HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY ,THE TWENTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY

PRESENT

THE HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NO: 23220 OF 2020

Between:

P.Panduranga Reddy, S/o Sri Srinivas Reddy Aged about 46 years Occ Business r/o H.No 7-1-137 Reddy enclave Temple Alwal Secunderabad

...PETITIONER

AND

1. The State of Telangana, rep by commissioner Prohibition and Excise Abkari Bhavan Old Kattal Mandi Nampally Hyderabad 500 001
2. The Dist Prohibition and Excise Officer, Siddipet Dist
3. The Inspector Prohibition and Excise Station, Cherial
4. The Telangana Geetha Parisaramika Sahakara Arthika Samkeshma Samastha, Rep by Managing Director Fifth floor , Damodaram Sanjeeviah Bhavan Sankshema Bhavan MasabTank Hyderabad 500 028
5. The Toddy Tappers Co-Operative Society, Inapure, rep President Inapure village, Siddipet Dist

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to declare the action of the respondent No 2 and 3 (Dist prohibition and Excise Officer and Inspector Prohibition and Excise Cherial) trying to interfere with petitioner's possession and enjoyment of the land under the cover of letter 14/9/2020 while while seeking physical inspection and calling for information in respect of the alleged mortgaged land for alleged dues of the year 2004 under KOTIVARALU scheme inspite of the respondent No 1 issuing GO 84 waiving off the loan as, illegal, arbitrary , and against Art 300-A of the Constitution of India.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents not to interfere with peaceful possession and enjoyment of the land pending disposal of the writ petition pending disposal of the above writ petition.

Counsel for the Petitioner : SRI T. SHARATH
Counsel for the Respondent Nos.1 to 3: ASSISTANT GP FOR PROHIBITION AND EXCISE
Counsel for the Respondent Nos.4 & 5:---------

The Court made the following: ORDER

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.23220 OF 2020

ORDER:

Heard learned counsel Mr.T.Sharath for petitioner and learned Assistant Government Pleader for Excise.

2. According to the petitioner, he entered into registered Agreement of Sale-cum-General Power of Attorney in respect of land to an extent of Acs.7.12 guntas in Sy.Nos.37/A, 37/B and 37/B/1 of Inapur village with Burugu Mallaiah. Based on the said registered agreement of sale-cum-general power of attorney, Burugu Mallaiah executed sale deed in favour of petitioner and ever since petitioner is in possession and enjoyment of the said property. The averments made in the affidavit filed in support of the writ petition disclose that even before the petitioner purchased the land, Mr. Burugu Mallaiah sold the land to an extent of Acs.4.39 guntas forming part of the same survey numbers by executing sale deed on 10.03.2004 in favour of 5th respondent. Thereafter, 5th respondent mortgaged the same with the 4th respondent under registered mortgage deed document no.2124 of 2004. Petitioner now alleges that on the ground that 5th respondent has violated the terms granting mortgage to the 4th respondent, recently the Excise Officials have taken certain steps, which are nothing but claiming possession of the land from the petitioner. According to the petitioner, he filed O.P.No.60 of 2019 on the file of Chief Judge, City Civil Court, Hyderabad on 20.12.2018 under Section 83 of Transfer of Property Act seeking leave to deposit the mortgage amount and the same is pending consideration of the said Court.

3. Petitioner alleges that said mortgage is without possession and that 5th respondent never in possession of the land. He further alleges that vide G.O.Ms.No.84, dated 20.07.2019, the Government weaved off the loan availed under 'Kotivaralu' scheme and, therefore, the violation of the terms of mortgage by the 5th respondent has no significance. By virtue of the recent exercise undertaken by the Government, 5th respondent is now trying to get the possession of the very same land.

4. The immediate provocation of the petitioner to institute this writ petition is, proceedings of the District Prohibition and Excise Officer, Siddipet district, dated 14.09.2020 (Ex.P10), and the proceedings of the Prohibition and Excise Inspector, Proh. & Excise Station, Cherial, dated 23.09.2020 (Ex.P11). By proceedings of the District Prohibition and Excise Officer, dated 14.09.2020, by referring to the earlier correspondence, he directed the Prohibition and Excise Inspector, SHO, Cherial, to obtain the land records from the President of the 5th respondent and also to find out the status of the land physically and status of the land allotted and details of what cultivation is going on in the land and to submit his report to him. The proceedings dated 23.09.2020 of the Prohibition and Excise Inspector are consequent to the said directions. By these proceedings, the President of the 5th respondent was directed to submit copies of the land records allotted to the society under 'Kotivaralu' scheme; to assist the Prohibition and Excise Inspector, Cherial, for physical verification of the land; the present status of the land; what cultivation is going on in the allotted land; and the President was also directed to cover

the land with proper fencing by fixing a board indicating the details as how the Government allotted the land to the society.

5. It is not in dispute that by the time petitioner claimed to have purchased the land to an extent of Acs.7.12 guntas from Burugu Mallaiah, admittedly Burugu Mallaiah sold Acs.4.39 acres of land to the 5th respondent society in the same survey number. Whether said sale transaction was validly made, whether Burugu Mallaiah had more extent of land to accommodate both sale transactions and whether even though the purchase by the 5th respondent was earlier in point of time, but 5th respondent was not put in possession and petitioner was put in possession of entire extent of land and continued to be in possession, are all matters which require consideration in appropriate proceedings. These are questions of fact and require leading of evidence. Thus, it is for the petitioner to avail appropriate civil law remedy and assert his claim to the subject property.

6. It is not the case of the petitioner that he is tracing his title to the subject property through the 5th respondent or that 5th respondent has accepted possession claim of the petitioner.

7. Even if the Government has issued orders in G.O.Ms.No.84, dated 20.07.2019 waiving off the loan, it is not for the petitioner to contend that violation of the terms of mortgage by 5th respondent does not arise and that the Government has no manner of right to interfere in the land. It is an *inter se* dispute between the 5th respondent and the Government and it is for the 5th respondent society to work out remedy as available in law. Thus, petitioner has to assert his title to the property and possession claim in

appropriate proceedings, before objecting to impugned exercise undertaken by the official respondents. Thus, leaving it open to the petitioner to work out his remedies as available in law, this Writ Petition is dismissed.

Pending miscellaneous petitions shall stand closed.

SD/-K.SAILESHI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. One CC to Sri T. Sharath, Advocate [OPUC]
2. Two CCs to GP for Prohibition and Excise, High Court for the State of Telangana at Hyderabad. [OUT]
3. Two CD Copies

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HIGH COURT

DATED:21/12/2020



ORDER

WP.No.23220 of 2020

DISMISSING THE WP

WITHOUT COSTS

5 SR copies
Dt 29/12/2020