

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**WRIT PETITION NO.3939 of 2020**

**ORDER:**

This petition is filed under Article 226 of the Constitution of India to issue a Writ of *Mandamus*, declaring the action of 1<sup>st</sup> respondent in interfering with the petitioner's possession and enjoyment, at the behest of 2<sup>nd</sup> respondent, in respect of the land to an extent of Ac.0.90 cents in Sy.No.309 in Mydavolu Village, Edlapadu Mandal, Guntur District, as illegal, contrary to law, violative of principles of natural justice and Article 300-A of the Constitution of India.

The petitioner is claiming that he is in possession and enjoyment of the property to an extent of Ac.0.90 cents in Sy.No.309 of Mydavolu, Edlapadu Mandal, inherited the same from his ancestors. The petitioner also obtained Pattadar pass book and title deed vide patta bearing No.1026 from the revenue authorities and he has been in possession and enjoyment of the said property in his individual capacity, being owner and obtained 1-B (ROR) from the revenue department. It is also further contended that while the petitioner is continuing in possession and enjoyment of the property, the respondents are trying to interfere with the possession and enjoyment of the same, without following due process of law, and their highhanded action is illegal, arbitrary and violative of principles of natural justice and violative of Article 300-A of the Constitution of India and requested to pass appropriate order, as claimed in the writ petition.

During hearing, learned counsel for petitioner contended that the petitioner is in possession and enjoyment of the property in his own right. The entries made in revenue records and tax receipts filed along with the writ petition are sufficient to show that the petitioner is in possession and

enjoyment of the property. Therefore, the petitioner cannot be dispossessed from the property, except by due process of law, and requested to pass appropriate order as claimed by him.

Whereas learned Assistant Government Pleader for Revenue placed on record the written instructions dt.19-02-2020 contending that the land is 'government land' included in the prohibitory list published under 22-A of the Registration Act. It is classified as 'government land' in RSR. A copy of RSR is also placed on record to substantiate the said contention, besides producing the Adangal for the Fasili 1429 to establish that the petitioner is not in possession and enjoyment of the property. The petitioner failed to produce any document to substantiate the contention that he is in possession and enjoyment of the property, more particularly cultivation account i.e., No.3 account/ Form 1-B Namoon (ROR). Therefore, the direction as sought cannot be issued to the respondents and requested to pass appropriate order.

The basis for claim of this petitioner is that pattadar pass book and title deed were issued in favour of G.Sivaiah, the petitioner herein. The land in Sy.No.309 to an extent of Ac.0.90 cents is included in pattadar pass book and title deed also. The petitioner paying land revenue to the Government for the land in Sy.No.309, copies of tax receipts are also placed on record to substantiate that the petitioner is paying land revenue to the Government for the land in dispute i.e., Ac.0.90 cents in Sy.No.309.

According to Section 6 of ***Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971(Act No. 26 of 1971)*** every entry in record of rights shall be presumed to be true until the contrary is proved or until it is otherwise amended in accordance with the provisions of this Act.

Therefore, the presumption contained in Section 6 of the Act is rebuttable presumption and the respondents placed on record the documentary evidence, more particularly RSR, pertaining to the property besides Adangal copies, to rebut the presumption available under Section 6 of the Act.

Though the petitioner contended that he is in possession and enjoyment of the property based on the title deed and pattadar pass book, they are not sufficient to establish that he is in possession and enjoyment of the property, as on the date of filing of the writ petition, since the pattadar pass book and title deed were issued long ago and corrections were also made therein on 24-06-2009. Therefore, the documents relied on by the petitioner did not disclose his possession and enjoyment over the property as on the date of filing of this writ petition.

On the other hand, Adangal/Pahani i.e., account No.3 pertaining to the Village Mydavolu for Sy.No.309 for the Fasili 1429 disclose that the land is classified as 'prabhutva bhoomi' i.e., 'Government land' in column No.6 belonging to the Government as per the entry in column No.8, the name of the possessor and enjoyer is shown as 'Government'.

Therefore, besides these documents, the entries in RSR are sufficient to conclude that the land is belonging to the Government and mere inclusion of land in pattadar pass book and title deed is only *prima facie* proof of title, but not the proof of possession and that too the presumption is rebuttable. When the respondents rebutted the presumption by producing documentary evidence, it is difficult to accept that the petitioner is in possession and enjoyment of the property, as on the date of filing of this writ petition, thereby the question of dispossession of petitioner from the disputed land does not arise. Hence, I find that the petitioner miserably failed to establish that he is in possession and

enjoyment of the land in dispute, as on the date of filing of the writ petition, thereby the question of issuing direction to the respondents not to dispossess the petitioner, except by due process of law, does not arise. Consequently, the petitioner is disentitled to claim writ of *mandamus*. Hence, the writ petition deserves to be dismissed.

In the result, the writ petition is dismissed. In the circumstances, there shall be no order as to costs.

Consequently, miscellaneous petitions, pending, if any, shall stand closed.

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**JUSTICE M. SATYANARAYANA MURTHY**

Date: 19-02-2020

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