

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 25092 of 2011

ORDER:

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The present writ petition came to be filed seeking issuance of a writ of mandamus declaring the action of the respondents in interfering with the possession and enjoyment of the petitioner over the house site admeasuring 122 square yards situated in premises No.3-4-284/1, Kachiguda Cross Roads, Lingampally, Hyderabad, without following due process of law, as illegal, arbitrary and violative of principles of natural justice; and consequently direct the respondents not to interfere with the possession and enjoyment of the petitioner over the said property.

The petitioner claims to be the owner and possessor of 122 square yards situated in premises bearing No.3-4-284/1, Kachiguda Cross Roads, Lingampally, Hyderabad, having inherited the same from his parents. It is averred that the mother of the petitioner purchased the same through a registered sale deed bearing document No.2184 of 1962, dated 19.07.1962 from Mohd. Azmath Ali, Mohd. Rahman Ali and Mohd. Ali. According to him, one late Raza Ali Saheb, S/o. Shabbir Ali Saheb, purchased site admeasuring 920 square yards and 6 Baswa through a sale deed dated 5th Jamadi-ul-Awwal, 1281 Hijri for valid sale consideration from Phatroo Saheb @ Murad Ali Saheb and Smt. Bajju Bai Tawaif. The said property devolved upon late Mohammed Vazeer Ali, who is no other than the son of late Raza Ali Saheb and thereafter on to Mohammed Azarath Ali, Mohammed Rehman Ali and Mohammed Ali, who are the sons of Mohammed Vazeer Ali. The said property was assessed with premises Nos. 3-4-284 and 3-4-285. The averments in the affidavit further discloses that all the three brothers namely Mohammed Azarath Ali, Mohammed Rehman Ali and Mohammed Ali, partitioned the property through a registered partition deed bearing No. 2202 of 1957, dated 05.09.1957. All the brothers sold away the site admeasuring 122 square yards from out of 920 square yards in favour of one Akther Begum vide registered sale deed bearing document No. 2184 of 1962, dated 19.07.1962 apart from selling other lands

which fell to their share. It is averred that the said property was in the name of late Vazeer Ali in the records of Municipal Corporation, Hyderabad and after following the procedure contemplated, the petitioner claims to have been repaired the existing rooms and is making construction. While things stood thus, the second respondent-Tahsildar came to the site and started threatening the workers on the ground that the said property is a government property. Immediately, the petitioner approached the office of the second respondent, submitted entire documents showing the flow of title and enjoyment over the said property. Though the petitioner approached the authorities concerned, the second respondent is said to have visited the site again on 05.09.2011 and started threatening the petitioner and persons working at the site. It is further averred that two police constables from the third respondent police station came to the site on the evening of 05.09.2011 and forcibly took the petitioner and others to the police station on the pretext that the petitioner has illegally encroached the government land. Claiming possession over the land on the basis of the documents available with him and also the entries made in the municipal/revenue records, the present writ petition came to be filed questioning the action of the respondents in interfering with the peaceful possession and enjoyment of the petitioner over the house property.

On 21.03.2012, this Court issued notice before admission and directed the matter to be listed on 02.04.2012. On that day this Court directed the respondents not to interfere with the possession of the petitioner in respect of the property in question without following due process of law and the same was extended until further orders on 09.04.2012.

Sri N.Sripad, working under the first respondent filed counter denying the averments made in the affidavit filed in support of the writ petition. It is stated that the petitioner has not come to the Court with clean hands and obtained interim orders by suppressing certain vital facts. It is averred that the property which is subject matter of dispute is classified as Government grave yard. In order to remove the encroachments made, the Mandal Revenue Officer, Musheerabad filed O.P.Nos. 152, 154, 155, 157 and 159 of 1989 against Ahmed Ali and others before the Special Tribunal under A.P.L.G. (P) Act-cum-Junior City Civil Court, Hyderabad. The said O.P.s were allowed declaring the respondents therein as land grabbers. Aggrieved by the same, L.G.A.Nos. 40,

41, 42, 43 and 44 of 1999 were filed by the petitioner along with others and the same were dismissed on 05.02.2011. It is stated that though the petitioner was aware about all the proceedings, he suppressed the same and filed the present writ petition only to circumvent the orders of the civil Court. The averments in the counter further discloses that in the month of July, 2011, the local people made a representation to the Collector, Hyderabad, questioning the illegal constructions being made in the grave yard land. On receiving the complaint, the respondents inspected the said grave yard along with the Mandal Surveyor and found that Mohd. Ahmed Ali ie. the petitioner herein and his brother removed the graves and started raising constructions in the government grave yard land. Though the officers raised objection, the petitioner and his brothers continued to raise constructions in the grave yard. It is further submitted that the allegation of the second respondent abusing and threatening the petitioner are all false and invented for the purpose of this case. Having regard to the circumstances stated above, it is submitted that there are no merits in the writ petition and the same is liable to be dismissed.

Learned counsel for the petitioner mainly submits that there is enough material on record to show that the petitioner is the owner of the site admeasuring 122 square yards situated in premises No.3-4-284/1, Kachiguda Cross Roads, Lingampally, Hyderabad. He placed on record the sale deeds and the partition deed affected among the brothers to show his ownership over the said property. But however, the petitioner failed to make any reference about the O.P.s and the appeals in the affidavit, though he was a party to those proceedings. No explanation is forthcoming as to why the petitioner failed to mention the said fact in his affidavit.

A perusal of the order passed in O.P.No.152 of 1989 and batch would show that the petitioner herein was shown as second respondent in O.P.No.155 of 1989. O.P.No. 155 of 1989 relates to the property bearing No. 3-4-284/1, which is subject matter of dispute in the present writ petition. By an order dated 03.03.1989, all the O.P.s were allowed and the respondents were directed to put the petitioners in vacant possession of the petition schedule site after removal of the constructions therein within three months from the date of the said order. It was further held that the petitioner therein was entitled to damages from the date of respondents constructing the mulgies to the date of

delivery possession and the damages shall be ascertained on a separate application. Challenging the same, the respondents therein preferred L.G.appeal Nos. 40, 41, 42, 43 and 44 of 1999 . L.G.A.No. 41 of 1999 relates to the appeal filed by the petitioner and another against the order in L.G.O.P.No.155 of 1989 dated 03.03.1989. By its judgment dated 05.02.2001, the Special Court under Andhra Pradesh Land Grabbing (Prohibition) Act, Hyderabad, dismissed all the appeals, but however the order granting damages was set-aside.

From the above, it is clear that the land which is subject matter of dispute in the present writ petition came up for adjudication before the civil Court. After considering all the documentary and oral evidence adduced, a judgment came to be passed rejecting the plea of the petitioner. The material filed along with the counter further discloses that on 03.09.2011 the Revenue Inspector and Deputy Tahsildar inspected the land in dispute and found that some persons were raising constructions by removing the government sign boards. Immediately, criminal prosecutions were initiated against them. Therefore, the argument of the learned counsel for the petitioner that the respondents are trying to interfere with the peaceful possession and enjoyment of the property admeasuring 122 square yards situated in premises No.3-4-284/1 without following due process of law cannot be accepted. As stated earlier, the Government filed O.P.Nos. 152, 154, 155, 157 and 159 of 1989 and was successful in getting favourable orders from the civil Court against the petitioner and others. Hence, the request of the petitioner cannot be considered in view of the orders of the civil Court.

Accordingly, the writ petition is dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

05.11.2015

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