

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.9269 OF 2011

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed seeking to declare the action of the respondents in not protecting the open space earmarked for public purpose pursuant to the layout permission No.95/ 91 in F.No.19379/ 88/ 05, bearing Ref.No.3093/ 88/ GP dated 23.06.1988 and extract of GTP No.14/ 89/ N, situated at Vedayapalem Village, Nellore Mandal, SPSR Nellore District, within the limits of the Nellore Municipal Corporation, the 2nd respondent herein, popularly known as Saptagiri Layout and seeking to permit the third parties to encroach upon the said land with fictitious claims, as arbitrary and illegal, and consequently, direct the respondents to protect the open space earmarked for public purpose.

While admitting the writ petition on 07.04.2011, this Court passed the following interim order, in WPMP No.11474 of 2011:

“Pending further orders, it is directed that the respondents shall ensure that the open area and the roads provided for, in L.P.No.95/ 91 of Vedayapalem Village, Nellore Town, are not encroached by any other parties.”

The respondents 5 and 6 were impleaded as parties to the writ petition. They stated that they are the owners of some plots in the subject layout.

The 2nd respondent filed counter affidavit stating that they never permitted any third party to encroach the open space in the said layout and that they will protect the open spaces and also the roads, which are earmarked for public purpose.

Subsequently, the respondents 5 and 6 filed W.V.M.P. No.3102 of 2011 seeking to vacate the interim order, dated 07.04.2011, stating that in view of the said interim order, the official respondents are preventing the respondents 5 and 6 from developing their plots and their plots are earmarked for residential purpose only, but not for any public purpose.

On 26.08.2011, this Court passed the following order on the said vacate stay petition:

“This is an application to vacate interim order, dated 7-4-2011, in WPMP No.11474 of 2011 in Writ Petition No.9269 of 2011.

At the hearing, there is no representation for the writ petitioners. I have heard Sri K. Ananda Rao, learned counsel for the vacate stay petitioners and perused the record.

The grievance of the writ petitioners is that respondent Nos.5 and 6 have been encroaching the open area and the roads in the layout L.P.No.95/91 of Vedayapalem village, Nellore town.

This court by order, dated 7-4-2011, directed the Nellore Municipal Corporation and its officials to ensure that the open area and the roads in the said layout are not encroached by any party.

The learned counsel for the vacate stay applicants submitted that in the guise of the said interim order, the writ petitioners are trying to dispossess his clients from the plots owned by them and in their occupation.

In my opinion, the interim order is clear and unambiguous. The said order is confined to the open area and the roads in the above said layout. If the writ petitioners try to interfere with the vacate stay applicants' properties, which do not form part of the open area and the roads, the vacate stay applicants shall be free to avail appropriate remedy against such interference, in accordance with law.

Subject to the above observations, both the applications are disposed of.”

Respondent Nos.7 to 11 and respondent No.12 are impleaded in the writ petition.

Learned counsel for the respondents 7 to 11 submitted that the respondents 7 to 11 are the original owners of the subject land, that the petitioners, who are not concerned with the subject layout filed the present writ petition alleging that the open space earmarked for public purpose in the layout is being encroached by the 3rd parties and that under the guise of the interim order passed by this Court, the petitioners are trying to encroach the plots of the respondents 7 to 11. The 12th respondent also stated that it purchased 14 plots in the said layout and that the writ petitioners are trying to encroach its plots.

Considering the facts and circumstances of the case and after considering the submissions of the learned counsel for the parties, this Court is inclined to pass the following order:

The Writ Petition is disposed of directing that if there is any interference by the petitioners on the basis of the interim order passed by this Court on 07.04.2011 in WPMP No.11474 of 2011, the respondents 7 to 12 are at liberty to seek their remedies before appropriate forum. The petitioners are also directed not to take advantage of the above said interim order and not to interfere with the land, which is in possession of the respondents 7 to 12.

There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

RAJA ELANGO, J

April 03, 2017

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