

HON'BLE SRI S.V.BHATT

W.P.No.36439 of 2014

ORDER:

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The petitioner prays for Mandamus declaring the action of respondents in trying to dispossess the petitioner from the property bearing MPL.No.1-8/B/136 measuring 613 sq. yards at Nehrunagar, Baghlingampally, Hyderabad, without right or interest, as illegal, arbitrary and unconstitutional.

With the consent of learned counsel for petitioner and the standing counsel, the writ petition is taken up for final disposal.

The petitioner claims that he is the absolute owner and possessor of property bearing Mpl.No.1-8/B/136 measuring 613 sq. yards at Nehrunagar, Baghlingampally, Hyderabad. The petitioner claims to have purchased the petition property through document No.364/2013 dated 26.01.2013 from Mohd.Ishaq and others. The ownership and possession of petition property is claimed by the petitioner in the following manner:

Originally, the petition property belongs to Nawab Himayath Nawaz Jung. On 25.01.1958, Nawab Himayat Nawaz Jung made oral gift in favour of one Mohd.Haneef, son of Mohd.Abdullah. On 06.03.1991, Mohd.Hanif executed Will in favour of his wife Mahamood Begum. On 20.11.2003, Mahamood Begum in her capacity as owner executed Will in favour of her children. The legatees under Will dated 20.11.2003 executed agreement of sale-cum-GPA dated 12.04.2006 vide document No.1414 of 2006 in favour of Mohd.Ali. The agreement of sale was the subject matter of suit for specific performance in O.S.No.591 of 2007 in the Court of the Senior Civil Judge, City Civil Court, Hyderabad. On 15.02.2012, the suit was decreed and Mohd.Ali executed registered sale deed dated 26.01.2013.

The further case of petitioner is that the petition property is covered by dwelling house, provided with electricity and water connections by the local authorities. The petition property is assessed to property tax by the Municipal Corporation of Hyderabad. The petitioner and his predecessor-in-interest have been paying property tax regularly. The petitioner applied for LRS scheme and paid Rs.11 lakhs for regularization of petition property. It is the case of petitioner that regularization was also completed. The petitioner claims to have entered into development agreement-cum-GPA vide document No.443/2013 dated 24.01.2013 with one Syed Ahmed Hussain.

The cause of action for filing the writ petition is that on 26.11.2014, the 2nd respondent without issuing notice or intimation trespassed into petition property with his subordinates and labourers, partly pulled down the tin sheds and threatened to dispossess the petitioner from petition property. The action of respondents is highhanded and arbitrary. The threatened action of respondents is violative of Articles 14 and 300-A of the Constitution of India and is liable to be interdicted by an appropriate order by this Court.

The 2nd respondent filed counter-affidavit denying each and every one of the averments in the writ affidavit. It is further contended that the jurisdiction of this Court under Article 226 of the Constitution of India is not available for any of the prayers. The case of 2nd respondent is that the petitioner and his predecessors-in-interest have never been in possession of petition land. The petition property claimed as H.No.1-8/B/136 belongs to the A.P. Housing Board and the Board is in possession of the petition property. Through award No.8/2231-LA/73 dated 31.12.1975, an extent of Ac.52-35 gts and 76 yards or 2,55,991 sq. yards covered by Sy.No.55 at Baghlingampally, Hyderabad and the property bearing No.8/1 was acquired under the

provisions of Land Acquisition Act. After deleting some extent from acquisition, on 18.04.1978, physical possession of Acs.48-35 gts and 70 sq. yards was handed over to the A.P. Housing Board. The 2nd respondent implemented the housing scheme for HIG, MIG, LIG, EWS, shops etc. The open spaces etc., were taken over by MCH. A few left over and stray pieces of acquired land remained unutilized due to various reasons. The petition property is one of such properties. Therefore, the definite case of 2nd respondent is that in terms of award dated 13.12.1975 read with delivery of possession on 18.04.1978, the 2nd respondent is the owner and also the possessor of the petition property.

Adverting to the case of petitioner, it is stated that the allegation that the property belongs to Nawab Himayath Nawaz Jung and executed gift deed etc., are all incorrect, fabricated to grab the valuable property. In land acquisition proceedings, the claimant/owner of Survey No.8/1 was shown as Khurshid Jah Paigah and was managed by the Court commissioner-cum-receiver.

The persons in possession of acquired property were awarded shifting charges and all of them delivered possession. The serious objection against the case of petitioner is that the memorandum of past oral gift deed mentions 650 sq. yards in Baghlingampally without boundaries, specifications, location or identity of the same. By reference to such incomplete document, the petitioner, as per his choice, cannot claim some land in Baghlingampally.

The next document is Will dated 06.03.1991 and the Will describes the property as H.No.1-8-1/B, Nehrunagar. The document dated 20.11.2003 describes the property as 1-8-1/B/136 and the boundaries are described as neighbour's property and road. The text of the documents raises any amount of suspicion. These testamentary documents do not co-relate to the property orally gifted by Nawab

Himayath Nawaz Jung. From the above, it is contended that the documents do not *prima facie* show right or title, possession of petition property in petitioner. The Housing Board is in actual and physical possession of the property. The payment of LRS is commented as a spurious document, for one Mohd.Ali is the addressee but not the petitioner and the property covered by LRS is also plot No.B/136, Nehrunagar, Baghlingampally. Even assuming such an LRS is issued, it is contended that the right and title of Housing Board remain unaffected. It is further stated that when the petitioner tried to erect tin sheds in petition property, with the help of police, the grabbing attempt was thwarted. The respondent prays for summary dismissal.

Mr.Mukheed, learned counsel, contends that the case of petitioner to the extent of issuing notice or following procedure is made out from the alleged oral gift in the year 1958 till the latest execution of document in favour of petitioner. The learned counsel relies upon the layout plan prepared by the 2nd respondent to show that a few of the portions were excluded from acquisition or not delivered to Housing Board and the petition property is one of such properties. The threatened action of respondents, on petitioner who is poor, is unconstitutional and the petitioner is entitled for the writ prayer.

Per contra, Mr.Ranganatha Kumar, vehemently contends that the petitioner prays for protection of a property described by house bearing No.1-8/B/136, measuring 613 sq. yards at Nehrunagar, Baghlingampally, Hyderabad. The present description is suspect enough not to grant any prayer to the petitioner. The survey number is not stated; there is no definiteness in the boundaries in the documents relied upon by the petitioner; the property covered by a series of documents from 1991 till 2006 is not consistent and further that these documents are more in the nature of testamentary succession and do not in any way establish the right and title of petitioner to the petition property. It is contended that this Court under Article 226 of the

Constitution of India does not consider examination of disputed questions of fact can be ascertained in a properly joined trial between parties.

He prays for dismissal.

From the above pleadings and submissions, the points for consideration are –

- (i) whether the petitioner is entitled for relief under Article 226 of the Constitution of India; and
- (ii) whether the respondents should be directed to follow the procedure stipulated by law for appropriate action against the petitioner.

POINTS 1 AND 2:

The petitioner prays for a declaration against the threatened dispossession of petitioner from petition property as illegal and unconstitutional. The respondent joined issue with petitioner on every material particular

The petitioner claims protection or declaration for the property described with municipal number Mpl.1-8/B/136 measuring 613 sq. yards at Nehrunagar, Baghlingampally, Hyderabad. The documents relied upon by the petitioner do not show the survey number or boundaries, much less exact location of the property.

It is on this aspect of the matter while asserting title and possession in its favour, the 2nd respondent joins issue with the identity of property claimed by the petitioner either in the prayer or in the documents. As rightly pointed by the learned counsel for respondent, the property covered by Will dated 06.03.1991 and the memorandum of past oral gift dated 25.01.1955, do not appear to be same and similar. The LRS relied on by the petitioner does not favour petitioner's case. The LRS is in respect of Plot No.B/136 issued in favour of one Mohd.Ali and another. The payment of either property tax or electricity with a

particular door number by itself is not sufficient to presume right to possession or title in favour of petitioner. The effort of learned counsel for petitioner by relying upon the layout plan prepared by the Housing Board does not further the case of petitioner, for none of the documents can with reasonable certainty presume title or right in possession of petitioner for the property claimed with reference to door number MPL.1-8/B/136 measuring 613 sq. yards at Nehrunagar, Baghlingampally, Hyderabad. These are all disputed questions of fact and no right, much less enforceable right is made out by the petitioner.

In BOKARO AND RAMGUR LTD., V. THE STATE OF BIHAR

AND ANOTHER^[1], the Apex Court held as under:

“Before a party can complain of an infringement of his fundamental right to hold property he must establish that he has title to that property and if his title itself is in dispute and is the subject of adjudication in proceedings legally constituted, he cannot obviously put forward any claim based on his title until as a result of that enquiry he is able to establish his title. It is only therefore that the question whether his rights in or to that property have been improperly or illegally infringed could arise.

In D.L.F. HOUSING CONSTRUCTION (P) LIMITED V. DELHI

MUNICIPAL CORPORATION AND OTHERS^[2], the Apex Court held as under:

“Thus in these proceedings under Article 226 the Court has been called upon to decide disputed questions of fact and law relating to the precise nature and extent of right, title and interest of the parties in the plots in question. Even the basic documentary evidence, such as the orders granting the sanctions, the conditions of the sanctions, and the agreements in which they are said to have been incorporated, were not produced before the pronouncement of judgment in the High Court. Even the questions of law relating to the validity and effect of Regulation 5(3) could not be properly decided in the absence of proof or admission of such primary facts. The High Court also felt this difficulty in reaching the finding that a fiduciary relationship in the

nature of a trust came into existence in regard to the user of these open sites. It conceded that this matter was being considered “in the abstract without reference to the facts of any case”, and had to leave undermined the exact nature of the trust that had come into being and the person or persons in whom the beneficial interest in these open sites was supposed to vest under such trust. Nevertheless, it concluded that the petitioners had by their own conduct and operation of law ceased to be the full and complete owners of the plots and held them only as trustees. This “conduct” of the petitioners according to the High Court consisted of the acts of making applications for sanction of the layout plans to the authority and the execution of the requisite agreements. But the evidence of those agreements and the terms and conditions of the sanctions were conspicuous by their absence from the record. Again in the absence of relevant material on the record, the High Court found it difficult to record a categorical finding as to whether the provisions of Regulation 5(3) (iv) were only optional and could be waived, or had in fact been waived by the authority while granting sanction of the layout plans in case of any of these six colonies in question.

In our opinion, in a case where the basic facts are disputed, and complicated questions of law and fact depending on evidence are involved the writ court is not the proper forum for seeking relief. The right course for the High Court to follow was to dismiss the writ petition on this preliminary ground, without entering upon the merits of the case. In the absence of firm and adequate factual foundation, it was hazardous to embark upon a determination of the points involved. On this short ground while setting aside the findings of the High Court, we would dismiss both the writ petition and the appeal with costs. The appellants may, if so advised, seek their remedy by a regular suit.”

In ABL INTERNATIONAL LTD. AND ANOTHER V. EXPORT CREDIT GUARANTEE CORPORATION OF INDIA LTD. AND OTHERS^[3], the Apex Court held as under:

“A writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a court in the exercise of its jurisdiction under Article 226 of the

Constitution, but there is no absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. It has even been held (in Gunwant Kaur case, (1969) 3 SCC 769) that in a writ petition, if the facts require, oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.”

In **MOHAMMAD IBRAHIM V. CITY MAGISTRATE, VARANASI**^[4], the Apex Court held thus:

“All we need say is that the High Court was in error in dealing with disputes as to these rights in a writ petition. The versions of both sides bristle with disputes and controversies which can be decided only by suit and not in a writ petition. The High Court should not have pronounced finding on the nature and character of rights and properties. The judgment of the High Court is set aside. If any party has any grievance as to rights or property the same may be agitated in a civil suit.”

From the ratio laid down by the Apex Court in these decisions, it is clear that this Court, in exercise of jurisdiction under Article 226 of the Constitution of India should refrain from deciding the disputed questions of fact or decide the rights which are not fundamental and issues which require adducing oral and documentary evidence by contesting parties in a properly instituted suit. The instant case is considered by applying the principle of law laid down by the Apex Court in the decisions referred to above and the jurisdiction of this Court under Article 226 is not available to petitioner. The petitioner failed to make out a case for grant of any relief.

The writ petition is, accordingly, dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition,

shall stand closed.

S.V.BHATT, J

11th March, 2015
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[\[1\]](#) AIR 1963 SC 516
[\[2\]](#) (1976) 3 SCC 160
[\[3\]](#) (2004) SCC 553
[\[4\]](#) (1983) 2 SCC 153