

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.25084 of 2011

ORDER:

The petitioner claims that she is the owner of land of an extent of 250 square yards situated in T.S.No.33 of Waltair Ward, Laxminagar Layout, Visakhapatnam, having acquired the same under a registered gift deed dated 30.08.2003 from her uncle Sri P.V.Subba Raju of Rajupalem, Mummadivaram Mandal in East Godavari District. Her uncle purchased the site under registered sale deed dated 28.04.1990 and constructed an asbestos roofed shed thereon. When there was interference from the Officers of the Andhra University, her uncle filed O.S.No.1798 of 1999 in the Court of the learned Principal Junior Civil Judge, Visakhapatnam, seeking permanent injunction and the same was decreed on 19.03.2002. Thereafter she obtained permission from the Municipal Corporation of Visakhapatnam on 21.02.2005 for construction of building consisting of ground + 2 upper floors. When she started construction, the Municipal Corporation issued a show cause notice on 15.04.2005 stating that there was a complaint from the Estate Officer of Andhra University claiming the property and asking the petitioner to submit her explanation. The petitioner submitted her explanation on 21.04.2005. When the Municipal Corporation, without considering the explanation in proper perspective, passed an order on 20.11.2005, canceling the building permission already granted, the petitioner filed

W.P.No.4484 of 2006 and the same was allowed on 25.02.2011. However, on the directions of the Commissioner, Municipal Corporation, Visakhapatnam, the staff of the Andhra University came to the site and asked the petitioner to stop further construction. She filed C.C.No.943 of 2011 and in the said case respondent Nos.2 and 3 filed counter affidavit stating that they have acted on the complaint made by the Registrar of Andhra University. The Contempt Case was admitted on 16.08.2011. On 27.08.2011 the Rector of Andhra University, the Registrar and other staff entered the premises and started demolishing the structures with the help of JCB. The respondents are trying to interfere with her possession on the ground that certain portion of her land fell within Survey No.34. In those circumstances, challenging the action of the respondents in demolishing the structures constructed with due sanction of building permission granted by the Municipal Corporation of Visakhapatnam in respect of her property of an extent of 250 square yards in T.S.No.33 of Waltair Ward, Lakshminagar Layout, Visakhapatnam, the present Writ Petition was filed.

This Court initially granted an interim direction on 13.09.2011 and the same was modified on 16.11.2011 to that of *status quo*.

A counter affidavit is filed on behalf of respondent Nos.1 and 2 stating that they are not claiming any property situated in T.S.No.33. But, they are concerned with the land in Survey Nos.34, 35, 36/1, which was acquired pursuant to Award No.26

of 1969 dated 28.10.1969. The total extent of land is Acs.8.59 cents. The land was acquired and was handed over to the Andhra University on 12.12.1969. Thus, they have been in possession of the said land for more than 41 years. The land claimed by the petitioner abuts the land possessed by the Andhra University as the land of the petitioner is situated in T.S.No.33 and the land of the Andhra University is situated in Survey No.34. The building permission was also granted only in respect of the land situated in T.S.No.33. Only columns were raised and at that stage, the construction was stopped. The order in W.P.No.4484 of 2006 was passed against the Greater Visakhapatnam Municipal Corporation and the Andhra University was not a party. When E.P.No.135 of 2005 was filed pursuant to the decree passed in O.S.No.1798 of 1999, the said E.P was dismissed. The demolition carried out by the Andhra University is in respect of the structures situated in Survey No.34 and they never entered the land in T.S.No.33. The other allegations in the Writ Petition were denied.

A separate counter affidavit is filed by the third respondent stating that the plan submitted by the petitioner was approved on 21.02.2005 subject to the conditions laid down therein. While the construction was going on, the Estate Officer, Andhra University, lodged a complaint on 02.04.2005 alleging that the petitioner was proceeding with the construction in the land acquired by them and requested the Commissioner to take necessary action. In those

circumstances, a notice was issued under Section 450 of the Hyderabad Municipal Corporation Act, 1955, asking the petitioner to submit her explanation as to why the building permission earlier sanctioned shall not be cancelled. Since the explanation submitted by the petitioner on 21.04.2005 was not satisfactory, an order was passed on 20.11.2005 revoking the permission earlier granted. After disposal of W.P.No.4484 of 2006 on 25.02.2011, an endorsement was issued in favour of the petitioner on 05.09.2011 permitting the petitioner to continue the construction in T.S.No.33 of Waltair Ward as per the approved plan. The Contempt Case filed against the third respondent was closed on 27.09.2011. The permission earlier granted in 2005 was valid only for a period of three years. On receipt of another letter from the Registrar, Andhra University, on 31.05.2011 the matter was referred to the Town Surveyor for his remarks. The Town Surveyor in his remarks dated 09.06.2011 categorically stated that the petitioner is having only 60 square yards in T.S.No.33 and the remaining land admeasuring 190 square yards falls in Survey No.34 which was acquired by the Andhra University by virtue of acquisition of the land in Award dated 28.10.1969. The said fact was informed to the Registrar, Andhra University, Visakhapatnam, by letter dated 15.06.2011. It is also stated that the permission was accorded erroneously, though part of the land falls within Survey No.34. The petitioner is trying to make construction by taking advantage of the building permission granted earlier.

Though a reply affidavit is filed by the petitioner denying the averments in the counter affidavits, in view of the clear facts, it is not necessary to traverse them.

It is clear from the above facts that the survey conducted by the Town Surveyor revealed that only an extent of 60 square yards fell within T.S.No.33, whereas an extent of 190 square yards fell within Survey No.34, which is the land belonging to the Andhra University. Though the building permission was granted by the third respondent on the representation made by the petitioner claiming 250 square yards of land situated in T.S.No.33, such building permission will not enure to the benefit of the petitioner when there is a serious dispute with regard to the title. Now it is also clear that the building permission earlier granted in 2005 is valid only for a period of three years. In the circumstances, no relief can be granted in the present Writ Petition where there is a serious dispute relating to the title and it is open to the petitioner to take appropriate civil proceedings in accordance with law, if the petitioner is so advised.

The Writ Petition is, accordingly, dismissed. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

01.12.2016
vs