

Battula Malakondaiah Vs. Angirekulapadu Gram Panchayat,represente

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Court : Andhra Pradesh

Decided On : Mar-18-2013

Judge : Hon'Ble Sri Justice C.V. Nagarjuna Reddy

Appellant : Battula Malakondaiah

Respondent : Angirekulapadu Gram Panchayat,represente

Judgement :

HON'BLE SRI JUSTICE C.V.

NAGARJUNA REDDY W.P.No.1146 o

18. 3-2013 Battula Malakondaiah Angirekulapadu Gram Panchayat,Represented by its Executive Authority-Cum- Panchayat Secretary, Lingasamudram Mandal,Prakasam District and others HEAD NOTE: Counsel for petitioner : Sri Naram Nageswara Rao Counsel for respondent Nos.1 & 3 : Sri Raju for Sri G.

Elisha Counsel for respondent No.2 : Sri G.

Ramachandra Rao for Sri G.

Pedda Babu ?CASES REFERRED: Nil The Court made the following: ORDER: This Writ Petition is filed for a mandamus to set-aside proceedings Rc.not PS/04/2012, dated 17-1-2013 of respondent No.1 whereby it has rejected the petitioner's representation not to evict him from the land in his occupation in

Sy.No.111 of Anneboyinapalle village.

The petitioner pleaded that his family is in possession of an extent of Ac.0-10 cents in the above mentioned survey number belonging to respondent No.1.

That the petitioner is using the said site for placing hayricks, firewood, dung heaps, tethering cattle etc., and that he has perfected his rights by adverse possession.

The petitioner further pleaded that in recognition of his enjoyment and also the enjoyment of the adjacent lands by other villagers, respondent No.4 has issued proceedings as far back as 3-9-1980 to the effect that as the land admeasuring Ac.3-54 cents in Sy.No.111 is being used by several villagers for storing hay, cow dung etc., the same is treated as being useful for communal purposes and accordingly the land was transferred to the Gram Panchayat for public purpose.

When there was a threat of dispossession by respondent No.1, the petitioner has filed W.P.No.12428/2012 which was disposed of by order dated 7-12-2012 with the direction to respondent No.1 to give a notice and an opportunity of being heard before taking appropriate action for eviction of the petitioner.

As the said order was not followed, the petitioner filed W.P.No.628/2013.

This Court has disposed of the said Writ Petition by directing respondent No.1 not to evict the petitioner unless he is given an opportunity of being heard and eviction order is passed.

Accordingly, the petitioner was given an opportunity of filing his explanation.

In his detailed explanation, the petitioner has claimed that he is in long standing possession of the subject property and that there is alternative vacant land belonging to the Gram Panchayat which can be used for construction of the school building.

The petitioner also pleaded that he has perfected his title by adverse possession.

By the impugned order, respondent No.1 has rejected the petitioner's objections and directed him to handover vacant possession of the property within 24 hours

failing which he will take possession of the property.

Feeling aggrieved by this order, the petitioner filed this Writ Petition.

At the hearing, Sri Naram Nageswara Rao, learned counsel for the petitioner strenuously contended that the petitioner has perfected his title by adverse possession; that no proper reasons have been assigned by respondent No.1 in rejecting the very long and detailed explanation submitted by his client and that there are alternative lands available for construction of a Panchayat building.

Sri G.

Raju, learned counsel representing Sri G.

Elisha, learned counsel for respondent No.1 and Sri G.

Ramachandra Rao, learned counsel for respondent No.2, submitted that the petitioner is admittedly in occupation of the land belonging to the Gram Panchayat and that therefore he has no vested right over the said property.

They further submitted that the land is required for construction of a Panchayat building and hence the petitioner is sought to be evicted.

Having carefully considered the respective submissions of the learned counsel for the parties, I am of the opinion that the petitioner does not have legally enforceable right for grant of mandamus to prevent respondent No.1 from asserting its right over the property belonging to it.

While admitting that he has encroached over the land belonging to respondent No.1, the petitioner has merely claimed that his title to the subject land is mainly based on his purported adverse possession.

The plea of adverse possession requires to be established by the petitioner in a competent Civil Court and it is not possible for this Court to adjudicate upon such a plea.

Having encroached upon the Gram Panchayat land, the petitioner cannot seek the help of this Court in protecting his unlawful possession.

The discretionary jurisdiction of this Court under Article 226 of the Constitution of India will not be exercised in favour of encroachers of public properties, howsoever long standing possession they may have over such properties.

Having encroached the land belonging to respondent No.1, it does not lie in the mouth of the petitioner to suggest that respondent No.1 can utilize some other land belonging to it.

If such a right is conceded to an encroacher, there will be no protection to the public properties.

Under Section 53 of the A.P.

Panchayat Raj Act, 1994, all public roads, sewers, drains, culverts etc., in any village vest in the Gram Panchayats and it is empowered to take steps to remove the encroachments by following the procedure prescribed by the Rules made thereunder.

The A.P.

Gram Panchayats (Protection of Property) Rules, 2011 lay down the procedure for eviction of the encroachers of the properties vested in the Gram Panchayats.

Rule 4 of the said Rules envisages a notice to be given to the encroacher and an order to be passed by the executive authority before the actual eviction takes place.

It is not in dispute that respondent No.1 has followed this procedure by giving notice to the petitioner and passing an order upon considering the petitioner's explanation.

In the absence of any dispute over the fact that the land in occupation of the petitioner is vested in the Gram Panchayat, no elaborate reasons need be assigned by respondent No.1 for rejecting the petitioner's objections as pleaded by

the learned counsel for the petitioner.

For the above mentioned reasons, I do not find any merit in the Writ Petition.

If the petitioner seeks to assert his right over the property in question on the basis of adverse possession, he shall be free to approach the competent Civil Court by instituting an appropriate suit for this purpose.

Subject to the liberty given as above, the Writ Petition is dismissed.

As a sequel, interim order dated 18-1-2013 is vacated and WPMP No.1384 of 2013 is disposed of as infructuous.

_____ Justice C.V.

Nagarjuna Reddy Date :

18. 3-2013

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