

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

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WRIT PETITION NO. 17830 OF 2010

O R D E R:

This Writ Petition under Article 226 of the Constitution of India is filed by the petitioner seeking the following reliefs:

“(a) Issue a writ or any appropriate writ/s or direction more particularly in the nature of mandamus declaring the action of the respondents in trying dispossess the petitioner over the plots bearing no 1,2,49 to 57, 60 and 67 to 72 of Chitra Nagar situated at Sy no. 14 anamagal, sitarama puram, Hayathnagar, R.R.dist is illegal, arbitrary and un-constitutional and consequently direct the respondent and it's official, workmen not to interfere with the absolute possession of the petitioner over the plot bearing no. 1,2,49 to 57, 60 and 67 to 72 of Chitra Nagar situated at Sy no. 14 anamagal, sitarama puram, Hayathnagar, R.R. dist, and be pleased to pass such other order/s as this Hon'ble court deems fit and proper in the circumstances of the case.

(b) Issue interim directions to the respondents or its agents, workmen, officials or anybody on behalf of the respondent corporation not to interfere with the peaceful possession of the petitioner over the plot bearing no 1,2,49 to 57, 60 and 67 to 72 of Chitra Nagar situated at Sy no. 14 anamagal, sitarama puram, Hayathnagar, R.R.dist, pending disposal of the writ petition and be pleased to pass such other order/s as this Hon'ble court deems fit and proper in the circumstances of the case.”

[Reproduced verbatim]

2. I have heard the submission of the learned counsel for the writ petitioner, the learned Standing Counsel for GHMC appearing for the first respondent and the learned counsel for the un-official second respondent-Association, which is impleaded as per orders dated 18.10.2011 in WPMP No. 23368 of 2011. I have perused the material record including the counter affidavits filed on behalf of respondents 1 & 2.

3. The case of the writ petitioner, as set out in Writ

Petition, in brief, is this:

The grand father of the petitioner, S. Hanumaiah, had purchased Ac. 7.23 gts of land in S.No. 14 situated at Anmagal, Hayathnagar of R.R. District under a registered sale deed on 26th September 1964 from Md.Ismail. The petitioner's grand father had executed a registered General Power of Attorney ('GPA' for short) in favour of Madireddi Rama Rao on 20th April 1968. The said GPA holder having obtained permission from the Grampanchayat had laid the said property into 75 plots and named it as 'Chitra Nagar Colony'. The said GPA holder had sold about 50 to 55 plots to the prospective purchasers around 1969 and 1970. In the year 1970, the GPA holder had died and the power of attorney had come to an end. The grand father of the petitioner is the absolute owner of the remaining plots, which are unsold. The said unsold plots are - plot nos. 1,2,49 to 57, 60, 67 to 71 and 72. The petitioner's grand father had died in the year 2000. The petitioner had succeeded to the properties of his grand father being one of his legal heirs. Since then the petitioner and other legal heirs of his grand father are continuing in possession of the unsold plots. While so, the officials of the first respondent-Corporation had started interfering with the possession of the petitioner and the other members of the family of the petitioner. On enquiries, the petitioner came to know that the Secretary of the Chitra Nagar Plot Owner's Association had

executed a settlement deed in favour of the first respondent-Corporation on 16.11.2009 in respect of plots bearing nos. 1,2,50 to 56 and 59. The said plots are unsold plots and hence, the same belong to the petitioner and his family members. As the Secretary is not the owner of the said plots, he is not competent to gift them to the first respondent-Corporation. The said settlement deed is *non est* in the eye of law; and it is null and void. Basing on the said document, the officials of the first respondent-Corporation started interfering with the possession of the petitioner and his family members over the subject plots. The GPA holder had laid roads and left the plot no. 59 as park. The execution of the settlement deed by the Secretary of the second respondent-Association and the act of the members of the association in giving ownership rights to the said Secretary are nothing but abuse of law. The interference of the first respondent- Corporation with the possession of the plots, which are unsold, is unwarranted, illegal and unconstitutional. Without prior notice, the first respondent cannot initiate any action. When attempts to dispossess were made on 19.7.2010 and 20.7.2010 by the officials of the first respondent-Corporation, the petitioner could resist the same with great difficulty; further, he had explained the facts to them. Even assuming for a moment that the first respondent-Corporation is entitled to have the possession of the said plots, it cannot evict the petitioner from the

subject plots without following the due procedure established by law. The petitioner and his family members are the owners of the said subject plots for more than five decades and are in possession and enjoyment of the said plots without any interference from any quarter. In the facts and circumstances stated, there is an imminent threat of dispossession of the petitioner from the plots aforementioned. Hence, the Writ Petition is filed.

4. The case of the first respondent as pleaded in the counter affidavit of the then Deputy Commissioner, in brief, is as follows:

One Surakanti Hanumaiah was the pattedar and possessor of the land in question apart from other lands. One Madireddy Rama Rao had taken the above said land for development. He, being the GPA holder of the said Surakanti Hanumaiah, had obtained approval for a layout from the then Grampanchayat, Hayathnagar. He had sold out the plots to third parties. He, being the developer, had left 15% of open spaces i.e., plot nos. 1,2,12, 31,40,42,43,50 to 55 and 56 and had handed over the possession of the said plots to the Grampanchayat, Hayathnagar by addressing a letter dated 28.11.1969. Since then the said plots are in possession and custody of the Grampanchayat, Hayathnagar. The said Grampanchayat is later merged into Greater Hyderabad Municipal Corporation. The owners of the plots had

formed into an association i.e., the second respondent-Association. The said association had submitted an application to HUDA on 01.02.2003 for regularization of the layout and for which purpose the association was required to show open spaces, which were already handed over to the then Grampanchayat, Hayathnagar. The second respondent-association had executed a registered gift deed dated 16.11.2009 in favour of the first respondent-Corporation in respect of plot nos. 1,2,50 to 56 and 59 in Chitra Nagar Colony towards the open spaces of the layout. The layout was approved in the year 1968 by the Grampanchayat and the plots towards open spaces were already handed over by the GPA Holder to the Grampanchayat. The remaining plots were sold out to the bonafide purchasers. Neither the petitioner nor his family members ever claimed possession or right over the above said plots, which were left for open spaces. The said plots left for open spaces had now vested in the Corporation in view of the settlement deed executed by the 2nd respondent-Association. There is a title dispute as per the claim of the petitioner and the same cannot be adjudicated in this Writ Petition. For all the reasons, the Writ Petition may be dismissed.

5. The case of the second respondent as set out in the counter affidavit of the President of the Second

respondent-Association and as per the submissions made at the hearing, in brief, is this:

The petitioner ought to have approached a Civil Court by filing a suit for declaration as he is having an alternative and efficacious remedy in view of the fact that he is claiming title over the immovable properties by stating that some of the plots, which remained unsold have devolved upon him and his family members by succession on the death of his grandfather. The GPA holder of the grand father of the petitioner had died in the year 1970 is denied. The allegations that the grand father of the petitioner died in the year 2000 and that till his death he was in possession of the unsold 20 plots and they are plot nos. 1,2,49 to 57, 60, 67 to 71 and 72 and that after the death of the grand father, the petitioner and his family members have succeeded to the unsold plots are all false. The GPA holder had addressed a letter to the then Sarpanch, Hayathnagar Grampanchayat, specifically stating that he had handed over 15% open spaces for public purpose i.e., plot nos. 1 part, 2 part, 12, 31, 40, 42, 43,50 to 55 and 56. Therefore, the contentions of the writ petitioner are false. The members of the family of the petitioner are in the habit of occupying even the plots that were sold away. Hence, the deponent had got published a public notice on 26.8.1981 in Andhra Prabha Daily News Paper cautioning the public. The deponent had filed O.S.No. 94 of 1985 on the file of the Court of Principal

District Munsif Magistrate, Hyderabad E & N against K. Sita Rami Reddy and K. Pitchi Reddy for granting perpetual injunction. As per the finding in the said judgment, the GPA holder is competent to execute sale deeds. It was also held in the said suit that the defendants therein are subsequent purchasers and that the plaintiff in the said suit is having better title and possession. Similarly Bandaru Appa Rao and B.S. Prabhavathi filed O.S.No. 444 of 1985 against the same persons and had obtained a decree in their favour on 27.4.1992. The appeal preferred by the said defendants in A.S.No. 25 of 1994 was dismissed on 30.6.1997 by the learned II Additional District Judge, R.R. District. The plots were left for public purpose. The deponent, being the then Secretary of the Association, had executed a settlement deed in favour of the first respondent-Corporation. The father of the petitioner is alive is admitted. Except the petitioner no other family member of the petitioners' family is claiming rights over the plots in dispute. The petitioner's father S. Prabhakar Reddy and his junior paternal uncle S. Jagan Mohan Reddy got partitioned their properties through a registered partition deed bearing no. 61/2010 dated 16.1.2010 mentioning therein some of the plots. A police complaint was lodged stating that they have even partitioned the sold plots. Subsequently their kith and kin got partitioned the properties by executing a registered partition deed vide

document no. 435 of 2010 dated 15.3.2010. The parties to the said deed have confirmed the execution of the settlement deed executed by the 2nd respondent-Association in favour of the first respondent-Corporation. The Writ Petition is filed with false allegations and with a malafide intention, simply because the father's name of the petitioner is being continued in the pahanies. On the intervening night of 26/27-01-2010, the petitioner along with henchmen had highhandedly trespassed into the layout and had removed the survey stones and demolished the compound walls, rooms and the roads with a JCB with a *mala fide* intention to destroy the features of the lay out/the colony. A complaint was lodged with the Station House Officer, Hayathnagar Police Station on 27.01.2010 against the petitioner, his father and others. After remand, they got themselves enlarged on bail. Having obtained interim orders from this Court, the petitioner had laid a fencing by occupying the open space no.1 in plot nos. 1 & 2 and also the 40 feet road. By applying white paint, he had also removed the name of the GHMC park with a view to sell the park area to public. Hence, this respondent had filed an application to vacate the interim order and the interim order was modified by this Court by ordering to maintain status-quo in respect of the property in question, vide interim orders dated 10.7.2012. The writ petition is devoid of merit and is liable to be dismissed.

6. The learned counsel for the parties made submissions in line with the respective pleadings of the parties, which are stated supra, in detail. I have given earnest consideration to the facts and the submissions.

7. By filing this writ petition and by *inter alia* claiming title and possession in respect of plot nos. 1,2,49 to 57, 60 & 67 to 71 and 72 of Chitra Nagar Colony (hereinafter referred to as 'the subject plots'), the petitioner is factually seeking an injunction restraining the first respondent-Corporation from interfering with the possession of the petitioner over the said plots on the ground that the said plots in Chitra Nagar Colony had remained unsold and that after the death of grand father of the petitioner in the year 2000, the same had devolved upon the petitioner and his family members. It is being alternatively contended on his behalf that even otherwise the first respondent-Corporation cannot disturb the possession of the petitioner over the subject plots except in accordance with the procedure established by law. The respondents having denied the title and possession of the petitioner and his family members over the subject plots are *inter alia* contending that certain plots, which are left for open spaces for public purpose, were already handed over to the Grampanchayat which had approved the layout and that the said fact is evident from the letter addressed by the GPA Holder to the Grampanchayat and that as the

Grampanchayat had later merged into the GHMC, the necessity for seeking regularization of the layout and executing the settlement deed by the 2nd respondent-Association in favour of the 1st respondent-GHMC had arisen and that accordingly, the second respondent-association had executed a registered gift deed dated 16.11.2009 in favour of the first respondent-Corporation in respect of plot nos. 1,2,50 to 56 and 59 in Chitra Nagar Colony towards the open spaces of the layout and that in any view of the matter, as the petitioner is claiming title and possession over the subject plots and as the same is being disputed, he ought to have approached a civil court and ought to have sought declaration of title and other reliefs and that in view of the title dispute and efficacious alternative remedy available to the petitioner, the writ petition is liable to be dismissed.

8. Admittedly, the entire property originally belonged to one Surakanti Hanumaiah. He had executed a registered GPA dated 20.4.1968 in favour of one Madireddi Rama Rao. The said GPA Holder had laid out the said property into plots and had sold some of the plots to some third party purchasers. According to the second respondent-Association all the plots were sold and that the plots that remained unsold were left as open spaces for public purpose and that the GPA holder of Surakanti Hanumaiah, who had laid out the plots had handed over

the unsold plots to the Grampanchayat for the purpose of open spaces for public purpose and that the said fact is also evident from the recitals of the letter dated 28.11.1969 addressed by him to the Sarpanch, Grampanchayat, Hayathnagar and that the said required extent of 15% of open space in the lay out corresponds to plot nos. 1 part, 2 part, 12, 31, 40, 42, 43, 50 to 55 and 56. Be that as it may, it is an undisputed fact that the President of the second respondent-Association in his then capacity as Secretary, Chitra Nagar Colony Plot Owners Association in the larger public interest had executed the settlement deed dated 16.11.2009 in favour of the first respondent-Corporation settling the open areas, i.e., plot numbers 1 & 2 (part), 59 and 50 to 55 and 56 and also the road areas and handed over the possession of the same to the first respondent-Corporation. Now, the petitioner is claiming the subject plots, viz., plot nos. 1, 2, 49 to 57, 60, 67 to 71 and 72 as unsold plots, which devolved upon him and his family members on the death of his grandfather. The burden squarely rests upon the petitioner to prove his title as well as possession in order to succeed in the writ petition. However, the petitioner has not produced any approved layout or a copy of it. Nevertheless, the layout plan showing the Chitra Nagar Colony which is annexed to the copy of the settlement deed executed by the second respondent association in favour of GHMC is available in the material record. In the

said lay out plan, the open space numbers 1,2 and 3 are clearly demarcated. Only after the execution of the said settlement deed, the present Writ Petition is filed by the writ petitioner. The said settlement deed is not challenged and the cancellation of the same was not sought by seeking an appropriate legal remedy, which the law permits. Be that as it may, the petitioner is not having exclusive claim to the subject plots in dispute even according to his own contentions. Admittedly, the father of the writ petitioner and the other family members, who are the legal heirs of the petitioner's grand father and who according to the writ petitioner are having right and interest in the subject plots have not joined as co-petitioners and parties to this writ petition. The second respondent-Association had filed copies of the sale deeds dated 04.02.2011, 19.11.2011, 19.11.2011 and 14.11.2011. Under the documents nos. 1 and 2 above, one Surkanti Prabhakar Reddy represented by his agreement of sale-cum-GPA holder-Merreddi Narendar Reddy and others together had sold plot no. 31 and part of plot no. 40 (South part) to third parties. Under the 3rd document dated 19.11.2011 the said Surkanti Prabhakar Reddy represented by his agreement of sale-cum-GPA holder-Merreddi Narendar Reddy and others together had sold part of plot no. 40 (North part) to a third party. Under the 4th document dated 14.11.2011, the said Surkanti Prabhakar Reddy represented by his agreement of sale-

cum-GPA holder-Merreddi Narendar Reddy had sold plot no. 66 to a third party. To the said documents, the present petitioner is not a party. The first executant of the said sale deeds is the father of the petitioner. No explanation is forthcoming as to why the petitioner did not join as a co-vendor to the said sale deeds, if really he was having an independent right or share in the plots along with his father and other family members. No explanation is also forthcoming from him for his father and other family members not joining him in filing and prosecuting the present Writ Petition. Further, the copy of the partition deed dated 16.01.2010 executed between Surakanti Prabhakar Reddy and S. Jagan Mohan Reddy would show that the schedule "A" property, with the plots mentioned therein, was allotted to the first party and that the schedule "B" property/i.e., plot no. 75 was allotted to the second party. The plots allotted to the first party under the said partition deed are – the plots bearing nos. 12, 17, 23, 31, 32, 33, 40, 42, 43, 49, 57, 66 and 73. Therefore, two of the plots, viz., plot nos.49 and 57, which the petitioner is now claiming in this writ petition had fallen to the share of Surkanti Prabhakar Reddy under the aforementioned deed of partition dated 16.01.2010. The existence of the said partition deed is not mentioned in this writ petition filed in July, 2010. According to the petitioner, the grandfather of the petitioner had died leaving behind him the said Surakanti Prabhakar Reddy,

who is no other than the father of the petitioner and his other legal heirs and that the petitioner is only one among them. It is not the case of the petitioner that his father gave his property exclusively to the petitioner by a Will or document *inter vivos*. Therefore, how the petitioner alone could maintain the writ petition could not be explained.

Further, a copy of another partition deed dated 15th March 2010 executed amongst Surakanti Bal Reddy and four others in respect of plot no. 42 (West part), Plot no.40 (North part), Plot no.31 (North part), Plot no.31 (South part), Plot no.40 (South part) is also filed. A perusal of the copy of this partition deed makes it evident that Surakanti Hanmanth Reddy, who is the purchaser of the property admeasuring Ac.7-23 guntas in Sy. No.14 of Anmagal, Hayathnagar village had appointed Madireddy Rama Rao as his GPA holder, vide Document dated 20.04.1968 to sell the plots on his behalf and that he, through his GPA Holder, had divided the said land into house sites and got the layout plan approved by the Grampanchyat, Hayat Nagar, vide permit no.3/1968. The said document also makes it manifest that in the said layout, open spaces for park, temple etcetera were left and the same were handed over to the then Grampanchayat, Hayathnagar along with roads and that basing on the same, the Plot Owners have authorized their Secretary to settle the said common areas and road areas in favour of the GHMC and that accordingly, the Secretrary of Chitranagar Plot Owners'

Association had executed a registered sale deed bearing Document no.2511/2009, dated 16.11.2009 in respect of plots bearing nos. 1 and 2 (part), 50 to 56 and 59 and also the road areas. The said contents and admissions in the partition deed would falsify the contentions, in the affidavit of the petitioner. Though these partition deeds are disputed by the contesting second respondent-Association, the same are filed to falsify the claim of the petitioner as the said partition deeds are admittedly executed between the legal heirs of the grandfather of the petitioner. As already noted, though certain plots, which are left towards open spaces for public purpose, were already handed over by the GPA Holder of Surakanti Hanmath Reddy as is evident from the copy of the letter dated 28.11.1969 addressed to the Sarpanch of then Hayathnagar Grampanchayat, as rightly contended the necessity to execute the settlement deed dated 16.11.2009 by the Association in favour of the GHMC had arisen at the time of regularization in view of the merger of the panchyat into the GHMC. In fact, no documents are filed to establish a semblance of right of the petitioner over the subject plots and that on the other hand, the documents filed by the 2nd respondent-association falsify, prima facie, the case set out by the petitioner in the writ petition.

9. In view of the facts and the contents of the

documents referred to supra, the petitioner, who is seeking a Writ Order against the first respondent-Corporation not to interfere with his possession of the subject plots, some of which are being claimed as plots left open for open spaces for public purpose and which are covered by the registered settlement deed executed by the Secretary of the Association in favour of the Greater Hyderabad Municipal Corporation, cannot be heard to say that his right and possession in respect of the disputed plots have to be determined in this writ petition by exercising the discretionary jurisdiction vested in this Court under Article 226 of the Constitution of India. When the writ petitioner came to Court claiming right and possession over the subject plots through his grand father without joining the other legal heirs and without mentioning about the partition deeds bearing nos. 61 of 2010 and 435 of 2010 dated 16.1.2010 and dated 15.3.2010 in the writ petition filed by him on 23.7.2010 it must also be held that the petitioner did not come to the Court with clean hands. The fact that the other legal heirs of Surakanti Hanmanth Reddy had admitted the execution of the settlement deed of the year 1969 in favour of the GHMC by the 2nd respondent-Association goes a long way and falsifies the claim of the petitioner that the said settlement deed is null and void. Further, when the issue is about the title to the plots, some of which are being claimed as open spaces left for public purpose, the

petitioner without establishing a semblance of right much less exclusive right cannot be heard to say that his constitutional and fundamental rights are violated. The exercise of jurisdiction under Article 226 of the Constitution of India is a discretionary and a Writ is not issued as of right or as a matter of course. (Vide ***C.R.Reddy Law College Employees Association, Eluru W.G.District vs. Bar Council of India, New Delhi***^[1]).

This Court having regard to the facts of the case has discretion to entertain or not to entertain the Writ Petition. The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, it must be exercised along recognized lines and subject to certain self-imposed limitations. This Court is required to keep larger public interest in mind in order to decide whether its intervention is called for or not. It is settled law that when an efficacious and alternate remedy is available, this Court would not normally exercise its jurisdiction. Having regard to the fact that there is a serious dispute with regard to the right, title and interest over the property involved in the *lis* and the further fact that the petitioner has come to the Court with unclean hands by suppressing the partition deeds and without impleading all the necessary parties, who are his family members and who are said to be having rights in the subject property, it follows that the petitioner is not entitled to the equitable relief, more particularly when the

execution of the settlement deed executed in favour of GHMC is admitted by some of his family members in the partition deed, which is referred to supra.

10. Having regard to the reasons, this Court finds that no case is made out to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India.

11. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, pending if any, in this writ petition shall stand closed.

M. SEETHARAMA

MURTI, J

DATE:20.01.2016

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