

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION NO.5783 of 2016

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Between:

Momin Beejan

PETITIONER

AND

1. The State of Andhra Pradesh, rep. by its Secretary, Panchayat Raj Department, A.P. Secretariat, Hyderabad, and others.

RESPONDENTS

ORDER:

The petitioner filed this writ petition complaining inaction on the part of respondent Nos.3 and 4 in implementing the order of the 2nd respondent dated 25.01.2016.

Heard Sri N. Siva Reddy, learned counsel for the petitioner, learned Government Pleader for Panchayat Raj for respondents 1 and 2 and Sri G. Seshadri, learned Standing Counsel for respondents 3 and 4.

As this Court come to a prima facie conclusion that the 2nd respondent has no jurisdiction to interfere with the construction activity and direct respondents 3 and 4 to initiate steps to stop constructions made by respondents 5 and 6, the matter was reserved for orders at the admission stage.

It is the case of the petitioner that she is the absolute owner of the residential building premises bearing D.No.4.10 of Banaganapalle Village and Mandal, Kurnool District, having inherited the same from her mother through oral gift dated 12.10.2009. When her brothers tried to interfere with her property, she filed O.S.No.410 of 2013 on the file of Principal Senior Civil Judge, Nandyal and the same is still pending. During the pendency of the suit, petitioner's brothers, who are defendants in the suit, sold the subject property to respondents 5 and 6 under registered sale deed dated 23.04.2014. After purchasing the same, respondents 5 and 6 obtained building permission from the 3rd respondent-Gram Panchayat vide proceedings dated 24.11.2014 for construction of building without disclosing the pendency of suit. The petitioner approached the 3rd respondent informing him about the pendency of the suit, and the 3rd respondent kept the said building permission in abeyance and directed respondents 5 and 6 not to

undertake construction activity. Aggrieved by the same, respondents 5 and 6 filed O.S.No.84 of 2015 on the file of Junior Civil Judge, Banaganapalle and obtained interim injunction in I.A.,No.588 of 2015, and undertook construction activity once again. Hence, the petitioner filed a representation before the 3rd respondent seeking to stop the construction. Even though the 3rd respondent directed respondents 5 and 6 to stop constructions, when they did not heed to the same, the petitioner filed a representation before the 2nd respondent on 27.07.2015 bringing all the facts to his notice. Accordingly, the 2nd respondent issued a memo dated 25.01.2014 to the 4th respondent to take necessary action in the matter. As no action has been taken so far, the petitioner filed the present writ petition.

Learned counsel for the petitioner contended that when respondents 5 and 6 have obtained permission to defeat her rights, she approached the 2nd respondent and the 2nd respondent had directed respondents 3 and 4 to restrain respondents 5 and 6 from further proceeding with the construction till the disputes in O.S.Nos.410 of 2013 and 84 of 2015 are settled. Without heeding to the said order, respondents 5 and 6 are proceeding with the construction.

A perusal of the material placed on record discloses that there are internal disputes between the petitioner and respondents 5 and 6. As a matter of fact, O.S.No.410 of 2013 is pending and respondents 5 and 6 are strangers to the suit. The defendants in O.S.No.410 of 2013 are the family members of the petitioner wherein the petitioner sought a declaratory relief with respect to the plaint schedule property and also consequential injunction. Respondents 5 and 6 also filed O.S.No.84 of 2015 on the file of Junior Civil Judge, Banaganapalli seeking permanent injunction restraining the petitioner and one Gounda Ismail from interfering with the petition schedule property. When respondents 5 and 6 claim to have purchased the property

through registered sale deed dated 23.04.2014 they had also obtained permission from the Gram Panchayat for developing the property.

In as much as in the very updated facts, the petitioner's claim is though in relation to the property and dispute is within her family members, the rights of respondents 5 and 6, who acquired the property through registered sale deed, cannot be interdicted by the 2nd respondent except in the circumstances respondents 5 and 6 violating the building permission granted under the Panchayt Raj Act. There being no such allegation, the very direction given by the 2nd respondent at the instance of the petitioner is not sustainable and the same cannot be directed to be implemented by respondents 3 and 4.

In that view of the matter, I do not see any merit in the writ petition and the same is accordingly dismissed. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

CHALLA KODANDA RAM, J.

4th April, 2016
Js.