

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO.7029 OF 2015

DATED:18-01-2016

Between:

M/s. Mysore Fertilisers Company Pvt. Ltd.,
Rep. by its GPA Holder Ramesh Gaikwad,
R/o. Ho.No.8-3-720/15/A/1, Yellareddyguda
Ameerpet,
Hyderabad ... Petitioner

And

The State of Telangana
Rep. by its Principal Secretary
Department of Municipal Administration
and Urban Development at Secretariat
Hyderabad
and others ... Respondents

COUNSEL FOR THE PETITIONER: Mr. Ch. Janardhan Reddy

COUNSEL FOR RESPONDENT NO.1: A.G.P. for Municipal
Administration

(TS)

COUNSEL FOR RESPONDENT NOS.2 to 4: Mr. P. Kesava Rao,
Standing

Counsel for GHMC

COUNSEL FOR RESPONDENT NOS.5 to 7: Mr. T. Sreedhar

THE COURT MADE THE FOLLOWING:

ORDER:

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The petitioner, who claims to be the owner of the property bearing House No.8-2-675/A, situated at Road No.13, Banjara Hills, Hyderabad, (hereinafter called, 'the subject property') filed this writ petition, feeling aggrieved by the building permission granted in favour of respondent No.7. The petitioner has emphatically asserted that there is overwhelming documentary evidence to show that the subject property belongs to it and that in spite of objections filed by it, the Commissioner of respondent No.2 has granted building permission in favour of respondent No.7.

A perusal of the record reveals that the petitioner filed O.S. No.177 of 2013 on the file of V Junior Civil Judge, City Civil Court, Hyderabad, against respondent No.6, which is evidently renamed as respondent No.7, for perpetual injunction restraining it from interfering with the possession and enjoyment of the petitioner over the suit schedule property, which is no other than the property bearing premises bearing No.8-2-675/A, which is the subject matter of the present writ petition. By order dt.1.4.2013, V Junior Civil Judge, City Civil Court, Hyderabad, has allowed I.A. No.30 of 2013, filed in the said suit for interim injunction, and granted an order of injunction restraining respondent No.6 from interfering with the petitioner's possession and enjoyment of the subject property. At the hearing, it has come out that respondent No.7 has filed O.S. No.744 of 2013 before the same Court in which O.S. No.177 of 2013 is pending, and that a counter order of injunction has been secured by it.

The question whether the premises in respect of which the building permission has been granted by respondent No.2 in favour of

respondent No.7 belongs to the petitioner or not, cannot be decided in a proceeding under Article 226 of the Constitution of India, for, for adjudication of this dispute the parties are required to adduce oral and documentary evidence and on appreciation of such evidence, a finding needs to be rendered. Such adjudication, it is trite, can only be made by the competent Civil Court. Therefore, I am not inclined to entertain this writ petition, more so, when the suits filed by both the parties are pending in the Civil Court as referred to above. The petitioner can assert its rights in the pending suit and if advised it may also seek appropriate amendments to the prayer in its suit for claiming further reliefs or file a fresh suit.

The learned counsel for the petitioner seriously complained that despite an order of injunction granted by the Civil Court, respondent No.7 has been carrying on construction in brazen violation of the said order. In my opinion, if respondent No.7 has been violating the order of injunction, the petitioner is not helpless as it can invoke the remedy under Order XXXIX Rule 2-A of the Code of Civil Procedure, 1908, before the Civil Court.

In the light of the above discussion, and subject to the observations made supra, while declining interference with the building permission granted in favour of respondent No.7, the petitioner is permitted to pursue the pending suit or file a fresh suit for comprehensive reliefs before the competent Court.

Subject to the above observations, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P. No.9351 of 2015 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

18-01-2016

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