

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.4982 OF 2013

ORDER:

Heard Mr.A.Abisekh Reddy for petitioners and the Assistant Government Pleader (Revenue) for respondents.

The petitioners pray for Mandamus declaring the action of respondents 1 and 2 in dismantling the schedule property without recourse to law, as illegal, arbitrary and unconstitutional.

The writ prayer though refers to schedule property, the petitioners have not appended schedule to the writ prayer to identify the property for which the instant prayer is made. Be that as it may, the petitioners claim that they are the absolute owners and possessors of an extent of 527 sq. yards identified as Municipal Door No.19-4-272/A/4, Mir Alam Tank, Hyderabad (subject property). The case of petitioners is that one Damayanthi, D/o A.Rajayah sold subject property through registered sale deed dated 28.07.1990 in favour of one Khaja Moinuddin, s/o Gulam Mohiuddin. Further on 26.01.2005, it is alleged that the said Khaja Moinuddin sold the schedule property in favour of 1st petitioner and the 1st and 2nd petitioners are in actual and physical possession of an extent of 527 sq. yards of land covered by Door No.19-4-272/A/4. It is relevant to remark that the petitioners claim title to Door No. 19-4-272/A/4 from Khaja Moinuddin under a sale deed, which is filed as Annexure P-2. Annexure P2 is not a registered sale deed. It is an agreement of sale allegedly executed by Khaja Moinuddin in favour of petitioners. It is on this unregistered sale deed or agreement of sale, the petitioners claim ownership and possession to the property. The cause of action for filing the writ petition is that

on 30.01.2013, the 2nd respondent with his staff and labourers, much less without issuing notice, demolished the compound wall of schedule property on the ground that the property covered by Door No.19-4-272/A/4 is Government land. Hence, the writ petition.

It is matter of record that this Court has called for report from the learned Chief Judge, City Civil Court, Hyderabad and the report is available on record.

Respondent No.2 filed counter affidavit and on the origin of title and how the premises now claimed by petitioners stood vested in Government, the following reply is given:

“In reply to the averments made in paras 3, 4 and 5 of the affidavit, it is submitted that the petitioners schedule property alleged to be premises No.19-4-272/A/4 to an extent of (527) sq. yards has been identified on ground and falls in T.S.No.4, Block – ‘B’, ward 253 of Meersagar Village, Bahadurpura Mandal of Hyderabad District. It is submitted that one Smt.Manemma, w/o late A.Rajaiah has filed the declaration before the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad U/S 6(1) of the Urban Land (C & R) Act, 1976 declaring the property bearing 32/1/P, T.S.No.4, Ward No.B of Meersagar Village. After completion of all formalities the Special officer and Competent Authority, Urban Land Ceiling, Hyderabad was declared an extent of (19,076.00) Sq.Mtrs out of T.S.No.4, Block ‘B’, Ward 253 of Meersagar Village as Ceiling Surplus Land vide Proceeding No.D2/13212/76, dated 08.02.2006. It is further submitted that the Deputy Tahsildar from Urban Land Ceiling office handed over the Ceiling Surplus Land to an extent of (19076) Sq.Mtrs out of T.S.No.4 to the Deputy Tahsildar, Bahadurpura Mandal, Hyderabad District on 11.03.2010 under a cover of panchanama and sketch. Right from taking over possession, the above said land is in the custody of the Tahsildar, Bahadurpura Mandal of Hyderabad District. I further submit that the above said Government Land (Ceiling Surplus) was updated in Land Bank No.900, which is in possession of the Tahsildar, Bahadurpura Mandal, Hyderabad District and the field staff

of Respondent No.(2) herein, office are regularly keeping visit on the said land.

While the matter stood thus, the field staff of this office noticed that the Writ Petitioner encroached the Ceiling Surplus vacant Government land (including 15 X 15 abounded tin shed room in South East Corner, it is existed since taken over possession of Urban Ceiling Land) to an extent of (527) Sq.Yards out of T.S.No.4 and constructed temporary compound wall in the overnight and placed 'Icon rod and flames' etc on the said land. It is submitted immediately this office staff has requested the encroacher to remove the compound wall in Government land but he refused our staff request. Further, the temporary constructed compound wall on Govt.land in T.S.No.4 has been removed, a complaint has been lodged vide this office letter No.B/Spl/2013 of 23.1.2013 to the Station House Officer, P.S.Bahadurpura, Hyderabad and requested to take action against the illegal encroachers, who tried to encroach Govt.vacant land in T.S.No.4.

It is further submitted that the land in question is a Govt.(Ceiling Surplus) land and in possession of the Tahsildar, Bahadurpura Mandal and therefore neither the petitioner nor the alleged predecessors have any right or title over the Govt.land, hence the sale deed executed in respect of Govt.land have no validity under eye of law. The alleged transactions through registered sale deed from the year 2005 onwards in respect of the land in question, which is a Govt.land are null and void under law and no one except the Govt. has any right, title, interest over the same".

The respondents are admitting demolition of compound wall in the property identified by them in T.S.4, Block B, Ward No.253. The construction area either from the counter affidavit or from the report of the Civil Court is confined to a small extent and rest of it was enclosed by a compound. Now the petitioners are complaining that demolition of compound wall or the small shed, without recourse to law, of premises bearing Door No.19-4-272/A/4 as illegal and unconstitutional.

As already noticed, the petitioners do not have a regular conveyance in respect of the property covered by Door No.19-4-272/A/4. Further, the schedule of property in the sale deed dated 28.07.1990 standing in the name of Khaja Moinuddin does not refer to T.S Number, Block number or Ward number. Either on the strength of agreement of sale or on the basis of registered sale deeds standing in the name of Khaja Moinuddin, this Court is not inclined to accept the existence of an enforceable right in favour of petitioners, for the acceptance of such right depends upon various rights and obligations under agreement of sale, identity of property and enforceability before a competent Court. Merely because a portion of the compound wall is demolished and that construction is attributable to petitioners, I am of the view that this Court cannot go that far to issue a further direction to respondents to follow the procedure and dispossess the petitioners in accordance with law. The petitioners if have rights under agreement of sale, it is always open to them to work out their remedy against the vendor under agreement of sale before competent Court for all reliefs.

For the above reasons, the writ petition fails and is, accordingly, dismissed. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

29th June, 2017
LrkM

S.V.BHATT, J