

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.14409 of 2006

O R D E R:

Petitioners state that one O.Mallesha, who is the pattadar of the land admeasuring 440 square yards in Survey No.820-A of Kukatpally Village, Ranga Reddy District, raised temporary construction thereon; that the said Mallesha executed General Power of Attorney (G.P.A.) in favour of petitioner No.1 on 22.09.1980, which is placed on record, with regard to sale of the above said land; that petitioner No.1 executed an agreement of sale in favour of petitioner No.2 on 14.04.2006; that after receiving the part sale consideration, possession was delivered to petitioner No.2; that when temporary constructions on the subject land were removed by respondent No.1 – Commissioner, Kukatpally Municipality, without issuing any notice to the original pattadar or petitioner No.2, petitioner No.2 submitted a representation, dated 16.06.2002, along with relevant documents, to the respondents by stating that it is a private land and he purchased the same under the aforesaid agreement of sale and that on 21.06.2006, petitioner No.2 got issued a legal notice to the District Collector, Ranga Reddy to direct the authority concerned for conducting survey in order to prove that he purchased the private land, but, the respondents did not take any action so far. Hence, the petitioners filed the present writ petition seeking to

declare the action of the respondents in demolishing the constructions made on the subject land without issuing any notice, as illegal and arbitrary.

Respondent No.1 filed a counter-affidavit asserting that the subject land is an open space left for public purpose *vide* LP No.9/80 of A.P. Housing Board, Bharath Nagar, Kukatpally; that the petitioners created the agreement of sale to grab the subject land and as it is not a registered document, the same does not convey ownership right to petitioner No.2; that the petitioners never submitted ownership documents as alleged in the writ affidavit; that the representations were submitted only for demarcation of the subject land and that the Municipality is in possession of the subject land since 1980.

Heard learned counsel for the petitioners.

Learned Standing Counsel for respondent No.1 submits that originally, A.P. Housing Board was the owner of the land and left the subject land as open space, as such, the Municipality is in possession of the same.

A perusal of the G.P.A. discloses that it was executed by one Oggu Mallesh and Oggu Shankaraiah in favour of P.Basavaraju and T.Narsing Rao with respect to the land admeasuring Ac.0.32 guntas in Survey No.820 of Kukatpally

Village West Taluq, Ranga Reddy District. Whereas, the agreement of sale indicates that it was executed by one T.Narsing Rao and Mohammed Buran Sab in favour of petitioner No.2. It may be noted that the said G.P.A. is not a registered document in terms of the Powers of Attorney Act, which mandates that if any right to sell a property is given to the G.P.A., such document is required to be stamped and registered. In other words, the G.P.A. executed in favor of petitioner No.1 by the original pattadar is an unregistered one, as such, petitioner No.1 would not get any right to enter the agreement with petitioner No.2. It may also be noted that except stating that originally, the property was owned by Mallesh, there is no supporting document filed by the petitioners in proof of the same. Further, the specific assertion of respondent No.1 in the counter-affidavit that A.P. Housing Board left the subject land as open space is not refuted by the petitioners by filing any reply affidavit. Even according to the provisions of the Stamp Act as well as the Registration Act, an agreement of sale, through which, possession was delivered, is required to be stamped and registered. But, in the case on hand, the agreement of sale is alleged to have been executed only on Rs.100/- worth stamp paper, and legality of the same is doubtful.

In those circumstances, there being a cloud with respect to the title to the subject property, no relief as such can be granted in favour of the petitioners.

The writ petition is accordingly dismissed.

Though the learned counsel for the petitioners seeks to grant liberty to the petitioners to approach the civil Court, this Court is not inclined to grant the same.

Miscellaneous Petitions, if any pending shall stand disposed of. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Dt: 27.09.2018
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