

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WPNo.31961 of 2016

ORDER::

This writ petition is filed assailing the action of the respondent-authorities in trying to dispossess the petitioners from the land situated in Sy.No.104/1 situated at Thimmapuram village, Kakinada Rural Mandal, East Godavari District, without following the due process of law as being illegal, arbitrary and violative of principles of natural justice and to pass consequential orders in the interest of justice.

2. Briefly stated facts are:-Land in Sy. No.104/1 situated at Thimmapuram village, Kakinada Rural Mandal, East Godavari District, admeasuring Ac. 1-88 cents (for short "the subject land") belongs to one S.V.Suryanarayana Murthy and with an intention to convert the subject land into plots he made an application for grant of layout to the 5th respondent-Thimmapuram Gram Panchayat, and while it could be approved, the said person seems to have sold the subject land to one Y. Krishna Murthy, who is the vendor of the petitioners. That thereafter, the layout was approved vide Lr.No.Dis.No.2073/2003/RI, dated 23-09-2004 for 19 plots on

condition of leaving open space of 10% of the total site in favour of the 5th respondent-Gram Panchayat and accordingly an extent of Ac.0-12 ½ cents was registered in favour of 5th respondent and the 5th respondent taken possession of the site. But the said Y. Krishna Murthy, who is the vendor of the petitioners, sold the 10% open space land which was kept aside as communal site to the petitioners by making it into 8 plots and executed registered sale deeds in the year 2016.

3. 6th respondent claiming to be a good Samaritan made a representation on 01-09-2016 to the 2nd respondent-District Collector, East Godavari District, in that behalf. That acting on the representation made by the 6th respondent, the 2nd respondent called for a report from the 4th respondent-Tahsildar, and the 4th respondent along with the Secretary of the 5th respondent-Gram Panchayat conducted enquiry and visited the subject land on 03-09-2016 and identified the subject land marked as communal site in LP No.46 of 2004 and the subject land has been sold to private individuals and, therefore, erected cement poles and lay a board indicating that the subject land belongs to 5th respondent-Gram Panchayat.

4. The grievance of the petitioners is that though they are bona-fide purchasers having purchased the subject land by paying valid consideration from their vendor-Y. Krishna Murthy and possession of the subject land has been handed over to them by their vendor and they being in possession of the land, the respondent-authorities are trying to dispossess them without following due process of law. Hence, this writ petition.

5. Heard the learned counsel for the petitioners, the learned Asst. Government Pleader for Revenue and the learned counsel for the 6th respondent.

6. Learned counsel for the petitioners strenuously contended that when once the petitioners are bona-fide purchasers and they are in possession of the subject land, they cannot be evicted without following the due process of law and no notice is issued to the petitioners muchless giving opportunity of being heard to them in the matter. It is also stated that since their vendor refused to sell the subject land to the 6th respondent, he bore grudge against their

vendor and made this false complaint that the petitioners have purchased the communal lands.

7. *Per contra*, learned Asst. Government Pleader for Revenue representing the respondent-authorities contended that when once the subject land is registered in favour of the 5th respondent-Gram Panchayat, it vests with the 5th respondent, and therefore the sale deeds, if any, executed by the vendor of the petitioners in respect of the subject land are null and void it is a sham document. It is also stated that the subject land is left for communal purpose in LP No.46 of 2004 is vacant and denied that the petitioners are in possession and enjoyment of the subject land.

8. Learned counsel for the 6th respondent also contended that when once the subject land is registered in favour of the 5th respondent as a condition to grant layout, the question of having any right whatsoever over the subject land to any person does not arise and the sale deeds executed by the Y. Krishna Murthy, are not valid and the petitioners did not acquire any rights over the subject land.

9. Admittedly, layout in respect of the subject land was approved in the year 2004 and as per the required condition to leave 10% of the land, as open space for communal purpose, the vendor of the petitioners registered the subject land in favour of the 5th respondent-Gram Panchayat. Prima facie, on the face of the sequence of events in the matter, the petitioners' vendor does not have any rights, muchless property rights in the subject land to transfer the land in favour the petitioners. The allegation of the petitioners that the 6th respondent is settling scores with the vendor of the petitioners, as allegedly he refused to sell the subject land to him, for a lesser rate, than the rate paid by the petitioners, is categorically denied by the 6th respondent.

10. In the counter affidavit filed by the 5th respondent it has been stated that the 4th respondent-Tahasildar and the Secretary of the 5th respondent visited the subject land and identified the subject land as the land which was left towards 10% open space as communal site and accordingly

erected cement poles that the land belongs to Gram Panchayat.

11. Public properties are what people of a country own and use it jointly. We very often find people championing the cause of the Society *viz.*, to protect the public property. To fight for good cause in this chauvinistic society is very tiresome saddled with vagaries. Legally speaking, to protect public property is a Constitutional responsibility of every citizen and it is an integral part of patriotism. In the instant case the vendor of the petitioners (Y.Krishna Murthy) ought not to have transferred the subject land which is already registered in favour of the 5th respondent in compliance of the requirement to leave 10% of the land as open space for communal purpose.

12. The question, whether the petitioners are bona-fide purchasers or not and whether valid title in respect of the plots in question is flown on to them under the registered documents, are all questions of fact which requires minute examination of the details, which cannot be undertaken in proceedings under Article 226 of the Constitution. However, it

is open for the petitioners to avail common law remedy to redress their grievance, if they are so advised.

13. In the circumstances, no relief can be granted to the petitioners in this writ petition. The writ petition fails and it is accordingly dismissed. Miscellaneous petitions, if any pending shall also stand closed. No order as to costs.

Dated: 02-06-2017
NRG

A.RAJASHEKER REDDY,J



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WPN0.31961 of 2016

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