

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
W.P.No. 10428 OF 2015

ORDER: *(Per Hon'ble Sri Justice M.Satyanarayana Murthy)*

The petitioners, being unsuccessful in I.A.No. 5254 of 2014 in L.G.O.P.No. 1126 of 2014 on the file of the Court of Chief Judge, City Civil Court, Hyderabad – cum – Special Tribunal under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 ("the Tribunal" for short), filed this Writ Petition challenging the dismissal order dated 18-03-2015, whereby and whereunder the Tribunal declined to grant temporary injunction during pendency of the petition under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure (for brevity, "C.P.C.") restraining the 56th respondent, his agents *etc.* from alienating the petition schedule property in favour of third parties by creating charge on the property by way of mortgage in favour of various banks, by way of project finance, home loans, who are proposed purchasers of the flats being constructed on the schedule property.

2. The petitioners were the applicants who filed L.G.O.P.No. 1126 of 2014 claiming right through Syed Mohiuddin under registered gift deed 16-03-1966. They are claiming that they are children of second wife and respondent Nos. 67 to 74 are children through the first wife of Syed Mohiuddin.

The 56th respondent allegedly grabbed an extent of 16,600 square yards out of the schedule property and started construction obtaining approved plan dated 22-05-2013. The 56th respondent entered into a develop agreement – cum – GPA marked as Ex.R1 with respondent Nos. 1 to 8 as one set of owners and respondent Nos. 15, 49, 51, 52, 59 to 66 as second set of owners. The other respondent Nos. 9 to 14, 16 to 48, 50, 53 to

58 having nothing to do with the property which is the subject matter of Ex.R1 pertaining to an extent of 16,600 square yards.

The case of the petitioners is that they are children of second wife of Syed Mohiuddin, the alleged pattedar of land in S.No. 391 (old), Road No. 5, Banjara Hills, and that he initially gifted the schedule property to the children of first wife and subsequently executed an unregistered memorandum of gift donating the entire schedule property to the petitioners and that the respondents, taking advantage of absence of the petitioners, allegedly grabbed the land in the month of May, 2014, and filed the main O.P. to declare the respondents as grabbers and to evict them through process of Court.

It is also alleged that the respondent Nos. 1 to 66 started litigating among themselves claiming Ac. 9.20 guntas of land and filed suit O.S.No. 364 of 1990 on the file of the Court of V Senior Civil Judge, City Civil Court, Hyderabad, for permanent injunction without impleading the petitioners as parties and, during pendency of the suit, all the respondents, being legal-heirs of late Sugra Begum and late Madan Lal Gupta, were brought on record and the suit was dismissed on 27-01-2004. Aggrieved by the same, they preferred appeal in A.S.No. 15 of 2005 on the file of the Court of III Additional Chief Judge, City Civil Court, Hyderabad. However, within a short span of filing appeal, the matter was referred to Lok Adalat and obtained award dated 26-02-2005, wherein the respondents themselves collusively admitted respective claims in an extent of Ac. 5.00 guntas in favour of themselves misrepresenting the *factum* of ownership and title to the property without any reference to documents. Therefore, the award of the Lok Adalat is not binding on the petitioners.

Basing on the award of Lok Adalat, the respondents started claiming title over the property and filed declaration before Urban Land Ceiling Authorities challenging the proceedings under the Urban Land Ceiling Act on behalf of the respondents and sought exemption under G.O.Ms.No. 533

dated 25-04-2005. The petitioners' family members *i.e.* respondent Nos. 67 to 74 filed W.P.No. 29104 before this Court and obtained *interim* order dated 31-12-2009 in W.P.M.P.No. 37736 of 2009.

The petitioners further contended in the Writ Petition that respondent Nos. 1 to 74 have no right or title to the property but, suppressing the material facts and without any title or ownership, obtained the award. Therefore, the award is not binding on the petitioners. Later, respondent Nos. 67 to 74 again filed W.P.No. 39150 before this Court seeking an injunctive relief to stop further illegal construction and this Court directed the Greater Hyderabad Municipal Corporation Authorities and the respondents to stop illegal construction. Violating the direction, the respondents proceeded with completion of construction without any manner of title or right whatsoever in the property. If the 56th respondent completes construction of flats in the apartment, there is every possibility of creating third party interest by way of sale, mortgage *etc.* and, in such case, the petitioners will be put to much inconvenience and prayed to grant *interim* injunction during pendency of the L.G.O.P. restraining the 56th respondent, his agents *etc.* from alienating the petition schedule property in favour of third parties by creating charge on the property by way of mortgage in favour of various banks, by way of project finance, home loans, who are proposed purchasers of the flats being constructed on the schedule property.

3. The 56th respondent filed counter denying material allegations while contending that he entered into registered Development Agreement – cum – General Power of Attorney with respondent Nos. 1 to 8 as one set and respondent Nos. 15, 49, 51, 52 and 59 to 66 as another set on 29-07-2010 and that those two sets of owners claiming the very same land of Ac. 4.20 guntas out of the schedule annexed to the O.P. Respondent Nos. 1 to 8 are claiming through Sugra Begum and respondent Nos. 15, 49, 51, 52, 59 to 66 are claiming through Madan Lal Gupta and Manik Lal Gupta and there was a

prolonged litigation among the parties and finally ended in compromise recorded in A.S.No. 15 of 2005 on the file of the Court of III Additional Chief Judge, City Civil court, Hyderabad. Despite compromise, there was further litigation between them and filed suit O.S.No. 484 of 2006 on the file of the Court of III Additional Chief Judge, City Civil Court, Hyderabad. While the matter stood thus, the Urban Land Ceiling Authorities declared the land as surplus, took possession of the property and issued G.O.Ms.No. 533 dated 25-04-2004 regularizing possession of respondent Nos. 15, 49, 51, 52, 59 to 66. Therefore, the 56th respondent is not a land grabber and he is a lawful owner, in possession and raising construction under the registered Development Agreement – cum – General Power of Attorney. The 56th respondent, being the registered GPA – cum – Development Agreement Holder, is entitled to alienate the property and create interest. Therefore, the petitioners are not entitled to claim temporary injunction during pendency of the O.P. and prayed for dismissal of the petition.

4. During hearing before the Tribunal, no oral evidence was adduced on either side but marked Exs.P1 to P60 on behalf of the petitioners and Exs.R1 to R46 on behalf of the respondents.

5. Upon hearing argument of both counsel, the Tribunal recorded its finding about title to the property in the interlocutory application. While arriving at such conclusion, the Tribunal decided title to the property before completion of trial and declined to grant *interim* injunction.

6. Aggrieved by the order and decretal order, whereby *interim* injunction during pendency of the O.P. is declined by the Tribunal, the present Writ Petition is filed challenging the same on various grounds. The petitioners in the Writ Petition, while reiterating the facts narrated in the affidavit annexed to the petition, contended that the Tribunal did not record any finding about the three requirements for grant of temporary injunction; went on deciding title in the interlocutory application without there being trial; did not record any

finding about *prima facie* title of the petitioners; failed to appreciate voluminous evidence produced before the Tribunal and swayed away with the voluminous documentary evidence produced by the respondents. Thereby, the order of the Tribunal is laconic and does not stand to any legal scrutiny.

It is further contended that the respondents are proceeding with the construction; if the respondents proceeded with the construction and changed nature of the suit property, the petitioners will suffer irreparable loss and injury; the respondents have not placed any material to establish *prima facie* title to the property; in case they are permitted to alienate the property, it would multiply the litigation and, consequently, the petitioners will be put to injury which cannot be compensated by grant of pecuniary damages.

It is further contended that the petitioners are able to establish that they have got *prima facie* case, balance of convenience is also in their favour and sustain irreparable injury in case no injunction is granted and prayed to set aside the order in I.A.No. 5254 of 2014 in L.G.O.P.No. 1126 of 2014 passed by the Tribunal granting temporary injunction restraining the 56th respondent, his agents *etc.* from alienating the petition schedule property in favour of third parties by creating charge on the property by way of mortgage in favour of various banks, by way of project finance, home loans, who are proposed purchasers of the flats being constructed on the schedule property.

7. Learned counsel for the petitioners, during hearing, would submit that the Tribunal did not record its finding with regard to the requirements for grant of temporary injunction during pendency of the O.P. like *prima facie* case, balance of convenience and irreparable loss which are *sine qua non* for grant of temporary injunction. On the other hand, the Tribunal, while deciding the interlocutory application, finally concluded that the petitioners have no title and the respondents are the owners of the property. Therefore, such conclusion is unwarranted while deciding the interlocutory application. At

best, the trial Court may record its finding with regard to *prima facie* title of other parties but arriving at such final conclusion about title of the parties is against the settled principles of law.

It is further contended that the Tribunal did not advert to the voluminous documentary evidence produced by the petitioners before it and, simply swaying away with the submissions made by learned counsel for the 56th respondent, erroneously dismissed the petition and prayed to allow the Writ Petition, setting aside the order passed by the Tribunal in I.A.No. 5254 of 2014 in L.G.O.P.No. 1126 of 2014, granting temporary injunction as mentioned above.

8. Learned counsel for the 56th respondent strenuously argued that the 56th respondent or the owners of the property, with whom the 56th respondent entered into the agreement, are not claiming the property under any gift deed *etc.*, but claiming title under G.O.Ms.No. 533 dated 25-04-2005, whereunder possession of respondent Nos. 15, 49, 51, 52 and 59 to 66 was regularized. Therefore, their title is totally independent and, thereby, the respondents are not land grabbers *prima facie*. Consequently, question of restraining them from alienating the property does not arise. Even otherwise, if any alienation is made after completion of construction of flats or created any third party interest, it is always subject to the litigation as those transactions are hit by Section 52 of the Transfer of Property Act, 1882 (for short, 'the Act of 1882'), and that the order of the Tribunal *prima facie* shows that the respondents are not land grabbers and the petitioners have no title much less *prima facie* title to the property. Thereby, the petitioners are disentitled to claim any temporary injunction during pendency of the O.P. and prayed to dismiss the Writ Petition confirming the order passed by the Tribunal.

9. Considering rival contentions, perusing the order under challenge and the other connected material, the sole point that arises for consideration is:

"Whether the petitioners are entitled to temporary injunction restraining the 56th respondent, his agents etc. from alienating the petition schedule property in favour of third parties during pendency of the L.G.O.P.No. 1126 of 2014?"

10. **In Re. Point:**

Normally, the order passed under Order XXXIX Rules 1 and 2 of C.P.C. is appealable under Order XLIII read with Section 104 of C.P.C. but, under the provisions of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short, 'the Act of 1982'), no appeal lies against an interlocutory order passed by Tribunal or Special Court. Therefore, such order can be questioned under Article 226 of the Constitution of India. Thereby, the petitioners filed the present Writ Petition questioning the order passed in I.A.No. 5254 of 2014 in L.G.O.P.No. 1126 of 2014 though it was filed under Order XXXIX Rules 1 and 2 of C.P.C. It is settled principle of law that, in a petition filed under Article 226 of the Constitution of India, High Court can exercise power of judicial review conferred on it by the Constitution where there is infringement of fundamental rights or to set right the decision making process by Subordinate Courts or Tribunals. There are only two limitations placed upon the exercise of these powers by a High Court under this Article: (a) that the power is to be exercise "throughout the territories in relation to which it exercises jurisdiction", that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction; and (b) that the person or authority to whom the High Court is empowered to issue the writs "must be within those territories", and this implies that they must be amenable to the jurisdiction of the Court either by residence or location within those territories. Under Article 226, the High Court does not sit or act as an appellate authority over the actions of the subordinate authorities or tribunals. The jurisdiction is supervisory in nature, and as such the Court would not be justified in re-appreciating the evidence adduced in any proceeding to alter the findings of the tribunals. It has to confine itself to correcting any error of jurisdiction by the tribunals and cannot assume *suo*

motu jurisdiction of the appellate court and attempt to correct every mistake assumed to have been made by the tribunal.

11. The Court would not interfere (on the merits) with determinations made by an authority invested with statutory power, particularly, when they relate to matters calling for expertise, unless there are exceptional circumstances calling for judicial intervention, *e.g.*, -

- (a) the determination is *mala fide*, or
- (b) prompted by extraneous considerations, or
- (c) made in contravention of the principles of natural justice, or
- (d) any constitutional provision.

The High Court while examining the correctness or otherwise of an order passed by a tribunal or any action taken by an officer under an Act, is also to be guided by the provisions of the statute. The power of High Court under Articles 226 and 227 cannot be invoked to direct the statutory authorities to act contrary to law. The High Court must balance the competing interests. The Court cannot sit as a Court of appeal and substitute its own decision. The Court confines itself to the question of legality and is concerned only with (i) whether the decision-making authority exceeded its powers; (ii) committed an error of law; (iii) committed a breach of the rules of natural justice; (iv) reached an unreasonable decision; or (v) abused its powers.

12. Keeping in view the powers of this Court under Article 226 of the Constitution of India, we have examined correctness and legality of the order under challenge before us. While exercising discretionary jurisdiction under Article 226 of the Constitution of India, this Court cannot reappraise oral and documentary evidence and cannot substitute its finding based on disputed facts in question. However, correctness of the order or finding arrived by the Tribunal can be examined by this Court. When a petition is filed under Order XXXIX Rules 1 and 2 of C.P.C. for grant of temporary injunction, it is

obligatory on the part of the Tribunal to apply the general principles under Order XXXIX of C.P.C. whether to grant or not temporary injunction; they are *prima facie* case, balance of convenience and irreparable loss or injury; based on the material before the Tribunal and the Tribunal is not supposed to record a final finding on the title of the parties in the interlocutory proceedings. At best, the Tribunal may decide *prima facie* title with reference to *prima facie* case. In the present case, the Tribunal went on deciding title finally based on the documents without ordinary enquiry as contemplated under the Act of 1982. Therefore, recording of finding about title of the parties by the Tribunal is an apparent error committed by the Tribunal. The finding of the Tribunal with regard to title to the property, while deciding the interlocutory application, is unwarranted and it is a pre-matured finding. Therefore, such finding recorded by the Tribunal with regard to title, attaching finality, deserves to be set aside since the Tribunal exceeded its powers while deciding the interlocutory application filed under Order XXXIX Rules 1 and 2 of C.P.C.

13. The Tribunal has to record its own finding with regard to *prima facie* case, balance of convenience and irreparable loss while deciding the petition filed under Order XXXIX Rules 1 and 2 of C.P.C. In ***Seema Arshad Zaheer and others Vs. Municipal Corporation of Greater Mumbai and others***^[1], a Division Bench of Apex Court held as follows: .

"The discretion of the Court can be exercised to grant temporary injunction only when the following requirements are made out by the plaintiffs:

- (1) Existence of a prima facie case as pleaded, necessitating protection of plaintiff's rights by issue of a temporary injunction;*
- (2) When the need for protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's rights, the balance of convenience tilting in favour of plaintiff; and*
- (3) Clear possibility or irreparable injury being caused to plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and the approaches the court with clean hands.*

It is true that in cases relating to orders for demolition of buildings, irreparable loss may occur if the structure is demolished even before trial, and an opportunity to establish by evidence that the structure was authorized and not illegal. In such cases, where prima facie case is made out, the balance of convenience automatically tilts in favour of plaintiff and a temporary injunction will be issued to preserve status quo."

In view of the principles laid down by Apex Court, it is for the Court to record its finding on the three requirements for grant of temporary injunction and the Court must also take into consideration conduct of the parties and whether the parties approached the Court with clean hands or not. In the order under challenge, the Tribunal did not record any finding whether the petitioners have made out *prima facie* case; whether balance of convenience is in their favour; and whether the petitioners would sustain irreparable loss or injury, which cannot be compensated by granting pecuniary damages, in case no injunction is granted. Thus, the order of the Tribunal is inherently defective and against the canons of elementary principles of law while deciding the petition filed under Order XXXIX Rules 1 and 2 of C.P.C.

14. According to Section 17 of the Act of 1982, any transaction relating to an alienation of a land grabbed or any part thereof by way of sale, lease, gift, exchange, settlement, surrender, usufructuary mortgage or otherwise, or any partition effected or a trust created in respect of such land, which has taken place whether before or after the commencement of this Act shall, except to the extent ordered by the Special Court, or Special Tribunal be null and void. In view of Section 17 of the Act of 1982, alienations in any manner made, if any, are null and void subject to the order of Special Court or Tribunal. Section 17 of the Act of 1982 is wider than the principle contained under Section 52 of the Act of 1882. As per Section 52 of the Act of 1882, if any alienation is made during pendency of the proceedings, it is hit by the doctrine of *lis pendens* but the alienation is not totally void and it is subject to the result of the suit. Assuming for a moment without conceding that the respondents are land grabbers, if any alienation is made during pendency of

the land grabbing application before the Tribunal, it is null and void in view of Section 17 of the Act of 1982.

15. The Tribunal, while deciding the application filed under Order XXXIX Rules 1 and 2 of C.P.C., did not take into consideration the principle contained under Section 17 of the Act of 1982 and the three requirements to grant temporary injunction under Order XXXIX Rules 1 and 2 of C.P.C. Therefore, the Tribunal exercised its discretion which is not conferred on it while deciding the interlocutory application filed under Order XXXIX Rules 1 and 2 of C.P.C. That apart, the Tribunal did not exercise its jurisdiction within the parameters while deciding the application under Order XXXIX Rules 1 and 2 of C.P.C. and failed to record its finding as to *prima facie* case, balance of convenience and irreparable loss which are *sine qua non* for grant of temporary injunction but decided title of the parties based on the documentary evidence available on record at interlocutory stage itself which is totally contrary to the settled principles of law. Therefore, we find that the Tribunal did not exercise its jurisdiction properly and, in such case, this Court, while exercising discretionary power under Article 226 of the Constitution of India, can correct the order passed by the Tribunal. Hence, we find that the order of the Tribunal is *ex facie* erroneous and deserves to be set aside while remanding the matter to consider the entire material on record, with reference to the contentions raised by both the parties to the petition, afresh and record its finding as to the requirements for grant of temporary injunction keeping in mind Section 17 of the Act of 1982 and Section 52 of the Act of 1882 and decide the petition afresh with utmost expedition. Accordingly, the point is answered.

16. In the result, the Writ Petition is allowed; setting aside the order dated 18-03-2015 passed in I.A.No. 5254 of 2014 in L.G.O.P.No. 1126 of 2014 on the file of the Court of Chief Judge, City Civil Court, Hyderabad – cum – Special Tribunal under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982; remanding the matter to the Tribunal with the

direction *ut supra* for disposal afresh with utmost expedition. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed in consequence. No order as to costs.

RAMESH RANGANATHAN, J.

M.SATYANARAYANA

MURTHY, J.

Date: 01st May, 2015.

JSK

[\[1\]](#) 2006 (5) ALT 33 SC