

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No. 39441 of 2012

ORDER:

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According to the petitioners, they are absolute owners of premises bearing No.8-3-502/1/A in Survey No.138 situated at Yellareddyguda, Hyderabad. To the north of their property, there is a public lane for their ingress and egress besides the main entrance on the western side. Originally, the public lane is a nala and the authorities laid drainage pipes in it and laid a road on the same for public usage. While so, claiming to be the owner of 40 sq. yards of site on the northern side of their house, the 4th respondent is making construction of a house by encroaching into the public lane without any manner of right, title or interest and any sanctioned permission from the authorities concerned. Though they have brought the same to the notice of the 3rd respondent by submitting a written representation dated 23.11.2012, no action is taken by the respondents so far. Questioning the inaction on the part of the respondents in taking action against the 4th respondent, the present writ petition is filed.

A counter affidavit is filed on behalf of the respondents 1 to 3 stating that there is a public lane to the northern side of the property of the petitioners. The houses of the petitioners and the 4th respondent are situated on opposite side of the lane at its end. It is also stated that during the inspection of the lane and the properties of both the parties, it is noticed that the 4th respondent has encroached into the lane up to 5'-0" on the north-east (at the end of the lane), whereas the petitioners have encroached into the land to an extent of 9'-0" on the south-east corner and constructed a building without obtaining any permission. As a result of which, the width of the lane reduced to 6'-3" from 19'-0". It is further stated that a show cause notice dated 04.12.2012 was already issued to the 4th respondent to submit his explanation why the illegal construction raised by erecting pillars up to 9'-0" should not be demolished, for which, the 4th respondent submitted his explanation on 09.12.2012 stating that he stopped the construction, and thereafter, there is no further construction till today. Therefore, the writ petition is devoid of any merit and is liable to be dismissed.

During pendency of the writ petition, the 5th respondent, who is none other than the son of the 4th respondent, was impleaded. He states that he purchased a portion of house bearing No.8-3-502/4/part admeasuring 36.5 sq. yards out of 73 sq. yards situated at Yellareddyguda, Hyderabad from his father, the 4th respondent, under a registered sale deed dated 02.01.2013. He also states that he is making construction well within his plot and the said aspect may be ascertained by measuring his land as well as the land of the petitioners and also the nala portion and if any irregularities are found in the construction, they may be demolished. He also states that in view of the interim direction granted by this Court on 26.12.2012, he is unable to proceed with the further construction. Therefore, he prays to vacate the interim order dated 26.12.2012 and dismiss the writ petition.

Heard learned counsel for the petitioners, learned standing counsel for the respondents 1 to 3 and learned counsel for the respondents.

This Court while admitting the writ petition granted interim direction to the 4th respondent to stop the construction work on the northern side of his house particularly over nala situated at Yellareddyguda, Hyderabad, pending disposal of the writ petition, in W.P.M.P.No.50094 of 2012 by an order dated 26.12.2012. It is to be seen that as per the counter affidavit filed on behalf of the respondents 1 to 3, the 4th respondent as well as the petitioners encroached into the public lane. As a result of which, the width of the lane reduced to 6'-3" from 19'-0". As such, a show cause notice was issued to the 4th respondent on 04.12.2012 under Section 452 of the G.H.M.C. Act directing him to submit explanation why the illegal constructions made by him should not be demolished, for which the 4th respondent submitted his explanation on 09.12.2012 stating that he has stopped the construction and thereafter there is no further construction till today. It is also to be seen that the 5th respondent is alleged to have purchased 36.5 sq. yards out of 73. sq. yards of site from his father on 02.01.2013 i.e., after filing of the writ petition and after granting interim direction by this Court on 26.12.2012.

In view of the above, the respondents 1 to 3 are directed to consider the explanation submitted by the 4th respondent to the show cause notice dated 04.12.2012 and pass appropriate orders, in accordance with law. Till then, the interim direction granted by this Court on 26.12.2012 shall continue. Since it is stated that the petitioners also encroached into the public lane, it is open for the

respondents 1 to 3 to take action against the petitioners, according to law, after issuing a notice to them.

With the above direction, the Writ Petition is disposed of. No order as to costs. Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand closed.

A. RAJASHEKER REDDY, J.

23rd June, 2015

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