

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

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HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE P. NAVEEN RAO

-
WRIT APPEAL No. 125 OF 2016

Date: 23.02.2016

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Between:

Uppari Ravinder
& another.

... Appellants

And

The State of Telangana, rep., by its Secretary,
Municipal Administration & Urban Development Dept.,
Hyderabad & others.

... Respondents

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE P. NAVEEN RAO**

WRIT APPEAL No. 125 OF 2016

PC: (per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

This writ appeal is directed against the order, dated 29.12.2015, passed by learned Single Judge dismissing the writ petition filed by the appellants. The appellants, in the writ petition, sought Mandamus declaring the building permission granted by respondent - Corporation in favour of respondent No.5, as illegal and without jurisdiction.

Learned Single Judge has dismissed the writ petition holding that the appellants have already taken a remedy of civil suit against respondent No.5, who, according to them, has encroached upon their property. The basic contention of the appellants is that respondent No.5 highhandedly removed the boundary stone fixed by the revenue officials and encroached upon their land and started making illegal construction. It is not in dispute that building permission has been granted by the respondent – Corporation, which, according to the appellants, is granted in contravention of the building regulations.

Further, it is also not in dispute that the appellants have already instituted a civil suit bearing O.S.No.291 of 2013 seeking injunction against respondent No.5. The suit is pending till today and no interim order has been passed. In this backdrop, learned Single Judge has dismissed the writ petition with the following observations:

“In my opinion, this writ petition is wholly misconceived as in

the garb of seeking enforcement of public duty of respondent Nos.2 and 3, the petitioners have raised the property dispute between themselves and respondent No.5 in this writ petition. The question whether respondent No.5 has encroached upon the petitioners' property or not, cannot be adjudicated by respondent Nos.2 and 3 and such a dispute could be resolved only by the competent civil Court. Admittedly, the suits filed by the petitioners and respondent No.5 with respect to the same subject matter are pending and such being the case, the petitioners cannot be permitted to avail the public law remedy of a writ petition before this Court. Having regard to the nature of the dispute, it is not desirable to compel respondent Nos.2 and 3 to intervene as it is only the civil Court which is competent to resolve such disputes between the petitioners on the one side and respondent No.5 on the other. If the petitioners succeed in establishing that respondent No.5 has encroached upon their property before the civil Court, they are entitled to seek the consequential relief of respondent No.5's eviction before the same Court."

In this view of the matter, we are not inclined to interfere with the order passed by learned Single Judge.

Writ appeal is dismissed. This, however, shall not preclude the appellants from approaching the civil Court for appropriate relief including seeking amendment of the pleadings and the prayers.

Miscellaneous petitions, if any, shall also stand dismissed.

DILIP B. BHOSALE, ACJ

P. NAVEEN RAO, J

Date: 23.02.2016

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