

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.11031 of 2005

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India seeking to declare the action of the first and second respondents in seeking to interfere with petitioner's possession and dispossess the petitioner from the land admeasuring 891 Sq.Mtrs. (1066 Sq. yards) forming part of land in (old survey No.403/11) new survey no.120/403-1 of Sheikpet Village and survey No.102/1 of Hakimpet Village in Ward No.8, Block No.2 bearing Plot No.723/A of the Jubilee Hills Co-operative House Building Society as per layout sanctioned by the Municipal Corporation of Hyderabad, as arbitrary, illegal and unconstitutional and consequently to direct the respondents not to interfere with petitioner's possession and enjoyment of the said land.

2. The case of the petitioner is that originally the third respondent-Society was allotted the land to an extent of Acs.1398-00 in old survey No.403 new survey No.120/403-1 of Sheikpet Village and survey No.102/1 of Hakimpet Village by the Government through G.O.Ms.No.147, Revenue Department, dated 31.01.1964. Thereafter, the Government resumed an extent of Acs.218-80 and allotted to various other Co-operative House Building Societies. The third respondent-Society was left with land to an extent of Acs.1179.20. The lay out for the said land was approved by the Municipal Corporation of Hyderabad and plots were allotted to various members of the third respondent-Society. One Smt.Vallivayai Meer Raja Gopal was allotted the plot No.723/A admeasuring 891 Sq. Mtrs. (1066 Sq. Yards) and a registered sale

deed was executed by the third respondent-Society and registered in the Office of the Sub-Registrar, Khairatabad, on 10.09.1991. Later, the petitioner purchased the said plot from Smt.Vallivayai Meera Raja Gopal on 24.12.1999 through registered sale deed, registered in the Office of the Sub-Registrar, Banjara Hills, Hyderabad.

3. The petitioner's predecessor in title, after original allotment, had constructed a house in the said plot after obtaining permission vide permit No.79/72 in File No.1115/open/8/97 dated 01.09.1997 from the Municipal Corporation of Hyderabad. The house was assessed for property tax and the same was paid regularly to the Municipal Corporation, Hyderabad. The petitioner further states that there seems to be a boundary dispute between the third respondent and the first respondent on the ground that the third respondent occupied more extent of land over and above allotted to it. In fact, the Government had issued memo No.50920/Assn.III/1/2000 dated 29.06.2001 directing the first respondent to withdraw the cases against the members and to examine the entire dispute in an objective manner. While things stood thus, the officers of the first and second respondents had repeatedly threatening to take over possession of the land high handedly without any notice and due process of law, which the petitioner was successfully resisted. Again the first and second respondents had came to the petitioner's house and threatened to demolish the house of the petitioner. Questioning the said illegal action of the first and second respondents, this Writ Petition is filed.

4. Heard the learned counsel for the petitioner and the learned Assistant Government Pleader for Revenue (TS) for respondents 1 and 2.

5. The learned counsel for the petitioner would contend that the petitioner's vendor was originally allotted with plot No.723/A and a registered sale deed was also executed by the third respondent-Society. Petitioner's vendor constructed a house after obtaining necessary permission, the house was assessed for property tax and the property tax was being paid regularly. Thereafter, the petitioner purchased the same through registered sale deed and property tax is also being paid by her regularly. The petitioner is in possession of the house property. The first and second respondents are high handedly threatening to demolish the house without due process of law, arbitrarily and illegally. The action of the first and second respondents in trying to demolish the house is illegal and contrary to the ratio laid down by the Supreme Court in ***East India Hotels Ltd., vs. Syndicate Bank***¹, ***Meghmala and others v. G.Narasimha Reddy and others***² and ***Maria Margarida Sequeria Fernandes and others vs. Erasmo Jack De Sequeria (dead) through LRs***³. The learned counsel further contended that the person in possession cannot be dispossessed except by due process of law.

6. The learned Assistant Government Pleader fairly admitted that the petitioner is in possession of house property and submitted that the petitioner constructed the house by encroaching a small portion of the government land. The first and

¹ 1992 Supp (2) SCC 29

² 2011 (2) ALT 8 (SC)

³ AIR 2012 SC 1727

second respondents may be given liberty to follow due process of law and evict the petitioner from the government land.

7. While admitting the writ petition on 10.05.2005, this Court granted interim direction restraining respondents 1 and 2 from interfering with petitioner's possession of an extent of 891 Sq. Mtrs. (1066 Sq. Yards) of land forming part of (old Sy. No.403/1) new survey No.120/403-1 of Sheikpet Village and survey No.102/1 of Hakimpet Village in ward No.8, Block No.2, bearing Plot No.723/A of the Jubilee Hills Co-operative House Building Society.

8. In view of the submissions of both the counsel, on perusal of the record, in considered view of this Court, the petitioner has purchased the house property through registered sale deed and in long standing possession of the house property. At this length of time, the petitioner should not be dispossessed without following due process of law, however, not by summary proceedings, as held by the Hon'ble Supreme Court.

9. Accordingly, the Writ Petition is disposed of.

10. Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

M.GANGA RAO, J

5th January, 2018.
sur/mva