

(1999) 03 AP CK 0051

In the Andhra Pradesh High Court

Case No : Writ Petition No. 437 of 1999

E. Venugopal Chetty

APPELLANT

Vs

Dist. Collector, Chittoor and others

RESPONDENT

Date of Decision : 01-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 3 ALD 726 : (1999) 4 ALT 67

Hon'ble Judges : M.S. Liberhan, C.J.;A.S. Bhate, J

Bench : Division Bench

Advocate : Mr. C. Ramachandra Raju, for the Appellant; Mr. M.V. Suresh and Mr. V. Jogayya Sharma and Government Pleader for Revenue, for the Respondent

Judgement

A.S. Bhate, J.—The unsuccessful writ petitioner has preferred this writ appeal. The petitioner sought a writ of Mandamus seeking a direction that Respondents 1 and 2 should implement the order alleged to have been passed by In am Deputy Tahsildar, Chandragiri, in his Proceedings ROC No.3901/59 dated 19-4-1961 in relation to the land in TS No. 32 and in S.No. 302 of Timpathi Revenue Village, Chittoor District.

2. The learned single Judge with an elaborate, detailed judgment dismissed the petitioner's claim on variety of grounds.

3. The learned Counsel for the petitioner/appellant even after a prolonged argument has been unable to make out any arguable point in support of his arguments. In the first place, the glaring fact which stands out is that the order, of which petitioner seeks implementation, was passed as long as back in 1961 April. The Writ Petition in question was filed in July, 1996. Thus he is seeking implementation of the order after about 35 years. The delay and laches are writ large and the learned single Judge was perfectly justified in considering this as a strong ground for refusing the relief. We also agree that discretion ought not to be exercised under Article 226 of Constitution for granting relief to such a person who slumbers for such a prolonged time. Secondly, the most curious aspect of

the case is that the petitioner in his writ affidavit has contended that on 19-4-1961 the Inams Deputy Tahsildar granted ryotwari patta in his favour. The petitioner has not produced the patta allegedly issued in his favour at any point of time. If patta was issued to him, the issued patta ought to have been in his possession and he should have produced it. Instead of producing the patta issued in his favour, he approached the authorities with certain certified copies of the alleged proceedings. Those certified copies were found to be prepared from certain true copies and not the original record. Thus there was lot of suspicion created. Not only that, the Joint Collector Chittoor in his proceedings dt. 10-2-1993 vide B9/10868/92 specifically held, "In the above circumstances I am of the view that it is evidently clear and that the orders of former Inams Deputy Tahsildar Chandragiri said to have been passed in ROC No. 3901/59 dated 19-4-1961 are proved to be fabricated/bogus one". Further it was held that the certified copies of the orders alleged to have been granted and issued from the Collector at Chittoor were cancelled. It is thus clear that the Joint Collector had specifically held that the orders allegedly passed in ROC No. 3901/59 were fabricated and bogus. This being the specific finding recorded by the Joint Collector, in the first place it was necessary for the petitioner to obtain an appropriate finding to challenge the said conclusion reached by the said Joint Collector before the appropriate authorities. The said finding having become final, the petitioner cannot claim any relief on the basis of ROC. No. 3901/59 dated 19-4-1961. The learned Counsel for the petitioner repeatedly contended that the original file in ROC No. 3901/59 was lost and was missing, and therefore, the Joint Collector made this erroneous order and it was not a binding one. It was argued that the said record was seized by an Advocate-Commissioner who was appointed by III Addl. Munsif Magistrate, Tirupathi, and has been produced before the learned Munsif Magistrate at Tirupathi in CC No. 160/1993/Crl. MP No. 1840/93. It is therefore contended that the perusal of the said record will show that the proceedings are genuine. We cannot appreciate this argument at all. It is true that some proceedings were seized by the Commissioner in May, 1993 and they have been put in sealed cover and produced before the Munsif Magistrate, Tirupathi. That does not necessarily mean that the proceedings are genuine or original. It is evident that the genuineness of these proceedings is itself a matter of investigation and determination by evidence. In the writ petition we do not think it appropriate to consider this aspect. The very fact that there is such a grave dispute about the genuineness of the proceedings, itself is a strong ground for the Court not to entertain writ petition in the circumstances.

4. Further, it may be pointed out that is the admitted contention of petitioner that earlier also he had filed WP No. 1939/92, which was disposed of by this Court on 15-6-1993, for seeking the very same relief which is now sought. While disposing of that writ petition the Court had given direction to the official respondents to consider the representation of the petitioner, if made, for implementation of proceedings in ROC No. 3901/59 dated 19-4-1961. In spite of such direction, the representation was not made by the petitioner till May, 1996.

It is urged that inspite of making of such representation in May, 1996 no implementation was done. In view of the fact that petitioner had obtained certain orders for seeking the relief which he is now seeking, we are of the view that it is not open for the petitioner to file second writ petition for the very same relief. If the compliance of the orders of the Court passed in WP No. 1939/92 has not been made by the authorities, it was open for the petitioner to take appropriate proceedings for getting the said order complied with. Filing of another writ petition in our view is not at all justified or tenable. It is also found from the material on record that a civil suit pending in respect of S.No. 302 to the knowledge of the petitioner. The said suit has been filed by the third parties. However, the very same property is the subject matter of that suit. It was open for the petitioner to get himself impleaded in that suit as the question of title is involved in that suit and petitioner is claiming to have title of the very same property. For this reason also discretion was not exercised by the learned single Judge for entertaining the writ petition. We do not know as to how exception can be taken to the learned single Judge's order.

5. The learned single Judge further found that the very same property was subject matter of another dispute in proceedings which culminated ultimately in filing Writ Appeal No. 1/96 in this Court. It was held in the said writ appeal that the sale deeds executed" by the trustees, in respect of the properties covered by the writ appeal, were null and void. As pointed out already the property for which the petitioner is claiming relief was also subject-matter of the said writ appeal. This is only one additional ground on which the learned single Judge found that the writ petition should not be entertained. We agree.

6. Lastly, but not of less importance is the point which the learned Counsel for the petitioner has not been able to overcome, is the fact that petitioner is claiming that unless the orders in question are implemented by the official respondents, his name will not be entered in the revenue records in respect of the suit property. When he was asked to state as to what is the substantial injustice which will result by refusing to grant the relief sought by him, his answer was that there was likelihood of a cloud on his title over the property unless in revenue records his name was entered. This itself is sufficient to show that the dominant purpose of filing the writ petition is merely to obtain orders for preparation of evidence for helping the petitioner for facilitating the ultimate dispute of title. Needless to state that when question requires determination of title, writ proceeding is not the appropriate proceeding. The petitioner has necessarily to approach the appropriate forum of civil Court for seeking declaration of his title.

7. For all the aforesaid reasons we have not this slightest doubt in our mind that filing of the present writ petition is nothing short of initiating a frivolous litigation seeking discretion under Article 226 of the Constitution. The learned single Judge has seen through this quite clearly and has rightly dismissed tiic writ petition with costs.

8. This writ appeal is totally sans any substance and is dismissed.