

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.5537 of 2015

Date: 04-06-2015

Between:

Pothu Rajender and 39 others

.. Petitioners

AND

The State of Telangana, represented by its
Principal Secretary, Municipal Administration
& Urban Development Department,
Secretariat, Hyderabad and 17 others

.. Respondents

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.5537 of 2015

ORDER:

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This writ petition is filed for a mandamus declaring the action of the 3rd respondent in granting permission of the compound wall in favour of respondents 4 to 7 vide permit No.BA/05/2014, dated 26-06-2014 and the consequential building permissions in favour of the respondents 8 to 17, vide permit Nos. BA/49/2014 and BA/50/2014, dated 11-07-2014, BA/51/2014, BA/52/2014, dated 15-09-2014, BA/75/2014, BA/76/2014 dated 26-09-2014 issued in favour of respondents 8 to 17 respectively in Survey No.693,

Janagoun Shivar village, Godhavari Khani, Ramagundem Municipal Corporation, Karimnagar District as illegal and arbitrary and for a consequential direction to cancel the said permits.

2. The case of the petitioners is that all the petitioners are in occupation of small extents of land admeasuring Ac.0.39 guntas in Survey No.693 of Jangoun Shivar village, Godhavarikhani, Ramagundem Municipal Corporation Limits, Karimnagar District, popularly known as Market Area, Shivaji Nagar Chowrasta, since last more than 45 years and they made small constructions over the said land in which they were doing their petty businesses like Garments shop, Barbar shop, Tea Stall and cloth etc. While so, the employees of the 3rd respondent Municipal Corporation asked them to vacate the premises for construction of a new Municipal Complex and the petitioners filed W.P.No.824 of 2004 and obtained interim direction in WPMP.No.1069 of 2004 on 09-01-2004 directing the 3rd respondent not to demolish the structures without following due process of law and ignoring the said interim direction, the 3rd respondent high handedly demolished their structures in the said land by using police force and bulldozers in the year 2006, for which they filed C.C.No.446 of 2007 complaining disobedience of the interim direction and the same is pending. That the land on which the petitioners are in possession is owned by the respondents 4 to 7 and the father of respondents 4 to 7 entered into an agreement of sale dated 15-04-1968 with the 18th respondent and as the respondents 4 to 17 have not honoured the agreement of sale dated 15-04-1968, 18th respondent, filed O.S.No.135 of 1975 on the file of District Munsif, Sulthanabad and the said suit was decreed in favour of 18th respondent on 17-05-1975 and the 18th respondent has not dispossessed the petitioners and that W.P.No.824 of 2004 was disposed of on 02-12-2013 directing the respondents 1 and 3 therein not to dispossess the petitioners except in accordance with law and the 18th respondent is the owner of the land.

3. The petitioners also stated that W.P.Nos.2138 of 2009 and 2098 of 2010 filed by the respondents 4 to 7 claiming that they are owners of the above said land were also disposed of by a common order on 02-12-2013 along with W.P.No.824 of 2004 directing the respondents not to dispossess the respondents 4 to 7 and the petitioners without following due process of law.

Apart from that, respondents 4 to 7 along with some others also filed W.P.No.18703 of 2006 claiming to be owners of the property and the respondent Municipality cannot dispossess them. Pending the said writ petition, the respondents 4 to 7 claiming themselves as owners of the above said land, filed an application before the 3rd respondent for grant of permission to construct a compound wall in respect of total area of Ac.0.39 guntas in Survey No.693 of Janagoun Shivar village, popularly known as Market area, Shivajinagar Chowrasta and the same was granted vide Permit No.BA/05/2014, dated 26-06-2014 by the 3rd respondent and thereafter, the respondents 4 to 7 sold the said land to the respondents 8 to 17 under various registered sale deeds basing on which consequential building permissions to construct buildings over the said land were granted by the 3rd respondent to the respondents 8 to 17 vide Permit Nos.BA/49/2014, and BA/50/2014, dated 11-07-2014, BA/51/2014, BA/52/2014, dated 15-09-2014, BA/75/2014, BA/76/2014, dated 26-09-2014 and that as the said building permissions were illegally granted by the 3rd respondent, a complaint was made by some Corporators and Ex-Councillors basing on which a detailed enquiry was conducted by the Revenue Divisional Officer, Peddapally, who submitted a report on 15-12-2014 and several complaints were made against the then Municipal Commissioner. Thereafter, respondents 8 to 17 herein filed O.S.No.28 of 2014 on the file of VI Additional District Judge, Godhavarikhani seeking perpetual injunction against the 18th respondent-company claiming that they are owners and possessors of the subject land having purchased the same under registered sale deeds from respondents 4 to 17 and along with the suit, they filed I.A.No.447 of 2014 seeking interim injunction and the same was granted on 19-01-2015 and the said orders are confirmed in C.M.A.No.59 of 2015 on 12-02-2015 and the petitioners herein filed I.A.No.71 of 2015 seeking their impleadment in the said suit and the same is pending. The petitioners further stated that the 18th respondent-company is having title and ownership over the above said land in view of the decree passed in O.S.No.135 of 1975 on the file of District Munsif, Sulthanabad dated 17-05-1975 and that the respondents 4 to 7, who are no longer holding the title from the said date, cannot transfer their title and ownership in respect of the above said land in favour of respondents 8 to 17, as such, the persons, who are

not having even a prima facie title, cannot be permitted to make constructions over the above said land. It is further stated that the petitioners have filed representations on 03-02-2015 to the respondents 2 and 3 to cancel the permits issued in favour of respondents 4 to 17. Aggrieved by the grant of permits in favour of respondents 4 to 17, the present writ petition has been filed.

4. The respondents 4 to 7 have filed counter affidavit along with WVMP.No.778 of 2015 stating that the writ petition is not maintainable as the petitioners do not have any title over the property in question nor they have filed any document showing their possession over any part of the land in Survey No.693 at any point of time and that since the petitioners do not have any legal right in the property in question, the writ petition cannot be entertained under Article 226 of the Constitution of India. It is further stated that they filed O.S.No.28 of 2014, which is pending before the VI Additional District Judge, Godhavarikhani in which the petitioners have filed implead petition and thus a serious civil dispute is pending among the parties in respect of the property in question and the said factual dispute require oral and documentary evidence to be adduced by the parties and to prove their case and the said dispute cannot be decided under Article 226 of the Constitution of India. It is also stated that the petitioners have never made any constructions nor they were in possession of any part of the property in the said survey number and the 18th respondent is not at all the owner of the property measuring Ac.0.39 guntas in Survey No.693 of Jangaon village and therefore, no question of handing over any part of the land to the 3rd respondent by the 18th respondent does not arise. The petitioners 4, 8 to 10, 12, to 15, 18, 19, 21 to 25, 24 to 30, 32, 34 to 36 and 38 to 40 herein are not parties to W.P.No.824 of 2004, which is a suppression of fact, as such, the petitioners cannot take the benefit of the order dated 09-01-2004 passed in WPMP.No.1069 of 2004 and the petitioner have not filed any contempt cases and one Gurram Ramesh Babu, who is the 6th respondent in W.P.No.824 of 2004, filed C.C.No.446 of 2007 and C.C.No.1037 of 2006 was filed by the 8th respondent and others. Since the petitioners have filed the affidavit with blatant lies, the writ petition is liable to be dismissed on that ground alone. The W.P.No.824 of 2004 was dismissed vide order dated 01-02-2010 and the 8th respondent and 3 others have filed WPMP.No.11196 of 2010 praying to set aside the said order and to reopen the writ petition, and thus, any order passed

thereafter cannot give any benefit to the petitioners herein. That the petitioners have also filed O.S.No.46 of 2003 on the file of Junior Civil Judge, Peddapally in respect of the subject matter of the writ petition and the same was also dismissed. That O.S.No.135 of 1975 filed by the 18th respondent for specific performance of a contract though decreed the 18th respondent failed to pay the sale consideration and therefore, no registered sale deed was executed in favour of the 18th respondent and that unless a registered sale deed is executed in favour of 18th respondent within the limitation as provided under Article 136 of the Limitation Act, the 18th respondent cannot become the owner or possessor of the land in pursuance of the decree passed in a suit for specific performance. As the petitioners are never in possession of any part of the land, question of dispossessing them by due process of law does not arise. It is denied that W.P.No.824 of 2004 is disposed of in favour of the petitioners. Respondents 5 to 17 have got absolute right, title and interest over their respective extents of land purchased and the petitioners have no concern with the same.

5. The respondents 4 to 7 further stated that being the pattedars they applied for grant of permission to construct boundary wall around the land admeasuring Ac.0.39 guntas in Survey No.693 of Jangaon village, and accordingly, after due enquiry, the Municipal Corporation has collected an amount of Rs.38,75,0870/- towards compound wall permit fee and an amount of Rs.23,240/- towards development charges and was pleased to grant permission to construct the compound wall in the said land vide File No.G1/05/2014 Permit No.BA/05/2014, dated 26-06-2014 to an extent of 2832.20 square meters of land out of Ac.0.39 guntas as a portion of the same has gone in the road and effected by a temple and aggrieved by the same, the 18th respondent had approached the Special Officer-cum-Joint Collector, Karimnagar and filed objection regarding construction of compound wall and the Joint Collector ordered to suspend the construction work initially and on information the claimants have filed representation before the Joint Collector, who passed final order in Rc.No.JCPESHI/160/2014, dated 09-07-2014 directing the 18th respondent to approach a civil court to establish its right and basing on the permission granted by the Municipal Corporation, the respondents 4 to 7 have constructed

the boundary wall around the land admeasuring 2832 square meters and are in peaceful possession and enjoyment over the same as absolute owners thereof.

6. The respondents 4 to 7 further stated that respondents 8 to 17, who have purchased various portions of land out of Ac.0.39 guntas in Survey No.693 from respondents 4 to 7, have also obtained permissions for construction of shops and stores by paying huge amounts to the Municipal Corporation, Ramagundam and having taken valid permission for construction of shops and stores, the respondents 8 to 17 have started construction and the same is completed to a considerable level and that the permission for construction granted by the 3rd respondent is perfectly in accordance with the Municipal laws, rules and regulations and there is no misrepresentation or fraud in grant of permission to the respondents 4 to 7. It is further stated that the Revenue Divisional Officer, Peddapally now under the influence of the 18th respondent has given a false report to the District Collector, Karimnagar, who in turn forwarded the same to the Government, against which the respondents 4 to 7 have filed objections. It is further stated that respondents 8 to 17 have filed O.S.No.28 of 2014 on the file of VI Additional District Judge at Godavarikhani against the 18th respondent and the trial Court granted injunction in I.A.No.447 of 2014 in favour of respondents 8 to 17 and the same was confirmed in C.M.A.No.59 of 2015 vide order dated 12-02-2015 and that the petitioners filed I.A.No.71 of 2015 in the said suit for their impleadment and the same is pending, and hence, the respondents 4 to 7 sought for dismissal of the suit.

7. The petitioners filed reply affidavit stating that the houses of the petitioners were forcibly dismantled by the 3rd respondent-Municipality, as such, the possession of the petitioners over the said land cannot be dispossessed without due process of law. It is further stated that the then Municipal Commissioner was transferred from Godavarikhani in view of complaint made against him including the present complaint. It is further stated that in view of serious dispute with regard to title of the property, further rights cannot be created in favour of any party by granting permission to them to make constructions over the said property.

Heard Sri T. Suryakaran Reddy, learned senior counsel, Sri M.A. Bari, learned counsel, Sri J. Prabhakar, learned Government Pleader for Municipal Administration and the learned standing counsel for the Corporation.

In the present case, even according to the petitioners, the respondents 8 to 17 filed O.S.No.28 of 2014, which is pending on the file of VI Additional District Judge, Godhavarikhani in which the 18th respondent is a party. It is also the case of the petitioners that they filed I.A.No.71 of 2015 in O.S.No.28 of 2014 for their impleadment in the said suit, which goes to show that a civil dispute is pending in respect of the same property. Admittedly, the trial court granted injunction in favour of respondents 8 to 17 in I.A.No.447 of 2014 restraining the 18th respondent herein from causing interference or dispossessing them from their respective properties and the 18th respondent preferred an appeal against the said injunction order and the same was dismissed this court vide its order dated 12-02-2015 in C.M.A.No.59 of 2015 and this would go to show that as of now injunction is operating and subsisting in favour of respondents 8 to 17 in the said suit. The case of the respondents 4 to 7 is that they purchased the property, which is the subject matter of the writ petition, through registered sale deeds vide document Nos.2569/2014, dated 21-07-2014, 2566/2014, dated 21-07-2014, 2567/2014, dated 21-07-2014, and 2571/2014, dated 21-07-2014 from the original owners and by virtue of registered sale deeds, the respondents 8 to 17 are in possession of the properties and obtained permission from the Municipal Corporation for constructing commercial buildings. The trial Court, after considering the case of the petitioners, granted injunction favour of respondents 8 to 17. When it is not the case of the petitioners that the Municipal Corporation, Ramagundam is the owner of the property, the petitioners along with reply affidavit have filed some receipts issued by the Municipal Corporation-the 2nd respondent showing that they are in possession of the land and the petitioners houses were forcibly dismantled by the 3rd respondent. The trial Court has elaborately considered the case of respondents 8 to 17 and the 18th respondent, granted injunction in I.A.No.447 of 2014 after considering the entire litigation holding that the respondents 8 to 17 are in possession of the property. O.S.No.189 of 2002 is filed by some of the petitioners herein against the 18th respondent. It is also found that as on today

permissions granted in favour of respondents 8 to 17 are still subsisting, more so, the Municipal Corporation grants permission only on considering *prima facie* title of the applicants and that mere grant of building permission does not confer any title and the same has to be decided by the civil court. It cannot be assume the role of an adjudicator or arbitrator and decide the title *inter se* between the applicants while granting of building permission as held in **T. Rameshwar v. Commissioner, Municipal Corporation of Hyderabad and others** (2006 (3) ALD 337). Admittedly, when the suit is filed by respondents 8 to 17 is pending before a civil court in which the writ petitioners were impleaded as party respondents in the said suit, as such the parties can pursue the litigation therein. More so, the respondents 8 to 17 are claiming the property through registered sale deeds basing on which the building permissions are granted. In the counter affidavit, it is stated that O.S.No.46 of 2003 filed by the petitioners in respect of the subject property was also dismissed, which is not disputed or denied in the reply affidavit by the petitioners. Even according to the petitioners, the respondents 8 to 17 have purchased the property from respondents 4 to 7, but it is the case of the petitioners that they are in possession of the property, which is subject matter of the writ petition and the 18th respondent is the owner by virtue of decree granted in O.S.No.135 of 1975 filed for specific performance of a contract. Unless the specific performance decree is executed and registered sale deeds are executed in favour of 18th respondent, the title of the respondents 4 to 7 is not divested. Admittedly, according to the petitioners, the said decree is not executed, more so, the petitioners have not filed any document to show that they have title over the subject property of the writ petition except filing some receipts issued by the Municipal Corporation. The so-called receipts do not show the title of the petitioners over the subject property. At any rate, all these aspects have to be gone into in O.S.No.28 of 2014 and this Court in W.P.No.12258 of 2014 by relying on judgment in **T. Rameshwar v. Commissioner, Municipal Corporation of Hyderabad and others** (2006 (3) ALD 337) held that the complicated questions regarding title cannot be dealt by the Commissioner exercising power under Sections 428 and 429 of the Greater Hyderabad Municipal Corporation Act, 1955. It is only *prima facie* title the authority will look into while granting building permission.

In view of the above facts and circumstances of the case and the law laid down by this court in the referred judgment, I do not see any merit to entertain the writ petition 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: 04-06-2015

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