

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Writ Petition No. 18809 of 2012

ORDER :

The petitioner is the absolute owner and possessor of the land admeasuring 918.65 Sq.yds in Sy.No.96/2 of Ambapuram Village, Vijayawada Rural Mandal, Krishna District, having purchased the same through registered sale deeds Nos.13349 to 13354 dated 15.04.2004 for valid consideration. On 04.03.2012, the petitioner came to know that the above stated land was shown as open space of an adjacent layout L.P.No.42/1994 sanctioned in favuor of the 3rd respondent society. The 3rd respondent society owned Ac.9.47 cents in Sy.Nos.97/3A and 96/2 for which they have obtained layout. However, the 3rd respondent society shown their land as Acs.10.31 cents to overcome the open place and the roads, which were to be left out mandatorily for obtaining layout and that the 3rd respondent society did not surrender the roads and open places either to the first respondent or to the 2nd respondent Gram Panchayat and also did not pay the development and betterment charges and failed to develop the said land. When the petitioner approached the first respondent under Right to Information Act for furnishing copy of the layout along with connected papers, the first respondent furnished only copy of the layout. Thereafter, the petitioner filed representation dated 05.03.2012 through registered post, before the first respondent appraising the above facts and also for canceling the layout, which was received by the first respondent on 06.03.2012. In spite of the same, no action is being taken against the 3rd respondent. Aggrieved by the same, the present writ petition is filed.

2. Counter affidavit is filed by the first respondent denying the averments of the affidavit filed in support of the writ petition stating

that layout was sanctioned in favour of the 3rd respondent in the year 1994 and that the petitioner alleged to have purchased the property on 15.04.2004. The petitioner has not challenged the layout granted in favour of the 3rd respondent from the year 1994 till 04.03.2012. It is stated that the first respondent approved the layout of 3rd respondent Society in L.P.No.31/1994 in respect of Acs.9.47 cents in R.s.No.96/2B, 97/2, 3B and 98/1 & 2 of Ambapuram Village on 29.06.1994. The roads and open spaces were handed over to the Gram Panchayat on 08.07.1994 and the same was informed by the 2nd respondent to the first respondent on 02.08.1994 and the same was revised vide permit No.42/1994 dated 13.12.1994. There is no change in the extent of the layout. In fact, the processing of layout application would arise only after payment of the required fee and charges, therefore, the question of canceling the layout at this stage, does not arise at all. The land in which the layout was granted in favour of the 3rd respondent is under the purview of the first respondent since 1978, as such, the allegation that the first respondent was not competent to grant layout permission during the year 1994 is not correct and sought for dismissal of the writ petition.

3. Counter affidavit is filed by the 3rd respondent denying the averments in the affidavit filed in support of the writ petition stating that the writ petition is liable to be dismissed on the ground of delay and laches, as the petitioner is assailing the layout granted to the 3rd respondent after lapse of 19 years and about 8 years after the purchase of the alleged land by the writ petitioner. The vendor of the petitioner did not have any right to sell the land of 918.65 sq.yds in Sy.No.96/2 in favour of the petitioner as he failed to produce the sale deed and link documents. The 3rd respondent had purchased land to an extent of 0.90 cents and 0.47 cents in R.Sy.No.96/2B from Alluri Raghava Raju and others and Tirumala Raju Venkata Subba Raju

respectively out of Ac.1.42 cents of land which they have title and possession, on 28.01.1982 through registered document No.598/1982, 601/1982. The vendors of the 3rd respondent purchased the said land from Smt. T.Seetaravamma and Sagi Jaya Lakshmi, those who are original owners of title land on 26.05.1981. As such, the petitioner who claims to have purchased his land on 15.04.2004 from the vendors of the vendors of this respondent i.e., Smt. T.Seetaravama and Sagi Jaya Lakshmi, who does not own any land except 0.05 cents, since they already sold away the entire property to his vendors Alluri Raghava Raju and others and Tirumala Raju Venkata Subba Raju as long ago as on 26.05.1981. Sri Mandapati Nagaraju is also claiming to have purchased 494 sq.yds on 29.07.2010 from his vendors vendor. The petitioner and said Nagaraju claiming to have purchased 28 cents of land, which is not in existence. That the 3rd respondent is a registered society and it purchased land in an extent of Acs.9.47 cents from different persons by paying valid sale consideration and obtained seven registered sale deeds in favour of the society including the two sale deeds for the extents mentioned above. Having obtained exemption from the competent authority under Urban Land Ceiling Act on 28.10.1993, the society applied to the first respondent for layout by paying necessary development charges and obtained layout permission vide L.P.No.42/1994 on 13.12.1994 signed on 17.12.1994.

As per the Rules and Regulations for obtaining lay out, the society has left Acs.2.78 cents towards roads and also formed roads, Ac.1.63 cnts towards open spaces and 0.06 cents as Green Belt area. Later they have allotted the plots to respective members of the society and they have been in possession and enjoyment of the same. It is stated that the alleged dispute raised by the petitioner is only a private dispute and the writ petitioner mischievously sought to bring the same into public law dispute so as to maintain the writ petition, as such, there is not even cause of action to maintain the writ petition under

Article 226 of the Constitution of India. That one Mandapati Nagaraju filed O.S.No.383 of 2014 on the file of the Principal Junior Civil Judge, Vijayawada, against the 3rd respondent society and the writ petitioner for injunction in respect of the plaint schedule property mentioned therein (494 sq.yds by showing part of the 80' feet road in the lay out and open place left by the society and the same is pending adjudication. Under the guise of interim orders of the status quo obtained therein, the said Nagaraju and writ petitioner encroached the 3rd respondent road and open places to an extent of 494 sq.yds and 918.65 sq.yds of land on 14.07.2014 respectively and raised temporary sheds in the said encroached places and fenced with barbed wire. As such, the 3rd respondent filed O.S.No.238 of 2015 on the file of the VII Additional District Judge, Vijayawada against the writ petitioner and another person namely Mandapati Nagaraju and the vendors of the said two persons, for recovery of possession of the same. That the said Mandapati Nagaraju also filed O.S.No.221 of 2014 against the writ petitioner collusively for mere injunction in respect of the above subject property and compromised the same by a decree dated 15.12.2014 and divided the above said land between themselves by compromise memo in an attempt to create artificial title to the subject land to mislead the courts and authorities. That this Court cannot go into the disputed questions of facts in the writ petition, as such, the same is liable to be dismissed on that ground also.

4. Reply affidavit is filed by the petitioner denying the averments in the counter affidavit filed by the first respondent and reiterated the averments in the writ affidavit filed in support of the writ petition.

5. Heard Sri M.R.Machavaram, learned counsel for the petitioner, Smt. K.Mani Deepika, learned Standing Counsel for the first respondent and Sri P.Prabhakar Rao, learned counsel for the 3rd respondent.

6. Sri M.R.Machavaram, learned counsel for the petitioner vehemently submits that the third respondent has obtained the layout from the first respondent by showing the land belongs to the petitioner as roads and open places. When the petitioner applied under the Right to Information Act, the petitioner is not provided with the requisite full information. He would further contend that the first respondent has not followed the procedure for granting of layout to the third respondent. He also submits that though the petitioner filed representation for cancellation of layout, the first respondent has not passed any orders.

7. On the other hand, Smt K.Mani Deepika, learned Standing Counsel for the first respondent emphatically submits that the alleged lay out is sanctioned in the year 1994 and the writ petition is filed in the year 2012, as such, the writ petition is liable to be dismissed only on the ground of laches. She also submits that the first respondent has followed the procedure and granted layout in favour of 3rd respondent after payment of necessary charges and that unless necessary charges are paid, layout application will not be processed.

She also submits that civil litigation by way of civil suits is pending between the petitioner and the 3rd respondent and that the first respondent is not concerned with the civil litigation pending between the parties, as such, the writ petition is not maintainable. More so, it is for the petitioner to establish his claim before the civil court, as disputed questions of facts are involved. She also submits that when once the layout is approved by the first respondent, it has no power to cancel the layout. In support of her contention, she relied on the judgment reported in **Prabhakar Enclave ECIL Employees Co.op. Housing Society Ltd., v. Government of A.P., Municipal Administration and another**^[1] and also produced a copy of order wherein W.P.No.1366 of 2014 filed by petitioner for considering his case for

regularization of his layout was dismissed.

8. Learned counsel for the 3rd respondent adopted the submissions made by the learned Standing Counsel for the 1st respondent stating that after sale of land in favour of the 3rd respondent, the vendor of the 3rd respondent has no right to sell the property to the petitioner as there is no land left for sale. He also submits that already civil suits are pending between the 3rd respondent and petitioner in respect of the same property. He also submits that disputed questions of facts are involved in this writ petition, as such, this petition is not maintainable. He would further contend that this Court cannot declare the title by exercising the power under Article 226 of the Constitution of India and grant relief as prayed for in the writ petition.

9. Admittedly, the subject layout is granted in favour of the 3rd respondent by the first respondent vide LP No.42 of 1994 for the land in respect of Acs.9.47 cents in Sy.No.97/3 and 96/2 of Ambapuram Village, Vijayawada Rural Mandal in the year 1994. But the petitioner asserts that the 3rd respondent has shown the lands of the petitioner as open places and roads for granting of above layout and that the 3rd respondent has also shown the title to the extent of Acs.10.31 cents in the layout. Though the petitioner made an application for cancellation of above layout, the same has not been considered by the first respondent. The allegation that the development charges and other charges were not collected from the 3rd respondent is also disputed by the first respondent in the counter affidavit. No doubt, the petitioner purchased land to an extent of 918.65 sq.yds in Sy.No.96/2 of Ambapuram Village, Vijayawada Rural Mandal, Krishna District in the year 2004 vide registered sale deeds Nos.13349 to 13354 dated 15.04.2004 for valid sale consideration. The petitioner kept quiet for nearly 8 years from the date of purchase of the property and made representation on 04.03.2012 to the first respondent for cancelling the

lay out granted in favour of the 3rd respondent in the year 1994. More so, the civil suits filed against/between the petitioner and 3rd respondent are pending in various civil courts, wherein one of the suit is filed by the 3rd respondent against the petitioner for recovery of possession of the property. Whether the 3rd respondent has shown the land in excess of the land owned by it for grant of layout or not, cannot be decided by this Court in this writ petition. Even the 1st respondent, while granting layout, they are expected to go into the *prima facie* title of the property and they are not expected to conduct roving enquiry about the title for grant of layout. More over, mere granting of layout permission does not confer any title on the 3rd respondent. When the 3rd respondent filed a comprehensive suit in O.S.No.238 of 2015 on the file of the VII Additional District Judge's Court, Vijayawada for recovery of possession and same is pending, it is for the Civil Court to decide all these aspects. Granting of layout is always subject to orders passed by the Civil Court in the above civil suit filed by the 3rd respondent. The petitioner can raise all these aspects in the suits filed before the Civil Court, especially in a suit filed by the 3rd respondent against the petitioner in O.S.No.238 of 2015. These are all disputed questions of facts regarding title to the property and also location of the property and that these aspects cannot be decided in this writ petition by exercising power under Article 226 of the Constitution of India.

10. Learned counsel for the petitioner submits that there are no laches on his part in filing the writ petition after nearly 8 years from the date of granting of layout in favour of the 3rd respondent in the year 2012. In the reply affidavit it is stated that neither the vendor of the petitioner or any public was put to notice of the approval or existence of the layout of the year 1994 and that the first respondent's office had

not even displayed the alleged layout sanctioned in the year 1994 in their notice board for the notice of general public. Moreover, the first respondent informed the petitioner vide item at Sl.No.4 of information in Rc.No.A-4-2650/2013, dated 12.02.2014 under Right to Information Act that 'there is no provision specified in the A.P.Urban Areas (Development) Act,1975 to call for the objections/suggestions from general public/neighboring land owners before approval of any layout plan. In support of his contention, he relied on the judgment reported in **Bangalore City Cooperative Housing Society Limited v. State of Karnataka and others**^[2].

No doubt, in view of the principle laid down in the above decision, mere laches on the part of the petitioner, may not be a ground for dismissal of the writ petition as a whole. However, disputed questions of facts cannot be decided in the writ petition by exercising power under Article 226 of the Constitution of India, especially, when the civil suits have been filed and are pending between the parties *inter se*. Therefore, the decision relied on by the learned counsel for the petitioner is not applicable to the facts of the present case on hand.

Moreover, the petitioner tried to raise new pleas in the reply affidavit, which cannot be permitted as other side may not be in a position to rebut the same. In view of above facts and circumstances, I do not see any merit in the writ petition and same is liable to be dismissed.

Accordingly, the writ petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous applications, if any pending in this Writ Petition, shall stand dismissed.

A.RAJASHEKER REDDY, J

01.09.2015.
KVS

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

W.P. No.18809 OF 2012

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Date: 01-09-2015

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PHONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Writ Petition No. 18809 OF 2012

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Between:

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B.Chandrasekhara Prasad.Petitioner

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And

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The Vijayawada Guntur Tenali
Mangalagiri Urban Development Authority
and others. Respondents

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Date of Judgment pronounced:08.2015

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Submitted for Approval:

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..... The Hon'ble Sri Justice A.Rajasheker Reddy
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1. Whether Reporters of Local newspapers
May be allowed to see the Judgments? Yes/No

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2. Whether the copies of judgment may be
Marked to Law Reporters/Journals Yes/No

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3. Whether His Lordship wish to see the fair
Copy of the Judgment? Yes/No

[\[1\]](#) 2002 (1) ALT 179 (D.B)

[\[2\]](#) (2012) 3 Supreme Court Cases 727