

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.2600 of 2018

ORDER:

Heard learned counsel for the petitioner, learned Government Pleader for Municipal Administration for respondent No.1, learned Government Pleader for Revenue for respondent No.2, learned Standing Counsel for respondent Nos.3 and 4 representing Hyderabad Metro Water Services and Sewerage Board (HMWSSB), learned Government Pleader for respondent No.5 for Panchayat Raj and learned Standing Counsel for respondent No.6 and 7 for Gram Panchayat and perused the prayer in the writ petition with supporting affidavit and other material on record and the written instructions submitted by learned Standing Counsel, Sri T.Sudhakar Reddy, for respondent Nos.3 and 4 that is adopted by the other official respondents supra.

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

“.....to issue a Writ, order or direction more particularly in the nature of Writ of Mandamus declaring the action of the 3rd and 4th respondent herein in active of consideration of respondent No.6 in allowing the construction of Over Head Service Reservoir (OHSR) under the Mission Bhageeratha Scheme in the petitioner's land within the extent of Ac.2.26 gts., in Sy.No.179/C, alleging to be park place, bank colony sy.No.179/C, Kompally Village, Quthbullapur Mandal, R.R.District, (presently known as Gandimaisamma Dundigal Mandal, Medchal Malkajgiri District) as Arbitrary, illegal and without jurisdiction and consequently direct the respondent No.3 and 4 to consider a representation dt.04.12.2017 to stop

the construction of Over Head Service Reservoir (OHSR) under the Mission Bhageeratha Scheme in the alleged park place, bank colony Sy.No.179/C, Kompally Vilage, Quthbullapur Mandal, R.R.District (presently known as Gandimaisamma Dundigal Mandal, Medchal Malkajgiri District) and pass such other order/s deems fit and proper in the interest of justice.”

3. It is the supporting affidavit averment that the petitioner’s husband late G.Padma Rao entered contract for sale, dated 10.08.1960, for Ac.2.26 gts. in Sy.No.179/C in the year 1960 from one Singidi Chittari and Adivamma W/o.Chittari also confirmed and ratified the same and after death of Chittari, the children of Chittari also executed G.P.A. in favour of Burugubavi Hanumanth Rao in the year 1972 for an extent of Ac.1.38 gts. in the said Sy.No.179/C and the said G.Padma Rao in turn sold some extent to one P. Sri Krishna, who purchased Ac.2.21 gts. in Sy.No.151 from P.Rajaiah and coincidentally the extent in Sy.No.179/C which is adjacent to Sy.No.151 and the said P. Sri Krishna, one of the partners of Meenakshi Constructions and Developers Company in the name of Jaya Bheri Park made application to HUDA to sanction layout in respect of the land in Sy.Nos.120P, 137/B, 138/A, 139, 146, 147, 149P, 150P, 151P, 153P, 154, 155/P, 178/P and 179/P of Kompally Village, for which G. Padma Rao, the writ petitioner’s husband, raised objection before HUDA for sanction of layout by letter, dated 23.10.2001, as HUDA has given draft layout approval by proceedings No.5944, dated 23.05.1998, which is subject to condition of the layout is tentative and sale of plots cannot be permitted till final layout

released by HUDA, but Jayabheri Park Developer in gross violation of draft layout and in breach of condition No.5 of the said proceedings, dated 23.05.1998, illegally sold plots to third parties based on the draft layout and the Meenakshi Constructions and Developers Company has not fulfilled and complied with the conditions of the draft layout, HUDA not even released the final layout and the same has been even lapsed in due course. G.Padma Rao even applied to the Survey and Land Department through Assistant Director for conducting of official survey and identification of the land of Ac.2.26 gts. in Sy.No.179/C and to fix the boundaries, the Meenakshi Constructions and Developers Company through said P. Sri Krishna conspired in sale, some of the plots from Sy.Nos.151 and 179/C and trying to encroach the land of the petitioner in Sy.No.179/C as lying adjacent and the land of the petitioners in Sy.No.179/C is part of the unapproved layout. It is also averred that suit for injunction in O.S.No.14 of 2016 filed before the Junior Civil Judge, Medchal, for injunction in respect of said Ac.2.26 gts. in Sy.No.179/C and another civil suit O.S.No.742 of 2015 filed for declaration of title pending before the XIV Additional District Judge, Malkajgiri and Adivamma W/o.Chittari among others filed suit for injunction in O.S.No.17 of 1991 on the file of the Principal Junior Civil Judge, Medchal, against G. Padma Rao and G.Padma Rao also filed another suit O.S.No.3 of 1993 pending on the file of the Principal Junior Civil Judge, Medchal, against Adivamma and others for injunction and the suit O.S.No.17 of 1991 was dismissed and the

suit filed by G.Padma Rao in O.S.No.3 of 1993 was decreed on 08.11.1999 by common judgment and A.S.Nos.2 and 43 of 2000 were also dismissed against G. Padma Rao in his life time filed O.S.No.3 of 2003 against P. Sri Krishna for injunction relief in respect of said Ac.2.26 gts. in Sy.No.179/C and the same was decreed on 31.10.2003. It is also averred that the above referred plot owners misrepresenting the facts to Gram Panchayat, Kompally, including the pendency of the civil litigation supra, are encroaching the land of the petitioner in Sy.No.179/C and there is a park land in Sy.No.151, however, it is misleading the officials of Panchayat Raj and Rural Development for construction of Over Head Service Reservoir (OHSR) the land belongs to the petitioner as if that is park land, under Mission Bhageeratha Scheme though the land in which the proposed OHSR going to be constructed is not even in the layout identified area as a park in Sy.No.151, but in Sy.No.179/C. The petitioner even made representations to the Managing Director of Hyderabad Metro Water Services and Sewerage Board (HMWSSB) questioning the digging of the land in Sy.No.179/C for OHSR, they are unheeding at the instance of respondent Nos.6 and 7-Gram Panchayat and if they are allowed to proceed with the construction, petitioner's valuable rights over her private property being affected. It is also stated that besides the considerable civil litigation supra, earlier W.P.No.38401 of 2015 filed against the revenue authorities with a direction allowed to conduct the survey and localisation of the land of the petitioner claimed in Sy.No.179/C and it is therefrom sought the reliefs prayed for.

4. Pending writ petition sought for interim protection order consequently.

5. The written instructions on behalf of respondents referred supra shows a report of the Sarpanch and Executive Officer of the Gram Panchayat, Kompally, addressing to the 4th respondent-General Manager, Project Division No.5 of HMWSSB saying so far as objection raised by one of the residents for locating the said OHSR in Sy.No.179/C of Bank Colony concerned, it is part of the tentative approved layout, dated 23.05.1998, and land is registered and developed by SD Engineers Private Limited and it is registered in the name of P.Sri Krishna, who obtained sale deed, dated 04.09.1996, and Mandal Revenue Officer also issued proceedings by mutation in his favour by issuing pattadar passbook and title deed and passed orders to that effect on 15.02.1992 and permitted for conversion of agricultural into non-agricultural, consequently covered by G.O.Ms.No.436 MA, dated 23.08.1996, and against the writ petitioner's grievance, orders passed by Mandal Revenue Officer in file No.A2/1997/92, dated 04.04.1997, and also against it by the Joint Collector in File No.D5/5739/97, dated 15.02.2005 and the documents referred supra thereby reveals that there is no dispute with regard to the land and it is part of tentative approved layout of 23.05.1998 and the location made the grounding of OHSR takes place is a park place and no where related to the objectors and residents of Bank Colony submitted a representation for construction of OHSR tank in the Bank

Colony and the objections raised are fake. So far as the residents of Bank Colony representation to the 4th respondent, dated 20.11.2017 concerned, saying Jayabheri Layout, Kompally, developed by SD Engineers Private Limited of P.Sri Krishna as referred supra and the adjacent owners entered development agreement, dated 15.03.1997, for Ac.87.15 gts. of the land by the layout and said P.Sri Krishna is the pattadar for the said Ac.1.38 gts. of land in Sy.No.179/C apart from other land, which he purchased from the legal heirs of Chittari under registered sale deed, dated 04.09.1996, through G.P.A. holder B. Hanumantha Rao, dated 08.03.1996, and Mandal Revenue Officer also mutated the property consequently and the revenue record thereby reflects the same, apart from the land is converted into non-agricultural in 1996 and the description of 23 plot owners covered by registered documents of 2017 referred saying they are in peaceful possession and enjoyment and stated that the said G. Padma Rao (writ petitioner's husband) application under Section 5-A of A.P. Rights in Land and Pattadar Passbook Act relying upon the so-called agreement of sale obtained from Chittari, dated 10.08.1960, was rejected and also the revision before the Joint Collector and a suit O.S.No.222 of 2005 for specific performance maintained by G. Padma Rao against the legal heirs of Chittari also ended in dismissal. It is these material that is relied upon with the written instructions by the respective respondents.

6. Insofar as the writ petitioner earlier filed W.P.No.38401 of 2015 to direct the Inspector of Survey and Land Records to conduct survey in respect of the land in question and the writ petition was disposed of to conduct the survey by taking necessary steps is not relevant much herein.

7. The main issue is, the Sy.No.179/C of Ac.1.38 gts. which is the subject matter for construction of the OHSR tank in question from the tentative layout approved and earmarked as a park site can be permitted to construct the OHSR tank in question; leave about the writ petitioner got right over the property or said P.Sri Krishna, the so-called developer, got right over the property from the rival claims from the original purchase from the original owner Chittari from the entire material on record. So far as the construction of the OHSR tank, though for the public cause, once the respondents are not the owners and not vested in any manner the site in question they cannot construct the OHSR tank by taking away the constitutional right to property of the private individual. What the respondents now say with reference to the enclosures to the written instructions is that residents of the locality of the layout laid by P. Sri Krishna given their consent for construction of the OHSR tank in the park area. A park area is once an earmarked common property, the respondents cannot convert the park area impeading the very purpose of its earmarking and against the norms and want to construct a OHSR tank. However, at this stage, it is the submission by the learned counsel for respondent

Nos.3 and 4 that as per the tentative layout plan, no doubt, final approval is not there, there are other vacant sites in which a park can be located by shifting park place and the officials are going to do so preferably to identify the park in Sy.No.151 or the like other than at Sy.No.179/C and from consent and request of the residents of the Bank Colony and to sub serve the equally larger public purpose involved in construction of the OHSR tank thereby is to be permitted, so that if at all the writ petitioner is able to prove her entitlement in civil lis, they remove without equities or acquire.

8. Having regard to the above, so far as this site covered by the park area earmarked as per the tentative layout from the said builder P.Sri Krishna applied for approval as per the say of the respondents to be changed to some other place the park and use the property concerned, in view of the respondents undertaking supra, the petitioner may not have a tenable objection, but for to say pursuant to her claim of right over the property as per the sale agreement executed by Chittari way back in 1960 if she succeeds in civil lis she can ask for demolition of the water tank unless being acquired to pay compensation. Once such is the case, this Court in the writ petition need not go into the disputed and complicated questions of facts as to the petitioner got title over the property pursuant to the sale agreement executed by Chittari allegedly ratified by his wife and children later or said P.Sri Krishna from his socalled subsequent purchase of part of the property from legal heirs of said Chittari, which is a matter to be

decided in the pending civil lis or otherwise by a civil Court and is thus outside the purview of the scope of the writ petition lis.

9. Having regard to the above, without prejudice to such recourse for the petitioner and including to implement the direction of the earlier writ petition for survey if at all it is not complied to take further steps there under, which is also beyond the scope of the present writ petition, the construction of the OHSR Tank shall go on subject to own risk of the respondents, who cannot ask any equities if at all the petitioner ultimately proved her entitlement for its demolition unless the respondents choose to acquire the same by initiating the proceedings contemplated by law.

10. Apart from the above, the respondents within one month from date of receipt of this order shall cause earmark and provide park in other available vacant site pursuant to their undertaking supra and submit the same to the Registrar Judicial to place before the Court, else action necessary can be initiated suomotto by this Court.

11. Accordingly, the writ petition is disposed of.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

1st February 2018

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Dr. B. SIVA SANKARA RAO, J