

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.29651 of 2010

ORDER:

This writ petition under Article 226 of the Constitution of India is filed seeking the following relief:

“For the reasons stated in the accompanying affidavit, it is therefore prayed that this Hon’ble Court may be pleased to issue an order or orders more particularly one in the nature of Writ of Mandamus declaring the inaction of the Respondent No.1 in not taking steps either suo-motu or the representation dated 11-10-2010 of the Sri Sainagar South Residents Welfare Association against the Respondent No.2 in respect of the plot no.17, which is Park and providing protection to the above said property is illegal, arbitrary and violative of Article 14 and 21 and violation of law and pass such other order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case.”

(Reproduced verbatim)

2. Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the 2nd respondent.

3. The case of the writ petitioner-association, as set out in the writ petition, in brief, is this:

The writ petitioner-association is a part of Sy. No.101/11, Sri Sai Nagar, Nagole, Hyderabad. Plot no.17 admeasuring 267 square yards at Road no.1 is earmarked as a park as per the layout dated 12.04.1978 approved by the Gram Panchayat, Nagole of Ranga Reddy District. From the beginning, the elected body of the petitioner-association has been apprehending illegal encroachments and possible grabbing of the land. Hence, the petitioner-association is frequently representing to the 1st respondent/GHMC and seeking its intervention against any encroachments. While so, the 2nd respondent who is a rank stranger and a person having no right, title and

interest over the above said plot no.17, i.e., park is sparing no efforts to knock away the property to make an illegal gain for him. The 2nd respondent had approached this Court and had filed W.P.no.8048 of 2008 challenging the alleged action of the 1st respondent in demolishing the compound wall of plot no.17, i.e., park. The 1st respondent seriously contested the said writ petition stating that the approved layout categorically demonstrated that plot no.17 is a park. However, the said writ petition was allowed holding that the respondents therein had remedies elsewhere. Notwithstanding such a direction, the 1st respondent had not evinced any interest in dislodging the encroachment made by the 2nd respondent. The 1st respondent is statutorily obligated to protect the public place. The inaction on the part of the 1st respondent and its attitude in turning a blind eye to the plight of the petitioner association gave raise to a suspicion that the respondents 1 and 2 herein are hand in glove and had colluded to defeat the rights of the petitioner association and deprive of it, a semblance of lung space in the form of a park. The said inaction of the 1st respondent and its conduct in not providing protection to the above property is illegal, arbitrary and violative of the provisions of the GHMC Act, the Articles 14 and 21 of the Constitution of India and the principles of natural justice. The writ petitioner, therefore, is aggrieved of the inaction of the 1st respondent in regard to taking steps either *suo motu* or on the representation dated 11.10.2010 of the petitioner association for proceeding against the 2nd respondent in respect of the plot no.17, which is a park.

4. The case of the 2nd respondent, in brief, is this: "The material averments in the affidavit filed support of the writ petition that plot no.17 is earmarked for park is absolutely incorrect. It is a matter of common knowledge that a park cannot be of a small extent of 267 square yards. The plots in and around plot no.17 also would clearly show that plot no.17 is a plot and not a park. If the area of plot no.17 is earmarked for a park, no plot number would have been assigned to it in the layout. The very fact that the

plot number was assigned would clearly show that the plot no.17 is not a park and it is only a plot. The registered sale deed dated 07.07.1989 bearing Document no.6161/1981 relating to plot no.18 would show that the Southern boundary of that plot is plot no.17. Likewise, the sale deed bearing document no.2140 of 1981 relating to plot nos. 19 and 20 would show that the Eastern boundaries of the said plots are plot nos. 17 and 18. Thus, even the sale deeds of the adjoining plots also reflect the fact that the property of this respondent is plot no.17. Nowhere, there is a mention of the said plot as park. The layout dated 12.04.1978 was never approved by the Gram Panchayat and it is a created and a fabricated documents. The lay out filed by the petitioner would show that it is purportedly dated 12.04.1978 and the Rubber Stamp (seal) and also contents in writing show the name of the District as 'Ranga Reddy District'. However, Ranga Reddy District was formed under the name of K. V. Ranga Reddy on 15.08.1978 and the name of Ranga Reddy District' was given in the year 1980 and as such it is clear that the lay out filed as exhibit P5 is a fabricated document. Further, feeling aggrieved of the illegal and high handed action of the 1st respondent and its officials in seeking to demolish the construction of this respondent in plot no.17, this respondent had filed W.P.No.8040 of 2008. The orders of this Court in W.P.No.8044 of 2008 have become final and operate as *res judicata*. Hence, it is not open for the writ petitioner to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. On 04.09.2003, this respondent had entered into an agreement of sale with one G.Bhavani Shankar for purchase of the plot no.17 in sy.no.101/11 of Nagole village and had paid the entire sale consideration. He is a bona fide purchaser in possession of the said plot. His vendor had purchased the same from Kolan Prameela and Kolan Aruna under a registered sale deed dated 26.10.1994 bearing document no.7121 of 2004, registered in the office of the Sub Registrar, Uppal of Ranga Reddy District. The said vendors of this respondent had acquired title under registered sale deed dated 25.10.1991 bearing document no.7275 of 1991 from Siddla Balappa, who is the original owner of the entire extent of Ac.3.13 guntas in survey number 101/11. He had laid out independent and individual plots by forming a lay out. As per the

lay out plot n.17 is an independent plot and is not ear marked for any public purpose.

5. The learned counsel for the parties made submissions in line with the pleadings.

6. In view of the pleadings and submissions of the parties, the adjudication of the writ petition need not detain this Court for long. The contention of the writ petitioner-association is that Plot no.17 is a park; while the contention of the 2nd respondent is that it is not a park and it is only a plot of 267 square yards. The registered sale deeds pertaining to the adjoining plot nos.18, 19 and 20 clearly lay bare that the Southern boundary of plot no.18 is plot no.17 and that the Eastern boundaries of plots nos. 19 and 20 are plot nos.17 and 18. The 2nd respondent herein had traced his title and also of his vendor and vendor's vendor in his pleadings. The fact remains that the said plot was purchased by him through his sale deed dated 26.10.1994. In W.P.No.8040 of 2008 filed by the 2nd respondent, this Court had noted that the plot of the petitioner therein, that is, the 2nd respondent is a part of layout sanctioned by the erstwhile Nagole village of Hayathnagar Mandal and that the 2nd respondent had constructed a compound wall around the plot and that later the village became initially a part of the Uppal Municipality and thereafter, Greater Hyderabad Municipal Corporation. A certified copy of the layout was placed before this Court in that earlier writ proceeding. And, as per the findings of this Court, in that layout, except the roads no other open place is mentioned and that plot no.17, which is shown to be of an extent of 267 square yards is described as park and it is not known as to whether this description was made while sanctioning the layout or thereafter. In that background of facts brought to the notice of this Court, while disposing of W.P.no.8040 of 2008, this Court had held as follows:

“Be that as it may, the question of plot number being shown as an open area earmarked for park, does not arise. Assuming that there was any illegality on the part of the Grampanchayat in sanctioning such layout, the remedy for

the respondents is elsewhere and the petitioner cannot be made to suffer.

Hence, the Writ Petition is allowed, and the respondents shall not interfere with the possession and enjoyment of the petitioner with plot no.17. There shall be no order as to costs.”

7. The orders of this Court in the above Writ Petition have become final. Having regard to the reasons and the above said findings of this Court in W.P.No.8040 of 2008, this Court finds that it is not possible, in the facts and circumstances of the case, to reach a different conclusion and hold that the said plot no.17 of the lay out is earmarked for park. Viewed thus, this Court finds that there is no merit in the contentions of the writ petitioner and that the writ petition is liable to be dismissed.

8. In the result, the Writ Petition is dismissed, subject, however, to the observations of this Court in the orders dated 19.11.2009 passed in W.P.No.8040 of 2008.

There shall be no order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed.

M. SEETHARAMA MURTI, J

29th January 2016
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