

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.1878 OF 2010

ORDER:

Heard learned counsel for the petitioner, the learned Standing Counsel for 1st respondent and the counsel for 2nd respondent.

2. It is the case of the petitioners that the land in survey No.144/6A & 6B situated in K.L.Nagar, (Chittinagar) Vidyadharapuram of Vijayawada Municipal Corporation originally belongs to one Basavaraju Srisukulu and after his demise, the property devolved on his wife. They have no male issues but they have only one daughter by name Saraswathi Devi. She was married to one Ongole Srinivasa Rao. The mother of Saraswathi Devi executed a Will on 02.01.1970 bequeathing all her immovable properties to her daughter's son Ongole Satyabhani Abhaya Kumar, who was only 12 years old by that time.

3. There was some dispute with regard to the above land and the matter was referred to Arbitration and the Arbitrator passed award on 19.03.1993 holding that one Y.Veera Venakta Satyanarayana and 14 others have perfected their title and the son of Saraswati Devi, who claimed the property under the Will has no right to evict them. The award further directed that an amount of Rs.1,00,000/- shall be paid to the legatee by 15 individuals as a gratuitous amount. Accordingly, the amount of

Rs.1,00,000/- was paid. The award was made rule of Court in O.S.No.166 of 1993 by the learned Principal Subordinate Judge, Vijayawada and the said judgment has become final.

4. While so, the 2nd respondent filed O.S.No.399 of 1993 on the file of the III Additional Senior Civil Judge, Vijayawada against the said 15 persons seeking cancellation of the decree in O.S.No.166 of 1993 and also the award dt.19.03.1993. The said suit was dismissed on 13.10.2003.

5. The 15 defendants in O.S.No.399 of 1993 entered into an agreement of sale with M.Prasad and 3 others, however, sale deeds were not executed by the said individuals.

6. In view of the same, the agreement holders filed O.S.No.43 of 2000 on the file of the II Additional District Judge, Krishna at Vijayawada and the suit was decreed. The plaintiffs in the said suit nominated the petitioners to obtain sale deeds in their favour. The sale deeds were executed in E.P.No.82 of 2005 in favour of the petitioners and the E.P. was closed on 27.02.2006. Though the sale deeds were executed, possession was not delivered to the petitioner. Petitioners therefore filed E.P.No.79 of 2006 in O.S.No.43 of 2000 seeking delivery of possession of the property and they also filed E.A.No.210 of 2006 seeking police protection for execution of the warrant against the judgment debtors in E.P.No.79 of 2006. The said EA was ordered on 14.08.2006.

7. It appears that the 2nd respondent approached the Government and sought regularization of the land under the provisions of G.O.Ms.No.455 Revenue (UC-1) Department dt.29.07.2002.

8. In view of the order granted by the Government in G.O.Ms.No.1610 Revenue (UC-I) Department dt.03.11.2006 the petitioners filed the Writ Petition challenging the said proceedings. In the meanwhile, the 2nd respondent sold the plots to different individuals in order to complicate the matter. In those circumstances, petitioners submitted representation on 25.01.2010 requesting the 1st respondent to take appropriate action against the 2nd respondent from making further construction and questioning the inaction of the 1st respondent on the petitioners' representation the present Writ Petition is filed.

9. This Court by order dt.06.04.2010 restrained the 2nd respondent from making any further construction over the property until further orders.

10. Though WVMP.No.2254 of 2015 is filed seeking vacation of the said order by the 1st respondent, in the counter affidavit filed in support of the said application it is stated as follows:

“3. I submit that in reply to para-8, the 2nd respondent society converted the land into 38 plots and sold away to individual persons long back around 20 years back and the purchasers occupied their plots constructed sheds and thatched houses. All the structures were unauthorized and temporary structures erected long back and there developed a slum. But the 2nd respondent society constructed a RCC roof building

unauthorizedly in Plot No.33 and one plot owner constructed a RCC roof Ground floor building in Plot No.7, and in another plot No.13, a GF+1 RCC building was constructed and all the 3 RCC, AC roof and thatched houses are unauthorized constructions. There are no drainage and water pipeline in that area. In the said disputed land there are no roads and did not pay any development charges as the society or the individual owners did not handed over the roads and common places to the Corporation. The area situated on the side of railway track is being used as Up-yard of railways. The construction of 3 small RCC buildings can be removed at any time after issuing notice under section 452 of GHMC Act. The 2nd respondent Society washed its hands after selling away the plots long back. There were already small constructions which are temporary and 3 RCC Permanent small structures constructed long back. The Corporation has to take action against individual plot owners if any further construction commences in the said disputed land in future.

4. It is submitted that in reply to para-9, the contention of the Petitioner that the constructions started at the Sy.No.144/6A & 6B are at initial stage and it started only few days back are not true and correct. As submitted above there were no new constructions and all structures existing are old. Therefore, the inaction on part of the Corporation to curb the activity of illegal constructions did not arise.

5. I submit that the 1st Respondent Corporation is always ready to take action against the unauthorized constructions as per GHMC Act. The petitioners alleged that they submitted a representation on 25.01.2010 to prevent the 2nd Respondent from making any construction did not arise. On the date of said representation there are no buildings under construction all the structures already existed since long back. The said representation is of no value and the contents of the representation were created and concocted for the purpose of cause of action to file the present W.P.

6. It is humbly submitted that the Corporation shall take action if any unauthorized constructions take place and shall take immediate action. This W.P. is unnecessarily filed against the 1st Respondent Corporation and may be dismissed in the interest of justice against the 1st Respondent. On the request of the dwellers, the Corporation constructed side open drains in front of the houses on both sides of the road and leveled the road with quarry dust to absorb any out flow of water in order to prevent viral fevers and brooding of mosquitoes. Keeping in view of the public health of the 2nd Respondent colony as well as the neighboring colonies the side open drains were

constructed on Humanitarian grounds. The staff of the Corporation has been observing the area on periodical checks in order to prevent from making any further constructions in obedience with the interim direction passed by the Hon'ble Court on 06.04.2010."

11. No counter affidavit is filed by the 2nd respondent.
12. In view of the averments made in the counter filed by the 1st respondent, it is clear that the structures raised were unauthorized but they were long back erected and a slum was developed in the said land.
13. In the said circumstances, if the 1st respondent has to take any action, it has to take action in accordance with law only.
14. In view of the averments made in the Writ Petition and in the counter affidavit filed by the 1st respondent, this Writ Petition is disposed of directing the 1st respondent to consider the representation of the petitioners dt.25.01.2010 and take appropriate action in accordance with law within a period of three (03) months from the date of receipt of a copy of this order. There shall be no order as to costs.
15. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

A.RAMALINGESWARA RAO, J

15th November, 2016.
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