

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.24993 of 2009

ORDER:

This Writ Petition is filed to declare the action of the respondents in interfering with lawful possession of the petitioners over the land in Sy.No.113/ 44 admeasuring 0.04½ cents each situated at Chinna Mushidivada Village, Pendurthy Mandal, Visakhapatnam District, with Door Nos.7-115/ 6, 1-111/ 8 and 1-115/ 7 respectively, without issuing any notice and opportunity, as illegal and arbitrary.

2. The case of the petitioners, in brief, is that the petitioners are landless poor persons and by taking into consideration of their eligibility, the then Mandal Revenue Officer, Pendurthy Mandal, granted house site pattas to them on 05.10.1989; after granting of house site pattas, the petitioners have constructed thatched houses and have been residing therein; the 4th respondent-Corporation accorded door numbers; the said houses were assessed to property tax; the petitioners have submitted applications seeking building permission to the 4th respondent, since the houses that were constructed by them in the year 1989 have to be rebuilt with new construction, the 4th respondent is not according permission at the instance of the revenue authorities; the petitioners are not the encroachers; as the respondents visiting regularly and threatening to evict the petitioners, the present writ petition is filed.

3. On 18.11.2009, this writ petition was admitted and an interim direction was granted to the respondents not to dispossess the petitioners from the lands, stated to have assigned in their favour, as long as the assignment is in force.

4. Counter-affidavit has been filed by the 3rd respondent-Tahsildar stating *inter-alia* that the total land in an extent of Ac.30.95 cents in Sy.No.113 of China Mushidiwada Village of Pendurthi Mandal is classified as 'Gayalu'; part of the land was assigned to some of the land less poor persons for agriculture purpose in the year 1970 and the said assignments were cancelled for violation of conditions of the D-Patta and the land was resumed; some of the vacant government land in the said survey number, has been encroached upon by the petitioners and others; the pattas produced by the petitioners are fake and fabricated; even though the Municipal Corporation assigned door numbers to the encroachers and power connection was obtained, the petitioners do not have any right over the Government land; now the petitioners filed applications for regularization of the encroachments in terms of G.O.Ms.No.118 Revenue (Assn.I) Department dated 30.03.2016 and as amended in G.O.Ms.No.388 dated 24.08.2017; the said applications are under enquiry stage.

5. Counter-affidavit has been filed by the 4th respondent-Greater Visakhapatnam Municipal Corporation (GVMC) *inter-alia* stating that the petitioners have submitted building permission applications dated 16.02.2010 seeking permission for construction of RCC buildings by enclosing the pattas dated 05.10.1989 granted by the 3rd respondent; the 4th respondent returned the said applications since the petitioners have not submitted no objection certificate from the 3rd respondent with an endorsement dated 03.03.2010 and the same was acknowledged by the petitioners on 08.03.2010; there after, the petitioners have not resubmitted those applications; but the petitioners, without obtaining building permission, have constructed AC sheet sheds unauthorisedly.

6. The petitioners filed reply affidavits to both the counter-affidavits, reiterating the averments in the writ affidavit and further stated that the action of the 4th respondent in returning the applications for building permissions for want of NOC from the Tahsildar is contrary to the provisions of Hyderabad Municipal Corporation Act.

7. Heard the learned counsel for the petitioners, learned Government Pleader for Assignment and Revenue and the learned standing counsel for GVMC. Perused the record.

8. The prayer in the writ petition is seeking a direction against the respondents not to interfere with the lawful possession of the petitioners over the subject land; a further direction to the 4th respondent-Municipal Corporation to entertain the applications of the petitioners and accord building permission in accordance with law. As seen from the counter-affidavit filed by the 4th respondent-Municipal Corporation, the applications filed by the petitioners seeking building permissions were returned vide endorsement dated 03.03.2010 and the copy of the same was also received by the petitioners on 08.03.2010.

9. The contention of the learned Assistant Government Pleader for revenue (assignment) is that the petitioners were not granted any assignments and that the pattas produced by the petitioners are fake and fabricated. This Court under Article 226 of the Constitution of India cannot go into the issue whether the pattas, which are in the possession of the petitioners, are genuine or fabricated. The respondents have not filed any vacate petition to set aside the interim order and the interim order is in force till today. Learned standing counsel for the 4th respondent submits that the petitioners, instead of filing the writ petition seeking a direction not to interfere with their lawful possession,

ought to have filed a writ petition challenging the endorsement dated 03.03.2010, issued by the 4th respondent, returning the building permission application.

10. Admittedly, the building permission applications of the petitioners were returned by the 4th respondent-Municipal Corporation with an endorsement dated 03.03.2010 and the same were acknowledged by the petitioners on 08.03.2010. The writ petition is of the year 2009 and the petitioners have not challenged the endorsement dated 03.03.2010 of the 4th respondent-Corporation in returning the building permission applications.

11. In the facts and circumstances of the case, without going into the merits of the case, the writ petition is disposed of giving liberty to the petitioners to file a fresh writ petition challenging the endorsement dated 03.03.2010 of the 4th respondent. As the interim direction granted by this Court on 18.11.2009 is still in force as on today, the petitioners should not be dispossessed for a further period of eight (8) weeks from today. No order as to costs. As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

Date: 28.11.2018
BSS

KONGARA VIJAYA LAKSHMI, J