

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.V.M.P.No.1199 of 2016

in/and

WP.No.36580 of 2014

and

C.C.No.1509 of 2015

COMMON ORDER :

1. The parties will be referred to as per their array in the Writ Petition.

2. Petitioner is the son of one G.Baloji. On the basis of an agreement of sale dt.09.12.2007 executed in favour of his father by Mir Hussain Ali Khan and others, he claimed to be in possession of an extent of Ac.0-13 guntas of land in survey No.360/4 of Moula-ali Village. He relied upon the pahanies of 1423 Fasli, 1421 Fasli, 1424 Fasli, 2006-2007 Pahani, etc., mentioning the name of his father as possessor of the land.

3. The recitals in the agreement of sale indicate that the subject land was litigated in O.S.No.25 of 1991 before the I Additional Senior Civil Judge, R.R.District and in A.S.No.1025 of 1999 and 1433 of 1998 before this Court and also prior thereto in O.S.No.62 of 1971 before the Additional Chief Judge, City Civil Court, Secunderabad and in appeal CCCA No.115 of 1976 before this Court. Copies of the

judgments therein indicate that the vendors of the petitioner's father succeeded in the said litigations against the persons disputing their title.

4. Petitioner contended in the Writ Petition that after obtaining the agreement of sale, petitioner's father was in possession of the property, but the Greater Hyderabad Municipal Corporation (for short 'the GHMC') started interfering with their right in the property without any manner of right, title or interest therein.

5. Petitioner contended that GHMC had lodged a complaint before the Malkajgiri Police Station against the petitioner and others stating that the subject land is earmarked as an open space by the Municipality for the purpose of septic tank, pump rooms and children's play ground at Housing Board Colony, Moula-ali; that the petitioner and others had constructed a room and put a sign board for the general public that "the land belongs to G.Baloji"; and that they had committed offences under Sections 427 and 447 of IPC. On this basis, charge sheet was filed and it was numbered as C.C.No.1072 of 2008 before the X Metropolitan Magistrate, Cyberabad at Malkajgiri. The Criminal Court acquitted the petitioner and other accused persons on 06.02.2013.

6. A reading of the said judgment indicates that the prosecution witness, who was Town Planning Officer of the GHMC, stated that he cannot say the extent of the lay out in survey No.360, that the GHMC did not apply for surveying of the park in the Housing Board Colony, and that he did not measure the extent of park land. PW4, another witness for prosecution, stated that trenches were being dug by the accused and earlier to the digging of the trenches, Municipality constructed compound wall around the open place and on the compound wall some unknown persons wrote that “the land belongs to Venkatesh Goud and G.Balaji severally”.

7. The Criminal Court observed that the prosecution evidence did not prove the case against the accused that they committed any mischief or caused any damage or committed any criminal trespass. This judgment was not challenged further and it attained finality.

8. In spite of the acquittal in the Criminal Court, when the GHMC continued to interfere with the peaceful possession and enjoyment of the petitioner, petitioner filed the present Writ Petition for a direction to respondents 2 to 4 to restrain them from interfering with his peaceful possession and enjoyment of the subject property or making attempts to

construct compound wall by dispossessing the petitioner from subject land.

9. On 01.12.2014 in W.P.No.36580 of 2014, this Court directed the respondents 2 to 4 not to dispossess the petitioner from the subject land under the guise of construction of compound wall, pending disposal of the Writ Petition.

10. Alleging that the respondents have dumped construction material for construction of compound wall around the site, in violation of the order dt.01.12.2014 in W.P.No.36580 of 2014, petitioner filed C.C.No.1509 of 2015.

11. WV.MP.No.1199 of 2016 is filed by the respondents 2 to 4 in the Writ Petition to vacate the order the order dt.01.12.2014 in W.P.No.36580 of 2014.

12. In the counter affidavit/vacate stay petition, respondents 2 to 4 contended that the Corporation had constructed compound wall to the layout open space of integrated Housing Scheme under Phase-II at Moula-ali in Survey No.360 of Malkajgiri Village and Survey Nos.40/1, 2, 3 of Meerpet Village of A.P. Housing Board vide permit No.15637/HUDA/1989; that as per the lay out there is an open space existing surrounded by plot Nos.87 to 100 (EWS)

towards Southern side, Plot Nos.519 to 525(LIG) towards Western Side, Plot Nos.301 to 316(EWS) towards Northern side and opposite to Plot No.547(LIG), in which one septic tank, one community hall and a temple existing for public purpose; and that the Engineering Section, Malkajgiri Circle had constructed a compound wall to the said open space towards three sides to safeguard the same from encroachers.

13. According to respondents 2 to 4, petitioner is claiming this open space as part of the land purchased by his father under an agreement of sale dt.09.12.2007. It is contended that petitioner himself did not know the boundaries of the land or where it is located and he had filed W.P.No.25174 of 2015 for a direction to the revenue officials to consider his representation dt.23.07.2015 to conduct survey/demarcation and fixing boundaries for his land and therefore he cannot get any relief in the Writ Petition. It was stated that petitioner was put to strict proof that he is in peaceful possession of the alleged property, and that the Corporation is safeguarding the lay out space by constructing compound wall to avoid further encroachments. Reference is also made to a survey conducted on 25.02.2016 by a Mandal Surveyor at the instance of the Tahsildar, Malkajgiri Mandal (5th respondent).

14. The report of the Mandal Surveyor indicates that the petitioner was claiming land of an extent of Ac.0-13 guntas in survey No.360 of Moula-ali village and that this land is covered by compound wall which is built by the GHMC officials as per the lay out Ref.No.15637/MPZ/HUDA/89, dt.21.10.1993.

15. But in the counter affidavit filed by respondents 2 to 4 it is stated as if the Mandal Surveyor informed that he could not demarcate the land claimed by the petitioner.

16. The Tahasildar, Malkajgiri Mandal, who is 5th respondent, filed a counter affidavit stating that originally an extent of Acres 7.26 guntas in survey No.360 was classified as patta land and stood in the name of Meharunnisa Begum, that there was sub-division of the said land into five parts in 1999-2000, that the land in survey No.360/4 of an extent of Ac.0-13 guntas is classified as patta land and stood in the name of Tayaba Begum, Syed Ali Akbhar, Debaba Tul, Shakina Jafar and Khaja Begum, and that in the possession column it is recorded as 'houses and plots'. It is also stated that as per pahanies of 2006-07 this land was shown to be in possession of one Golikar Balaji, but the names of Tayaba Begum, Syed Ali Akbhar, Debaba Tul, Shakina Jafar and Khaja Begum were shown as pattadars.

17. The significance of this is that Tayaba Begum, etc., were the persons who lost the litigation in High Court in A.S.No.1025 of 1999 and A.S.No.1433 of 1998 against the petitioner's vendors.

18. It is further stated in the counter that the land in survey No.360/4 is patta land and on the ground with regard to possession, it is vacant.

19. This counter affidavit is significant because if there are already structures like septic tank, etc, in the subject land as alleged by the respondents, the pahanies for this land issued by the Revenue department whould have indicated the same and would not have shown it as an open space and also would not have shown the name of the petitioner's father as person in possession of the land.

20. Having regard to the counter affidavit filed by the Tahsildar, as well as the Revenue records produced by the petitioner and also referred to by the Tahsildar, it has to be held that the land of an extent of Ac.0-13 guntas in survey No.360/4 of Moula-ali village is patta land and is physically in existence and it was subject matter also of the judgments and decrees dt.03.09.2004 in A.S.No.1025 of 1999 and

AS.NO.1433 of 1998 before this Court, to which the vendors of the petitioner were parties.

21. Also in the proceeding dt.25.02.2016 of the Mandal Surveyor addressed to the Tahsildar, the Mandal Surveyor has pointed out that the land claimed by the petitioner is the land covered by compound wall which was built by the GHMC. This certificate is subsequent to the filing of the Writ Petition No.25174 of 2015 by the petitioner seeking survey of his land by the Tahsildar, Malakjiri Mandal.

22. Therefore the contention of the respondents 2 to 4 that the petitioner himself was not aware where his land is located cannot be accepted.

23. Also the observation of the Criminal Court in the order dt.06.02.2015 in C.C.No.1072 of 2008 indicates that the Municipality had alleged therein specifically that the area earmarked in the layout of the Housing Board Colony, Malkajgiri where there was a septic tank, pump room and children play ground was trespassed by petitioner and others, but the evidence of the prosecution witness itself indicated that they did not know where the open space in the layout was located. In fact PW4 admitted before the Criminal Court that the petitioner and others were digging

trenches in the lands where the Municipality had constructed the compound wall.

24. Thus, it is clear that the land being claimed by the petitioner is the land which is alleged by GHMC to be enclosed by a compound wall.

25. The Municipal Corporation cannot appropriate to itself a private land in this manner without following due process of law, particularly, when no material is placed on record by the Municipal Corporation that the land claimed by the petitioner in survey No.360/4 was acquired by the State Government for the purpose of Housing Board Colony or gifted to it by the applicant for the layout.

26. Therefore, the respondents are restrained from interfering with the peaceful possession and enjoyment of the petitioner of an extent of Acre 0-13 guntas in survey No.360/4 of Moula-ali Village or attempting to obstruct any use by the petitioner of the subject land without following due process of law.

27. In the counter affidavit filed by respondents 1 to 3 in the Contempt Case, though it is contended that the Hyderabad Urban Development Authority had constructed compound wall to the one side of the subject land and the

Corporation had constructed compound wall to the 2 remaining sides of the land to safeguard the land from encroachers, when this compound wall was constructed is not mentioned. Even in the affidavit filed in support of the Writ Petition or in the Contempt Case it is not mentioned by the respondents.

28. Therefore, the respondents 2 to 4 are directed to dismantle the compound wall constructed by them within four (04) weeks from the date of receipt of a copy of this order.

29. In the facts and circumstances of the case, I am not inclined to punish the respondents 2 to 4 for Contempt of Court, subject to their complying with the above direction. It is made clear that if the above direction is not complied with, the matter will be viewed seriously and proceedings for Contempt will be revived.

30. Accordingly, the Writ Petition is allowed and the Contempt Case is closed. There shall be no order as to costs.

31. Consequently, WV.MP.No.1199 of 2016 in W.P.No.36580 of 2014 is dismissed. Miscellaneous Petitions

pending if any, both in the Writ Petition and Contempt Case shall also stand closed.

M.S. RAMACHANDRA RAO, J

06th April, 2017.

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