta land and if there is any dispute with regard to the nature of the land and serious dispute with regard to the title to the property, the remedy open to the petitioner is to approach the Civil Court to claim necessary relief. The jurisdiction of the Civil Court is ousted in terms of Section 14 of the Act amended by Andhra Pradesh Act 23 of 1976 with effect from 28.08.1975 making it clear that no decision made or order passed or proceeding taken by any officer or Authority or the State Government under this Act, not being a decision, order or proceeding affecting the title of the land of a person, shall be called in question before a Civil Court in any suit, application or other proceeding and no injunction shall be granted by any court in respect of any proceeding taken or about to be taken by such officer or authority or State Government in pursuance of any power conferred by or under this Act.

Thus, the jurisdiction of the Civil Court taken away or ousted by express bar under Section 14 of the Act, but a person, who is in unauthorized occupation of the Government land cannot be evicted summarily by government where complicated questions of title arise for decision as held by this Court in *State of Andhra Pradesh v. Guntur Dignumatge Neti Kotala Dharam Chalivendra Sangam*¹. Even otherwise, the inherent jurisdiction of the civil Court can be inferred under Section 9 of the Act unless such Civil Court is ousted by express or implied bar and a similar question came up before constitutional constitution bench consisting of Seven judges of the Apex Court in *Kamala Mill v State of Madhya Pradesh*² and the same is reiterated in another judgment in *Dulabai v State of Madhya Pradesh*³, wherein the Apex Court laid down the following guidelines:

- “(1) *Whether the statute gives finality to the orders of the special tribunals the Civil Court’s jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.*
- (2) *Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decision to sustain the jurisdiction of the Civil Court.*

Where there is no express exclusion the examination of the remedies and scheme of particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays

¹ 2003 (3) ALD 349

² AIR 1965 SC 1942

³ AIR 1969 SC 78

down that all the questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

- (3) *Challenge to the provisions of the particular Act is ultra vires cannot be brought before Tribunals constitutes under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.*
- (4) *When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.*
- (5) *Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.*
- (6) *Questions of the correctness or the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the order of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case, the scheme of the particular Act must be examined, because it is a relevant enquiry.*
- (7) *An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.”*

In view of the guidelines issued by the Apex Court, the Court can readily interfere ouster of the jurisdiction only in case the machinery provided under the Act is sufficient to grant relief which the Civil Court is competent and finality of the Order passed by the concerned statutory authorities. If those principles are applied to the facts of the present case and in view of the law declared by this Court referred above, the Civil Court jurisdiction is not completely ousted when there is a serious dispute as the title of the parties. Here in this case, the petitioner is claiming title

through his predecessors in title viz., Maternal grand father having succeeded the property. The predecessors in title of the petitioner purchased the property under registered sale deed. Thus, there is a serious dispute as to the title and in such case, the petitioner is entitled to invoke jurisdiction of Civil Court and bar under Section 14 of the Act would not come in the way of deciding the title to the disputed property. Hence, leaving it open to the petitioner to approach the Civil Court, this petition is to be disposed of.

Since there is a dispute of delivery of possession after evicting the petitioner from the land in dispute, it is difficult to decide the question on fact regarding taking possession and vesting with the gram panchayat, but the learned counsel for the petitioner requested to restrain the respondent from alienating or assigning the land to 3rd parties in view of serious dispute to be decided by the Civil Court, the respondent No.4 is directed not to alienate or assign the land in dispute to third parties for a period of six months or till the date of filing civil suit, whichever earlier.

With the above direction, this Writ Petition is disposed of.

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

M. SATYANARAYANA MURTHY, J

Date: 23-04-2018
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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