

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 7545 of 2017

ORDER:

This Writ Petition is filed claiming herself to be owner of the agricultural land situated in Sy.Nos.94/1, 2, 3, 7, 8, 9, 10 and 11 and Sy.No.95 of Indira Nagar, Gachibowli Village, Serilingampally Mandal, Cyberabad. The petitioner asserts that she obtained Occupancy Right Certificate from the revenue authorities. She claims to have filed a case before the Land Grabbing Court, as a portion of land, admeasuring 150 sq.yards, was grabbed by the 7th respondent and continues to grab the vacant portion of the land and carrying out unauthorized constructions of ground plus one upper floor without any municipal permission. Petitioner further asserts that, as respondent No.7 is further proceeding with unauthorized construction, she approached respondent Nos.2 to 6 and made complaints on 15.10.2016 and 04.11.2016 alleging encroachment and unauthorized constructions in the said land. Despite which, respondent authorities failed to take action and prevent respondent No.7 from carrying on unauthorized constructions in the vacant portion of the land. The petitioner, therefore, seeks a mandamus to declare the action of the respondent authorities in not taking action on the written complaints dated 15.10.2016 and 04.11.2016 with immediate effect.

Heard the learned counsel for the petitioner Sri Nazir Ahmed Khan, who passionately reiterated the contents in the Writ Petition and prayed for direction to respondent authorities to take immediate action against the respondent No.7.

Perused the material on record. Petitioner filed selected certified documents, forming part of the proceedings under Andhra Pradesh (Telangana Area) Abolition of Inam Act, 1955 (in short “the Act”). The survey number mentioned therein is Sy.No.94 of Gachibowli, Serilingampally Mandal. Apart from that, petitioner also filed proceedings of the Special Grade Deputy Collector and Revenue Divisional Officer, Chevella Division, dated 14.06.2011, with respect to Ac.0-34 gts., of land situated at Gachibowli, Serilingampally Mandal and a xerox copy of setwar, with respect to Sy.No.94, for an extent of Ac.1-08 gts., and another extent of Ac.0-34 gts. It may be noted that, in the Village Account, for an extent of Ac.0-34 gts., the nature of possession has been recorded as ‘Vijaya Bharati High School’. In other words, the very facts as stated by the petitioner disclose that the case requires adjudication of the *prima facie* title of the petitioner viz-a-vis the title and right of the 7th respondent, which this Court in normal circumstances, would not venture to it. Here, except mentioning survey numbers and some extent, there is no material placed before this Court. Hence, this Court cannot determine the title and possession of the petitioner. Even assuming the petitioner has some element of title, mere assertion of the petitioner that 7th respondent has encroached the land belonging to her, in which case, petitioner has to approach the civil court for recovery of possession. Besides, there is no assertion in the writ petition that the petitioner has made any enquiry with the respondent authorities either directly or under the Right to Information Act, whether 7th respondent has applied for any building permission or not. Without ascertaining the basic information, simply addressing a letter to the respondent

authorities as well as to the Collector complaining that 7th respondent is making construction without permission, the petitioner filed the present writ petition. In other words, what the petitioner seeks is this Court should conduct roving inquiry and to ascertain from the respondent authorities and, thereafter, to initiate action against the 7th respondent.

While it may be said that municipal authorities are enjoined with a duty to take action by initiating proceedings when a construction is made in violation of the sanctioned plan, it is well-nigh impossible for monitoring and ensuring every construction that is happening within the vast area covered under GHMC Act. In the event construction is being made by a third party in the property belonging to the persons like petitioner, she is excepted to approach the appropriate Civil Court, which has wide power to grant injunctive reliefs, both temporary and mandatory. As it is well settled that the powers of the Civil Court are wide and extensive under Section 9 of the CPC read with Specific Relief Act, a reference is made to the judgment of the Supreme Court in **Dhulabhai etc., v State of Madhya Pradesh and Another**¹.

In the facts of the present case, this Court is not inclined to exercise power under Article 226 of the Constitution of India and grant the relief, which the petitioner sought. However, it may also be made clear that the observations made in the present case are only for the purpose of discussing the maintainability and the aspect whether this Court can exercise jurisdiction under Article 226 of the Constitution of India or not. However, the observations

¹ AIR 1969 Supreme Court 78

made herein shall not be construed as expressing any opinion with respect to title or right of the petitioner for appropriate reliefs before the Civil Court.

Accordingly, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, the Miscellaneous Petitions, if any pending, shall stand closed.

CHALLA KODANDA RAM, J.

Date:15.03.2017
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