

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.41317 of 2014

ORDER:

This writ petition is filed assailing the action of the respondents 1 to 6 and 8 to 11, permitting the 7th respondent to set up an Agricultural Market Yard in the land of the petitioner situated in Sy.No.1228/139, of Peraigudem village, Aswaraopet Mandal, Khammam District, as illegal and arbitrary and for consequential direction not to dispossess the petitioner from the subject land.

2. It is the case of the petitioner that he was assigned an extent of Acs.5.00 in Sy.No.1228/139 of Periagudem village, Aswaraopet Mandal, Khammam District in the year 1962 and final patta certificate was issued in the month of May, 1977. The 1st respondent also granted pattadar pass book and title deed vide patta No.1487. The pahani issued by the 1st respondent dated 16.12.2013 also reflects his name to an extent of Acs.5.00. That the 1st respondent, without informing and without taking the consent of the petitioner, allowed the 8th respondent to set up godown in the year 1983 to an extent of Ac.0.10 cents out of the land belongs to the petitioner. Now the said godown is abandoned and same is in dilapidated condition and the 1st respondent permitted the petitioner to use Acs.3.00 of land only from out of Acs.5.00, without any acquisition. It is stated that it is beneficial to the petitioner if he is allowed to use at least Acs.4.90 cents, after excluding Ac.0.10 cents of land in which the dilapidated

godown of the 8th respondent exists, which was abandoned in the year 1998. The petitioner filed WP No.37613 of 2013 seeking a direction to the respondents 1 to 4 to permit him to use entire Acs.5.00 of land, without any interference from the respondents 5 & 6 and for a direction to the 8th respondent to remove the dilapidated godown constructed in the subject land and handover the physical possession and the said writ petition is pending. Now, the staff of the 7th respondent is digging a bore-well stating that Acs.2.00 of land out of Acs.5.00 was allotted to set up Agricultural Market Committee Building. The respondents also made attempts to cut the trees planted by the petitioner in the subject land. Aggrieved by the same, present writ petition is filed.

3. This Court, while admitting the writ petition, passed interim order on 31.12.2014 in WPMP No.51731 of 2014, which reads as follows:

“Learned Government Pleader for Revenue takes notice for R-1 to R-4; learned Government Pleader for Agriculture takes notice for R-5 to R-7 and learned Government Pleader for Home takes notice for R-9 and R-10.

Issue notice to R-8.

Learned counsel for the petitioner is permitted to take out personal notice to R-11 by R.P.A.D and file proof of service.

Petitioner is owner of extent of Ac.5.00 gts in Sy.No.1228/139 of Periagudem village, Aswraopet Mandal, Khammam District and the same is assigned to him under Pattedar Pass Book No.1487. Petitioner contends that without following the procedure prescribed under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, he is being deprived an extent of Ac.2.00 gts of his land for the purpose of 7th respondent- Agricultural Market Committee.

Having regard to the title deed issued to the petitioner by 1st respondent and the adangal filed by the petitioner, the title and possession of the petitioner are *prima facie* established. It is therefore not open to the respondents to deprive the petitioner on any portion of the property without following provisions of the above Act. Therefore, there shall be interim direction as prayed for.”

4. This Court, by interim order dated 05.03.2019 directed both parties to maintain status quo in all respects in relation to the

land in question and both shall not resort to any sort of construction activity, pending further orders.

5. Counter affidavit along with vacate stay petition is filed by the 1st respondent denying the averments in the affidavit filed in support of the writ petition stating that an extent of Ac.1.33 in Sy.No.1228 situated in Aswaraopet was allotted to Andhra Pradesh State Irrigation Development Corporation-the 5th respondent herein during 1985 and same is recorded in the pahanies for the years 2010-11, 2011-12, 2012-13, 2013-14 and same is noticed in the old office file bearing No.B/756/86. The aforesaid land was relinquished to the revenue department by APSIDC. The person-in-charge of Agriculture Committee, Dhammapeta vide Lr.No.AMC/D/33/2011, dated 12.4.2012 addressed the Distict Collector, Khammam requesting to allot an extent of Ac.1.31 gts in Sy.No.1228,situated in Peraigudem for construction of godowns. The advance possession of the land was given to the Person-In-charge on 21.01.2013 by MRI, Aswaraopeta duly mentioning the boundaries of the said land under the cover of panchanama, after receiving market value of the said land. The subject land is part of Sy.No.1228, which is a very vast survey number comprising of Acs.2819.23 guntas and same is surrounded by government buildings on three sides and main road running from Khammam to Bhadrachalam. The location of petitioner's land is different from the lands in question. That the lands which were earlier alienated to APSIDC are now alienated/transferred to Market Committee and that only the

Government land to an extent of Ac.1.31 in Sy.No.1228 situated in Aswaraopeta was allotted to Market Committee. It is also stated that the issue pertains to transfer of lands from APSIDC to Agriculture Market Committee and no acquisition of lands are involved in the instant case. Hence, the question of payment of compensation to the petitioner does not arise and sought for vacating the interim order.

6. Counter affidavit and vacate petition is filed by the 7th respondent denying the averments in the affidavit filed in support of the writ petition stating that the petitioner is neither owner nor possessor of the land admeasuring Ac.1.33 guntas in Sy.No.1228, situated in Peraigudem, Aswaraopet village, Khammam District. That the 7th respondent purchased the subject land from the Government on 03.10.2012 for a consideration of Rs.3,65,000/- to establish Ashwaraopeta sub yard in notified area of Dammapeta Market Committee for the benefit of the farmers. That the petitioner with a malafide intention is claiming rights over the land purchased by the 7th respondent as the market value of the land increased as the lands are located on the main road running from the Ashwaraopeta to Bhadrachalam.

7. Reply affidavits are filed by the petitioner denying the averments in the counter affidavits filed by the respondents 1 & 7 stating that without issuing any notice and also without paying compensation to the petitioner, the subject land was allotted to the 7th respondent; that no land can be allotted by the 3rd

respondent to either the 7th respondent or 8th respondent, without paying compensation to the petitioner.

8. Vacate petition is also filed by the petitioner for vacating the interim order dated 05.03.2019 reiterating the averments in the affidavit filed in support of the writ petition stating that in spite of interim orders granted by this Court, criminal cases have been registered against the petitioner.

9. Heard learned counsel for the petitioner, learned Government Pleader for Revenue appearing for respondents 1 to 4 and learned Assistant Government Smt. G.Neeraja Reddy, learned Standing Counsel for 7th respondent.

10. Learned counsel for the petitioner submits that when the respondents have admitted that the petitioner was assigned land to an extent of Acs.5.00 in Sy.No.1228/139 and revenue records reflects the same, petitioner cannot be deprived of the said land, without following due process of law. He also submits that there is no record to show that the land was allotted to the respondents 7 & 8 and that the 8th respondent has not filed any counter affidavit to that effect.

11. On the other hand, learned Government Pleader for revenue as well as learned Standing Counsel for the 7th respondent submits that initially the land to an extent of Ac.1.33 gts was allotted to APSIDC and the name of APSIDC also reflected in the revenue records and pahanies. They submit that in Sy.No.1228 there is vast extent of government land available.

They further submit that the land allotted to the APSIDC is different from that of the land assigned to the petitioner. They further submit that after Irrigation department wound up, the subject land was taken over by the Government and allotted to the 7th respondent.

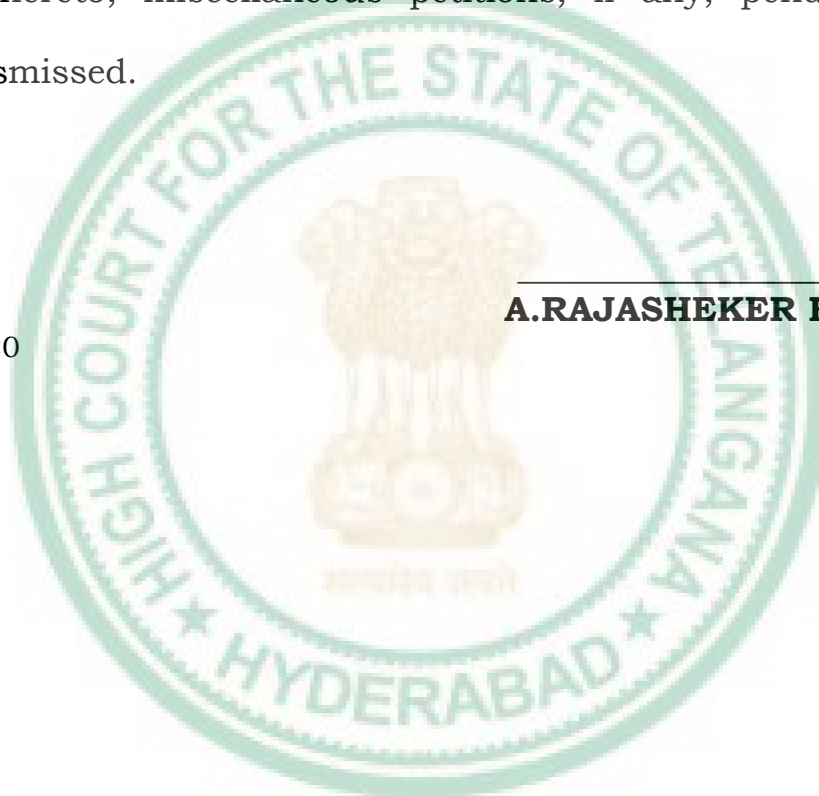
12. In this case, it is to be seen that final patta certificate on which reliance is placed by the petitioner does not show any particular boundaries. The patta certificate filed by the petitioner goes to show that the same was issued in the year 1977 and survey number is mentioned as 1228/139 of Peraigudem village, Aswaraopet Mandal, Khammam District. According to the learned counsel for the petitioner, there is no sub-division of Sy.No.1228, but when the same is pointed out to the learned counsel for the petitioner, he submits that it is a typographical error. In the counter affidavit filed along with vacate stay petition, the pahanies for the years 2012-13 and 2013-14 goes to show that the name of the Irrigation Department is reflected in Sy.No.1228. The respondents have also disputed that the land allotted to the Irrigation Department, which was again re-allotted to the 7th respondent is different land from that of the land assigned to the petitioner. Though reply affidavit is filed disputing the same, the said aspect cannot be decided in this writ petition, by exercising power of extraordinary jurisdiction under Article 226 of the Constitution of India.

In view of above facts and circumstances, this Court is not inclined to entertain the writ petition, as this Court cannot go into the disputed questions of facts, as such, the writ petition is liable to be dismissed.

Accordingly, this writ petition is dismissed, with liberty to the petitioner to avail alternate remedy available to him, as per law, if he is so advised. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed.

A.RAJASHEKER REDDY, J

23-01-2020
kvs



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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Date: 23.01.2020

kvs

