

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.23565 OF 2011

&
C.R.P.No.3211 OF 2013

COMMON ORDER :

Since the property involved in the both the petitions are connected, both the cases were directed to be listed together and are now disposed of by this common order.

2. The writ petition came to be filed seeking issuance of writ of Mandamus, declaring the action of the first respondent in issuing G.O.Ms.No.1113, dated 24.10.2009, as illegal and arbitrary.

3. The petitioner claims to be the owner and possessor of the property bearing Municipal No.5-1051/ 3/ 159, Plot No.159, admeasuring 267 square yards, covered by Survey Nos.588 to 591, situated at Jonnabanda, Alwal Village, Malkajgiri Mandal, Ranga Reddy District, by virtue of a registered sale deed dated 22.02.2002. The petitioner is said to have purchased the said land through one S.Rajendra Kumar, who is the power of attorney holder of one B.Ramachandra Rao. After purchasing the land, the petitioner claims to have made an application before the Urban Land Ceiling authorities, for issuance of No Objection Certificate, so as to construct a house in the said plot. A memo dated 09.03.2011, came to be issued to the petitioner, stating that the lands in Survey Nos.522, 523, 527 to 530, 542, 543, 589 and 590 were declared as surplus lands and possession of land admeasuring 98472.20 square meters was taken over in C.C.No.G1/ 13347/ 76, G1/ 340/ 82. It was further stated that the land to which NOC was applied is covered in another surplus area. At that stage, the petitioner came to know that the unofficial respondent, who is said to have obtained these lands by

way of agreement of sale from the HMT Officers Cooperative House Building Society Limited, made an application for regularisation of the land in terms of G.O.Ms.No.455, dated 29.07.2002. Though the said G.O. is said to have been substituted by G.O.Ms.No.1069, the regularisation of the plot of the petitioner along with others came to be made vide the impugned G.O. Aggrieved thereby, the present writ petition came to be filed seeking to set aside the impugned G.O.

4. Learned counsel appearing on behalf of the unofficial respondent would submit that one Sri B.Ramachandra Rao sold the land by way of an agreement of sale to the HMT Officers Cooperative House Building Society, who in-turn allotted a plot in favour of the unofficial respondent, by issuing the allotment letter dated 29.03.1990. The petitioner is also said to have entered into an agreement of sale with the HMT Officers Cooperative House Building Society Limited. While things stood thus, the unofficial respondent filed O.S.No.3020 of 2005, showing himself as the first plaintiff and the HMT Officers Cooperative House Building Society Limited as second plaintiff. The petitioner herein was shown as first defendant. The said suit was filed to declare the registered sale deed dated 22.02.2002, executed by the third defendant therein i.e. Sri S.Rajendra Kumar, who is GPA holder of Sri B.Ramachandra Rao, in favour of the first defendant, as null and void. The said suit was decreed *ex-parte* on 13.10.2008. On coming to know about the same, an application to set aside the *ex-parte* order and also an application to condone the delay to set aside the *ex-parte* order, came to be filed. By an order dated 02.07.2013, the application filed by the petitioner to condone the delay of 190 days to set-aside the *ex-parte* decree was rejected. Aggrieved by the same, C.R.P.No.3211 of 2013 came to be filed.

5. As seen from the records, the dispute now relates to a plot bearing No.159, admeasuring 267 square yards, situated in Alwal Village. The writ petitioner claims to have purchased the said plot by way of a registered sale deed in the year 2002 from one B.Ramachandra Rao, who is said to have sold the same to his GPA Holder, who is third defendant in the suit. The unofficial respondent claims to have obtained the said plot, by way of allotment from HMT Officers Cooperative House Building Society Limited, who in turn entered into an agreement of sale with one B.Ramachandra Rao, after receiving due consideration. The affidavit filed by B.Ramchandra Rao, which has been filed as a material paper in the CRP, would show that he is the owner of the said land in Survey No.591 along with other lands and about Acs.25 were sold to the House Building Society.

6. Learned Government Pleader, on written instructions, states that the land in Survey No.591, is a private land. Therefore, the dispute which requires to be settled is whether the petitioner has a right over the plot by virtue of a registered sale deed or whether the unofficial respondent, by virtue of the allotment made by the Society, who in turn claim the plot through an agreement of sale entered into with B.Ramchandra Rao?

7. From the above, it can be said that the original owner, Sri Ramchandra Rao, sold the plot in Survey No.591 to the petitioner and part of the land in Survey No.591 to the Society. This dispute, which involves complicated questions of fact and law, requires adjudication by the competent civil Court, which is not disputed by both the counsel.

8. Since a civil dispute is already initiated by the respondent seeking to cancel the sale deed executed in favour of the petitioner, this Court

feels that ends of justice would be met, if the CRP which has been filed against the order refusing to condone the delay of 190 days in filing an application to set aside the ex-parte decree, is allowed. Accordingly the CRP is allowed. Further, the writ petition is disposed of leaving it open to the parties to agitate their grievance before the civil Court, in accordance with law. Since the G.O.Ms.No.1113, will be staring at the petitioner, this Court feels that in the interest of all the parties and to give a quietus to the litigation, the execution of G.O.Ms.No.1113, in so far as the petitioner is concerned, shall be kept in abeyance, till appropriate orders are passed by the civil Court. Till appropriate orders are passed by the civil Court in the suit referred to above, *status-quo* as on today to be maintained with regard to the possession and entries in the records. There shall be no order as to costs.

9. Miscellaneous petitions, if any, pending in the writ petition and civil revision petition shall stand closed.

04.09.2017
vnb

JUSTICE C. PRAVEEN KUMAR