

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.11768 of 2017

ORDER:

Heard learned counsel for the petitioner and learned Government Pleader for Panchayat Raj for respondent Nos.1 to 3 and Sri G.Narender Reddy, learned standing counsel for 4th respondent and before ordering notice to unofficial respondent Nos.5 to 8 and perused the prayer in the writ petition with the supporting affidavit and other material on record including the counter affidavit of the 4th respondent-Panchayat.

2. The prayer in the writ petition reads as follows:

“To issue an appropriate writ, order or direction, more particularly one in the nature of writ of mandamus, declaring the inaction of the respondent Nos.2 to 4 in controlling the illegal constructions in Sy.No.301/4 of Nakrekal revenue village who are not taking the proper action to implement the Grampanchayat Act and provisions therein regarding the constructions, as well as all the constructions only going on with the oral permissions of the 4th respondent but there is no any valid permissions as per the law from the 4th respondent is illegal, improper, bad in law and consequently direct the respondent Nos.2 to 4 to take to implementation of the Grampanchayat Act as well as direct the respondents No.4 by removing the illegal constructions in Sy.No.301/4 of Nakrekal Village which is making by the respondents No.5 to 8 herein contrary to the law and without any valid and required permissions and to pass such other order or orders.”

3. As per the supporting affidavit in the said prayer supra, the main grievance is that the official respondents, particularly, 4th respondent in collusion with unofficial respondents permitting the unofficial respondent to make construction without any valid permission and contrary to law and despite a civil suit in O.S.No.155 of 2012 on the file Senior Civil Judge, Nalgonda for

partition between the family members of petitioner and respondent Nos.5 & 6 etc., pending, wherein the property covered by S.No.301/4 of Nakrekal, Shivajinagar, is part of the lis, that despite the petitioner lodged the complaint with the 4th respondent Panchayat Secretary, no action taken to prevent the constructions and despite the area of construction is covered by pending lis of the suit and under the guise of construction the unofficial respondents are destroying the boundaries by managing the 4th respondent-Panchayat including in construction of compound wall.

4. The counter affidavit of the 4th respondent-Panchayat Secretary particularly from Paras 4 to 8 reads that the petitioner no doubt made complaint dated 03.12.2016 to the Panchayat complaining said construction and petitioner also made complaint to the District Panchayat Officer-respondent No.3 and respondent No.3 in turn issued memo No.5914-2016/B4 (Pts) dated 03.12.2016 directing respondent No.4 to examine the complaint and take necessary action and report compliance and as per said directions, respondent No.4 issued notice to 7th respondent on 15.12.2016 to stop the construction work undertaking by her and also issued notice to the petitioner from what respondent No.7 contends she is not a party to suit O.S.No.155 of 2012 since she purchased the area under construction which is part of S.No.304/1 under registered sale deed dated 06.11.2015 from one Ganta Ravi, who purchased the same from Ganta Ramchandru under registered document No.1612/2015 and said Ramchandru in turn purchased from the respondent Nos.5 & 6 to the writ petition by name Sankuju Brahmaiah and Sankuju Naryana sons of Thirupathiah under document No.655/2014 and thereby the

petitioner to furnish the details of the suit. It is also stated in the counter affidavit of respondent No.4 that respondent No.7 stopped said construction and later applied for construction permission with site plan with registered sale deed dated 06.11.2015 No.3065/2015, on 18.10.2016, and because of construction permission not granted respondent No.7 is not proceeding with construction after issuing notice dated 15.12.2016 to respondent No.7 and recently on came to know respondent No.7 is proceeding further, respondent No.4 cause stopped the attempts and then respondent No.7 made a representation dated 19.12.2016 stating that the writ petitioner is no way concern with subject site as per the records of ROR 1-B as the land belongs to respondent Nos.5 & 6 and once the writ petitioner did not choose to make respondent No.7 as party to suit and petitioner also later on 16.03.2017 submitted an affidavit-cum-declaration stating he has going to settle the matter with respondent No.7 and withdrawing objection/complaint against respondent No.7 dated 03.12.2016, and this no way prevents the respondent No.4 to process the application filed by R.7 and by suppressing these facts, the writ petition is filed.

5. There is no reply affidavit filed by the petitioner against it. A perusal of the enclosures to the counter affidavit of respondent No.4 show that the suit O.S.No.155 of 2012 was filed by Smt. Laxmamma W/o. Venkataiah and Smt. Padma W/o. Venkata Chary against 11 defendants of whom, the writ petition respondent Nos.5 & 6 were defendant Nos.10 and 11 and writ petitioner was defendant No.3 and elder brothers of writ petitioner were defendant Nos.1 & 2 apart from others by name Parvatham Pitchamma,

Biroju Indiramma, Guntoju Dhanamma, Akennapilly Srilatha and Thoudoju Venkanna. In that suit for partition, in I.A.No.677/2012 there was originally an ad interim exparte order of status quo to be maintained and later by order dated 10.10.2013 in I.A.No.369 of 2013, the said status quo order against defendant Nos.10 & 11 (writ petition respondent Nos.5 & 6) was vacated. Thus, practically there is no even status quo order against writ petition respondent Nos.5 & 6. The claim of writ petition respondent Nos.7 & 8 is that they purchased from writ petition respondent Nos.5 & 6, the original owners through vendors of R.7 and R.8 supra in the counter affidavit of respondent No.4.

6. The writ petitioner filed plaint copy of the suit to which he is 3rd defendant as stated supra which reads the suit filed by his 2 sisters against him and 2 elders brothers (defendant Nos.1 to 3) and defendant Nos.4 to 9 are children of one of the deceased sister of them and defendant Nos.10 & 11 were the sons of junior paternal uncle of plaintiffs and defendant Nos.1 to 3 and the suit claim is based on the averments that their father Sankuju Janaiah is the owner and possessor of Ac.3-29 guntas of Nakrekal Mandal, Nalgonda District, which included an extent of Ac.0.25 guntas out of S.No.301 and these properties according to plaintiffs and defendant Nos.1 to 3 were the ancestral properties fallen to the share of their father in partition with the father of defendant Nos.10 & 11 by name Sankuju Thirupataiah and after death of their father on 25.12.1985, their mother was managing who died 10 years back to the date of the suit and mother of defendant Nos.4 to 9 was also died 4 years back to the date of suit and the suit properties are liable for partition and they are entitled to

1/6th share along with defendant Nos.4 to 9 to be put together one such a share.

7. Even from the plaint averments that father of respondent Nos.5 & 6 and father of plaintiffs and defendant Nos.1 to 3 of the suit, the 2 brothers already partitioned and the writ petition referred construction in S.No.301/4 in an extent of Ac.3.29 guntas and whereas in the plaint schedule of the suit in S.No.301 what is shown is Ac.0.25 guntas and for that on West and North there are private lands of Sankoo people and Soma people. Thus, what the plaint refers against defendant Nos.10 & 11 who are writ petition respondent Nos.5 & 6 is that they in collusion with defendant Nos.1 to 3 of the suit entered the names of defendant Nos.1 to 3 in the revenue records and defendant Nos.1 to 3 are trying to alienate part of the suit property and if allowed and if so allowed, multiplicity of litigation may creep in and thereby defendant Nos.1 to 3 cannot alienate any extent of suit property to defendant Nos.10 and 11. It is not even the case of defendant Nos.10 and 11 are trying to interfere in any manner with any of the suit properties in S.No.301/4 which is proposed construction by respondent No.7 as vendee in claiming through respondent Nos.5 & 6 mentions S.No.301/4 and not the extent shown in the suit plaint schedule of S.No.301 of Ac.0.25 guntas. The full extent particulars not even furnished in the plaint schedule. Prima facie once there is a sale deed in favour of respondent No.7 obtained from their vendors who purchased originally from respondent Nos.5 & 6, there is nothing for the Panchayat to prevent any construction by respondent No.7 but for if at all not to allow any construction without proper approval plan and without compliance with the statutory

requirements. Needless to say, any grievance of the writ petitioner is otherwise is at all to claim any right in the property to approach civil court and not by way of writ petition.

8. Accordingly and in the result, with the above observations, the writ petition is disposed of with a direction to the 4th respondent of any allowing of construction is subject to permission and subject to showing the entitlement over the property for the persons who applied for permission after statutory compliance and not otherwise.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

Date: 12.07.2017
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JUSTICE Dr. B.SIVA SANKARA RAO

