

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NO. 583 of 2014

Between :

N Amarendra S/o Sreemanarayana
D No. 1-1-126, Ambedkar Nagar,
Near FCI, Sattenapalli village and mandal
Guntur district

.... Petitioner

And

The Govt of A P
Rep by its Principal Secretary,
PR and Rural Devp Department
Secretariat, Hyderabad and others

.... Respondents

DATE OF JUDGMENT PRONOUNCED : 20.08.2015

-
SUBMITTED FOR APPROVAL:

-

-

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

-

-

-

1. Whether Reporters of Local Newspapers may : / No
Be allowed to see the Judgments ? :

2. Whether the copies of judgment may be marked : / No
To Law Reporters/Journals :

3. Whether Their Lordship wish to see the fair : / No
Copy of the Judgment ? :

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 583 of 2014

ORAL ORDER:

This writ petition is instituted praying to grant declaration of the action of the respondents in obstructing the petitioner from enjoying and trying to dispossess him from the property to an extent of Ac.2.00 in Survey No.13/1, Vaddavalli village, Sattenapalli town, Guntur district as illegal, arbitrary and contrary to the orders of this Court and consequential direction not to interfere with the peaceful possession and enjoyment of the said property.

2. Petitioner claims that he is absolute owner of the property to an extent of Ac.2.00 in Survey No.13/1, Vaddavalli village, Sattenapalli town, Guntur district having purchased the same from grandson of original owner of the property by name Sri Kattamuri Narasimham and as a consequence to the registered sale deed, petitioner is in possession and occupation of the property.

3. According to the petitioner late Sri Kattamuri Narasimham was having land to an extent of Ac.3.36 in above survey number, out of which, he denoted Ac.3.00 to the then District Zilla Board now called as Zilla Praja Parishad for the purpose of construction of ITI school building with an object to promote technical education in and around Sattenapalli area. That gift deed specifies that if the purpose of donation is not fulfilled, he reserved the right to be returned to the donor. Since the purpose of donation was not achieved, in the year 1963, late Sri Kattamuri Narasimham cancelled the gift deed and cancellation deed was registered in the office of the Sub Registrar at Sattenapalli. Simultaneously he has also executed registered gift

deed in favour of his son Sri Kattamuri Ahobila Bhaskara Rao and as a consequence property vested in Sri Bhaskara Rao. Petitioner purchased from the son of Kattamuri Ahobila Bhaskara Rao. While so, Swami Ayyappa Samajam requested for donation of the land for construction of Swami Ayyappa Temple and land to an extent of Ac.1.00 was denoted for construction of Swami Ayyappa temple on the eastern side of the property.

4. Further case of the petitioner is that grand son of Sri Kattamuri Narasimham requested the Sub Registrar to register the entire extent of land in his name. The said request was not processed compelling to invoke jurisdiction of this Court by filing W.P.No.18751 of 2011. The said writ petition was disposed of directing the Sub Registrar to entertain; process and deal with the deed of conveyance. The Chief Executive, Zilla Praja Parishad, filed W.A.No.998 of 2011 challenging the direction issued by the learned single Judge in the above writ petition. The appeal was dismissed. Aggrieved thereby, SLP (C) No.26383 of 2012 was filed which was also dismissed by order of Supreme Court dated 21.10.2013. Further case of the petitioner is that Sri Kattamuri Vijaya Venkata Laxmi Narasimha Rao has given special power of attorney to the petitioner which was registered on 18.1.2012. Later the entire property was sold to the petitioner. Accordingly, the documents were presented before the Sub Registrar for registration but the Sub Registrar refused the request for registration of document. Petitioner was unsuccessful in the appeal filed before the District Registrar. Aggrieved thereby, petitioner filed W.P.No.24234 of 2013 before this Court. This Court directed to receive the documents and complete registration formalities without treating the said land as belonging to Zilla Praja Parishad. Accordingly, Sub Registrar registered the document on 29.10.2013.

5. In the above background, petitioner intends to fence the property for exclusive enjoyment and to avoid encroachments. In order

to avoid undue interference by persons inimical to him, he has also taken police protection . On 4.1.2014, petitioner erected a board disclosing that the property belongs to him. However, the then local Member of Legislative Assembly/ 6th respondent herein and his associates along with staff of Zilla Praja Parishad came to the site and obstructed the petitioner stating that the land belongs to Zilla Praja Parishad and asked him not to erect the fencing. He alleges that he was not given opportunity to explain as to how title accrued to him. It appears that the complaint dated 21.12.2013 was lodged with Sattenapalli police by the Zilla Praja Parishad on the alleged instructions of the District collector.

6. In the above factual background, petitioner filed this writ petition contending that Zilla Praja Parishad has no manner of right to interfere with the possession, it having suffered an order before this Court in W.A.No.998 of 2011 which order was confirmed by the Supreme Court in SLP (C) No.26383 of 2012. He further alleges unnecessary involvement by the then MLA.

7. This Court granted interim direction by order dated 9.1.2014 directing not to interfere with the peaceful possession of the landed property described as above. Praying to vacate the said order, Zilla Praja Parishad filed WVMP No. 3714 of 2014. The 6th respondent filed separate counter affidavit and enclosed several documents to support the Zilla Praja Parishad.

8. Heard the learned counsel for petitioner Sri Venugopala Rao, learned Advocate General for respondents 1 and 2 and Zilla Praja Parishad and learned counsel for 6th respondent Sri Posani Venkateshwarlu. With the consent of learned counsel appearing for respective parties, the writ petition is heard and disposed of by this order.

9. As the learned counsel for petitioner submitted that property belong to the petitioner by virtue of a valid sale deed executed by the previous owner of the property. He submitted that the respondent Zilla Praja Parishad having suffered order from this Court as affirmed by Supreme Court, has no competence or authority to interfere with the possession and enjoyment of the property. He placed reliance on the judgment of this Court in W.A.No.998 of 2011 dated 15.2.2012. This Court observed that since the conditions stipulated in gift deed were not complied with, the revocation deed was executed and was also registered, therefore the said revocation deed cannot be said to be void. Thus, the direction issued by the learned single Judge to entertain the sale deed, process and deal with the conveyance deed is affirmed. Aggrieved thereby, SLP was moved before the Supreme Court but same was withdrawn by the appellant therein, Zilla Praja Parishad. Having regard to the said litigation, this Court gave directions on 15.9.2013 in W.P.No.24234 of 2013 to register the deed of conveyance without treating the same as Zilla Praja Parishad land. As these two orders having become final, the question of further interference by the Zilla Praja Parishad is arbitrary and illegal, is submission of the learned counsel for petitioner.

10. He further contended that in order to make illegal demand, the 6th respondent was interfering with the peaceful possession and enjoyment of the property of the petitioner. He has no manner of right to encroach into the land of the petitioner and remove the board put up by petitioner with the help of his henchmen. Such action of the 6th respondent amounts to illegal exercise of power and authority.

11. Learned Advocate General fairly submitted that officials of Zilla Praja Parishad have not prosecuted the matter properly and sacrificed the interest of the Zilla Praja Parishad. The true and correct

facts were not placed before this Court when W.A.No.998 of 2011 was filed and was heard by the Division Bench. Even though vendor of the petitioner was party to the writ appeal, the vendor also did not place true facts on record and by deliberately suppressing the true and correct facts has invited decision from this Court. He therefore submitted that the decision rendered by the Division Bench of this court is *per incuriam* and is contrary to the judgment and decree passed by Civil Court which has become final inter parties.

12. He further submitted that Sri K V L Narasimha Rao, alleged vendor of petitioner, did not disclose W.P.No.20255 of 2004 instituted by him in this Court, wherein he was specifically pleading that granting of Ac.1.00 of land for construction of Ayyappa Temple was contrary to the intendment of donor. Before 2011, decree has become final, consequently possession was delivered and even his father has paid costs as awarded by the Civil Court. Strangely in W.P.No.18751 of 2011 though he talks about the cancellation of gift deed he does not refer to the decree passed by the Principal Subordinate Court at Sattenapalli concerning the same property. However, his plea specifically raised before the District Registrar in Appeal No.1 of 2012 filed by the petitioner nullifies all the claims of the petitioner. In view of the categorical stand of Sri Narasimha Rao that he has already revoked GPA executed in favour of the petitioner and that he did not execute the sale deed in favour of the petitioner, the question of petitioner having any interest in the subject property does not arise. At the most, it is for Sri K.V.V.L Narsimha Rao to assert but not to this petitioner.

13. Learned Advocate General submitted that as principal has suffered a decree which has become final, the power of attorney holder has no authority to take a different stand. Learned Advocate General submitted that since factum of decree passed by the Principal Subordinate Court was not brought to the notice of this Court when

W.A.No.998 of 2011 was decided, the said decision cannot come to the rescue of the petitioner. Consequential order passed by this Court in W.P.No.24234 of 2013 cannot give any better title to the petitioner. In fact mere registration of the deed of conveyance does not confer any title to the purchaser than what was available to his vendor. Assuming that the transaction between the vendor and petitioner was validly made, since vendor did not have title to the property, the question of acquiring title by the petitioner and consequently claiming possession and enjoyment has no validity.

14. Learned Advocate General submitted that as per the orders in E.P.No.301 of 2014 possession was delivered to the Zilla Praja Parishad on 12.9.1974. Except for attempting to put up board and fence to property, no other material is brought on record to show that petitioner is in possession of the said property and that illegally Zilla Praja Parishad is trying to interfere with his possession. Learned Advocate General submitted that Sri Koteswar Rao is in no way concerned with the subject property, merely because petitioner has instituted a suit against Sri Koteswar Rao and obtained some injunction, he cannot claim that he is owner of the property and that he is in possession. Learned Advocate General states empathetically that relief sought by the petitioner cannot be granted, more particularly, when there is serious dispute regarding the claim of the petitioner of passing of title to him and when the decree granted by the Principal Subordinate Judge, Narasaraopet in favour of the Zilla Praja Parishad has become final and possession is vested in Zilla Praja Parishad. Learned Advocate General submitted that the writ petition is misconceived and in the garb of seeking declaration from this Court, petitioner is trying to grab valuable land belonging to Zilla Praja Parishad.

15. In the counter affidavit filed on behalf of 6th respondent, the history of the case is elaborately discussed and has enclosed

several documents which throw light on true facts of the case. Learned counsel for 6th respondent supplemented to the submissions made by learned Advocate General. He submitted that Zilla Praja Parishad filed O.S.No.17 of 1969 on the file of the District Munsif, Sattenapalli praying for recovery of possession. The suit was dismissed on 05.07.1969. Aggrieved thereby, Zilla Praja Parishad filed A.S.No.143 of 1969 on the file of the Principal Subordinate Judge, Narasaraopet. The Appellate Court allowed the appeal on 27.08.1973 and suit was decreed in favour of the Zilla Praja Parishad as prayed for. The appellate Court recorded clear finding that the gift deed dated 14.10.1946 executed in favour of Zilla Praja Parishad is valid and cannot be revoked by revocation deed and therefore further gift deed is not valid and not binding on the Zilla Praja Parishad. The Appellate Court declared that the Zilla Praja Parishad has got title to the suit property and is entitled to recover possession. The said decree has become final. Consequently possession was delivered on 12.9.1974.

Even costs were recovered from the defendants therein on 22.2.1975.

16. Learned counsel also highlighted that when the Government permitted the Zilla Praja Parishad to gift Ac.1.00 of the said land to construct Ayyappa Swamy temple, grand son of the donor, from whom petitioner is claiming to have purchased the property, instituted W.P.No.20255 of 2004 contending that alienation to the temple and possible leasing of the remaining extent of land is contrary to the intention of the donor and sought for declaration against such illegal alienation. Writ petition was disposed of holding that the petitioner should approach the Civil Court, if the conditions of gift deed were violated. Sri Narasimha Rao did not close to institute civil litigation. Learned counsel contended that as pointed out by learned Advocate General, the earlier litigation and serious contest by Sri Narasimha Rao, shows that petitioner has not acquired any interest in

the property.

17. He submitted that when title was not vested in the vendor, it does not pass on to petitioner merely because sale document was registered.

18. Learned counsel further stated that petitioner instituted O.S.No.695 of 2013 praying to grant permanent injunction in the suit. Injunction was sought against one Mr N.Koteshwar Rao alleging that he was trying to interfere and ex-parte ad-interim injunction was obtained. By referring to the said injunction order, he has also obtained an order of police protection. Said N.Koteshwar Rao did not contest and was set ex-parte. It is not known how Mr.Koteshwar Rao was concerned with the subject property and how he is trying to interfere with the subject property. Learned counsel therefore submitted that by misrepresenting facts and by not disclosing the true and correct facts, petitioner instituted this writ petition as if illegally he was sought to be dispossessed but at no point of time he was in possession.

19. It is not in dispute that the said property was owned by late Sri K.Narasimha Rao and he has executed a gift deed on 14.10.1946 in favour of the then District Board of Guntur now called Zilla Praja Parishad giving gift of Ac.3.00 land in Survey No.13/1, Vadlapalli, Sattanapalli town and possession was handed over to the Zilla Praja Parishad on the same day. As a consequence to the said gift granted by the original owner, subject property vested in Zilla Praja Parishad. Claim of the petitioner rests on the subsequent action of the donor in canceling the gift deed on 9.8.1963 and on the same day executing another gift deed in favour of his son. Therefore, insofar as Zilla Praja Parishad is concerned, the title is traceable to the gift deed dated 14.10.1946 and insofar as claim of petitioner is concerned, assuming that the sale deed was validly executed in his favour by the grand son

of the donor, depends on the validity of the alleged cancellation of the gift deed on 9.8.1963. Thus, judgment and decree in A.S.No.143 of 1969 dated 27.8.1973 passed by learned Principal Subordinate Judge, Narasaraopet assumes significance. The learned Judge has recorded clear and categorical finding that as a consequence to the executing gift deed on 14.10.1946, on the same day the property vested in Zilla Praja Parishad and possession was handed over. Principal Subordinate Judge, Sattenapalli held that in the gift deed no clause was made by the donor to revoke or suspend the gift in case Zilla Praja Parishad fails to fulfill the conditions incorporated in the gift deed. Learned Judge held that when there is no such condition in the gift deed, the donor is not competent to revoke the gift and revocation is not valid. An attempt was made to justify the subsequent action of the donor in canceling the gift by contending that it was not a gift and it was only a trust deed and failure of the trust, the donor is entitled to get back the property. On considering the contents of the relevant document, the learned Judge recorded categorical finding that the document in issue is nothing but gift deed and is not a trust deed. Learned Judge noticed that there was no clause incorporated in the gift deed that in the event of not establishing ITI gift gets revoked and on the contrary, the terms of gift deed clearly disclose that in the event of not establishing the ITI, the land should be used for any other ancillary purpose. This clearly shows intention of the donor and therefore the question of revocation of the gift deed does not arise. Having recorded categorical and clear findings in favour of the Zilla Praja Parishad, the Court ordered that Zilla Praja Parishad be put in possession of the suit schedule property and also awarded costs payable to the Zilla Praja Parishad by defendants. On 12.9.1974 possession was handed over to Zilla Praja Parishad and suit costs as awarded by the Principal Subordinate Judge were also recovered from the vendors of petitioner by Zilla Praja Parishad on 22.2.1975. In view of the categorical findings recorded by the Principal Subordinate

Judge, the subsequent cancellation of the gift deed and alleged granting of gift in favour of his son is invalid. Admittedly petitioner traces the title to his vendor through son of donor i.e., Kattamuri Ahobila Bhaskar Rao. When no such gift was valid in favour of Sri Bhaskar Rao, in view of the declaration given by Principal Subordinate Judge, which has become final, the question of right to alienate said property by son of K.Bhaskar Rao does not arise. In fact, a reading of the judgment by the Principal Subordinate Judge (copy supplied is not legible) also shows that the alleged gift deed dated 9.8.1963 executed by the donor late K Narsimha Rao after canceling the gift deed executed in favour of Zilla Praja Parishad was not in favour of Sri K Bhaskar Rao but appears to be in favour of a trust created by him. It is also appropriate to note that even Narasimha Rao denies receiving of sale consideration, execution of sale deed and he was empathetic before the District Registrar in the Appeal filed by petitioner that he has cancelled earlier GPA granted in favour of the petitioner.

20. The crucial and important facts concerning the subject property are not placed before this Court in the present writ petition. Petitioner has only stated that he is in possession and illegally Zilla Praja Parishad with active support of the 6th respondent was interfering with his possession. It was the bounden duty of the petitioner to disclose the history of litigation. It is also strange that petitioner has not arrayed his vendor as party respondent to this writ petition. He has also not arrayed the vendor of the petitioner as a respondent in W.P.No.24234 of 2013, who seriously contested his earlier claim before the District Registrar against which said writ petition was filed.

21. It is intriguing to note the conduct of the employees of Zilla Praja Parishad. True and correct facts were not placed on record in the earlier litigation. For the first time, in the present counter affidavit, there is a reference to the O.S.No.17 of 1965 on the file of the District Munsif,

Sattenapalli and A.S.No.149 of 1969 on the file of the Principal Subordinate Court, Narsaraopet filed by Zilla Praja Parishad. It appears that as per the averments made in the counter filed by the Zilla Praja Parishad and the reply filed by the petitioner, even the subsequent suit filed by the Zilla Praja Parishad in O.S.No.172 of 2014 praying to grant permanent injunction which is pending on the file of the II Additional District Judge, Guntur is not prosecuted properly. It appears, though injunction was granted in I.A.No.557 of 2014 dated 28.4.2014, the said injunction was not extended and I.A was dismissed for non prosecution and for not producing relevant documents and material.

22. It would suffice to note the claim of the petitioner. He alleges that respondent authorities are obstructing the petitioner and trying to dispossess him from the subject property and such action is illegal and contrary to law. As seen from the above history of the case, property is vested in Zilla Praja Parishad by virtue of a valid decree granted in their favour and no other material is brought on record to show that contrary to possession granted by Court on 12.9.1974 the petitioner came into possession of the property in a legal manner. No other material is brought on record to show that he is in possession and Zilla Praja Parishad is not in possession. As the decree passed by the Principal Subordinate Judge in A.S.No.143 of 1969 vests the possession in Zilla Praja Parishad, even assuming that 6th respondent/former MLA visited the subject property in order to ascertain the true facts, it cannot be said that he was illegally interfering with the possession of the property claimed by the petitioner. As a public representative it is his bounden duty to verify true facts, more particularly when property concerns Zilla Praja Parishad. Therefore, I do not see any illegality in 6th respondent visiting the subject property. Merely because petitioner puts up a board claiming ownership, without acquiring title, he cannot challenge the

verification of the facts by public representative.

23. It appears that petitioner is trying to take undue advantage of the improper handling of the issue by the Zilla Praja Parishad authorities, more particularly when the subject property is a valuable one. Learned Advocate General fairly submitted that authorities of Zilla Praja Parishad failed to protect the interests of Zilla Praja Parishad and for reasons best known, which could not be immediately ascertained, he states, the Zilla Praja Parishad has not disclosed true facts when W.A.No.998 of 2011 was considered and SLP was filed. However, as seen from the history of the case, the decision rendered by this Court in W.A.No.998 of 2011 cannot inure to the benefit of the petitioner to claim title. If according to the petitioner, valid title is vested in him and that he has to recover possession of the subject property, it is for him to avail the civil remedy as available in law and writ Court cannot grant restoration of possession in favour of petitioner in exercise of power of judicial review. I hope and expect that appropriate remedial measures would be taken by Zilla Praja Parishad and a thorough enquiry would be conducted into the entire issue.

24. I, therefore, see no merit in the writ petition. The writ petition fails. It is accordingly dismissed. There shall be no order as to costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE:20.08.2015
TVK

HONOURABLE SRI JUSTICE P. NAVEEN RAO

-
-
-

-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-

WRIT PETITION No. 583 of 2014

Date: 20.8.2015

