

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.28076 of 2012

ORDER:

Heard the learned counsel for the petitioners, learned Government Pleader for Municipal Administration, appearing for 1st respondent and Smt. G.Jhansi, learned counsel for 2nd respondent.

2. None appears for the 3rd respondent though personal notice sent by the permission of this Court by the petitioner is served on it.

3. The Government of Andhra Pradesh issued G.O.Ms.No.113 MA dt.19-04-1997 sanctioning for alienation of the property situated in R.S.No.489 (P) of Gunadala Revenue village, Vijayawada East at Rs.1300/- per square yard. The 2nd respondent also passed Resolution No.590 dt.19-07-1996 and allotted open plot No.24 in R.S.No.489 (P) of the said village to the petitioners.

4. Petitioners then entered into agreement with the 2nd respondent during 1996 and paid an amount of Rs.2,42,000/- on various dates by way of demand drafts.

5. Petitioners contend that at that time, they noticed certain encroachments around the plot allotted to them and by virtue of said encroachment, it would be difficult for petitioners to enter the said plot. As such, they made representations to 2nd respondent to remove the encroachments and then to receive the balance sale consideration

and to register sale deed in petitioners' favour. Some of the representations dt.06-08-2003, 15-10-2004, 15-12-2004, 18-08-2006, 28-07-2010 and 28-06-2012 given by the petitioners to 2nd respondent are filed in the material papers.

6. Petitioners contend that in spite of the same, 2nd respondent insisted that the petitioners pay the balance sale consideration and so on 15-11-2007, petitioners paid the balance sale consideration of Rs.4,11,525/- by way of demand draft in favour of 2nd respondent and the said amount was received by 2nd respondent and registered sale deed being Doc. No.3663 of 2008 dt.03-12-2008 was executed by 2nd respondent in favour of the petitioners. Petitioners contend that at the time of execution of the sale deed, 2nd respondent had assured that it will remove the encroachments existing around the plot which the petitioners have purchased, but did not do so compelling the petitioners to file the present Writ Petition.

7. Petitioners contend that petitioners were unable to make constructions in the plot purchased by them due to the encroachments which interfere with the petitioners' ingress and egress to the plot purchased by them and it would be difficult to put the plot to use unless and until the encroachments were removed. Petitioners contend that action of 2nd respondent in not removing the encroachments and not taking any action on petitioners

representations referred to above is arbitrary, illegal and violative of Articles 14 and 300-A of the Constitution of India.

8. The 1st respondent has not filed any counter and 2nd respondent has filed counter denying the allegations made by the petitioners. It is denied that 2nd respondent promised to evict the encroachments and it is stated that 2nd respondent had sold the plot “as is where is condition” and it is for the 3rd respondent which has subsequently come into existence to look after the removal of encroachment. It is stated that 2nd respondent is ready to cooperate with 3rd respondent for removal of encroachment.

9. As stated above, notice in the Writ petition has been served on 3rd respondent but there is no counter affidavit on its behalf.

10. The learned Standing Counsel for 2nd respondent states that it will cooperate 3rd respondent in removing encroachments around the plot sold to the petitioners by 2nd respondent although she is unable to commit to any time schedule within which 2nd respondent would remove the encroachments along with 3rd respondent.

11. Admittedly, the terms of the sale deed indicate that 2nd respondent, while conveying title to the subject plot also conveyed ways, courses etc. in favour of the petitioners and assured that the purchasers/petitioners would enjoy the same peaceably and quietly possess and enjoy the same premises free from all encumbrances and

without any lawful eviction, interruption, claim or demand whatsoever from or by the vendor or any other person or persons. It therefore cannot be accepted that the sale by 2nd respondent in favour of the petitioners is one conveying the property in “as is where is condition” as contended in the counter affidavit filed by the respondent. If it were to be so, condition of the above nature would not have been incorporated in the above sale deed. Once the 2nd respondent had agreed to ensure that petitioners shall enjoy the property after purchase, it cannot now wriggle out of the said commitment.

12. Having regard to the terms of the sale deed referred to above and having regard to the statement of the learned Standing Counsel for the 2nd respondent Smt. Jhansi that 2nd respondent will cooperate 3rd respondent for removal of the encroachment, the respondent Nos.2 and 3 are directed to ensure that access to the plot purchased by the petitioner under the above sale deed is free from any encroachments within four months from the date of receipt of a copy of this order. The 2nd respondent shall also pay costs of Rs.2,000/- to the petitioner.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-09-2017

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