

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.33058 of 2014

Date:30.11.2015

Between:

Smt Shareefunisa Begum Shazan,
W/o Mohd. Maanzoor Ahmed

..... Petitioner

And:

The State of Telangana., repled., by its
Principal Secretary, Municipal
Administration Department, Hyderabad
and four others.

.....Respondents

Counsel for the Petitioner: Mr. Babuji Tenneti

Counsel for Respondent No.1: GP for Municipal Admn. (TS)

Counsel for Respondent No.2: Mr. N.Ashok Kumar

Counsel for Respondent No.3: Mr. K.Chidambaram

Counsel for Respondent Nos.4 & 5: Mr. T.N.M.Ranga Rao

The Court made the following:

ORDER:

The petitioner, who claims the land in occupation of respondent Nos.3 to 5 as belonging to her, invokes the public law remedy under Article-226 of the Constitution of India in the garb of inaction of respondent No.2 in removing the alleged unauthorised structures raised by respondent Nos.3 to 5.

A perusal of the pleadings of the parties and the material forming part of this case would show that the petitioner and respondent Nos.3 to 5 are embroiled in civil dispute.

Respondent No.3 along with three others has filed L.G.C.No.40 of 2008 initially against the son of the petitioner as respondent No.1 and on his death, the petitioner was brought on record, as one of his two legal heirs, as respondent No.8. The Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act disposed of the said LGC. The findings rendered on issue No.2 by the Special Court read as under:

“Neither respondent No.1 nor his L.Rs, respondent Nos.8 and 9 filed any oral or documentary evidence in support of their contention and thus failed to prove the rival claim made by them. This issue is decided accordingly.”

Of course, the Special Court has also rendered a finding on issue No.1 to the effect that the applicants have failed to prove that the respondents therein are land grabbers. As things stand as on today, the Court of competent jurisdiction has not declared the title of either the petitioner or of respondent Nos.3 to 5.

In the counter-affidavit filed by respondent No.3, he has categorically stated that a small shed was raised over a part of the land admeasuring 500 square yards situated in T.S.No.25 of Mallepally Village about 70 years back; that a part of the said shed was acquired by the Greater Hyderabad Municipal Corporation (for

short ' the GHMC') in road widening; and that in the balance shed, tailoring shop is being run. Respondent No.3 further asserted that no new construction is raised in the said Survey number.

Respondent Nos.4 and 5, who are mother and son, respectively, against whom the petitioner has grievance that they have encroached over her property, have also filed a common counter-affidavit, wherein they have averred that an old building is in existence and that recently, as it has become dilapidated, some repairs are being affected to it.

I am not inclined to go into the nitty-gritty of the nature of structures in possession of respondent Nos.3 to 5 for the simple reason that the petitioner has not invoked the jurisdiction of this Court in public interest.

As rightly submitted by Mr. K.Chidambaram, learned counsel for respondent No.3, what the petitioner could not achieve directly by approaching the competent Court of law against his client and respondent Nos.4 and 5, is seeking to achieve indirectly by exerting pressure on respondent No.2 through the present Writ Petition to remove the existing structures raised by respondent Nos.3 to 5. I find force in this submission of learned counsel for respondent No.3.

As noted hereinbefore, so far, the petitioner's interest over the properties in occupation of respondent Nos.3 to 5 has not been established and no competent Court of law has declared her right and title over the said properties.

Therefore, even if some unauthorised structures exist over a private land, this Court will not exercise its jurisdiction under Article-226 of the Constitution of India in order to aid the petitioner to coerce respondent Nos.3 to 5 to vacate the said structures.

The petitioner shall be free to avail a common law remedy for establishing her right and seek appropriate consequential reliefs against respondent Nos.3 to 5.

Subject to the liberty given to the petitioner as above, the Writ Petition is dismissed.

As a sequel to dismissal of the Writ Petition, W.P.M.P.No.41356 of 2015 shall stand dismissed as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

30th November, 2015

DR