

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.33479 of 2016

Date : 10.11.2016

Between :

V.Jyotheeswari W/o Raghavulu Naidu,
Aged 63 years, R/o Plot No.102,
Raghunath Resorts, Thanapalli Road,
Tirupati, Chittoor District and two others.

.... Petitioners

And

State of Andhra Pradesh, rep.by its
Principal Secretary, Municipal Administration
And UD Department, Secretariat, Hyderabad
And others.

.... Respondents



WRIT PETITION No.33479 of 2016**ORDER:**

Petitioners claim to have purchased the house plots bearing Nos.32 & 33, 31, and 30 (part), respectively, in an unapproved layout formed in Sy.No.8A/1D (old) of Tirupati Village accounts. Under the Land Regularization Scheme, the plots were regularized by the 3rd respondent vide proceedings dated 06.06.2013. The 4th respondent is the neighbour having land to an extent of 26 cents in Sy.No.623/3C. Petitioners alleged that as per the unapproved layout, western boundary to their houses is a road and on the other side of the road is a property of the 4th respondent. While so, 4th respondent encroached on to the road abutting the plots of the petitioners on the western side, and started undertaking of construction of multistoried complex. In spite of requesting several times not to encroach the 20 feet wide road, the 4th respondent did not heed and going on undertaking construction. Though petitioners brought to the notice of the 2nd and 3rd respondents against 4th respondent, no action is taken by them. Hence, this writ petition is instituted.

2. This Court, by order dated 29.09.2016 made in WP MP No.41352 of 2016, granted interim direction as prayed for. Aggrieved thereby, 4th respondent filed W.V.M.P.No.3897 of 2016 praying to vacate the interim order. With the consent of learned counsels, this writ petition is taken up for final disposal.

3. Heard Smt S.Pranathi, learned counsel for petitioners, learned Government Pleader for Municipal Administration & Urban Development Department for respondent no.1, learned standing

counsel for Tirupati Municipal Corporation for respondent no.2, learned standing counsel for Tirupati Urban Development Authority and Sri. K.S.Murthy, learned counsel for 4th respondent.

4. Smt. S.Pranathi would submit that though the layout formed was unapproved, as a consequence to the Government decision to regularize unapproved layouts, petitioners had applied for such regularization of their house plots. Along with the application submitted for regularization, petitioners submitted the copy of unapproved layout determined by the vendor. The unapproved layout clearly demarcated 20 feet wide road to the western side of the plots of the petitioners. A road was formed. After 20 feet wide road, on the other side, the property of the 4th respondent is situated. The unapproved layout was considered and competent authority having satisfied that the claim for regularization is valid, passed orders granting regularization. As a consequence to the regularization granted to the petitioners, they have right to use 20 feet road to reach their plots. While so, illegally the 4th respondent encroached on this 20 feet wide public road and showing the same as part of his property, illegally obtained the building permission to construct a multistoried complex. She would therefore submit that the 4th respondent cannot occupy this 20 feet wide road shown on the western side of the plots of petitioners, and deprive the right of way to the petitioners to their plots. She would therefore submit that respondents ought to have removed the encroachment and restored the road.

5. Sri K.S. Murthy would submit that layout in which petitioners purchased the plots is in Sy.No.8A/1D, whereas the property of the 4th respondent is in Sy.No.623/3C. This is an

adjacent property. The 4th respondent purchased this property in the year 1996. At the time of his purchase, as per the description of property, on the eastern side, land of Sri P.Rama Reddy was shown. The layout was formed in the land of Rama Reddy. Petitioners purchased these plots. Thus, even if road is formed, it has to be within the layout formed in the land of P.Rama Reddy. Merely because owner has demarcated 20 feet road to the western side of the petitioners plots, the petitioners cannot claim land belonging to the 4th respondent as part of the layout. He would submit that total extent of land belong to 4th respondent is 26 cents and after leaving small extent of land towards proposed road widening in the master plan, on the northern side, 4th respondent is in occupation of his land. He is not in possession of excess land. He would submit that after having been satisfied with the relevant documents of ownership, the building permission was granted. Illegally, in order to harass and humiliate the 4th respondent, false case is foisted.

6. Shorn of details, in substance, the controversy agitated in the writ petition is whether the 4th respondent encroached on to the land of unapproved layout in which petitioners purchased the plots and occupied the road. Parties take extreme rival stands with reference to the existence of road. It is not in dispute that the land of 4th respondent is in different survey number and it is adjacent property to the property, in which the layout was formed and petitioners purchased the plots. On specific question posed by the Court, learned counsel for petitioners could not assert whether the 4th respondent is in occupation of the land in excess of land belonging to him as per the documents. It is not in dispute that on due satisfaction of the documents presented, the competent

authority has granted building permission in favour of the 4th respondent. No statutory violation is brought to my notice by the competent authority in granting building permission to the 4th respondent.

7. Thus, the only issue remains is *inter se* dispute with reference to the boundary between two properties and alleged existence of road between the plots of the petitioners and the 4th respondent. Admittedly, the layout in which petitioners purchased the plots was unapproved and their plots were independently regularized under the LR scheme. Thus, whether there is a road formed in unapproved layout and whether that road was occupied by the 4th respondent and was shown as part of the property belonging to him is a disputed question of fact, which ought to be agitated before the competent Civil Court in appropriate proceedings. This Court in exercise of power of judicial review under Article 226 of the Constitution of India cannot go into disputed questions of fact between two private persons.

8. The writ petition is accordingly dismissed leaving it open to the petitioners to work out their civil remedies, if so advised. This order does not come in the way of petitioners to work out their civil remedies. What is discussed herein above is only for limited purpose to decide maintainability of the writ petition. It is made clear that there is no expression of opinion on merits. No costs.

Having regard to the same, miscellaneous petitions, if any pending, are closed.

JUSTICE P.NAVEEN RAO

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