

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.M.P.No.25530 of 2015

and

W.P.No.31013 of 2014

ORDER:

When the writ petition was heard on 16-10-2014, the petitioner never disclosed in the affidavit with regard to filing of earlier writ petitions i.e., W.P.Nos.1215 of 2010, 1249 of 2010 and 1455 of 2010. This Court had, therefore, issued notice before admission. Thereafter, on 09-07-2015, the petitioner has moved W.P.M.P.No.25530 of 2015 by way of lunch motion and on the request of the learned Standing Counsel for the Municipality, the writ petition and W.P.M.P. are coming up today for hearing.

I have heard the learned counsel for the petitioner and the learned Standing Counsel for the 4th respondent.

The relief sought for by the petitioner in the W.P.M.P. referred to above against the auction notification and the main relief sought for in the writ petition with regard to conducting of survey, in my view, are clearly impermissible for atleast two reasons, firstly the individual members of the petitioner association had approached this Court by filing W.P.No.1249 of 2010 questioning the auction notification issued by the Municipality. The said writ petition was heard by Division Bench and by order, dated 27-06-2014, the said writ petition was disposed of. The operative portion of which is as follows:-

“We do not find any justification under the law to stay the hands of the respondent – Municipality as the petitioners and each of them have no enforceable right either legally or otherwise for seeking any direction against the respondents as such. We, therefore, direct the municipal authority to issue fresh notice for leasing out the respective premises in accordance with law and it would be open for the petitioners and each of them to participate in such auction for leasing out, if so advised. In this process, if any of them become successful bidders, obviously their possession should not be disturbed. If any of them become

unsuccessful, obviously the possession shall be given to the successful person after evicting the petitioners and each of them with due process of law, as is required against unauthorized occupants.”

Without disclosing about the said writ petition and the order thereof and the earlier writ petitions, referred to above, the present writ petition is filed, which itself amounts to abuse of process of the Court. Secondly, the petitioner is admittedly lessee of the Municipality. Though the lease was granted several years back, the petitioner now seeks to contend that the Municipality is not the owner of the land and it is in fact the Government land and for that purpose, the petitioner is relying upon some correspondence and letters of the Tahsildar and the Collector. Learned counsel for the petitioner placed strong reliance on the letter of the Collector i.e., Lr.No.E1/522/2003, dated 28-02-2015, which is filed at page No.84 along with the W.P.M.P. referred to above. The said letter addressed by the Collector to the Principal Commissioner (LA), Hyderabad, reveals that detailed survey is required to be conducted before confirming whether the land is Government land or Municipality land. Relying upon the said letter, learned counsel for the petitioner would contend that the Municipality is not owner at all and neither under Section 37 of the Municipalities Act, 1965 nor under Rule 6 of the Acquisition and Transfer of Immovable Properties Rules, 1967 framed under the Municipalities Act, the Municipality is empowered to conduct auction. Firstly, having received the lease from the Municipality, under Section 116 of the Evidence Act, the petitioner is estopped from denying the title of the Municipality. Secondly, Section 37 of the Municipalities Act itself stipulates that vacant land belonging to the Government situated in the Municipality shall be deemed to be in possession and under control of Municipal Council for the purpose of A.P. Municipalities Act.

It is evident from the above that the direction of the Division Bench, as extracted above, is being implemented by the Municipality by calling for public auction. The said action of the Municipality, therefore, cannot be faulted at as the relief sought for in W.P.M.P.No.25530 of 2015 is contrary to

the directions of the Division Bench, which are binding on some of the members of the petitioner's association, who are petitioners therein. It is, therefore, not open for the petitioner to file the present writ petition and seek relief, which runs contrary to the directions of the Division Bench, referred to above.

In my view, therefore, the writ petition is clearly abuse of process of court and hence, the writ petition as well as W.P.M.P.No.25530 of 2015 are dismissed with costs of Rs.10,000/- payable by the petitioner association to the Municipality.

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

VILAS V.AFZULPURKAR, J

Date: 10-07-2015

Prv

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.M.P.No.25530 of 2015
and
W.P.No.31013 of 2014

10-07-2015

Prv