

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.15199 OF 2005

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed to declare that the action of the third respondent is illegal and against the principles of natural justice in conducting auction of the House No.13-4-411/1, admeasuring 213 square yards or 178.06 square meters, situated at Sabzimandi, Hyderabad, without issuing any auction notice to the petitioner, by issuing a writ of mandamus.

02. The petitioner purchased the property bearing Municipal Door No.13-4-411/1 in an extent of 213 square yards situated at Sabzimandi, Hyderabad, from one Uzagar Singh, S/o. Ganesh Singh, obtained registered sale deed bearing document No. 2111/1999 dated 17.09.1999. Thus, the petitioner became absolute owner of the property. Since then, he is in possession and enjoyment of the property. The vendor of the petitioner, Uzagar Singh, purchased the property from one Sri Ramaiah under registered sale deed bearing document No.820/1967 registered in the Office of Sub-Registrar, Khairathabad, Hyderabad.

03. While the matter stood thus, one Mohammed Shareef filed O.S. No.1566 of 1984 before the V Assistant Judge, City Civil Courts, Hyderabad, claiming himself as a President of the Committee of the Majid-E-Rala Mullah against the Vendor of the petitioner, Uzagar Singh, he contested the suit. The learned Assistant Judge dismissed the said suit on 29.06.1990 on the ground that the plan submitted by the plaintiff in the suit and the plan submitted by Uzagar Singh is not tallied and the alleged encroachment by Uzagar Singh is not believable. The vendor of the petitioner is continuing in possession and enjoyment of the property, paying property tax to the Municipality. The petitioner came to know through his neighbours and other persons, who are residing in the same street, that the third respondent visited the premises and informed that

he is going to auction the property on 15.07.2005. Immediately, he rushed to the Office of the third respondent, requested to supply a copy of auction notice, but the M.R.O., demanded Rs.1,000/- to purchase the auction notice, but he was unable to get auction notice. The auction conducted by the third respondent is high-handed and against the principles of natural justice, since no notice was served for conducting auction of the House No.13-4-411/1, situated at Sabzi Mandi, Hyderabad.

04. The main ground raised by the learned counsel for the petitioner is that the auction dated 15.07.2005 by the third respondent is illegal, since the suit filed by the Mohammed Shareef in O.S. No.1566 of 1984 filed before the V Assistant Judge, City Civil Court, Hyderabad, was dismissed and that if the auction is confirmed, the petitioner and his family members would be deprived of their right and shelter. But without considering the right of the petitioner, the third respondent conducted auction, which is illegal and high handed, therefore prayed to set aside the auction held by the third respondent.

05. The third respondent filed separate counter denying the material allegations of the writ affidavit *inter alia* contending that the schedule property in T.S.No.10, Block-H and Ward 27 of Kulsumpura Village, Asif Nagar Mandal, Hyderabad District, it is recorded as 'G. Abadi' admeasuring 140 square meters. As per Town Survey Land Register (TSLR), the land is vacant plot and it is Government land, any sale transaction of the Government land is absolutely null and void and the vendor, Uzagar Singh, will not convey any right to the petitioner, since Uzagar Singh did not possess title to the property. The suit in O.S. No.1566 of 1984 is between private parties and Government was not made as a party to the suit. Hence, the Judgment of the suit is not at all binding on the third respondent.

06. The third respondent admitted that auction was proposed to be held on 15.07.2005, since it was classified as 'G.Abadi', and thereby question of issue of auction notice to the petitioner by the Government

specifically does not arise as Government is the owner of the said property. Therefore, the alleged non compliance of procedure, more particularly, alleged failure to follow principles of natural justice is baseless.

07. It is further contended that the petitioner was not in possession and that the petitioner has misrepresented the facts and obtained an interim order, directing the third respondent herein not to finalize the auction till disposal of the main writ petition. Finally it is contended that there are no merits in the case of the petitioner and prayed for dismissal of the writ petition.

08. During hearing, Smt. K.N. Vijaya Lakshmi, learned counsel for the petitioner, reiterated the contentions raised in the writ petition while submitting that the petitioner is the owner of the property and his name was mutated in the municipal records and paying property tax, if any, purchased the same from Uzagar singh under registered sale deed. Therefore, he became the owner of the property and he cannot be deprived of his right, title in the immovable property and that the third respondent has no right to auction, since it is not a Government land and prayed to allow the writ petition.

09. Whereas the learned Government Pleader for Revenue (TS) reiterated the contentions raised in the counter and drawn attention of this Court to TSLR and as per the entries in TSLR, the land was classified as 'G.Abad' i.e. Government Land, thereby question of issuing any notice to the person allegedly in possession, does not arise and prayed for dismissal of the writ petition.

10. Considering rival contentions and perusing the material papers available on record, the point that arise for consideration is,

Whether Uzagar Singh was the owner of the property, having purchased the same from one Sri Ramaiah? If so, whether the sale in favour of the petitioner by Uzagar Singh is binding on the respondents? If not, the third respondent is entitled to auction the same, claiming schedule property as Government land and that the auction is liable to be set aside?

POINT:

11. It is the specific case of the petitioner that originally the property belongs to one Sri Ramaiah S/o. Narasimha from whom Uzagar Singh purchased the property under registered sale deed bearing No.820/ 1967, but produced the typed copy of the document without producing the original document. Even according to it, the said Sri Ramaiah was the owner of the land admeasuring 213 square yards situated at Sabzi Mandi, Hyderabad, Ward No.13, Block No.4 and sold the same for a consideration of Rs.2,000/- to Sri Uzagar Singh, S/o. Ganesh Singh, Resident of Dhoolpet, Hyderabad, and conveyed the property to Uzagar Singh, delivering the possession of the same, incorporating the usual terms as to warranty of title etc., The property covered by the said sale deed is within the following boundaries.

East: Neighbour's Property

West: 30'-0" wide road

North: H.No.13-4-411

South: 30'-0" wide road

12. The property proposed to be sold in TS No.10, Block-H, Ward 27, classified as 'G.Abadi' and it is in the occupation of Uzagar Singh, S/o. Ganesh Singh, constructing room with Asbestos roof, running firewood depot. The copy of the Town Survey Land Register is filed along with the counter. Therefore, at best, Uzagar Singh, who is the occupant of the property, is entitled to raise any dispute with regard to sale.

13. It is the specific case of the petitioner that he purchased the schedule property under registered sale deed from Uzagar Singh dated 17.09.1999 and produced a Photostat copy of agreement of sale-cum-general power of attorney dated 17.09.1999. The power of attorney is a registered document and this document is only agreement of sale-cum-general power of attorney which would not convey any title to the property. Even as per the terms of the agreement of sale-cum-general power of attorney, Uzagar Singh received Rs.2,00,000/- by way of cash towards sale consideration and agreed to execute registered sale deed in favour of the vendee or his nominees in full or part at any time

whenever vendee demanded for the same and that the vendor nominated the vendee as his lawful agent to do all or any of his acts executing the sale, transfer, and executing deed or deeds in favour of the vendee or in favour of any of nominees of vendee to present such deed/ deeds for registration before Sub-Registrar and Registrars competent to register the said deed/ deeds to admit execution thereof to sign in all the official records of all registration offices, to file application for mutation in all departments and to do all things necessary and incidental for completing the registration of said sale deed/ deeds and to settle and receive the entire sale consideration amount of such transaction, to represent the vendor in all Government, and semi Government offices, including municipality, electricity office, income tax office etc., and that the vendor, Uzagar Singh agreed and covenant himself that his power of attorney conferred on the vendee is irrevocable. Thus, Uzagar Singh, alleged vendor of the petitioner, received Rs.2,00,000/- from the petitioner while appointing him as an agent for sale of the property etc. This is nothing but circumventing the law to gain unlawful advantage by creating such document. It is only an agreement of sale-cum-general power of attorney, which is governed by Section 209 of Indian Contract Act, 1872 and it is irrevocable, but such agreement of sale-cum-general power of attorney would not confer any right or create any title on the power of attorney holder, i.e. the petitioner herein, in view of paragraph 2 of Section 54 of Transfer of Property Act, 1882, at best, he is entitled to protect his possession by taking advantage of the Transfer of Property Act. But here the petitioner being a purchaser under agreement of sale-cum-general power of attorney is not entitled to claim title over the property, even otherwise no piece of evidence is produced before the court to establish that the land purchased by Uzagar Singh from Sri Ramaiah, who is the private party, and when the third respondent contended that the property belongs to Government, since it is classified as 'G.Abad' in TSLR, it is for the petitioner to establish title to his vendor and the vendor's vendor by

producing documentary evidence, but no such evidence is brought on record to establish the same.

14. It is the contention of the petitioner that on account of the judgment in O.S. No.1566 of 1984, the petitioner became owner of the property and thereby the third respondent is not entitled to put the property to auction. Whereas the third respondent contended that the Government is not a party to the suit and the judgment is not binding on it. Undoubtedly, in O.S. No.1566 of 1984 was filed by Mohammed Shareef against Uzagar Singh, the alleged vendor of the petitioner, claiming that the property belongs to the Committee of Majid-E-Rala-Mullah and the defendant therein made an attempt to encroach the property, sought for permanent injunction. But the suit was dismissed as the plaintiff therein i.e. Mohammed Shareef failed to establish the lawful possession as on that date and the attempt to interfere with his possession. The said judgment is not binding on the Government, since it is not a party to the suit. Therefore, the contention that, in view of the judgment in O.S. No.1566 of 1984, the petitioner became owner of the property is without any substance, since his title was not decided in the said suit, even otherwise any finding recorded in the said suit regarding title is not binding in the absence of the third respondent. Hence, the disputed fact regarding title to the property cannot be decided in a petition filed under Article 226 of Constitution of India as the petitioner claiming title under agreement of sale-cum-general power of attorney executed by Uzagar Singh, and the said Uzagar Singh purchased the property from one Sri Ramaiah S/o. Narasimha under registered sale deed document bearing No.820/1967. At the same time, the third respondent is claiming title to the property based on TSLR, wherein the land was classified as 'G.Abadi'. Therefore, the remedy open to the petitioner is only to approach the civil court to seek declaration of title over the property as against the government or any other person, who denied or interested to deny the title of the petitioner, and such declaration cannot be granted by this Court while exercising

power of judicial review under Article 226 of Constitution of India.

15. The petitioner claimed only to declare the auction is null and void, as no notice was issued to the petitioner before the alleged auction since the petitioner is not entitled to claim title over the property by virtue of agreement of sale-cum-general power of attorney, and, at best it is irrevocable power of attorney executed by his vendor, Uzagar Singh in view of Section 209 of Indian Contract Act, 1872. Till the petitioner establishes his title or ownership over the property, auction cannot be set aside and the question of issuing any notice to the petitioner does not arise, since he is not in possession as per entries in TSLR, but one Uzagar Singh is in possession, constructed room with Asbestos roof running fire wood depot therein. Hence, the auction was conducted without notice to the petitioner is not a ground to set aside the same.

16. On overall consideration of the entire material on record, I find no material to conclude that the vendor of the petitioner, Uzagar Singh, and his vendor Sri Ramaiah has got title to the property and that the petitioner became absolute owner of the property by virtue of agreement of sale-cum-general power of attorney, thereby he has no locus standi to claim any relief in the present writ petition to set aside the auction held on 15.07.2015.

17. However, liberty is given to the petitioner to approach appropriate forum or civil court for declaration of his title to the property, if law permits, and the finding or observation, if any, recorded herein will have no bearing in the disposal of the suit, if any, filed before the competent court or any proceedings initiated before any competent authority or tribunal.

18. Accordingly, the point is held in favour of the third respondent and against the petitioner.

19. In the result, the writ petition is dismissed. No costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M. SATYANARAYANA MURTHY, J

15-07-2016
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