

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 11558 OF 2012

ORDER:

This writ petition is filed with the following prayer:

“... to issue a writ, order or more particularly one in the nature of writ of Mandamus declaring the action of the respondents 1 to 3 in not considering the representation of the petitioners dated 10.03.2006 and 23.10.2010 in contemplation to the respondent No.3 proceedings letter No.../ACP/C5/MCH/05 dated 25.08.2005. While O.S.No.2171 of 2005 is pending for disposal on the file of the Hon'ble II Senior Civil Judge, City Civil Courts at Hyderabad as illegal, arbitrary, unlawful, unconstitutional and against to the principles of natural justice”

The averments in the affidavit filed in support of the writ petition would show that petitioner Nos.1 to 3 and respondent Nos.4 to 8 are the successors to the assigned patta issued in favour of late Smt. Sai Bai in respect of the property bearing H.No.7-1-632/17 situated at Bapunagar, Sanjeeva Reddy Nagar, Hyderabad. The said Sai Bai died leaving the said property intestate. While things stood thus, petitioner Nos.1 to 3 and respondent Nos.7 and 8 filed O.S.No.2171 of 2005 before the Court of II Senior Civil Judge, City Civil Court, Hyderabad, against respondent Nos.4 to 6 for partition of the said property.

While things stood thus, respondent No.3 initiated proceedings under the provisions of Land Acquisition Act against the 5th respondent only, as he was claiming the subject property through registered gift deed and was in possession of the same. At that point of time, the petitioners made representations, dated 10.03.2006 and 23.10.2010 to the 3rd respondent bringing to his notice the pendency of the partition suit. The 3rd respondent made an endorsement stating as under: “not to disburse the compensation to any person”. Since respondent Nos.1 to 3 are not

considering their representations, the petitioners filed the present writ petition.

On 20.04.2012, this Court while issuing notice directed the respondents not to disburse the compensation award to the 5th respondent or any other respondents or the petitioners.

The 5th respondent filed a counter stating that originally the plot admeasuring 101.67 square yards was assigned in favour of his mother late Smt. Sai Bai vide patta certificate bearing No.D/1234/90 and as such the said house is not a ancestral property. It is further stated that after performing the marriages of the petitioners and respondent Nos.7 and 8, his mother i.e., late Smt. Sai Bai, was residing with him and he looked after the welfare of his mother. It is said that out of love and affection, late Smt. Sai Bai executed a registered gift deed in favour of the 5th respondent vide document No.969/2002, dated 03.06.2002 and thereafter the 5th respondent dismantled the old structures and constructed a RCC building, from out of his won earnings and is residing there. It is further stated that when the subject property was acquired by the Government and when the respondent authorities were about to disburse the compensation amount, the petitioners and respondent Nos.7 and 8 developed ill-motive and with a mafa fide intention filed O.S.No.2171 of 2005 for partition. It is also stated that the provisions of Section 3(2) of the Prohibition of Transfer of Assigned Lands do not get attracted, as the subject property, which was assigned to the mother of respondent No.5, was gifted to respondent No.5 out of love and affection, which does not mean transfer of property. It is also stated that petitioner No.1 in the cause title mentioned his address as 7-1-632/17, but, in fact, the 5th respondent is in possession of the said property and that to

get orders from this Court petitioner No.1 wrongly mentioned his address. It is further stated that without pursuing the suit, the petitioners rushed to this Court by way of this writ petition and as such they are not entitled for any relief. Hence, prayed to vacate the interim order and dismiss the writ petition.

It is an admitted fact that late Smt. Sai Bai is the mother of the petitioners and respondent Nos.4 to 8. After their marriage, Smt. Sai Bai was residing with the 5th respondent and out of love and affection she gifted the subject property to the 5th respondent, who dismantled the old structures and constructed a RCC building from out of his own earnings. A perusal of the counter affidavit filed by the 5th respondent shows that late Smt. Sai Bai, after performing the marriages of the petitioners and respondent Nos.4 to 8, was residing with the 5th respondent and out of love and affection she gifted the subject property in his favour. It also states that the petitioners and respondent Nos.4 and 6 to 8 got married long back and are living separately.

Since the petitioners and respondent Nos.4 and 6 to 8 have not disputed the fact that after their marriage they lived separately and that their mother late Smt. Sai Bai was lived with respondent No.5, their plea that they are entitled to get a share in the compensation amount awarded by the Government in favour of the 5th respondent for acquiring the subject property cannot be considered herein, as the same requires evidence to be adduced to establish the aspects, namely, whether there was any gift in favour of respondent No.5 and whether the said gift was voluntary and its effect on respondent Nos.4 and 6 to 8.

Hence, I see no merit in the writ petition and the same is dismissed leaving it open to the parties to avail the common law remedy.

Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall also stand dismissed. No order as to costs.

JUSTICE C. PRAVEEN KUMAR

Date: 04.04.2017

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