

THE HON'BLE SRI JUSTICE P.KESHAHA RAO

WRIT PETITION No.4740 of 2016

ORDER:

Heard learned counsel for the petitioner, Sri Nimmagadda Venkateswarlu appearing for respondent No.2 municipality and learned counsel for the 3rd respondent.

2) The prayer in the Writ Petition is as under:

“...to pass an order or writ particularly in the nature of writ of mandamus by declaring the action of the 2nd respondent in issuing the endorsement vide ROC.No.5225/2015/A2 dated 11.01.2016 inspite of the knowledge of civil suit pending in respect of the concerned property and not considering the oral request as well as the legal reply of the petitioner dated 20.01.2016 as illegal and arbitrary and consequently direct the 2nd respondent not to proceed further in respect of endorsement in ROC.No.5225/2015/A2 dated 11.01.2016 in the interest of justice and to pass such other and further orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.”

3) A perusal of the affidavit filed in support of the writ petition shows that the petitioner and the unofficial respondent—3rd respondent are natural brothers. The case of the petitioner is that they have jointly purchased the subject property in the year 1995 through an agreement of sale and subsequently on 18.04.2006, two registered sale deeds have been obtained from the vendor. Originally, the property belongs to one Gandhi Raghava Rao. The property has been assessed by the 2nd respondent jointly in the name of the petitioner and the 3rd respondent and they have been paying taxes jointly since the date of purchase of the property.

4) The property purchased by the petitioner is facing the road and the property purchased by the 3rd respondent is on the rear side. As the 3rd respondent is living elsewhere, the petitioner took his portion on lease from 1996 onwards by paying rent of Rs.1,500/- per month initially and presently paying Rs.2,700/- per month. The lease period is upto 2030. However, after the death of petitioner's son, the 3rd respondent and his sons are trying to dispossess the petitioner illegally and thereby, he was constrained to file a suit in O.S. No.264 of 2015 for injunction simplicitor against the 3rd respondent and his sons and obtained interim orders, which are still in subsistence. Pending the suit, the 3rd respondent has filed an application before the 2nd respondent municipality seeking change of name in the municipal tax assessment by deleting the name of the petitioner. Pursuant to the said application, the 2nd respondent municipality has issued an endorsement vide ROC No.5225/2015/A2 dated 11.01.2016 asking the petitioner to furnish the documents mentioned therein within three days to the Commissioner, Chirala Municipality either through registered post or in-person. In the event of the above said documents not being submitted within time, further action will be taken with the available documents.

5) Aggrieved by the said proceedings, the present writ petition is filed.

6) A perusal of the said endorsement would indicate that it is a letter issued to the petitioner requiring him to submit relevant documents for the purpose of verifying the authenticity and to take necessary steps. In reply to the said endorsement, the petitioner has submitted an explanation on 20.01.2016 to the 2nd respondent that a suit for injunction simplicitor has already been filed against 3rd respondent on

the file of Principal Junior Civil Judge, Chirala and interim orders were obtained in I.A. No.1596 of 2015 and the same is pending for consideration. In the light of the pendency of the said suit, the petitioner requested the Corporation not to entertain the application submitted by the 3rd respondent for change of name. Learned counsel for the petitioner would also submit that as of now no orders have been passed on the explanation submitted by the petitioner and the same is still pending for consideration.

7) Learned counsel appearing for the 3rd respondent would submit that the writ petition is not maintainable since no cause of action arises for the petitioner enabling him to approach this Court. The cause of action would arise only if appropriate orders are passed pursuant to the endorsement dated 11.01.2016.

8) A perusal of the material on record would indicate that the endorsement dated 11.01.2016 is in the form of show cause notice requiring the petitioner to submit the relevant documents for the purpose of effecting mutation.

9) Be that as it may, though the counsel for the petitioner tried to convince this Court that since the suit is already pending for consideration before the competent civil Court, the 2nd respondent Corporation may be directed not to pass any orders. A perusal of the affidavit would indicate that in O.S. No.264 of 2016 pending on the file of Principal Junior Civil Judge, Chirala, an interim order was obtained by the petitioner restraining the 3rd respondent from interfering with his peaceful possession, which admittedly has nothing to do with either the title or ownership of the property. Be that as it may, since the impugned proceedings are only in the nature of show cause notice, this

Court is of the view that the writ petition is pre-mature and the same is liable to be dismissed.

10) Accordingly, the writ petition is dismissed. However, it is open to the petitioner to challenge the final orders that would be passed pursuant to the endorsement dated 11.01.2016 as per law. No order as to costs.

11) Consequently, pending miscellaneous Petitions, if any, in the writ petition shall stand closed.

JUSTICE P. KESHA RAO

16.04.2018
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