

THE HONOURABLE SRI JUSTICE P. KESHA VA RAO

WRIT PETITION No.20579 of 2014

ORDER:

There is no representation on behalf of the petitioners.

2. The prayer sought in the writ petition is as under:-

“...to issue writ or order one in the nature of writ of mandamus, declaring that the action/inaction of the Respondents 2 to 5 is illegal and consequently direct the respondents 2 to 5 to take immediate steps to prevent criminal activities of the Respondents 7 to 11 and protect the legal possession of the schedule properties and grant such other order or orders as this Hon’ble High Court may deem fit and proper in the circumstances of the case and in the interest of justice.”

3. Learned Government Pleader appearing for the respondents 1 to 6 submitted that the 1st petitioner herein filed W.P.No.26137 of 2011 in this Court seeking the very same relief as sought for in this writ petition. The said writ petition was dismissed by this Court on 28.02.2012. The said copy of the order is enclosed to the counter-affidavit filed by the 6th respondent. From a perusal of the order, it is evident that the relief sought in the above said writ petition and the present writ petition is one and the same.

4. This Court, while dismissing W.P.No.26137 of 2011, was pleased to observe as under:

“The petitioner is seeking directions to the respondents-Police to safeguard its possession with regard to the subject land, in this petition, filed under Article 226 of the Constitution of India, claiming that it is in possession of the said land. In this case, it is to be noticed that, undisputedly, the land to an extent of Ac.3.31 guntas covered by Sy.Nos.741, 742 and 743 of Malkajgiri village, was originally held by the grandfather of respondents 5 and 6. It is the specific case of respondents 5 and 6 that their father has succeeded to the said property and upon his demise; they have succeeded the same from their father. In view of the said stand taken by respondents 5 and 6, there is a serious factual dispute with regard to

possession. Though the petitioner is claiming transfer of the said land by the father of respondents 5 and 6 in its favour, whether the petitioner has acquired title to the said land is a matter which cannot be gone into in this writ petition. Moreover, it is also stated that respondents 5 and 6 were the declarants before the authorities under the Urban Land (Ceiling and Regulation) Act, 1976 and they claim exclusive possession of the said plots covered by the aforesaid survey numbers. Therefore, in view of the factual disputes with regard to the possession of the land in question, no directions, as prayed for, can be issued. Moreover, it appears, in view of the serious dispute between the petitioner and respondents 5 and 6, only for the purpose of maintaining this writ petition under Article 226 of the Constitution of India, the Station House Officer, Malkajgiri Police Station, is made as party-respondent. It is also to be noticed that crimes, namely Cr.Nos.369 and 370 of 2011 are pending on the file of the 4th respondent and lands claimed in the complaints filed in both the crimes are one and the same. In view of the rival claims between the parties as to possession of the subject lands, no relief, as sought, can be granted. If the petitioner claims possession of any of the plots, it is open to it to establish its right before the competent Civil Court, but, when possession of the petitioner over the subject lands is disputed and when originally the same stood in the name of the late father of respondents 5 and 6, it is not possible for this Court to record a definite finding on such rival claims in this petition under Article 226 of the Constitution of India.

5. From a perusal of the above said order and also from the counter-affidavit filed by the 6th respondent, it is clinchingly established that there are serious disputed questions of fact relating to the possession as well as title of the subject property.

6. In similar circumstances, the Apex Court in **Sanjay Kumar Jha v. Prakash Chandra Chaudary**¹ has held that the disputed questions of facts cannot be adjudicated in a writ petition filed under Article 226 of the Constitution of India. In these circumstances, this Court is of the opinion that there are no merits in the writ petition.

7. On the other hand, though the writ petition is listed under the caption 'for dismissal', there is no representation on behalf of the petitioners. From this also, it appears that the petitioners are not

¹ 2019 (2) SCC 499

interested to prosecute the matter diligently. Therefore, on both the counts, the writ petition is liable to be dismissed.

8. Accordingly, the writ petition is dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand dismissed.

P. KESHA VA RAO, J

12th December 2019

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