

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.23749 of 2012

ORDER:

Heard the learned counsel for the petitioner, Sri Ancha Panduranga Rao, learned counsel for 2nd respondent, learned Government Pleader for Home appearing for 3rd respondent, learned Government Pleader for Revenue appearing for respondent Nos.1, 4 and 5 and Sri P.V.Vidyasagar, learned counsel for 6th respondent.

2. Though respondent Nos.7 and 9 have been served, there is no counter affidavit on their behalf. The 8th respondent died and according to the petitioner, no relief is now being sought against 8th respondent.

PETITIONER'S CONTENTIONS

3. The petitioner is a society of Vysya Community people of Guntur registered under the Societies Registration Act, 1860. The deponent who filed affidavit in support of the Writ Petition is the General Secretary of the petitioner-society.

4. He contended that his father Gokavarapu Krishna Murthy started the society to perform religious rites for the departed souls of Hindu community and with the said object, he constructed certain buildings and temples in 1979-80 in T.S.Nos.654/2, 655/4, 658/2, 658/4 and 658/5 at Ward No.21, Block No.11, R.Agraharam, Near Nallacheruvu, Guntur.

5. According to him, the society purchased vacant site admeasuring 241.3 sq yds in T.S.No.658/4 and 658/5 situated at Ward No.21, Block.11, R.Agraharam, Guntur under registered sale deed dt.19-03-1971 and another extent of 306 sq yds in T.S.No.658/4, Block No.11, Old Ward No.16, new Ward No.21 with D.No.107 under registered gift deed dt.26-01-1978; that Government also vide G.O.Ms.No.780 dt.09-07-1985 allotted certain extent of land for market value; and thus, the society came to be in possession of 2253 sq yds of land covering the above survey numbers.

6. He stated that originally, his father has registered the organization under the Societies Registration Act, 1860 under the name of 'Hindu Aparā Karmala Sheds Nirvahana Sangham' and a trust deed dt.24-01-2008 was also executed. He states that it has constructed home for widows and Old Age Home on one side and temples on the other side which are popularly called as Vaikunta Nilayam, Swarga Nilayam and Kailasa Nilayam etc.

7. Petitioner contends that when the Municipality tried to demolish construction of public toilets, petitioner instituted O.S.No.1258 of 1987 before the III Additional District Munsif, Guntur for permanent injunction restraining it from interfering with his possession and enjoyment of the property and the suit was decreed on 08-11-1988. According to him, it also filed O.S.No.1295 of 2004 before the III Additional Munsif Magistrate against third parties who attempted to encroach the land and the suit was also decreed on

05-09-2005. It also filed L.G.C.No.51 of 1996 before the Special Court constituted under the A.P Land Grabbing (prohibition) Act,1982 against another person who tried to encroach into the land by raising construction and this was also allowed by order dt.11-02-1997.

8. Petitioner contends that at the instance of some political leaders, respondent Nos.6 to 9 attempted to encroach into the land covered by T.S.Nos.658/4, 658/5 of the extent of 241 sq yds, that they illegally demolished old compound wall in order to encroach into the land, that it filed O.S.No.284 of 2012 before II Additional Junior Civil Judge, Guntur and even obtained an *ex parte* temporary injunction on 13-04-2012 which is still in force.

9. He contended that when respondent Nos.6 to 9 were questioned about their illegal action, they claimed that 4th respondent granted pattas and on enquiries, the Tahsildar issued proceedings L.Dis.No.09/2012 dt.19-03-2012, L.Pari No.46/2012D dt.19-03-2012 and Rc.No.563/2011/D dt.21-12-2011 confirming that no pattas were sanctioned to any persons.

10. Petitioner contends that without having any right over the subject property, respondent Nos.6 to 9 have raised 3' compound wall highhandedly and when complaint was made to the Municipal Corporation of Guntur (2nd respondent) on 26-11-2011, they did not take any steps. He stated that subsequently complaints were again

made on 24-04-2012 to the said Corporation, 3rd respondent and also to the Home Minister and further complaints were also made on 18-06-2012, but no action was taken.

11. Petitioner contends that respondent Nos.6 to 9 did not obtain any permission to raise constructions in the land located in T.S.Nos.655/4, 658/2, 658/4 and 658/5 or any other land in possession of the petitioner and it was the duty of the Municipal Corporation to remove the said construction.

12. It therefore prayed that a Writ of Mandamus may be issued declaring inaction of the respondents in removing unauthorized construction raised by respondent Nos.6 to 9 in the above survey numbers as illegal, arbitrary, and violative of Building Bye-laws and provisions of the Greater Hyderabad Municipal Corporation Act, 1955 applicable to 2nd respondent-Corporation and to direct the respondents to demolish the same.

13. On 03-08-2012, notice before admission was ordered in the Writ Petition and direction was given to both parties to maintain *status quo*.

STAND OF RESPONDENT NO.2

14. The Guntur Municipal Corporation/ 2nd respondent filed counter stating that the Town Surveyor in his remarks dt.09-07-2012 informed that the District Collector in his proceedings dt.16-07-1985 allotted the site at Rs.15/- per sq yd in T.S.No.658/5, Block No.11,

S.Ward No.16 to an extent of Ac.0.12690 sq ft, another extent of Ac.0.4230 sft in T.S.No.654/2 to the Hindu Aparā Karmala Sheds Maintenance, Guntur; that the total land is Ac.0.2752 sft and there are structures called as 'Swarga Nilayam' and 'Kailasa Nilayam' etc in the land. He also stated that a site of Ac.0.2752 sft in T.S.No.658/4 Block No.11, S.Ward No.16 belonged to one Sri Rekapalli Bhaskara Rao, that he was running Gymnasium and that the said site was handed over to the petitioner-society through a gift deed.

15. In para 4 of the Counter it is however stated that there were AC sheds existing not in T.S.No.658/4 but in T.S.No.658/part. Contradicting the same, in para 5 it is alleged that actual survey number of the land where the 'proposed' construction are is not known, but petitioner is claiming that they are within the boundaries of his property in T.S.No.658/4 and 5.

16. It is stated that a letter was addressed to the Tahsildar, Guntur on 18-08-2012 to supply the subdivision record pertaining to T.S.No.658/part to identify the correct survey number of the 'actual construction of the sheds' but no record was received by the Tahsildar and the matter is pending. He stated that after receipt of sub division record, identification of the survey boundary of Sri Vemula Anjaneyulu and respondent Nos.6 and 7 would be done and action will be taken.

17. It is denied that Corporation did not take any action on the unauthorized construction made by respondent Nos.6 to 9. It is stated that notice was issued on 22-06-2012 in the name of respondent Nos.6 and 7 for unauthorized construction of two A.C.Sheet sheds under Sections 42 (1) and 43 (1) of the A.P. Urban Development Act, 1975 and also under Section 452 of the Hyderabad Municipal Corporation Act, 1955 and the action is being processed on the file. It is stated clearly that respondents did not apply for permission for construction of the two A.C.Sheets Roof sheds in the site and the Corporation had not granted any permission for those constructions. Material papers were also filed along with the said counter affidavit.

STAND OF RESPONDENT NO.6

18. The 6th respondent has filed counter affidavit on behalf of himself and the 7th respondent, who is his sister. He denied title of the petitioner to the subject property. He stated that he had no knowledge of the cases filed by the petitioner. He denied that they had illegally demolished compound wall by encroaching into the vacant land of the petitioner. He also denied that they had raised 3' compound wall highhandedly.

19. The 6th respondent claimed that his mother was assigned a house site of 60 sq yds in R.S.No.658/8, 9 of Nallacheruvu, Guntur in 1975 and after her death, he inherited the same and the property was mutated in his name in 1989. He stated that the 7th respondent is his sister and she was assigned a house site adjacent to the house site

assigned to his mother in R.S.No.655 of Nallacheruvu, Guntur admeasuring 64 sq yds.

20. He stated that they had replied to show cause notice issued by the Guntur Municipal Corporation on 22-06-2012 stating that they did not make fresh constructions but only replaced the roofs with A.C. Sheets since the roofs were damaged by heavy rains and since their house sites were less than 100 sq meters, the threatened action against them may be dropped. He stated that basing on the reply given by them, 2nd respondent dropped the matter.

21. He denied that any construction activity was done by the respondent Nos.6 and 7 after the *status quo* order was passed by the Court. He stated that in I.A.No.266 of 2012, the Civil Court gave a finding that the house sites granted to respondent Nos.6 and 7 by way of pattas did not fall in any of the town survey numbers claimed by the petitioner.

CONSIDERATION BY THE COURT

22. I have noted the contentions of both the parties.

23. It is important to note that the Tahsildar, Guntur had given endorsement on 19-03-2012 that no assignment of land has been given for house site purposes to 8th respondent in Sy. No.655.

24. Under the Right to Information Act, 2005, the petitioner sought to know on 11-04-2012 from 2nd respondent the remarks of the Town Surveyor in ROC.No.9777/11-12/G4 submitted to the

respondent no.2. Copy of the remarks of the Town Surveyor, Guntur Municipal Corporation addressed to the Commissioner of the Municipal Corporation furnished to the petitioner show that he was informed by the Tahsildar, Guntur that no pattas had been granted to respondent Nos.6 to 8. This is not contradicted by respondent Nos.6 to 8 who continue to assert that they have got patta for house sites in R.S.No.658/8, 9 and R.S.No.655. The Tahsildar, Guntur who is impleaded as respondent no.5 has also not chosen to dispute the same. So it has to be held that respondent no.6 to 8 had no assignments of any land in their favor.

25. So it follows that they have taken a false plea in that regard only to give an impression that they have nothing to do with the petitioner's land though they are interfering with the possession and enjoyment of the petitioner as held by the Civil Court as explained below.

26. It is not in dispute that the petitioner filed O.S.No.284 of 2012 before the II Additional Junior Civil Judge, Guntur against respondent Nos.6 to 8 for perpetual injunction restraining them from interfering in any way with its peaceful possession and enjoyment of the schedule property and conducting of rituals therein either by way of trespass or otherwise and for costs.

27. The subject matter of the suit is an extent of 241.30 sq yds originally forming part of T.S.No.658, subsequently given

T.S.No.658/4 and 658/5 in old Ward No.16, New Ward No.21, Block No.11 of Ramachandrapuram Agraharam, near Koneru, Guntur town and District.

28. Admittedly during the pendency of the suit, interim injunction order was granted on 13-04-2012 in I.A.No.266 of 2012 by the said Court restraining respondent Nos.6 to 8 from interfering with the petitioner's peaceful possession and enjoyment of the plaint schedule property pending disposal of the suit. Subsequently on 24-06-2014, after contest, the said injunction was made absolute. It is also not in dispute that the said suit was decreed on 30-10-2015.

29. The Civil Court in its final judgment, observed that though the land assigned to respondents is in no way concerned with the plaint schedule property, still respondent Nos.6 to 8 denied the title of the petitioner-society and its right over the plaint schedule property and that this was surprising. The Civil Court also observed that the endorsement given by the Tahsildar, Ex.P-5, shows that no pattas were issued to anybody in Sy. No.658/4 and 5; that there were disputes between the petitioner and respondent Nos.6 to 8; and that the Revenue Divisional Officer (RDO) had passed order under Section 111 Cr.P.C. at the instance of the petitioner against respondents and others. It also noted that knowing fully well that the plaint schedule property belongs to the petitioner and it is not their property, the suit is being contested by respondents no.6 to 8 as if the they did not cause any interference over the plaint schedule property.

It also noted that when asked to give an undertaking, DW2 i.e respondent no.7 stated that there is no necessity to give undertaking as they have never interfered with the possession and enjoyment of the petitioner over the plaint schedule property; and that it itself indicates that the respondent Nos.6 to 8 were interfering with the possession and enjoyment of the petitioner over the subject property though they are claiming that they are in no way concerned with it. It held that the petitioner proved its possession and enjoyment of the schedule property and therefore it is entitled for permanent injunction.

30. From the above findings of the Civil Court, it is thus clear that the respondent Nos.6 to 8 were interfering with the possession and enjoyment of the petitioner over the subject property and that the mere fact that land allegedly given to them was far away from the plaint schedule property did not deter them from interfering with the possession and enjoyment of the plaint schedule property.

31. When a question was put to the learned counsel for the respondent Nos.6 to 8, whether any appeal has been preferred against the said judgment, he replied in the affirmative. If it is the case of the respondent Nos.6 to 8 that they were possessing land far away from the plaint schedule property and they were not interfering with the possession and enjoyment of the petitioner over the subject property, there is no necessity for them to prefer any appeal and this itself shows that respondent Nos.6 to 8 are interfering with the possession and enjoyment of the petitioner over the plaint schedule property.

32. That apart it is not disputed by respondents that the Guntur Municipal Corporation (2nd respondent) had issued notice on 22-06-2012 to respondent Nos.6 and 7 that they were making unauthorized construction of two A.C. Sheets sheds contrary to G.O.Ms.No.168 dt.07-04-2012 in premises bearing Door No.20-18-483, D.S.Nagar, 1st line. Photographs filed by respondent Nos.6 and 7 along with their counter affidavit show the existence of such sheds.

33. How the Guntur Municipal Corporation allowed them to construct the sheds even when there was no permission granted for their erection even after issuing the above notice is not satisfactorily explained by 2nd respondent. It is the obligation of 2nd respondent to enforce the law and ensure that illegal constructions made without obtaining permission from it are not allowed to stand.

34. The plea of the 2nd respondent that they are seeking certain records from the Tahsildar, Guntur in order to take action shows the escapist attitude of 2nd respondent since the constructions admittedly made by respondent no.s 6 and 7 are illegal and it makes no difference in which sub division of T.S.No.658 they are located.

35. According to the petitioner, these structures have been erected in its land. The respondent Nos.6 and 7 however state that there are only thatched huts in the lands assigned to them. If so, how the thatched huts became rooms with hollow bricks with A.C. sheet

roof on top has to be explained the same. It is thus clear that respondent Nos.6 and 7 are trying to mislead the Court and projecting as if they did not make any construction and obeyed the *status quo* order passed in the Writ Petition.

36. In this scenario, the constructions of the two A.C. sheets sheds made by respondent Nos.6 and 7 without any sanctioned plan, cannot be allowed to stand.

37. Therefore, the Writ Petition is allowed and the respondent No.2 is directed to forthwith take action under the provisions of the Greater Hyderabad Municipal Corporation Act, 1955 Act, 1955 in continuation of the proceedings dt.22-06-2012 already issued by him against the respondent no. 6-7 and demolish the sheds. For it's escapist attitude and disinclination to enforce the provisions of the Act, they shall pay costs of Rs.5000/- to petitioner. Likewise for attempting to mislead the Court by taking false pleas, respondent No.6-7 shall also pay costs of Rs.3,000/- each to petitioner.

38. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-11-2017

kvr