

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.4963 of 2005

ORDER :

This writ petition is filed seeking writ of mandamus declaring the action of the respondents in interfering with the possession of the petitioner's plot bearing No.136/A in Sy.No.117 to an extent of 756 sq.yds situated at Medipally village, Ghatkesar Mandal, R.R.District, without due process of law as illegal and arbitrary and violative of Article 300-A of the Constitution of India.

2. It is the case of the petitioner that he is the absolute owner of the plot bearing No.136/A in Sy.No.117 to an extent of 756 sq.yds situated at Medipally village, Ghatkesar Mandal, R.R.District, which was purchased under registered sale deed No.6149/1998 dated 21.04.1999 from one K.Manohar Reddy. Since then he is in possession and enjoyment of the said property. While so, petitioner submitted an application on 12.07.2002 before the Gram Panchayat for permission to construct the building. The petitioner was asked to pay betterment charges and building permission fee. The petitioner paid Rs.15,180/- on 05.05.2003 towards building permission fee and betterment charges. On 14.07.2003, building permission was granted in favour of the petitioner. However, due to lack of funds, petitioner could not commence the construction and in order to protect from encroachments, when he started construction of compound wall, the first respondent Gram Panchayat objected for the same stating that the said plot is required for development of park. It is stated that the first respondent has no authority to interfere with the same as the said land is a private land. It is stated that the first respondent without acquiring the said plot and without any authority is interfering with the construction of compound wall. Aggrieved by the same, the present writ petition is filed.

3. Counter affidavit is filed by the 1st respondent on 23.08.2014 denying the averments of the affidavit filed in support of the writ petition stating that the petitioner made an application to the Gram Panchayat seeking permission for construction of a residential house on 12.07.2002, which was considered and granted permission on 05.05.2003. The plot of the petitioner is situated in Sai Nagar Colony of Medipally village. The

residents of Sai Nagar Colony made representation to the Gram Panchayat stating that the plot bearing No.136/A in Sy.No.117 is earmarked for park according to the layout approved by the Gram Panchayat. Thereafter, this respondent had enquired into the matter and found that the alleged plot bearing No.136/A is left open, according to the layout, for the purpose of park. When the petitioner was informed about the same, he denied stating that he had purchased the said plot by paying valid sale consideration. Thereupon, the Gram Panchayat had passed unanimous resolution on 09.12.2003 for cancelling the permission granted to the petitioner on 05.05.2003 and the same was served on him and that the said resolution has become final as neither filed any appeal nor challenged in any Court of law. It is stated that in view of *status quo* orders granted by this Court on 14.03.2005 in W.P.M.P.No.6591 of 2005, the Gram Panchayat is unable to construct the compound wall to protect the park area. When the Gram Panchayat is about to construct the compound wall to protect the park area, the petitioner filed CC No.153 of 2008 before this Court. It is stated that by the time the *status quo* orders granted by this Court, the Gram Panchayat has erected the board on the said site.

4. In addition to the counter affidavit dated 23.08.2014, the 1st respondent filed additional counter affidavit on 06.11.2014 stating that during the course of arguments, this Court has called for the original lay out of Sy.No.117 in which the alleged plot No.136/A is shown as park. It is stated that prior to 1996, the Medipally Gram Panchayat was part of Feerzadiguda Gram Panchayat, the layout in Sy.No.117 of Medipally Village is approved by the then Sarpanch of Feerzadiguda on 14.10.1979. Subsequently in the year 1996, the Medipally Gram Panchayat was constituted, as such, all the records from Feerzadiguda Gram Panchayat were not transferred to the Medipally Gram Panchayat. It is stated that as the layout in Sy.No.117 of Medipally is approved by the Feerzadiguda Gram Panchayat on 14.10.1979, original lay out could not be secured. It is stated that in the layout dated 14.10.1979, park is shown beside plot Nos.136 and 137 and no plot numbers were assigned to the area which is earmarked for park. That the area which is earmarked for park is being used by the Gram Panchayat for flag hoisting during Republic Days as

well as Independence days every year and that a Board was also erected by the Gram Panchayat stating that the said area is a park.

5. Reply affidavit is filed by the petitioner reiterating the averments in the writ affidavit and denying the averments in the counter affidavit stating that one Ch.Madhusudhan Rao is the owner and possessor of the plot bearing No.137A in Sy.No.117 of Medipally village i.e., adjacent plot of the petitioner. It is stated that when the respondents were interfering with the possession of the plot of said Ch.Madhusudhan Rao on the ground that the said plot is earmarked for park, he filed W.P.No.8281 of 2005 questioning the action of the respondents. In the said writ petition, the stand taken by the 1st respondent was that the plot was earmarked for park was rejected and ultimately, the writ petition was allowed by this Court on 21.03.2012. It is stated that in view of the above judgment, it is clear that the plots bearing Nos.136/A and 137/A are in existence and they are not earmarked for park area. That plot No.137/A was regularized by the Hyderabad Metropolitan Development Authority on 07.05.2011. It is stated that since the petitioner has not applied for regularization, the said plot was not regularized. It is stated that the petitioner is not aware of the cancellation of the building permission as he was not given any prior notice.

6. Heard Sri E.Madan Mohan Rao, learned Senior Counsel appearing for Sri Ch.Siddaiah, learned counsel for the petitioner and Sri G.Narender Reddy, learned Standing Counsel for the respondents.

7. Sri E.Madan Mohan Rao, learned Senior Counsel submits that the respondents themselves have considered the application of the petitioner for building permission on 12.07.2002 and granted the same on 14.02.2003 by receiving the requisite betterment charges of Rs.15,180/-on 05.05.2003. He would further contend that due to lack of funds, the petitioner could not complete the construction. He would further contend that the petitioner had purchased the said plot through valid registered sale deed by paying valuable sale consideration, as such, the respondent authorities cannot evict the petitioner. He would further contend that as per the layout plan dated 14.10.1979 granted by the Gram Panchayat, Feerzadiguda, there is no open space and that the petitioner's plot was not shown as open space, but the same was shown as plot bearing No.136/A.

He also submits that when the respondent authorities are trying to interfere with the possession of the owner of adjacent plot i.e., owner of plot No.137/A, he filed W.P.No.8281 of 2005 and the said writ petition was allowed and that the respondent authorities were directed not to interfere with the possession of the petitioner therein and negated the contention of the respondent authorities that the plot No.137/A is earmarked for park area. In fact the plot of the petitioner herein is adjacent to plot No.137/A, which forms part of the same block and same layout.

8. On the other hand, Sri G.Narender Reddy, learned Standing Counsel for the respondents submits that the plot in which the petitioner is claiming is open space earmarked for park in the layout, as such, petitioner cannot claim any rights over the said plot. He would further contend that when once the said plot is shown as open space in the layout, the same vests with the Gram Panchayat and petitioner has no right to claim the same. He would further contend that layout clearly shows the plot claimed by the petitioner is an open space and basing on the representation of the residents of Sai Nagar Colony, the Gram Panchayat had cancelled the permission granted to petitioner.

9. The strange part of the case is that the petitioner and respondents are relying on the same lay out dated 14.10.1979 in respect of lands in Sy.No.117/Part, 118/Part, 120/Part and 121/Part, situated at Medipally village. It is the case of the petitioner that he is the owner of the plot No.136/A as per the layout. It is the case of the respondent authorities that the said plot is shown as open space in the layout and earmarked for park. Two layouts are produced before this Court. Though both are Xerox copies, in one layout produced by the petitioner, the plot of the petitioner is shown as plot No.136/A and in the layout produced by the respondent Gram Panchayat is shown as park area.

10. When the original layout of the plot was called for from the Gram Panchayat, the Gram Panchayat, filed an affidavit stating that the said layout is not available in the records of Gram Panchayat, Medipally, as the same was approved by Feerzadiguda Gram Panchayat before the formation of Medipally Gram Panchayat. In those circumstances, it is very difficult to hold either way, as the petitioner has purchased the said plot

through sale deed and the respondent Gram Panchayat granted permission to construct residential house, though cancelled later. But, however, when the respondent Gram Panchayat is claiming that it is a park area, they are bound to produce the original layout and as per the original lay out, if it is park, then the petitioner cannot claim right over the property as the owner. In the absence of the same, it cannot be said that the said open space is a park land. Even otherwise, when the respondent Gram Panchayat tried to interfere in respect of plot No.137/A claiming to be the park area, the owner of the said plot Sri Ch.Madhusudhan Rao filed W.P.No.8281 of 2005 and the same was allowed by this Court. Subsequently, the said owner had applied for regularization and HUDA had regularized the same. A perusal of the layout dated 14.10.1979, there is no doubt about the existence of plot Nos.136/A and 137/A. When once the writ petition i.e., W.P.No.8281 of 2005 filed by the adjacent owner of plot bearing No.137/A was allowed, the petitioner who claims to be the owner of plot No.136/A also entitles for the same relief. If the permission granted by the Gram Panchayat is cancelled, it is open for the petitioner to challenge the same since it is not a subject matter of the writ petition. More over, the respondent Gram Panchayat has not issued any prior notice before cancelling the permission granted to the petitioner, by way of unanimous resolution dated 09.12.2003.

In view of above facts and circumstances, this writ petition is allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand disposed of.

A.RAJASHEKER REDDY, J

30.09.2014

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HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

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