

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 34251 OF 2016

ORDER:

This writ petition is filed declaring the action of respondent Nos.3 to 6 in putting a lock over the house of the petitioner bearing H.No.23-3-921/7 admeasuring 500 square yards situated at Sultan Shahi, Hyderabad, by putting their lock over his lock, without following the due process of law.

2. The case of the petitioner is that one late Qamar Uddein, grandfather of the petitioner, was originally the owner of the property which was an open plot admeasuring 500 square yards through an unregistered sale deed dated 11.07.1939 for a total sale consideration of Rs.6/-. After the demise of his grandfather, the suit schedule property devolved upon Mohd. Miskeen, father of the petitioner, and thereafter the same was given on oral gift to the petitioner on 15.02.1973. While so, the authorities of the Greater Hyderabad Municipal Corporation (GHMC) visited the property of the petitioner and made markings for the purpose of construction of a community hall for the benefit of the locality people. Petitioner has submitted a representation to respondent Nos.2 to 4 questioning the action of the authorities on 23.05.2015. Petitioner also filed a suit viz., O.S.No.35 of 2012 on the file of IV Junior Civil Judge, Hyderabad, seeking the relief of perpetual injunction along with I.A.No.14 of 2012. The said I.A. was ordered on 19.01.2012 and *status quo* was directed to be maintained

till 30.01.2012 and the same was extended from time to time. It is further submitted that on one of the dates of hearing, the said order was not extended and the same was kept as it is for a period of few months. During the said period, the GHMC officials by taking advantage of the situation tried to dispossess him from the suit schedule property. Thereby, the petitioner submitted representations to the Commissioner, GHMC, which were not adhered to by the GHMC. Thereafter, the petitioner brought these facts to the notice of the court below and the trial court by order dated 09.12.2014 in I.A.No.14 of 2012 in O.S.No.35 of 2012 directed the respondents to follow the principle of law. While the said suit is still pending adjudication before the said Court, the GHMC officials were trying to illegally interfere with the peaceful possession of his house property, threatening to dispossess him from the property.

It is further submitted that the Assistant Commissioner of Town Planning came to the property of the petitioner and threatened to illegally dispossess him from the property without issuing any show cause. While so, on 29.08.2016 the respondent authorities came along with their subordinates and police personnel and forcefully thrown away all the belongings without issuing any show cause notice and had locked the premises and went away, which was evidenced by the photographs. Earlier, Land Encroachment Act proceedings were initiated by the Tahsidar and on the submission made by the petitioner that civil suit is pending the land encroachment proceedings were dropped against the petitioner. Hence, the writ petition.

3. Mr.Mirza Nisar Ahmed Baig Nizami, learned counsel for the petitioner, by placing reliance on the judgment in Civil Appeal No.5917 and 5918 of 2012 arising out of SLP (C) No.17156 and 11501 of 2009 submits that in similar cases the Court interfered with and the rights of the parties therein are protected.

4. Learned Standing Counsel appearing for the second respondent opposes the writ petition and submits that inasmuch as there is already a civil suit pending, the writ petition ought not to be entertained.

5. Having regard to the submissions made by both the learned counsel and having perused the material and acting to the facts of the case, I find it difficult to entertain the writ petition.

6. Even assuming for arguments sake what all has been stated by the petitioner is true, in sum and substance the allegation of the petitioner is that in spite of the orders of the court below granting *status quo*, the respondents have interfered with the property of the petitioner and caused damage to the petitioner. This is nothing but an allegation of violation of the injunction orders of the Court below, granted under Order 39 Rules 1 and 2 of CPC. Order XXIX Rule 2A of CPC deals with the provisions relating to the consequence of disobedience or breach of injunction orders granted by the court.

7. In the case on hand, there are number of disputed questions of fact. The fact that the court is seized of the matter also is not in dispute. As a matter of fact, while making docket order dated 09.12.2014 in the reopening petition filed by the respondents, the court had taken various aspects into consideration. There is no allegation that the court

below has not taken into consideration or not likely to take into consideration of the submissions that are made or likely to be made by the petitioner.

8. In the peculiar facts and circumstances of the present case, invocation of writ proceedings is not a proper remedy for the petitioner and the writ petition is not maintainable. In the circumstances, petitioner is at liberty to approach the court below by filing appropriate application and ventilate his grievance. Observations made in this order are only for the purpose of deciding the maintainability and the appropriateness of this court for entertaining the writ petition and it shall not be construed the observations having been made in any manner on the merits of the matter. Respective parties shall be at liberty to place the relevant material before the court and the court below shall take into consideration in deciding the application that may be filed by the petitioner in terms of Order XXXIX Rule 2A of the CPC. As an when such an application is made, the court below shall endeavour to complete the enquiry and pass appropriate orders within three months from the date of receipt of a copy of this order.

Accordingly, the writ petition is disposed of. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

JUSTICE CHALLA KODANDA RAM

October 18, 2016

Note: - Furnish copy by one week.

{B/o} LMV

