

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.8499 of 2012

ORDER:

This Writ Petition under Article 226 of the Constitution of India is filed seeking the following relief/s:-

“...to issue an appropriate Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent in not disposing the representation dated 22.02.2012 as illegal, arbitrary and violative of principles of natural justice and Article 21 of the Constitution of India and consequently direct the 1st respondent to consider the petitioner's representation dated 22.02.2012 and grant all the benefits thereon and pass such other order or orders as this Hon'ble Court deem fit and proper.”

2. I have heard the submissions of the learned counsel for the writ petitioner, the learned Standing Counsel appearing for the 1st respondent and the learned counsel appearing for the respondents 2 to 5. I have perused the material record.

3. The case of the writ petitioner and the facts that lead to the filing of this writ petition, in brief, are as follows: - “The writ petitioner is a resident of Anantapur town. Her family is having a house bearing no.25/48 situated at Galam Veedhi, Anantapur Town of Anantapur District, which is the subject house. Her husband is Kistappa @ Kistaiah, son of one China Tirupalu. China Tirupalu and Peda Tirupalu are brothers and are the sons of one late Nagappa. During the lifetime of said Nagappa, the properties were divided amongst his sons equally as the properties belonged to the joint family. The subject house was given to the husband of the petitioner. The same was purchased in a Court auction in the year 1936 in E.P.no.569 of 1939 and AVPC No.125/36. The grand father of the husband of the petitioner was in possession of the said house from the said date of purchase. In the partition, the said house was allotted to the husband of the petitioner. The house was let out to one Fakruddin, a police constable, in the year 1965 on lease basis by China Tirupalu, the father-in-law of the petitioner. He had continued in

possession as a tenant. Thereafter, the father-in-law of the petitioner died in the year 1969. The said Fakruddin, who was a tenant of the property, created false and fabricated documents alleging falsely that the property was sold in favour of his wife Fatima by the father-in-law of the petitioner. In the circumstances, HRC No.1 of 2000 was filed on the file of the Principal Junior Civil Judge's Court, Anantapur, for eviction. However, unfortunately, the said eviction case was dismissed for default and later the husband of the petitioner was upset on account of disputes. One Mehboob Bee daughter of Fathima was brought into the house at present on payment of rent. She had a quarrel with this petitioner. Therefore, a police complaint was lodged. No action was taken as the complaint was lodged against a police constable's daughter. Now the sons of Mehboob bee by names Wajeed and Imtiaz are also residing in the subject house and are trying to change the physical features of the house and are trying to make constructions as per their wishes. Explaining the said circumstances, the petitioner gave a representation dated 22.02.2012 to the first respondent and the same was not attended to and no action was taken to prevent the changes that are being undertaken to the structures of the house. Hence the petitioner is constrained to file the writ petition."

4. The crux of the defence of the first respondent is this: 'On receipt of the representation of the petitioner, enquiries were made and it came to light that HRC No.1 of 2000 is filed against one Akhil Sab S/o Late Fakruddin and the same is pending by that time before a competent Court. Therefore, a notice was issued to the writ petitioner under endorsement dated 15.03.2012 requesting to furnish the registered title deeds/property tax receipt pertaining to the subject house to take further action in the mater. But, the petitioner had failed to comply with the said request. Further, the first respondent is not competent to adjudicate and decide the title between the rival claimants. Therefore, there is no merit in the writ petition and the same is liable to be dismissed.

5. The case of the unofficial respondents, as pleaded in the counter affidavit of the fourth respondent is this: "The property was originally put to auction by the learned District Munisif in E.P.No.569 of 1939 and that in the said auction, the property was purchased by one Aswarthanarayana Sastri on 04.03.1940 and that subsequently, a sale certificate was issued to him. Later, he had sold the said property to one Uppara Nagappa, S/o Narappa under a registered document bearing no. 185/1951 dated 23.01.1951. The said Nagappa has two sons by names Pedda Tirupalu and Chinna Tirupalu. In the family partition, which was reduced into writing, the subject property fell to the share of China Tirupalu and the said fact is evident from the registered partition deed bearing document no.2965/1965 dated 24.08.1965. Later, the said China Tirupalu sold the property to one Masool Faqrudin by virtue of a registered sale deed bearing document no.5739/1969 dated 17.10.1969. Later, the property was mutated in the name of the said purchaser Faqrudin in the municipal records. On his demise, his two sons had executed a Special Power of Attorney in favour of M. Fatimabee, the wife of Faqrudin. The said Fatimabee and others had sold away the subject property by virtue of a registered sale deed bearing document no.5359/2007 dated 26.04.2007 to the third respondent. On the request of the third respondent, in the month of May 2012, the property was mutated in her name in the municipal records. As there were some mistakes in the schedule, a Rectification Deed dated 22.02.2012 was also obtained. Thus, the contentions of the writ petitioner that Faqrudin was a tenant and he had created false and fabricated documents are false. The writ petitioner has to approach a competent civil Court for cancellation of the sale deeds, if she is aggrieved. Without taking a proper recourse before the appropriate forum, the writ petitioner had approached this Court and had obtained status quo orders. The first respondent is not competent to decide a title issue. Hence, the writ petition is liable to be dismissed."

6. At the time of hearing, the learned counsel for both the sides made

submissions in line with the respective pleadings.

7. The learned counsel for the writ petitioner fairly submits that the respondents 2 to 5 are in possession of the property and that they are making constructions. The *status quo* orders were granted by this Court on 28.03.2012 for a period of two weeks only and the said interim order reads as follows:-

“Notice before admission.

The learned counsel for the petitioner is also permitted to take out personal notices on R2 to R5 by RPAD and file proof of service within a period of two weeks from today.

The learned standing counsel for Municipal Corporation takes notice for R1.

List the matter after two weeks.

Meanwhile, status quo obtaining as on today with regard to the house bearing No.25/48, Galam Veedhi, Old Town, Behind I Town Police Station, Anantapur, shall be maintained.”

[Reproduced verbatim]

The writ petitioner had raised two fold contentions. Firstly, no endorsement as stated in the counter of the first respondent was served on the writ petitioner to produce the title deeds; and, secondly the constructions were made during the pendency of the writ petition after the *status quo* orders were granted. On the other hand, the learned counsel for the unofficial respondents, while drawing the attention of this Court to the above referred *status quo* order, would submit that the *status quo* orders were granted only for a period of two weeks and that the said orders were not further extended and that even if the representation of the writ petitioner is directed to be disposed of, no useful purpose would be served as the writ petitioner is required under law to approach a competent civil Court for questioning the sale deeds, if she so desires and if the law permits, and that, therefore, the writ petition is devoid of merit and is liable to be dismissed.

8. I have bestowed my attention to the facts and noted the submissions of the learned counsel for both the sides.

9. From the chronology of the events and the copies of the documents filed by the fourth respondent along with the counter affidavit, it appears that after the subject property was acquired by Nagappa, there was a family partition as is evident from the registered partition deed and that in that partition, late Nagappa got the subject house to his share and that he had later sold away the said property by way of a registered sale deed to Faqrudin. Without going into the merits of the matter as regards title, it is apt to note that as rightly contended by the learned counsel for the respondents 2 to 5, the first respondent is not competent to go into the question of title and adjudicate the title issue between the writ petitioner on the one hand and the respondents 2 to 5 on the other. Admittedly, there was a house in existence since a long time and the respondents 2 to 5 are in possession of the same. It is not even alleged in the writ petition as to what are the changes to structures or the constructions which are being attempted to be made by respondents 2 to 5. It is also not the case of the writ petitioner that any changes that are being made require approval from the local body and that no approval was obtained. Therefore, having regard to the reasons, this Court finds that when the first respondent is not competent to go into the question of title and decide the title issue, no useful purpose would be served by directing the first respondent to dispose of the representation of the writ petitioner as sought for in this writ petition. The only remedy, which is efficacious and alternatively available to the writ petitioner, is to approach a competent civil Court and initiate a civil action by questioning the sale deeds. Hence, this writ petition is not maintainable, in the facts and circumstances of the case.

10. Viewed thus, this Court finds that this writ petition is devoid of merit and is liable to be dismissed.

11. Accordingly, this writ petition is dismissed. However, it is made clear that the writ petitioner is at liberty to approach a competent civil Court, if she so desires and if she is so advised, and seek the reliefs,

which the law permits. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this writ petition shall stand dismissed.

M.Seetharama Murti, J

24th November, 2015
Bvv