



***HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

+ WRIT PETITION No.14180 of 2020

% 7th April, 2021

Suddapalli Bramendra Rao

... Petitioner

AND

\$ The State of A.P. rep. by its Principal Secretary, Revenue Department, 4th Block, Ground Floor, Room No.135, A.P. Secretariat Office, Velagapudi, Amaravathi, Guntur District and four others.

... Respondents.

! Counsel for the Petitioner : Sri Jada Sravan Kumar

^ Counsel for the 1st to 4th respondents: Government Pleader for Revenue

^ Counsel for the 5threspondent : Sri Vinod K Reddy,
Standing Counsel for Gram
Panchayat

^ Counsel for the 6threspondent : Sri S.A.Razaaq

< Gist:

> Head Note:

? Cases referred:

(2012) 5 SCC 370

**HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU****WRIT PETITION No.14180 of 2020****ORDER:**

This Writ Petition is filed by the petitioner for the following relief:

“...to issue a Writ, order or direction, particularly one in the nature of writ of Mandamus declaring the action of the respondents in proceeding for construction of “Grama Secretariat” over the petitioners ancestral property to an extent of Ac.0-25 cents situated in Survey No.58/1 (old survey No. is 58) of Rachavaripalem village of Maddipadu mandal, Prakasam District without passing any resolution of Grama Panchayati and conducting of any Grama Sabha as contemplated in G.O.Ms.No.791, dated 07.11.2013 issued by the State of Andhra Pradesh and Section 4 (3) and 6 (2) of The Andhra Pradesh Panchayat Raj Act, 1994 as illegal, arbitrary and violation of principles of natural justice and also Article 14, 19, 21 and 300-A of the Constitution of India and consequently direct the respondents to consider the representation of the petitioner dt.23.07.2020 and withdraw the efforts of making any further construction in the subjected property and pass such order or orders may deem fit and proper in the circumstances of the case.”

This Court has heard Sri Jada Sravan Kumar, learned counsel for the petitioner. Sri Vinod K Reddy, learned standing counsel for the 5th respondent, learned Government Pleader for Revenue for the 1st to 4th respondents and Sri S.A.Razak, learned counsel for the implead petitioner-proposed 6th respondent.

The implead petition, which has been filed as I.A.No.3 of 2020 is allowed as this Court is of the opinion that the



implead petitioner-proposed 6th respondent is a necessary party for effective disposal of this Writ Petition. Office is directed to carry out necessary amendments.

Sri J.Sravan Kumar, learned counsel for the petitioner argues that the petitioner is in settled possession and enjoyment of the land, which is his ancestral property. It is mentioned that the total extent of land is Ac.0-25 cents. The petitioner claims title to the same through registered Gift Deed bearing No.7627 of 2014. The petitioner claims to be in possession and enjoyment of the property and argues that when the revenue authorities tried to prevent the petitioner from entering the land both, he and his brother, filed O.S.No.256 of 2014 before the 1st Additional Junior Civil Judge Court, which is pending. Relying upon the contents of the Writ affidavit, learned counsel for the petitioner argues that the petitioner, who is in settled possession and enjoyment of the land cannot be thrown out of the property, more so for the purpose of construction of Gram Sachivalayam. Learned counsel relies upon the provisions of the Panchayat Raj Act to argue that the Gram Sabha did not pass any resolution for construction of a Gram Sachivalayam. Therefore, learned counsel for the petitioner on the basis of the documents, which are annexed to the Writ, argues that as the petitioner is in settled possession, he cannot be evicted nor can the Gram Secretariat be constructed over the ancestral property of his forefathers.



For the respondents the lead was taken by Sri Vinod K Reddy to argue the matter. Relying upon paragraphs 3 to 5 of the counter affidavit, learned counsel argues that the petitioner does not have possession and enjoyment of the property. The petitioner's father's enjoyment and title is also questioned. It is also mentioned that the tax receipts do not relate to the schedule property and that the Gift Deed that is filed is merely "created" between the two parties. There is no such property according to him. The Written Statement filed in O.S.No.256 of 2014 is also relied upon to deny the correctness of the Gift Deed. The property certificate is denied as false. The house tax and water tax bills do not establish title, possession and enjoyment as per him. Therefore, Sri Vinod K. Reddy in his usual forceful style argues that the petitioner does not have either title or possession to the property and should in fact be proceeded against for perjury.

Learned Government Pleader for Revenue also argued on similar lines. According to him the site is still vacant site and there is no house constructed therein. It is a Gram Kantam property. The right title and possession of the petitioner is expressly denied. Learned Government Pleader argues that the petitioner is not in possession or enjoyment of the property. He contends that on the basis of a "false" document, the entire litigation is commenced.



Thus, it can be seen that both the 4th and 5th respondents take the stand that the petitioner is not in possession and enjoyment of the property. They deny his title also.

Sri S.A. Razzaaq, learned counsel appears for the implead petitioner who has also filed a vacate stay petition. The deponent in the vacate stay petition is the newly added 6th respondent. He is the Panchayat Secretary and he is the defendant in the suit O.S.No.256 of 2014. Sri Razzaaq relies upon the documents annexed to the vacate stay and argues that the petitioner has suppressed various facts and has not come to the Court with clean hands. He points out that the suit is not filed against the Revenue Department and that it is only filed against the implead petitioner-newly added respondent. He also argues that a decree is sought for recovery of possession for a part of the property. Therefore, he raises a contention that the petitioner is not in peaceful possession and enjoyment of the land as stated in the Writ Petition. He also argues relying upon the depositions that the possession certificate etc., given to the petitioner are false. Learned counsel submits that the petitioner is not in possession of the property. He also questions that the Gift Deed dated 14.08.2014 as a sham document. Since the newly added respondent is the Panchayat Secretary, he also avers to the facts that the Gram Panchayat passed a resolution to construct the Health Centre and additional class



rooms. Learned counsel on the basis of the documents argues that this Court should consider the depositions and the documents filed in O.S.No.256 of 2014. It is his contention that these documents and depositions conclusively establish that the petitioner is not in possession and enjoyment of the property. He submits that there are seriously disputed facts involved besides concocted documents which cannot be decided in a Writ Petition. Therefore, he prays that the Writ should be dismissed.

CONSIDERATIONBY THE COURT:

This Court after hearing all the learned counsel notices that very serious issues are raised in this case. This Writ Petition is similar to a number of writ petitions which are being filed, wherein similar issues of peaceful possession and enjoyment of a specific property are being raised. In fact, a reading of the Writ does not show the description of the property as is required under law. The High Court Writ Rules, 1977 makes the Civil Procedure Code applicable to writs in so far as they are not inconsistent (Rule 24). Under Order VII Rule 3 of the CPC any property, which is a subject matter of a litigation, should be described with sufficient clarity along with boundaries etc. The petitioner claims to be in possession and enjoyment of the property of Ac.0-25 cents of land;and that he himself has filed a suit for recovery of possession against the newly added respondent. Therefore, this Court opines that this was a case which needed a clear



description of the extent of the property with boundaries to enable this Court to come to a conclusion, about his title, possession and other rights. Unfortunately, the same is not done.

Apart from this, this Court also notices that the flow of title is not clearly explained. In the leading case of ***Maria Margarida Sequiera Fenrandes and Others v Eeasmo Jack De Sequiera (Dead) through LRs.***¹ the Hon'ble Supreme Court of India highlighted the importance of clear pleading. Para 69/70 are reproduced hereunder:

“69. The person averring a right to continue in possession shall, as far as possible, give a detailed particularised specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.

70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive:

- (a) who is or are the owner or owners of the property;
- (b) title of the property;
- (c) who is in possession of the title documents;
- (d) identity of the claimant or claimants to possession;
- (e) the date of entry into possession;
- (f) how he came into possession—whether he purchased the property or inherited or got the same in gift or by any other method;
- (g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, licence fee or lease amount;
- (h) If taken on rent, licence fee or lease—then insist on rent deed, licence deed or lease deed;

¹ (2012) 5 SCC 370



(i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants, etc.;

(j) subsequent conduct i.e. any event which might have extinguished his entitlement to possession or caused shift therein; and

(k) basis of his claim that not to deliver possession but continue in possession.”

While this is in a civil suit still in the opinion of this Court, the principles are applicable to a Writ Petition also when a person seeks an order from a Court of Record and under Article 226 of the Constitution of India claiming rights over a particular property.

A reading of the present petition does not clearly describe as to who acquired title / possession initially and how it was acquired. It is not clear who succeeded this original possessor of the property and how the petitioner's father came to be in exclusive possession and enjoyment of the subject property. The details of the sole legal heir or other heirs etc., are not spelt out. The flow of title in the opinion of this Court should describe with clarity how the property has come down from generation to generation ending with the present petitioner. This is all the more important when it is claimed to be ancestral property. There is total lack of clarity about the flow of title.

The mere fact that there is a registered document will not lead to an inescapable conclusion that the petitioner's father had clear title, which he could pass on to his children. A registered document does carry a certain presumption but



when the same is expressly denied a rejoinder must have been filed and a proper explanation must be given. The reading of the document merely reveals that the petitioner's father claims the property to be the ancestral property inherited from his elders. No further details are spelt out. After that it also describes what is situated in the site is a "building bearing Door No.3-1". The link between this door number and the various receipts filed is also not correctly established.

Apart from this, when the respondents have come to the Court with a very specific case raising an issue about the plaintiff's possession and enjoyment and have questioned the various documents, which are filed, a greater duty was cast on the petitioner to link his documents to the site / the property and to all the receipts that are filed. The house tax and water tax receipts have to be linked to the property in the light of the denial. A foundation must be laid in the writ affidavit of the building; its assessment number / door number, water tax etc. The same is not very clear in this case. Both the learned Government Pleader for Revenue and the learned Standing counsel for the panchayat have clearly pleaded and also argued that the property is not in possession and enjoyment of the petitioner.

The arguments of Sri S.A. Razzaaq are also to the same effect. He also urged this Court to consider the depositions



and documents, which are filed along with his vacate stay petition. These are all said to be depositions and the documents related in the suit O.S.No.256 of 2014. This Court is of the opinion that it should restrain itself and not pronounce anything on the documents and the depositions, which are admittedly a part of a pending suit. Appreciation of evidence, whether it is oral or documentary is best handled by the trial Court Judge. The suit is also pending trial. Therefore, this Court does not wish to enter into those areas and pronounce anything on the merits of the matter, which may touch upon the suit O.S.No.256 of 2014. It is left open to the trial Court to decide all the issues raised. Sri Razzaaq contention about the petitioners lack of possession etc., are however appreciated.

A reading of the pleading and the documentary evidence filed in this case does show that the plaintiff has not made out a case for grant of any order. As mentioned earlier this Court has noticed clear lacuna which in the opinion of this Court disentitle the petitioner from seeking any relief. The petitioner has not disclosed the facts truthfully and the suit O.S.No.256 of 2014 is only filed against the newly added respondent.

This Court for all the above reason finds that the petitioner has not made out a case for an order. It is reiterated that in such cases the Writ affidavit should contain



clear details of the manner of acquisition of title and the possession. The Writ affidavit should also disclose the connection between the documents; tax receipts; possession documents etc., and the property. This is all the more important as in most cases such matters are decided on affidavits alone in the High Court.

The Writ Petition is, therefore, dismissed. There shall be no order as to costs.

Consequently, the Miscellaneous Applications pending, if any, shall stand dismissed.

D.V.S.S.SOMAYAJULU, J

Date:07.04.2021.

Note: LR copy to be marked.

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