

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.25215 OF 2012

ORDER:

This writ petition is filed seeking to issue an order or direction particularly, one in the nature of writ of *Mandamus* to declare the proceedings of respondent No.3 bearing R.L.P. No.260/2009/VJA, File No.Rc.C8/2450/2009, dated 23.12.2009, regularizing the unauthorized plot of respondent Nos.4 and 5 in R.S.No.72/2 of Patamata within the Municipal Corporation Limits of Vijayawada, and also consequential order passed by respondent No.1 bearing No.Rc.G7-153326/10, dated 12.01.2011, as illegal, arbitrary, high handed and against the principles of natural justice, and to set aside the said proceedings; and consequently, to direct respondent Nos.1 and 2 to cancel the approval of plan in RCG7 BA No.1548/2009, dated 04.02.2010, sanctioned to respondent Nos.4 and 5 by respondent Nos.1 and 2.

2. Case of the petitioner is that he and one Valluru Venkateshwar Rao are the sons of late Gopala Krishnaiah, who owned and possessed an extent of Ac.1.45 cents of agricultural land at Patamata Lanka in R.S.No.72/2. The said Gopala Krishnaiah got the said property during partition between himself and his brother. As there was no proper way out to the said property to reach the road, a right of easement was granted to him in the said partition itself duly reciting the said right of easement in the partition deed entered into between Gopala Krishnaiah and his brother. A right of passage was conferred on the said Gopala Krishnaiah by way of joint passage to reach the said extent of land. During the life time of said Gopala Krishnaiah, due to the dispute regarding enjoyment of the said right of passage through the said joint passage, the said Gopala Krishnaiah filed a suit in

O.S.No.1126 of 1982 on the file of the District Munsiff, Vijayawada for permanent injunction restraining the defendants and their men in the said suit from interfering with the peaceful possession and enjoyment of the said joint passage shown in the plan filed along with the suit and from closing, obliterating or blocking the said passage along with the channels which run from the well into the land of said Gopala Krishnaiah. The said suit was filed against respondent No.5 herein and others, and the same was decreed on 10.12.1984 in favour of the petitioner and his father and brother. Aggrieved thereby, respondent No.5 herein and others filed appeal in A.S.No.10 of 1985 on the file of the I Additional Senior Civil Judge, Vijayawada and the same was dismissed on 28.4.1998. Pursuant thereto, respondent No.5 herein filed Second Appeal No.758 of 1998 and the same was also dismissed on 01.07.2008. The said judgment became final and as per the said judgment and decree, the petitioner and his brother – Venkateshwar Rao, being the sons of late Gopala Krishnaiah, got a right of easement to pass through the joint passage mentioned as HOML in the plaint plan to reach the property of the petitioner and his brother.

Respondent No.5 herein submitted an application to respondent No.1 Corporation seeking sanction of the plan to his property duly including the joint passage as his property. The petitioner raised objection for sanction of approval of the plan and respondent No.1 has not sanctioned the said plan. Respondent No.5 herein transferred his property in favour of his daughter – respondent No.4 suppressing the Court proceedings and right of easement of the petitioner and his brother on the joint passage, and once again, submitted an application through his daughter seeking approval of the plan for construction of a building in his site duly including the said joint passage as her site. Respondent Nos.1 to 3, without verifying the record and also without calling for any objections from the petitioner or adjacent owners,

sanctioned the approval of plan vide proceedings bearing No.R.C.G.7.B.A.No.1548/2009, dated 4.2.2010. The petitioner was neither given an opportunity to raise his objections nor had knowledge of the application of respondent No.4 seeking approval of the plan. The petitioner made a representation to respondent Nos.1 to 3 by way of a legal notice, dated 6.5.2010, through his counsel duly enclosing the copies of the judgments, but the same was not considered. On the other hand, respondent Nos.4 and 5 are taking advantage of the plan obtained by them illegally and proceeding with further construction in the said property by blocking the said joint passage thereby, effecting the right of usage of the joint passage of the petitioner and his brother. Hence, the petitioner filed W.P.No.16690 of 2010 for cancellation of the approved plan to respondent No.4 and the same was disposed of on 14.7.2010 giving liberty to the petitioner to make an appropriate application before respondent No.1 Corporation for cancellation of the permission granted in favour of respondent Nos.4 and 5, and on such application, respondent No.1 to consider and pass appropriate orders in accordance with law after giving an opportunity of hearing to the petitioner as well as respondent Nos.4 and 5 within a period of four weeks from the date of receipt of such application from the petitioner. As respondent No.1 failed to comply with the direction of this Court, the petitioner filed C.C.No.167 of 2011. In the said C.C., it was contended by the learned Standing Counsel for the respondent Corporation that the order of this Court was complied with by its proceedings, dated 12.01.2011, and the plan could not be cancelled in view of the fact that respondent No.4 submitted proceedings of respondent No.3 regularizing her unapproved plan. The said C.C. was dismissed giving liberty to the petitioner to challenge the proceedings, dated 12.01.2011, of respondent No.1. Hence, he filed the present writ petition.

3. No counter-affidavit is filed by respondent Nos.1 and 2.

4. It is stated that respondent No.5 died.

5. Counter-affidavit is filed on behalf of respondent No.3 Authority stating that respondent No.4's L.R.S. Application dated 16.11.2009 was considered as per G.O.Ms.No.902, Municipal Administration & Urban Development (M1) Department, dated 31.12.2007, and accordingly, proceedings, dated 23.12.2009, were issued subject to certain conditions. It is also stated that respondent No.3 is not a party to the aforementioned suit and is not aware of the judgment in the suit as well as the first appeal and the second appeal, and sought for dismissal of the writ petition.

6. Heard Sri Ambadipudi Satyanarayana, learned counsel for the petitioner, who reiterated the submissions taken in the writ petition, Sri T.Balaswamy, learned Standing Counsel appearing for respondent Nos.1 and 2, Smt K.Mani Deepika, learned Standing Counsel appearing for respondent No.3, and Sri P.Prabhakar Rao, learned counsel appearing for respondent Nos.4 and 5.

7. It is to be seen that respondent No.5 transferred the property in question in favour of his daughter – respondent No.4 and as such, the cause in the writ petition against respondent No.5 does not survive. It is to be seen that respondent No.1 Corporation has passed the order, dated 12.01.2011, in pursuance of the directions of this Court in W.P.No.16690 of 2010, dated 14.7.2010, after giving notice to the petitioner herein and also to the respondents wherein it is held that the building permission in proceedings B.A.No.1548/2009, dated 04.12.2010, was granted basing on L.R.S. Proceedings of respondent No.3 and therefore, the petitioner has to approach respondent No.3 for clarification or cancellation of L.R.S. proceedings by stating the above facts.

8. Learned counsel for the petitioner states that earlier to the

issuance of these proceedings, petitioner has issued legal notice to respondent No.3 on 6.5.2010, but the same has not been considered. Learned counsel for respondent No.4 states that no particulars and extents were mentioned in the aforementioned suit and as such, no relief can be granted to the petitioner and he has to work out his remedies in a civil Court.

9. The main grievance of the petitioner is that respondent No.4, without disclosing about the judgment of the aforementioned second appeal, obtained the L.R.S. proceedings. All these aspects have to be considered by respondent No.3, who has granted proceedings in Rc.C8/2450/2009, dated 23.12.2009, by which lay out proceedings were regularised in favour of respondent No.4. In view of the same, it is open for the petitioner to make out an appropriate representation to respondent No.3 stating all the above facts and the same may be considered by respondent No.3 after issuing notice to the petitioner as well as respondent No.4. Taking into consideration the judgment of the aforementioned second appeal and the objections raised by the petitioner as well as respondent No.4, respondent No.3 has to consider the representation of the petitioner and pass appropriate orders in accordance with law within a period of three (3) months from the date of filing of representation by the petitioner.

10. With the above direction, the Writ Petition is disposed of. There shall be no order as to costs.

11. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE A.RAJASHEKER REDDY

Date: 08.09.2015
AMD

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THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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