

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.18972 of 2012

ORDER:

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Heard Sri Ali Farooq for petitioner and Assistant Government for Revenue.

The petitioner prays for Mandamus declaring the action of respondents in interfering and dispossessing petitioner from premises bearing Municipal No.10-4-41/4/A in Sy.No.15, T.S.No.2, Block-D, Ward-22 in an extent of 350 sq. yards at Pochamma Basti, Masab Tank, Hyderabad, as illegal, improper and violation of Articles 21 and 300-A of the Constitution of India.

At the outset, it is stated that having regard to the nature of disposal this court intends to give to the instant writ petition, all the circumstances and documents relied upon by both the parties are not adverted to and conclusions recorded.

Briefly stated the case of petitioner is that the petitioner is the tenant of one Noorjehan Begum. On 18-10-1986 Rent Deed was executed in favour of petitioner. Petitioner claims to be in actual, physical and continuous possession of subject matter of the writ petition from 18-10-1986. The petitioner incidentally refers to Gift Deed dated 08-09-1980 in favour of petitioner's landlady. In assertion of existence of house and municipal assessment numbers, the petitioner relies upon the house tax paid by her to Municipal Corporation. The decree and judgment dated 11-04-1990 in O.S.No.838 of 1987 is relied upon by petitioner for the purpose of showing that she is enjoying the subject matter of this writ petition. Therefore, according to

petitioner, the effort of respondents to disturb possession of petitioner without recourse to law and contrary to the title asserted by her landlady is illegal, arbitrary and unconstitutional. Hence, the writ petition.

The 3rd respondent filed counter affidavit and the 3rd respondent substantially denies and disputes each and everyone of the allegations asserted by petitioner. The 3rd respondent disputes the location of House bearing No.10-4-41/4/A in T.S.No.2, Block-D, Ward-22. For the purpose of appreciating the fact in issue on the identity of property between parties, the operative portion is extracted hereunder for convenience.

“The petitioner herein has been trying to grab the subject land with the help of certain un-social elements in the Locality. In order to protect the said Government Land the respondent herein erected a Government Sign Board warning to the General Public not to trespass in the land.

Further, it is submitted that the subject land to an extent of 801.70 square yards was allotted to Police Department for construction of Barracks/Out-post the possession of the said land was handed over to Station House Officer, Humayunnagar, Hyderabad, vide the District Collector, Hyderabad District Procd.No.E5/4821/2012, dated 16-05-2012 under a cover of panchanama. The petitioner herein is claiming the subject land basing on the certain fabricated documents like MCH Tax receipts and rental agreements etc. It is submitted that the petitioner is claiming the subject premises No.10-4-41/4/A, which is not existing either in the Municipal record, T.S.L.R. nor on the Ground.

In reply to para 2 of the petitioner's affidavit it is to submit that as per the T.S.L.R. the premises No.10-4-41/4/A does not exist. The subject land which is claimed under the said premises number falls in T.S.No.2, Block-D, Ward-22 correlated to Sy.No.39/1/P of Gudimalkapur Village, Asifnagar Mandal, Hyderabad. The total extent of T.S.No.2 is 285360.00 sq. meters. Further in Col.No.20 it is recorded as

“C.G.54 Lax Division Military”, and Col.No.23 as “On Ground Military AMC Center”. Further as per the Revenue Record the land in Sy.No.39/1 is recorded as “Military Play Ground”.

Further it is to submit that the land in question is a Government Land any proceedings therein executed i.e., mere payment of alleged Municipal Tax, Rental Agreement etc does not confer any right or title of the Property. Hence the allegations made by the petitioner are hereby denied. As per the Municipal record there is no house/premises No.10-4-11/4/A existing in the Locality and elsewhere.

3. In reply to para 3 the case was filed between the Private persons, this office was not made a party in the case, as such the injunction orders are not binding upon this office.

4. In reply to para 4 of the petitioner's affidavit it is to submit that the subject land is vacant on ground and there are no such House numbers/Structures existing and it is not true that the petitioner is in physical possession of the said property. Further as per the letter issued by the Deputy Commissioner, Circle No.7, GHMC vide Lr.No.4263/TC7/T9/GHMC/12, dated 10.07.2012, the premises No.10-4-41/4/A as alleged by the petitioner is not existing as per their records. Hence, the allegations made by the petitioner are hereby denied.

5. In reply to para 5, 6 & 7 it is to submit that the land in question falls in T.S.No.2, Block – D, Ward – 22 correlated to Sy.No.39/1/P of Guddimalkapur Village, Asifnagar Mandal, Hyderabad. The total extent of T.S.No.2 is 285360.00 Sq. Meters. Further in Col.No.20 it is recorded as “C.G.54 Lax Division Military” and Col. No.23 as “On Ground Military AMC Centre”. Further it is to submit that on the request made by Deputy Commissioner of Police, West Zone, Hyderabad vide Lr.No.159/DCP-WZ/HOUSE-Wife-7/12, dated 24.05.2012 and Station House Officer, P.S. Humayunnagar Lr.No.551/OW/PS-HN/12, dated 28.04.2012, the possession of the said land to an extent of 801.70 Square Yards/670.32 Sq. Meters. is handed over to the Police Department for construction of Police Barracks / Police out-post, vide the Collector, Hyderabad District Lr.No.E5/4821/2012, dated 16.05.2012 after duly conducting the Panchanama dated 29.05.2012. At present the Police Authorities have erected Government Sign Board and it is

under the custody of Police Department. Hence, allegations made by the petitioner are hereby denied.”

With the assistance of learned counsel appearing for parties, I have perused the pleadings and the documents on which the parties rely upon. The petitioner relies upon Gift Deed, dated 08-09-1980. The schedule of property of gift deed dated 08-09-1980 is open plot of land in Sy.No.15 adjacent to House No.10-4-41/4. Therefore, the first document does not refer to further subdivision of house as 10-4-41/4/A.

Further, the respondents contend that the property for which the present writ petition is filed is not part of Sy.No.15 but Sy.No.39/1/P of Gudimalkapur Village. The total extent of T.S.No.2 is 285360.00 sq. meters. The respondents further contend that the house number relied upon by petitioner is not borne out by record in House Assessment Register of MCH.

From the above, it is clear the right if any in favour of petitioner is to be considered, the Court is required to go into issue of identity of property. The same is feasible and practicable in a properly instituted suit or proceeding by petitioner. This court particularly in the fact situation of this case is of the view that when each one of the assertions is denied and disputed with documentary evidence, it is not convenient and practicable to even consider the limited prayer protecting possession of petitioner and grant any relief.

The writ petition fails on this short ground and accordingly dismissed.

It is made clear that dismissal of the writ petition shall not

be treated as expressing any view on the merits of the case or bars the owner of the property from pursuing the remedy in accordance with law.

Accordingly, the writ petition is dismissed with the above observation. No order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

S. V. BHATT, J

Dt: 19-07-2016

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THE HON'BLE SRI JUSTICE S.V.BHATT

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