

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.17809 OF 2004

ORDER:

This writ petition is filed under Article 226 of Constitution of India seeking a direction against the respondents not to dispossess the petitioners from the residential house bearing M.No.8-2-293/82/A/161 constructed on plot No.161 at Road No.13, Jubilee Hills, Hyderabad in an extent of 390 Sq.Yds. and direct the respondents not to cause any damages except by due process of law.

It is the case of the petitioners that the subject property was purchased by the deceased Moazzam Ali, husband of the 1st petitioner and father of the petitioner Nos.2 to 4, under a registered sale deed bearing document No.1974/97 dated 06.09.1997 for valuable consideration and the said property forms part of the land allotted by the Jubilee Hills Co-Operative House Building Society Limited to its members. The said Society was allotted huge extent of land by the State of Andhra Pradesh vide G.O.Ms.No.147 Revenue Department dated 31.01.1964. Later the deceased Moazzam Ali constructed a house in the site purchased by him. Thus, the petitioners are in possession and enjoyment of the property after the death of deceased Moazzam Ali .

The respondents are claiming that the property in dispute is Government Property and making attempts to evict the petitioners from the subject property and to cause damage to the house bearing M.No.8-2-293/82/A/161 constructed on plot No.161 at Road No.13, Jubilee Hills, Hyderabad, without any title or right.

Since the attempt of the respondents is illegal and highhanded, the petitioners sought a direction to the respondents not to dispossess them from the residential house bearing M.No.8-2-293/82/A/161 constructed on plot No.161 at Road No.13, Jubilee Hills, Hyderabad, in an extent of 390 Sq.Yds. except by due process of law.

Respondents have not filed any counter even after 12 years. During the hearing, Sri M.M.Firdos, learned counsel for the petitioners, while reiterating the contentions urged in the writ petition, requested this Court to issue a direction against the respondents not to dispossess the petitioners except by due process of law.

Whereas, the learned Government Pleader for revenue represented that no files are available with him since the matter relates to 2004 and expressed his inability to advance any arguments being the Government Pleader.

Admittedly, the petitioners are in possession and enjoyment of the property as the property was purchased by Moazzam Ali, husband of the 1st petitioner and father of the petitioner Nos.2 to 4 under a registered sale deed 06.09.1997 for valuable consideration and constructed a house therein and produced a copy of the sale deed in support of their claim. The petitioners obtained a certificate dated 30.06.1984 to show that the original purchaser was the member of the society. The Government of Andhra Pradesh under Revenue (U.C.II) Department by its Memo.No.906/U.C.II/81-1 dated 27.04.1981 clarified that the property was allotted to the Jubilee Hills Co-Operative House Building Society Limited on payment of entire consideration. The petitioners also produced the electricity bills evidencing payment of electricity consumption charges and water consumption charges paid to Hyderabad Metropolitan Water Supply and Sewerage Board. All these documents clinchingly established that the petitioners are in possession and enjoyment of the property.

It is a settled position of law that a person, who is in possession of the land, though an encroacher, cannot be dispossessed except by due process of law (***See: EAST INDIA HOTELS LTD. V. SYNDICATE BANK***^[1], ***MEGHMALA AND OTHERS V. G.NARASIMHA REDDY AND OTHERS***^[2], and ***MARIA MARGARIDA SEQUERIA FERNANDES AND ORS. V. ERASMO***

JACK DE SEQUERIA (DEAD) THROUGH L.RS.^[3]). In view of the principles laid down in the above said judgments, the petitioners, who are in possession of the house bearing M.No.8-2-293/82/A/161 constructed on plot No.161 at Road No.13, Jubilee Hills, Hyderabad in an extent of 390 Sq.Yds., cannot be dispossessed by the respondents except by due process of law.

The writ petition is, accordingly, disposed of by directing the respondents not to dispossess the petitioners without following the due process of law. No order as to costs. The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:15.07.2016

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^[1] 1992 Supp (2) SCC 29

^[2] 2011 (2) ALT 8 (SC)

^[3] AIR 2012 SC 1727