

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.33250 of 2016

O R D E R:

Petitioner had filed this Writ Petition assailing permission dt.25.04.2016 granted by the 2nd respondent to respondents 4 and 5 for making construction in the subject property.

2. Counsel for the petitioner contends that petitioner had already filed a suit for declaration of title, recovery of possession and for perpetual injunction against the vendors of respondents 4 & 5 and when the said suit is pending, the defendants in the said suit sold the property to respondents 4 and 5. He also contends that the petitioner had filed an objection on 22.01.2016 before the 2nd respondent opposing grant of building permission to respondents 4 and 5, but in spite of the same, the 2nd respondent granted permission on 25.04.2016 to respondents 4 and 5. Counsel for the petitioner also placed reliance on a judgment of this Court in ***T.Rameshwar v. Commissioner, Municipal Corporation of Hyderabad and others*¹**.

3. In the very judgment cited by the petitioner it has been held that the provisions of the HMC Act, 1955 and Municipal Corporation Building Byelaws 1981 contain no provision,

¹ 2006(3) ALD 337

which enables the Commissioner of MCH to reject application on ground of ownership of applicant being doubtful. The Court held that the Commissioner, if he so inclined, can always come to a *prima facie* conclusion whether the applicant for permission is owner or not, and in that regard the Commissioner may also invite objections if he so desires. The Court held that the Commissioner is required to make a pragmatic assessment of the material available on record and decide the claim of *prima facie* title and lawful possession of the applicant for permission. It also stated that decision to grant permission itself would not confer any title on the applicant nor it would take away the rights of the objectors, be it the Government or any individual, for asserting their right, title and interest in the land in respect of which permission has been granted and dispute the title in any manner known to law. It also held that Commissioner is not entitled to decide any disputed questions of title or ownership, and all that the Commissioner is required to do is to find out *prima facie* title and lawful possession of the applicant and obviously such consideration is confined to only for the purposes of granting permission and nothing more.

4. In the present case, obviously satisfied with the *prima facie* title of respondents 4 and 5, the 2nd respondent had accorded permission for making construction and ignored the

objections filed by the petitioner. Since the petitioner has already approached the Civil Court by filing O.S.No.547 of 2015 seeking declaration of title, recovery of possession and for perpetual injunction, the petitioner ought to have secured appropriate orders from the Civil Court, if he intends to stop any construction in the subject property being made by respondents 4 and 5. Having failed to do so, the petitioner cannot approach this forum to get that relief.

5. Therefore, I am not inclined to entertain this Writ Petition and it is accordingly dismissed granting liberty to the petitioner to pursue the civil remedy available to the petitioner before the Civil Court against respondents 4 and 5. It is made clear that this Court has not expressed any opinion on the title claimed by the petitioner vis-à-vis respondents 4 and 5 and the Civil Court shall decide the suit filed by the petitioner uninfluenced by any observations made herein. There shall be no order as to costs.

6. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

14th October, 2016
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