

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.22109 of 2008

Date: 02-09-2015

Between:

Smt. Ghousia Begum and another

.. Petitioners

AND

The Special Officer, Greater Hyderabad Municipal
Corporation, Hyderabad and 4 others

.. Respondents

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.22109 of 2008

ORDER:

-

This writ petition is filed for mandamus directing the respondents 1 and 2 not to interfere or develop the petitioners' land admeasuring Ac.1.38 guntas in Survey No.51 of Saheb Nagar Khurd village, Hayathnagar Mandal, Ranga Reddy District without following due process of law.

2. The case of the petitioners is that the father of the petitioners late Mohd. Ibrahim, s/o late Moinuddin was absolute owner, pattedar and possessor of land admeasuring Ac.1.38 guntas in Survey No.51 of Saheb Nagar Khurd village, Hayathnagar Mandal, Ranga Reddy District and on the demise of their father, the said land was devolved upon the petitioners, which is still undivided, in which the petitioners and the 3rd respondent are having shares as per their custom. The father of the petitioners was in possession of the subject land for more than 50 years and when the officials of the 2nd respondent tried to raise compound

wall over an extent of 75 square yards in their land and to demolish the existing structures and as they refused to stop the work, the petitioners made enquiries and learnt that a notice was issued to their father, who is a dead person on 02-02-2007 in response to which, the petitioners submitted their explanation. The alleged notice was issued in respect of the land in Survey No.5, but not the land in Survey No.51 and under the guise of said notice, the respondents have not only demolished their existing structures but also trying to encroach upon their whole land with the help of police officials. Aggrieved by the action of the respondents in trying to interfere with the subject property, the present writ petition has been filed.

3. The 2nd respondent filed his counter stating that the writ petition is not maintainable since the petitioners have not disclosed the filing of O.S.No.3074 of 2007 on the file of II Additional Junior Civil Judge, Ranga Reddy District in which the petitioners sought for perpetual injunction against the respondent-Corporation in respect of an extent of 73.40 square yards in Survey No.51 of Saheb Nagar Khurd village, which is subject matter of present writ petition. It is stated that in the said suit, the 1st petitioner filed I.A.No.4839 of 2007 under Order 39 Rules 1 and 2 CPC and when she failed to get any injunction orders, she approached this court without disclosing those facts. The Vice Chairman, Hyderabad Urban Development Authority in File No.17672/ MP2/HUDA/87, dated 17-01-1990 approved the final layout in respect of Survey No.51 part to an extent of 29,040 square yards and as per the said approved layout 10% of total area i.e. 2,904 square yards was reserved for open space, 7.666 square yards was set apart for roads, 1120 square yards set apart for shopping purpose and the total plotted area is 17,350 square

yards. It is further stated that from the date of approval of layout, building permissions are being granted by the then L.B. Nagar Municipality and the open places are in possession of the Municipality. In response to the orders passed in W.P.No.15188 of 2006 dated 25-07-2006, the 2nd respondent has taken steps to protect the reserved open spaces in the layout including the present one. It is further stated that the 2nd respondent has taken steps to construct a compound wall around the above mentioned layout open space of about 1633.33 square yards with an estimated cost of Rs.6.74 lakhs and the said work of construction of compound wall was entrusted to Sri Murali Krishna, Contractor vide work order No.E2/253/2008-444, dated 25-08-2008 and the petitioners with an intention to grab the layout open space have approached the civil court and when they failed to secure any injunction, they approached this court. It is further stated that with regard to survey number mentioned in the said notice, it was happened by oversight and in fact the survey number is Survey No.51 instead of Survey No.5 in the said notice and that under the cover of orders in WPMP.No.28803 of 2008 in W.P.No.22109 of 2008 dated 06-10-2008, the petitioners have damaged the existing compound wall basement, incurring a loss of about Rs.1.25 lakhs to the 2nd respondent and the police complaint was made on 07-10-2008 and hence, he sought for dismissal of the writ petition.

4. Sri Muddu Vijay, learned counsel for the petitioners submits that the petitioners and their father were in possession of subject property for the last 50 years and a Civil Revision Petition is pending before this court and as per the survey conducted, the present subject property was shown as their own property and even Pahanies and other relevant documents filed as additional material papers also show that though the subject property

admeasuring Ac.20.20 guntas in survey Nos.50 and 51 was surrendered, they remained the subject property admeasuring Ac.1.38 guntas and the respondent authorities cannot high-handedly dispossess the petitioners. He further submits that if any survey is conducted, the petitioners will be able to find out their property admeasuring ac.1.38 guntas, which is the subject matter of the writ petition.

5. On the other hand, Sri P. Krishna Reddy, learned standing counsel for the respondent Corporation submits that in order to protect the open space layout as approved by the HUDA, the respondents have to construct a compound wall after sanctioning the amount and never encroached the petitioners' property. He further contended that the petitioners have filed the writ petition by suppressing the filing of the suit and on that sole ground, the writ petition is liable to be dismissed.

6. In this case, it is to be seen that though in the counter affidavit, it is alleged that the petitioners filed O.S.No.3074 of 2007 on the file of II Additional Junior Civil Judge, Ranga Reddy and along with the suit, they filed I.A.No.4839 of 2007 under Order 39 Rules 1 and 2 CPC for grant of temporary injunction and the petitioners, having failed to get any injunction order, suppressing the said fact, they filed the present writ petition, which is not even disputed in the reply affidavit. The petitioners cannot avail simultaneous remedies one by filing the suit and the other by filing the writ petition in respect of same subject matter and on that sole ground, the writ petition is liable to be dismissed. Even according to the petitioners, the land, which is claimed by them, was shown as open space in the layout granted in favour of the persons who purchased the land from them. The petitioners themselves stated that they also filed a Civil Revision Petition, which is pending

before this court.

7. Therefore, having regard to above facts and circumstances, these are all disputed questions of fact, which can be decided by a competent civil court and this court cannot decide such disputed questions of fact in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. Hence, the writ petition lacks any merit and the 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 petitions, if any, pending shall stand closed.

A. RAJASHEKER REDDY, J

Date: 02-09-2015

Ksn