

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.41089 of 2018

ORDER:

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

“to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the 3rd respondent in trying to dispossess the petitioner from the land in Sy.No.435/2 an extent of 0.99, in Sy.No.421-4 an extent of Ac 0.23 cents, in Sy No.344-11 an extent of Ac.0.25 cents in total an extent of 1.47 cents situated at Tharunavai village, Sangam Mandal, SPSR Nellore District, without following the proceedings and without following the issuing any notice under the guise of 4th respondent, as arbitrary and illegal.”

2. Heard learned counsel for the petitioner, the learned Assistant Government Pleader for Revenue appearing for respondents 1 to 3 and Sri Josyula Bhaskara Rao, learned counsel for the 4th respondent.

3. The petitioner is the absolute owner and possessor of land to an extent of Ac.1.47 cents in survey Nos.344/11, 421/4, 435/2, Tarunavai Village, Sangam Mandal, SPSR Nellore District. The aforesaid land was allotted to him under CJFS by the then Chairman and Revenue Divisional Officer, Kavali, in the year 1993. While so, the Revenue Divisional Officer issued proceedings, dated 11.10.2010, recommending the 3rd respondent that petitioner has violated the conditions under Section 4 (1) of the POT Act. The same was accepted by the 3rd respondent and issued proceedings on 22.10.2010 to the petitioner. The contention of the petitioner is that before cancellation of CJFS lease, no notice was issued no opportunity was given to submit explanation; that without conducting enquiry, the 3rd

respondent is trying to mutate the name of the 4th respondent in the revenue records in the place of the petitioner. The 4th respondent filed a suit against the petitioner in O.S.No.54 of 2013 on the file of Principal Junior Civil Judge, Kovur, seeking permanent injunction restraining the petitioner and his men from in any way interfering with his peaceful possession and enjoyment of the land. The 4th respondent also filed Interlocutory Application seeking temporary injunction. The Court below decreed the aforesaid suit on 21.08.2018. Against the said decree and judgment, the petitioner filed first appeal in A.S.No.25 of 2018 on the file of Senior Civil Judge, Kovur, SPSR Nellore District, and the same is pending consideration.

4. Admittedly, the aforesaid suit filed by the 4th respondent against the petitioner was decreed on 21.08.2018. Aggrieved by the said judgment, the petitioner filed A.S.No.25 of 2018 before the Court of Senior Civil Judge, Kovur, SPSR Nellore, and the same is pending. As on today, the decree passed in the said suit was not suspended.

5. Learned Assistant Government Pleader, on instructions, submits that as on today, the 4th respondent is in possession and enjoyment of the property.

6. In view of the same, when there is a finding by competent Civil Court, the same is binding on the parties until the same is suspended by appropriate Court. Having filed first appeal and without waiting for disposal of the same, the petitioner resorted to file the present Writ Petition. The petitioner cannot be permitted to avail two parallel proceedings in respect of same cause of action. Hence, the writ petition is liable to be dismissed.

7. Accordingly, the Writ Petition is dismissed. However, it is open to the petitioner to file an appropriate application in the pending first appeal in A.S.No.25 of 2018 and obtain orders.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

A.RAJASHEKER REDDY, J

DECEMBER 15, 2018
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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY



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Date:15.12.2018

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