

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

-

Writ Petition Nos.27531 and 29225 of 2012

-

COMMON ORDER:

-

WP.No.27531 of 2012 is filed seeking the following relief/s:

‘..to issue a writ order or direction/s more particulars one in the nature of writ of Mandamus quashing the proceedings BA.No.10534/2012/ACP-1, dated 17.08.2012, is bad, by set-aside the same restraining the respondents in interfere with the constructions made by the petitioners in Sy.No.10/1 of Rushikonda village an extent of 387 Sq.yards which is contrary to law violation of Article 300-A of the Constitution of India as it is illegal, arbitrary, without jurisdiction against the principles of natural justice and pass such other order or orders..’

[Reproduced verbatim]

WP.No.29225 of 2012 is filed seeking the following relief/s:

‘..to issue a writ order or direction/s more particulars one in the nature of writ of Mandamus declaring the action of the first respondent cancellation petitioner land in Survey no.10/1, an extent of 387 Sq.yards or Ac.00-08 cents situated at Rushikonda village, Visakhapatnam orders passed in proceedings no:22839/08/L5, Dated:11-07-2012, is bad, behind back, without notice, without servicing the orders, to the land by set-aside the same which is contrary to law violation of Article 300-A of Constitution of India as it is illegal, arbitrary, without jurisdiction against the principles of natural justice and pass other order or orders..’

[Reproduced verbatim]

2. I have heard the submissions of the learned counsel for the writ petitioners in both

the writ petitions, the learned Standing Counsel appearing for the Visakhapatnam Urban Development Authority (VUDA) and the learned counsel appearing for the unofficial respondent.

3. The case of the writ petitioners in WP.No.29225 of 2012, in brief, is as follows: -

‘They having purchased the subject property had approached the 1st respondent under Land Regularisation Scheme. A survey was done and a certificate was issued stating that the land is zeroyati land and that one Sri Krishan Co-operative Society had sold away plot no.112 to a third party and that he had sold the same to the 2nd respondent/unofficial respondent. The Society got approved a lay out *vide* plan bearing no.5/80; and, subsequently, the same was revised into LP.No.85/88 in RC.No.193/85/H.1. While the matter stood thus, the unofficial respondent had filed a suit in OS.No.67 of 2008 on the file of the Court of the learned Junior Civil Judge, Bheemunipatnam. Later that suit was dismissed. Thereafter OS.No.191 of 2008 was filed by the writ petitioners herein for abundant caution for declaration of title. The petitioners had obtained an endorsement in RC.No.1118/2010/A dated 11.12.2010 from the Tahasildar, Visakhapatnam. Thereafter, after due verification, the 1st respondent had granted land regularisation *vide* proceedings in RC.No.22839/08/L5 dated 02.11.2011. Subsequently, without notice to the writ petitioners herein, the said proceedings wherein the plot was regularised were cancelled on the ground that the writ petitioners had obtained the plot regularisation fraudulently without mentioning the legal disputes with the unofficial respondent and also that a Court case in OS.No.191 of 2008 is pending in the Court of the learned Additional District Judge. Hence, the writ petition is filed to set aside the said proceedings no.22839/08/L5 dated 11.07.2012 revoking the earlier proceedings issued *vide* RC.No.22839/08/L5 dated 02.11.2011.’

4. The case of the writ petitioners in W.P.No.27531 of 2012 is this:

The writ petitioners had purchased an extent of 387 Square yards in Survey no.10/1 situate at Rushikonda village within limits of Greater Visakhapatnam Municipal Corporation (GVMC). The 2nd petitioner herein is having land admeasuring 193.5 Square yards in the said survey number (Western part out of 387 Square yards). The 1st petitioner had purchased his share of property through a

registered sale deed dated 08.12.2011 from his vendors. Similarly, the 2nd petitioner had purchased her share of property under a registered sale deed dated 25.01.2012. Thus, both the writ petitioners together had purchased the above said total extent and are the absolute owners and possessors of the property from the dates of respective purchases and are continuing in peaceful possession and enjoyment of the said property without any interruption. The vendors of these petitioners had obtained lay out regularisation from the 2nd respondent in RC.No.22839/08/L5 dated 02.11.2011. Having purchased the property, the writ petitioners herein, had applied to the 1st respondent for permission for construction of a residential building consisting of stilt for parking plus ground floor plus three upper floors and had paid the necessary amounts as claimed by the 1st respondent in proceedings in BA.No.10534 dated 22.02.2012. The first respondent had granted permission in proceedings No. BA.No.10534/2012/ACP-1 dated 07.03.2012. Thereafter the petitioners had immediately raised and completed the first and second floor slabs and had erected slab for the third floor. At that time, an official of the 1st respondent came to the building spot on 17.07.2012 and had asked to stop the construction activity without giving any notice or mentioning any reason. Subsequently, the petitioners herein had sent an application dated 21.07.2012 and had met the officials of the 1st respondent. The 1st respondent had assured to look into the matter. The petitioners had also issued a telegraphic notice to the 1st respondent on 25.07.2012. Later, the petitioners had continued the construction work without any hurdle. While the matter stood thus, the 1st respondent had issued a notice under Section 450 of the Hyderabad Municipal Corporation Act, 1955 *vide* proceedings BA.No.10534 /2012/ACP-1 dated 26.07.2012 as to why permission granted to the petitioners for construction of the building shall not be revoked. It was also stated in the said notice that it was informed by the 3rd respondent that a civil dispute in OS.No.191 of 2008 is pending and that in IA.No.100 of 2012 directions were issued not to change the physical features of the subject plot in the said application. The 3rd respondent had given false information to the 1st respondent. No such directions were given against the 1st respondent and the 1st respondent is not a party to the said suit. The petitioners had submitted their explanation dated 03.08.2012 informing that they are not the parties to the suit and any order therein is not binding on them. Hence, the 1st respondent cannot issue notice basing on the request made

by the 3rd respondent. Pursuant to the notice issued by the 1st respondent, the petitioners had approached this Court by filing WP.No.25829 of 2012 . This Court by orders dated 22.08.2012 had granted orders of *status quo*. Due to the stoppage of the work, the petitioners are being put to lot of hardship. Unless the petitioners are permitted to continue the construction work, they suffer financial loss; further, the dumped material would also be damaged. The proceedings wherein the plan was regularised were cancelled on the ground that the writ petitioners in the other writ petition had obtained the plot regularisation fraudulently without mentioning the legal disputes with the unofficial respondent and also that a Court case in OS.No.191 of 2008 is pending in the Court of the learned Additional District Judge

5 .The unofficial respondent had filed a counter affidavit stating that a suit for declaration of title is pending and that the regularisation proceedings, which are subject matter of W.P.No.29225 of 2012 were obtained without disclosing the pendency of a civil suit and that the writ petitioners therein had sold the property to the writ petitioners in WP.No.27531 of 2012 and that, therefore, the writ petitioners in WP.No.29225 of 2012 have no *locus standi* to seek the relief and that the proceedings issued in WP.No.27531 of 2012 were issued after hearing both the parties and that there is no violation of the principles of natural justice.

6. At the time of hearing, the learned counsel for the writ petitioners and the unofficial respondent had reiterated the contentions urged in the writ petitions and also the pleadings, which are briefly stated supra.

7. The learned Standing Counsel for VUDA fairly submits that since the proceedings dated 11.07.2012 were issued without notice to the writ petitioners in WP.No.29225 of 2012, the said proceedings may be set aside and the matter may be remitted to VUDA for fresh disposal on merits. The learned counsel for the writ petitioners in both the writ petitions also submit that it is a fit case to remit the matter to VUDA by setting aside the proceedings, which are assailed in both the writ petitions, as one proceeding impugned is a sequel to the other and that the proceedings that may ultimately be issued in one matter by the authority concerned of the VUDA, will have a bearing on the proceedings that have to be sequentially passed in the other matter by the municipal authorities. Nevertheless, the learned counsel for the unofficial respondent would submit that the civil Court is having sesin over the matter and that in that civil proceeding, the title dispute is the subject matter and that the disposal of

the matter afresh by the VUDA may take some time and that if in the meanwhile the property is alienated, it would lead to multiplicity of proceedings and that, therefore, the writ petitions may be disposed of with suitable further directions.

8. Having regard to the facts and recording the submissions, the Writ Petitions are allowed and the orders passed in proceedings no.22839/08/L5 dated 11.07.2012, which are assailed in WP.No.29225 of 2012 and the proceedings in BA.No.10534/2012/ACP-1 dated 17.08.2012, which are assailed in WP.No.27531 of 2012 are set aside. The Application No.20505 of Sri

P. Sarveswara Reddy, which lead to the passing of the orders impugned is remitted to the Vice Chairman, VUDA for fresh disposal on merits and in accordance with the procedure established by law within three months from the date of receipt of a copy of this order, however, after also adhering to the principles of natural justice. The municipal authorities shall dispose of the matter remitted to them, subsequent to the disposal of the application remitted to the VUDA, however, by following the procedure established by law and in due adherence to the principles of natural justice within a period of three months from the date of disposal of the now remitted application by the competent Officer of the VUDA. However, to protect the interests of both the writ petitioners and the unofficial respondent, both the parties are directed to maintain *status quo* without alienating the properties to any third parties and without making any constructions whatsoever until the disposal of the application afresh by the VUDA. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in the writ petitions shall stand closed.

M. SEETHARAMA MURTI, J

09.11.2015

Vjl