

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.4289 of 2018

ORDER:

Heard the learned counsel for petitioner, learned Government Pleader for Municipal Administration & Urban Development (TG) for respondent No.1, and Sri Chatla Madhu, learned Standing Counsel, on the written instructions, for respondents 2 and 3 with counter by the unofficial respondent No.4 and perused the prayer in the writ petition with supporting affidavit and other material on record. The prayer in the writ petition is as follows:

“to issue a writ, order or direction more in the nature of Writ of Mandamus declaring action of the respondents more particularly respondent No.3 in seeking to grant permission for construction on the property bearing Sy.No.357/ 4 & 5 situated at Amba Nagar, Moulali, Hyderabad admeasuring 5059 square yards to respondent No.4 or to third parties without any right, title or interest in the said property, as illegal, arbitrary and contrary to Article 14 of the Constitution of India and contrary to the orders in I.A.No.1692 of 2013 in I.A.No.3713 of 2012 pending in O.S.No.21 of 1998 on the file of XVI Additional District Judge, Malkajgiri, Rangareddy District on 04.04.2014 and to pass such other order or orders as this Hon’ble Court may deems fit just and proper in the circumstances of the case.”

2. It is the submission of the learned counsel for the petitioner that pursuant to the preliminary decree in the partition suit i.e., O.S.No.21 of 1998 on the file of XVI Additional District Judge, Malkajgiri, Rangareddy District, by virtue of the Doctrine of Matrix, the said suit dismissed was

allowed in appeal in A.S.No.218 of 2003 on 29.02.2012 fixing entitlement of 1/3rd share each by sole plaintiff by then and two defendants. Leave about any of them since died and legal representatives brought on record, the matter went upto the Supreme Court, wherein the Supreme Court confirmed the appeal judgment of the High Court in A.S.No.218 of 2003 by dismissing the Civil Appeal on 02.07.2012, including the Review Petition before this Court on 15.03.2015 and the final decree petitions, pursuant to the preliminary decree supra, filed are pending in I.A.No.3713 of 2012 and I.A.No.3714 of 2012, one is for division of properties and the other is for ascertainment of profits (as it appears) and there is also an interim injunction against the alignees pending final decree petitions disposal, particularly for division of properties in I.A.No.3713 of 2012, in I.A.No.1692 of 2013 with orders therein not to alienate, passed on 04.04.2014, and that pending finalization of the final decree proceedings regarding division of properties in I.A.No.3713 of 2012, taking advantage of some of the alignees by the original defendants or their legal representatives, as the case may be, though the alignees are trying to obtain approved plan from the respondents 2 and 3 behind their back and put their efforts, many complications made creep in without actual division of the defined rights, pursuant to the preliminary decree pending finalization of the

final decree application for division of properties in I.A.No.3713 of 2012.

3. Sri Chatla Madhu, learned Standing Counsel, submits that there is no building permission so far granted and any thing to be granted is with reference to the verification of records and if at all there is any civil dispute, they will relegate parties to settle in the appropriate Forum and so far no permission was given and no construction activity was taken up.

4. So far as the counter of respondent No.4 stated as one of the legal representatives of defendant No.1 of the suit that several allegations made in the writ petition are untrue, however, the respondents 2 and 3 cannot grant any approved plan for any alignees because of the pendency of final decree proceedings in I.A.No.3713 of 2012.

5. Having regard to the above, this Writ Petition is disposed of directing the respondents 2 and 3 not to entertain for approval of any plan in any part of the property undivided interest, even alienated as specific interest, by virtue of any alienation without finalization of the actual division of properties by metes and bounds in the pending final decree petition in I.A.No.3713 of 2012, which is now pending on the

file of XVI Additional District Judge, Malkajgiri, Rangareddy District. No order as to costs.

Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

14.03.2018
MVA

