

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

CASE No. W.P.No.4950 of 2014

Between:

Jutta Arjuna Rao and others

... **Petitioners**

AND

The State of A.P.Department of Municipal Administration and Urban
Development, Secretariat, Hyderabad rep.by its Principal Secretary
and others

... **Respondents**

DATE OF JUDGMENT PRONOUNCED: 21st January, 2016

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THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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| 1. | Whether reporters of local newspapers
may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. | Whether Their Lordship wish to see the
fair copy of the judgment? | Yes/No |

*** THE HON'BLE MR JUSTICE C.V.NAGARJUNA REDDY**

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+ Writ Petition No.4950 of 2014

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+ DT.21.01.2016

Jutta Arjuna Rao and others

...Petitioners

Vs.

\$ The State of A.P.Department of Municipal Administration and Urban Development, Secretariat, Hyderabad rep.by its Principal Secretary and others

... Respondents

^ Counsel for the Petitioners: Sri N.Vijay

! Counsel for respondent Nos.1 & 2: AGP for Municipal Administration (AP)
Counsel for respondent Nos.3 & 4: Sri Venkateswarlu Nimmagadda

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> Head note:

? Cases referred:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

Writ Petition No.4950 of 2014

Dated 21st January, 2016

Between:

Jutta Arjuna Rao and others

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And

The State of A.P.Department of Municipal Administration and Urban Development, Secretariat, Hyderabad rep.by its Principal Secretary and others

...Respondents

Counsel for the petitioners: Sri N.Vijay

Counsel for respondent Nos.1 & 2: AGP for Municipal Administration (AP)
Counsel for respondent Nos.3 & 4: Sri Venkateswarlu Nimmagadda

The Court made the following:

ORDER:

This writ petition is filed for a mandamus to declare endorsement bearing ROC No.2664/2012-G1, dated 10.01.2014, of respondent No.4, whereby he has rejected the application of the petitioners filed for regularization of their plot admeasuring 456 sq.yards in RS.No.201/3 of Tadepalligudem Municipality as illegal.

I have heard Sri N.Vijay, learned counsel for the petitioners, and Sri Venkateswarlu Nimmagadda, learned Standing Counsel for Municipalities (AP) representing respondent Nos.3 and 4.

The petitioners pleaded that their paternal grandfather, by name, Jutta Gangaraju, purchased an extent of Acs.1.80 cents in B.S.Nos.129/2 & 129/3 of Kadkatla Village, Tadepalligudem Municipality in the year 1945, that the said numbers were later re-numbered as R.S.Nos.201/2, 201/3 and 201/4, that Jutta Gangaraju constructed a house over the said land and that he expired in 1951. That subsequently his sons i.e., Jutta Subba Rao and Jutta Somaraju, remained joint and constructed a building with Rcc roof on the existing foundations pursuant to the building permission granted by respondent No.4 vide proceedings in Roc.B.A.No.62/74, dated 15.06.1974. The petitioners further averred that Jutta Subba Rao expired in the year 1985 and Jutta Somaraju expired in the year 1987, that subsequently their children have partitioned the joint family properties including the extent of Ac.1.85 cents along with other properties and that under the partition deed, the plot on which the petitioners intend to construct the building, along with other properties allotted to them, was shown as 'C' schedule therein.

It is further averred that as per the partition, a pathway of an extent of 18 feet from main gate facing K.N.Road was left out for the

parties to the partition deed to have access to their respective plots and that the said private road is a dead end and is meant exclusively for the residents of houses in Survey Nos.201/2, 201/3 and 201/4. That the parties to the registered partition deed including the petitioners executed another document on 16.03.2011, whereunder the original private road was increased from 18 feet to 33 feet and the extents of the land originally succeeded by the parties to the partition deed in the year 2001 were accordingly reduced. That thereafter, the petitioners executed among themselves an unregistered construction agreement, dated 15.12.2011, with regard to the schedule plot which is an extent of 456 sq.yards facing internal private road for construction of stilt + Ground + 3 upper floors of plinth area of 10750 sq.feet and as per the said agreement, each petitioner is to reside in one + floor and one floor is for joint use. That the petitioners applied for permission for construction of residential building on 20.01.2012 over an extent of 456 sq.yards and that thereafter at the instance of respondent No.4, Tahsildar, Tadepalligudem along with the Town Planning Officer and Town Planning Surveyor visited the site and gave a report that the building satisfies the Rules framed under G.O.Ms.No.569, Municipal Administration, dated 23.08.2008, and that as per the report of the Tahsildar, the land in question is a private land of the petitioners and not covered by any approved layout. Therefore, respondent No.4 has forwarded the proposals to respondent No.2 on 16.05.2012. That without proper application of mind, respondent No.2 has rejected the proposals vide his letter, dated 01.06.2012. That the petitioners filed W.P.No.32274 of 2012 questioning the rejection of the building permission and that in WP.MP.No.26708 of 2013, the petitioners sought for a direction to respondent Nos.3 and 4 to consider regularisation of their plot under Rule 12 of the A.P.Regulation of Unapproved and Illegal Layout Rules, 2007 (for

short 'the Rules'). That this Court by order, dated 25.11.2013, directed respondent No.4 to deal with the request of the petitioners made on 29.10.2012 as per the Rules and pass appropriate order. Thereafter, respondent No.2 has issued the impugned endorsement rejecting the request of the petitioners for regularisation. Feeling aggrieved thereby, the petitioners filed this writ petition.

A detailed counter affidavit has been filed by respondent No.3. Before advertng to the relevant averments in the said counter affidavit, it is appropriate to refer to the grounds on which respondent No.4 has rejected the petitioners' application for regularisation.

On a proper analysis of the impugned endorsement, it is evident that the application was rejected on two grounds, namely, (1) that the petitioners have not submitted any application for regularisation of plot under the Rules and (2) that the petitioners' site was registered vide document No.9272/2011, dated 15.12.2011, whereas under Rule 2 of the Rules, the cut off date is 31.12.2007.

As regards the first mentioned ground *supra*, in paragraph-9 of the counter affidavit, respondent No.3 has tacitly admitted that the petitioners have submitted applications, dated 29.10.2012 and 09.12.2013, for regularisation of their plot. Sri Venkateswarlu Nimmagadda, learned Standing Counsel, fairly submitted that in the face of this admission, the first ground of rejection does not stand.

Coming to the second ground, it is necessary to refer to the relevant Rules governing regularisation of plots in unapproved and illegal layouts. As per Rule 2 (ii) of the Rules, the Rules shall be applicable to the existing unapproved sub-division of plots, existing unapproved layouts or ventures promoted by land owners/ private developers/ firms/ companies/ property developers/Societies where the plots have been sold by registered sale deed before the date of notification of the Rules. Under Rule 4 of the Rules, only those unapproved layouts and sub-division of plots with registered sale deed/title deed existing prior to the date of notification of the Rules

shall be considered for regularisation and as proof and evidence, the plot holder/Land owner/Association/Society/Colony developer is required to furnish copies of the sale deed/title deed.

From the aforementioned Rules, it is clear that in order to get a plot regularised which exists in an unapproved layout or ventures, it must be proved that the person who makes an application must have purchased under a registered sale deed or he must hold title deed prior to the date of notification of the Rules.

It is not in dispute that these Rules came into force from 31.12.2007. Therefore, in order to succeed, the petitioners must show that they had title over the subject plot as on 31.12.2007. From the facts narrated above, which are not disputed by the respondents, the petitioners were allotted the subject plot under registered partition deed, dated 04.07.2001. The agreement, dated 15.12.2011, referred to in the impugned endorsement pertains to construction of the building and allocation of shares in such building. This agreement does not relate to the title over the plot. Therefore, there is no element of doubt that the petitioners derived title to the subject plot under the registered partition deed, dated 04.07.2001. Thus, at least six years prior to the commencement of the Rules, title over the subject plot came to be vested in the petitioners. Respondent No.4 has committed a serious illegality in ignoring the registered partition deed and in considering only the registered construction agreement, dated 15.12.2011, pertaining to the construction of building which in my opinion has no relevance whatsoever for considering the eligibility of the petitioners for regularisation of the plots under Rule 4 of the Rules. Thus, in my opinion, respondent No.4 has thoroughly misdirected himself in holding that the petitioners had no title as on the cut off date i.e., 31.12.2007.

For the above-mentioned reasons, the impugned endorsement is wholly unsustainable and the same is accordingly set aside.

Respondent No.4 is directed to approve the plot in respect of which the petitioners have made applications on 29.10.2012 and 09.12.2013 and communicate the order within one month from the date of receipt of a copy of this order, subject to the petitioners complying with all other legal requirements, if any.

Subject to the above directions, the writ petition is allowed.

As a sequel to disposal of the writ petition, WP.M.P.Nos.6137 & 7171 of 2014 and 13854 of 2015 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

21st January, 2016

Note: LR copies to be marked.

(b/o)

VGB