

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.No.5700 of 2016

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ORDER:

Heard.

The petitioners' request for grant of permission to dig a bore well was rejected under the impugned Memo of the 2nd respondent, dated 12.02.2016 on the ground that the land falls in Sy.No.49, which is classified as 'Sarkari'. Though the appeal lies against the said order, learned counsel for the petitioners questioned the impugned Memo primarily on the ground that the 2nd respondent has no jurisdiction to pass the impugned Memo in the light of the decision of the Chief Judge, City Civil Court, Hyderabad, in O.P.No.1348 of 1991, dated 24-08-2002. It is stated that the said O.P. was filed under Section 7-A of the A.P.Land Grabbing (Prohibition) Act, 1982 by the State and prosecuted by the same 2nd respondent. The said case was filed against the mother of the petitioners and as per the aforesaid order of the Chief Judge it was held that the respondent therein and her vendors have been in possession of the property as owners from 1952 onwards and the petitioner therein has not adduced any evidence to show the steps taken for recovery of possession from the vendors of the respondent therein and consequently dismissed the O.P. The said order is stated to have attained finality.

The petitioners, who succeeded to their mother, state that the 2nd respondent has not looked into the aforesaid order, which is binding on him and he cannot reject the request of the petitioners. They also submit that their house existing on the said land was sought to be developed for which appropriate permission was already granted by GHMC on 16-11-2015. Hence, in order to develop the land in question, the petitioners sought permission from the 2nd respondent to dig a bore well and the rejection of the said request on the ground

mentioned under the impugned order is without jurisdiction.

Learned Government Pleader for Revenue submits that there is no reason why the petitioners could not approach the appellate authority against the said order.

I have considered the submissions and keeping in view the fact that the order of the Chief Judge under the A.P.Land Grabbing (Prohibition) Act, 1982 referred to above is in the nature of judgment in rem and stated to have attained finality and the findings in the said judgment are binding on the 2nd respondent, the impugned order is passed without reference to the said judgment and the same is clearly rendered without jurisdiction.

Hence, in my view, it is a fit case where this Court would exercise jurisdiction under Article 226 of the Constitution of India. Consequently, the impugned order is set aside and the matter is remitted to the 2nd respondent to consider the petitioners' application afresh by duly taking into consideration the judgment of the Civil Court, referred to above, and all the attendant circumstances and then pass a reasoned order expeditiously, preferably within four weeks from the date of receipt of a copy of this order.

Accordingly, the writ petition is allowed. No order as to costs.

The miscellaneous petitions, if any, pending in this writ petition shall stand closed.

VILAS V.AFZULPURKAR, J

Date: 23-02-2016

Prv

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

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Prv

