

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 27989 of 2016

Date : 14.11. 2016

Between :

Kundur Shilpi W/o Sri Vijaypal Reddy
Rep by GPA holder C Rama Devi
R/o H No. 1-7-309 Revenue colony
Pragatinagar, Hanakonda, Warangal

Petitioner

And

State of Telangana
Rep by its Secretary
Ministry of Municipal Administration & Urban Devp
Telangana Secretariat, Hyderabad & others

Respondents

The Court made the following:



ORAL ORDER:

Petitioner instituted this writ petition alleging that 4th respondent illegally encroached house plot belonging to petitioner and erected idols and performing pooja. According to petitioner, property was purchased in the year 2005. Petitioner is presently living in USA and her mother is taking care of the property but due to her old age, she is not keeping regular watch on the property belonging to petitioner. Taking advantage of the absence of petitioner, 4th respondent encroached said plot and in order to grab the plot erected idols. Hence, this writ petition.

2. Based on the submissions made and in view of the statement of the learned standing counsel representing second respondent municipality, this Court by order dated 14.9.2016 directed the second and third respondents to remove the idol in question from the subject property. Aggrieved thereby, 4th respondent filed vacate petition.

3. Heard the learned counsel for petitioner, learned Government Pleader for Municipal Administration for first respondent, learned standing counsel for second respondent and learned Government Pleader for third respondent. With the consent of the parties, the writ petition is taken up for hearing at the admission stage itself.

4. Learned counsel for petitioner submits that as per the documents by which property was sold, earlier plot numbers 2 and 3 were purchased by the petitioner and subject plot is adjacent to plot No.1, having two sides road facing of 40 feet and 30 feet respectively and it is not meant as open space or park. Claiming this as open space, 4th respondent is trying to grab the property in the absence of petitioner. The photographs filed along with writ petition would show that only recently road was laid and idols were put up as if temple is being constructed. The construction activity is only of recent past. She would submit that no permission was obtained from the District Collector/Municipality and no

temple can be constructed without prior permission from the District Collector/Municipality.

5. According to learned counsel for 4th respondent, permission was obtained from the Gram Panchayat as early as in the year 1987 and temple has been in existence since then and regularly poojas are being performed in the said place. He would submit that false document is produced to show as if property was purchased by the petitioner; the lay-out relied by the petitioner is not valid and it is a forged document. The person, who claims to have sold the property to the petitioner is not the owner of the property; there is no sub-division of the survey number; whereas in the lay out relied on by the petitioner subdivision number is mentioned. He would therefore submit that all this would show that false claim is made by the petitioner. According to learned counsel for petitioner, property belonging to the society was originally meant for park but members of the colony and villagers have decided to construct a temple for the benefit of the village. While agreeing that valid permission was not obtained from the District Collector, he would submit that since temple is in existence since 1987 the association would not apply to the municipality seeking permission and the technical lapse in not obtaining permission from the District Collector/Municipality, cannot be a ground to deny the performance of regular Poojas in the temple. He would further submit that on the same issue petitioner instituted O S No. 458 of 2014 on the file of the Principal Junior Civil Judge, Ranga Reddy district and the said suit was dismissed for default by order dated 20.7.2015. Without disclosing filing of the suit and dismissal, this writ petition is filed and the writ petition is liable to be dismissed on the sole ground of suppression of true and correct facts.

6. Learned standing counsel for second respondent Municipality submits that no permission was obtained prior to establishment of the temple and therefore 4th respondent association cannot run temple.

7. It is not in dispute that petitioner earlier filed O S No. 458 of 2015 on the file of the Principal Junior Civil Judge, Ranga Reddy and the suit is

dismissed. On the one hand, petitioner claims that she purchased subject property and she is owner and on the other hand 4th respondent claims that property belongs to society meant for public park therefore, petitioner has no manner of right to claim the property as belonging to her. Thus, there are rival claims and disputed questions of facts. This Court in exercise of writ jurisdiction, cannot go into the disputed questions of title to property. Petitioner has to workout her remedies as available under law, if so advised.

8. Coming to the establishment of temple, it is not denied that no permission was obtained from the District Collector or even after establishment of Municipality no such permission was obtained from Municipality. Thus, as of now construction of temple is illegal and the temple cannot be used by the respondent society without obtaining due permission from the Municipality.

9. At this stage, learned counsel for 4th respondent submits that society would apply for permission within a period of one week and till the permission is obtained, the Poojari may be permitted to perform the daily pooja to idol.

10. Writ Petition is dismissed, in so far as claim of the petitioner on the ownership of the property is concerned, leaving open to petitioner to work out other legal remedies, if any. With reference to other grievance, there is merit in the contention of the petitioner. The 4th respondent cannot use the temple until permission is obtained from the Municipality. However, since idol is already installed, 4th respondent is permitted to perform the 'morning and evening pooja' to the deity by a Poojari and no other programmes can be conducted nor devotees can visit the temple to perform poojas till appropriate permission is obtained. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE:14.11.2016
TVK

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