

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WVMP.No.4113 of 2015 in WP.No.41322 of 2014

and

WP.No.41322 of 2014

and

CC.No.318 of 2015

COMMON ORDER :

In this Writ Petition, petitioners allege that they are absolute owners of land admeasuring Ac.0.72 cents in Survey No.47/4 situate at Vadlapudi Village, Gajuwaka Mandal, Visakhapatnam District and that pursuant to a sale agreement – cum – General Power of Attorney dt.20.08.2010, the petitioners came into peaceful possession and enjoyment of the said land.

2. The petitioners contend that 5th respondent disputed the right of petitioners in the said land and started some construction activity in the land claimed by them. The petitioners alleged that when they complained on 16.09.2013 to 2nd respondent, the 2nd respondent did not take any action; that they also made a complaint to 4th respondent on 16.09.2013, but the 4th respondent also did not take any action. According to petitioners, the 4th respondent colluded with 5th respondent, that 5th respondent made a counter-complaint against petitioners

to 4th respondent, and the 4th respondent arrested petitioner nos.2 and 5, and later they were enlarged on bail. They allege that later the 4th respondent referred the complaint made by petitioners as of civil nature and referred the matter to 3rd respondent to verify the details after conducting enquiry, but 3rd respondent did not take any action on the complaint / referred report of 4th respondent. In the meantime the 5th respondent with the help of 4th respondent is digging holes in the land claimed by petitioners. They allege that they made representations on 07.08.2014, 06.10.2014 and 23.12.2014 alleging that 5th respondent is interfering with their possession and enjoyment, but the 3rd respondent is not taking any action. They therefore filed the present Writ Petition to declare the inaction of 3rd respondent in passing orders on the complaint / referred report submitted by 4th respondent in respect of the lands situate at Survey No.47/4 in Vadlapudi Village, Gajuwaka Mandal, Visakhapatnam District and for not restraining the 5th respondent from interfering with the peaceful possession and enjoyment of their land is illegal, arbitrary and violates Article 14 and Article 300-A of the Constitution of India.

3. The petitioners also filed WPMP.No.51736 of 2014 in WP.No.41322 of 2014 to direct 5th respondent not

to enter their land till orders are passed on the complaint / referred report submitted by 3rd respondent.

4. On 31.12.2014, this Court directed the respondents not to interfere with the subject land without following due process of law.

5. Thereafter, CC.No.318 of 2015 was filed by petitioners alleging that in spite of knowledge of the orders passed by this Court on 31.12.2014, the 5th respondent is still interfering with the property, and the other respondents are not taking any steps to restrain the 5th respondent from interfering with the construction in petitioners' properties. It is also alleged that the Mandal Revenue Officer, Gajuwaka Mandal and the Station House Officer, Gajuwaka Police Station did not obey the orders passed by this Court, and that the 5th respondent as well as these officials ought to be punished under the Contempt of Courts Act, 1971.

6. While the Writ Petition was pending, proceedings in Rc.No.200/2015/SA dt.26.02.2015 was issued by 3rd respondent to 4th respondent stating the following :

“With reference to your letter cited, I wish to inform that as per this Office records Sy.No.47/24B in which the land is registered in favour of Happy Home Developers Private land represented by its Managing Director Sri Y. Raghubabu is recorded as Government land. This land is acquired by Special Deputy Collector, Steel plant vide award No.2/1983

dt.22.02.1983.

As per records, in regard to others Survey Numbers referred to in your letter they are recorded as Private lands in our records as detailed below.

<i>Sy.No.</i>	<i>Entry as per Office records</i>
<i>47/4</i>	<i>Karri Ramaswami</i>
<i>47/16</i>	<i>Yellapu Simhachalam</i>
<i>47/18</i>	<i>Mindi Krishnamma</i>
<i>47/22</i>	<i>Karri Pothana</i>
<i>47/23</i>	<i>Yellapu Sihachalam</i>

As verified from the Documents, the document No.1834/2010 registered in favour of Yenamala Suryanarayana Reddy, S/o.Ramachandra Reddy in Sy.No.47/4 tally with the names available in this Office, in respect of Documents of other party viz., Happy Home Developers, Kamineni Suryanarayana etc., does not contain details of the original owners of the land.”

7. Since the grievance of petitioners that 3rd respondent had not taken any action on the complaint / referred report of 4th respondent thus stood satisfactorily addressed by the issuance of the proceedings dt.26.02.2015 by 3rd respondent, the main grievance of petitioners in the Writ Petition, is thus stood addressed.

8. The further grievance of petitioners in the Writ Petition that the 5th respondent should be restrained from interfering with the alleged peaceful possession and enjoyment of their land admeasuring Ac.0.72 cents in Survey No.47/4 situate at Vadlapudi Village, Gajuwaka Mandal, Visakhapatnam District. This is a matter which is more appropriately redressed by a Civil Court since it is not disputed by the Writ Petitioners that the total extent of land in Survey No.47/4 is actually Ac.0.99 cents, and

there is no demarcation as to where the land claimed by petitioners and the balance extent which does not belong to petitioners ends.

9. Moreover, the material filed by 5th respondent suggests that there are two sale deeds in respect of land covered by Survey No.47/4, i.e., one for an extent of Ac.0.48 cents, executed by one Smt. Karri Sanyasamma on 30.03.1983 in favour of M/s. United Steel and Allied Industries and another for an extent of Ac.0.40 cents by one Smt. Madagala Venkayamma on 05.08.1985 in favour of M/s. United Steel and Allied Industries. The 5th respondent had also relied upon a registered Development Agreement dt.19.06.2014 executed in his favour by M/s.D.K. Reddy Developers and Hospitalities Pvt. Ltd. and M/s.Sarwagna Infratech Private Limited, covering a portion of the land covered in Survey No.47/4, apart from other survey numbers under registered sale deeds dt.06.04.2004 and 16.12.2006.

10. In view of the above facts and circumstances, since disputed questions of fact about right, title and interest of petitioners and 5th respondent in the land in Survey No.47/4 cannot be properly adjudicated in proceedings under Article 226 of the Constitution of India, and since these are matters which require evidence and can be more appropriately considered by a Civil Court,

granting liberty to petitioners, if they are so advised, to approach the competent Civil Court for appropriate relief, the Writ Petition, in view of the proceedings dt.26.02.2015 issued by 3rd respondent, is dismissed as infructuous.

11. Consequently, WVMP.No.4113 of 2015 is allowed and the order dt.31.12.2014 in WPMP.No.51736 of 2014 is vacated.

CC.No.318 of 2015 :

12. This Contempt Case is being decided since counsel for petitioners as well as the learned Government Pleader for Home, the learned Government Pleader for Revenue as well as the counsel for 3rd respondent in the Contempt Case / 5th respondent in the Writ Petition unanimously agreed that it can be disposed of notwithstanding the pendency of Contempt Appeal No.3 of 2016 pending before the Division Bench of this Court against an order dt.29.12.2015 passed therein against the Mandal Revenue Officer, Gajuwaka Mandal, Visakhapatnam District and the Station House Officer, Gajuwaka Police Station.

13. In this Contempt Case, as stated above, petitioners have complained that 3rd respondent / 5th respondent in the Writ Petition is still interfering with the property claimed by petitioners.

14. I have already held that whether the property claimed by petitioners in fact belongs to petitioners or to third parties and it is not possible to determine whether the constructions alleged to have been made by 5th respondent in the Writ Petition are in the land which is claimed by petitioners or not, and since a decision on the title to property is also necessary to grant relief to petitioners, is a matter which cannot be conveniently decided in WP.No.41322 of 2014 filed under Article 266 of the Constitution of India.

15. Since the main grievance of petitioners in the Writ Petition had been addressed by proceedings dt.26.02.2015 issued by 3rd respondent in the Writ Petition, and since the Writ Petition has been disposed of as infructuous, and since petitioners have already been relegated to a Civil Court in that regard, I am not inclined to hold that there has been any willful or deliberate violation of the orders passed by this Court on 31.12.2014 in WPMP.No.51736 of 2014 in WP.No.41322 of 2014. Accordingly, the Contempt Case is closed.

16. It is made clear that all issues of title and possession are left open to be adjudicated by a competent Civil Court, if any proceeding is initiated by any party in such Court.

17. As a sequel, miscellaneous petitions pending if

any in this Writ Petition and Contempt Case, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 12-07-2016

Ndr/*