

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.3720 of 2007

Order:

This Writ Petition is filed questioning the sanctioning of three layouts in respect of the petitioner's property in Survey No.118 of Bhoktapur locality, Adilabad Town and District by the fifth respondent – Director of Town Planning basing on the recommendations made by the third respondent – Commissioner, Adilabad Municipality, vide (i) LP No.95/77 in File No.(FH) No.12734/77/05) dated 23.07.1977, (ii) LP No.430/79 in File No.8347/79/D5, dated 31.10.1979 and (iii) LP No.336/83 in File C.No.21499/80/D5-C.No.21331/82/D5, dated 16.07.1983 and to set aside the same as illegal and fabricated and a consequential direction was sought to direct the fourth respondent – Director General of Vigilance, Hyderabad, to enquire into the matter and to take disciplinary action against the culprit officers.

The case of the petitioner, in brief, is that he is the owner of the land admeasuring 2503.69 sq. yards, out of total land admeasuring Ac.1-07 gts., situated in Survey No.118 of Bhoktapur village, Adilabad Town and District and the said property is his ancestral property; he filed OS No.89 of 2005 and got a decree; he also filed WP No.13263 of 2004 for demarcation of the land and to fix the boundaries; the said Writ Petition was disposed of on 29.07.2004 directing the Assistant Director, Survey, Settlements and Land Records, Adilabad, to inspect and demarcate the land of the petitioner; pursuant to the said orders, the Assistant Director, Survey, Settlements and Land Records demarcated the land and fixed the boundaries; the petitioner is having the documents viz., Pahani Patrika, title deed, civil Court decree and the order of this Court

dated 29.07.2004 in WP No.13263 of 2004; the petitioner executed a Gift Deed on 13.10.2006 in favour of his son; the petitioner made a representation dated 03.02.2006 requesting the third respondent to make assessment of the said land and collect property tax by allotting the house number to enable him to construct a building over the said land; as per the Circular dated 26.06.2006, the third respondent has to collect tax and allot the house number; the third respondent has rejected his application on 07.11.2006 stating that there is no layout sanctioned in Survey No.118 in the name of the petitioner; three layouts were sanctioned by the Director of Town Planning basing on the recommendations made by the third respondent; whenever the Government changes the Commissioner is sanctioning the new layout by collecting huge amounts from the interested parties; some political leaders are pressurizing the third respondent not to collect property tax and not to allot house number to the petitioner.

Counter affidavit has been filed by the third respondent - Municipal Commissioner, Adilabad Municipality, Adilabad district, stating, *inter alia*, that the petitioner has submitted an application on 03.02.2006 along with copies of (1) order in WP No.13263 of 2004, dated 12.07.2004, (2) copy of OS No.89 of 2005 on the file of Junior Civil Judge, Adilabad, dated 20.06.2005, (3) copy of Assistant Director of Survey and Land Records, Adilabad, Panchanama dated 26.12.2004 and (4) two maps; the site was inspected with reference to the submitted documents and the boundaries of site shown in OS No.89 of 2005 is admeasuring 278.18 sq. yards situated at Bhukthapur near Sai Nursing Home, near House No.7-2-52/10/1 and 7-2-59/10/3, and bounded by South: house of NNK Reddy, North: road leading to Tamsi village, East: house of Bandhukula

Bhagwandlu and West: open land belongs to the plaintiff; but the petitioner has erected a shed admeasuring 11' x 30' made up of thatched and zinc shed and also fenced the land to an extent of 52' x 76'.6" which is situated behind Natraj theatre nearest house No.6-6-15 which did not tally with the submitted documents as it is very far from the said site; thus the petitioner has misguided the Municipality duly submitting sketch plan and erecting shed; in view of the said facts the petitioner cannot ask for implementation of Circular dated 26.06.2006 issued by the C & DMA, Hyderabad and that the Municipality cannot issue construction permission on the said land as the petitioner does not have clear ownership and title; the petitioner's son namely Sarfaraz Ahmed also submitted an application along with copy of registered gift deed dated 13.10.2006 and requested for mutation of open Plot 25 x 120 in Survey No.118/A, situated behind Natraj Theatre, Bhukthapur; when the said documents were verified with the records it was found that there is no assessment in the name of the petitioner herein on the said plot and no layout has been sanctioned either in his name or in the name of any of his legal heirs; in view of the same, the application of the petitioner's son for mutating his name by assessing the tax allotting number was not considered and it was rejected on 07.11.2006; the Director of Town and Country Planning has sanctioned layout LP No.95/77 in favour of the applicant namely Syed Tajuddin, S/o Syed Hyder in Survey No.118 of Bhukthapur, Adilabad vide D.Dis.No.12123/77-D5, dated 26.07.1977 on the bases of the decree and Court order in LGC No.331/A/75, dated 04.10.1976; the Municipal Council, Adilabad, vide resolution dated 02.09.1977 has approved for implementation of the layout and accordingly the layout was released to the applicant on 02.09.1977; regarding sanction of LP No.430/1979, the

layout number is 420/1979 but not 430/1979 as alleged by the petitioner in favour of the applicant Syed Tajuddin, S/o Syed Hyder basing on his ownership to an extent of Ac.2-00 in Survey No.118 of Bhukthapur village; regarding the layout LP No.336/1983, the Director of Town Country Planning has sanctioned comprehensive layout in Survey Nos.118, 119, 120/A and 120/B of Bhukthapur village, Adilabad; the Survey Nos.119, 120/A and 120/B are not related to the present Writ Petition.

Additional counter affidavit has been filed on behalf of the third respondent stating that the petitioner has submitted an application duly enclosing copies of award passed by the Lok Adalat in W.P.No.24736 of 2006 dated 11.04.2015 and order of this Court in WP No.24736 of 2006, dated 25.01.2017, and requested to collect the property tax and allot door number; the said Writ Petition was referred to the Lok Adalat for settlement and both the parties appeared before the Lok Adalat and hence the third respondent was directed to consider the case of the petitioner and pass appropriate orders in terms of the award dated 11.04.2015; pursuant to the said award, the Town Planning Staff inspected the site with reference to the documents and the boundaries of site shown in OS No.89 of 2005 which are as follows:

- South: House of NNK Reddy
- North: Road leading to Tamsi village
- East: House of Badhkala Bhagwandlu
- West: Open land belongs to the plaintiff

The said site is situated at Bhukthapur near Croma Hospital near House No.7-2-52/10/1 and 7-2-52/10/3, but the petitioner has shown the site i.e., the boundaries of the site situated at Bhukthapur are as follows.

- East: Compound Wall of Natraj Theatre
- West: 30 feet wide road

North: Shops of Raghunath Mittal, S/o Shambunath

South: Open Plot

At the backside of Natraj Theater nearest House No.6-6-15 the petitioner has constructed four shops and the said shops site is not tallying with the boundaries of the site shown in OS No.8 of 2005 and it is very far from the said site; in view of the same, the request of the petitioner and his son were not considered; with regard to layout LP No.95/77 the same was sanctioned on 26.09.1977 for an extent of 1644.4 sq. yards with 19 plots and at present all the constructions have been come up and there are no open plots in the said layout; regarding layout LP No.420 of 1979 the same was granted on 09.10.1979 for an extent of 1254 sq. yards with 10 plots and the constructions were made in the said layout; regarding layout LP No.336 of 1983 the same was a comprehensive layout in Survey Nos.118 part, 119 part and 120/A part to an extent of 9506 sq. yards and the layout was divided into 3 sites i.e., A, B and C; whereas A and B site falls in Survey Nos.118/P and 119/P and site C falls in Survey No.120/A; the sites A, B and C consists of 75 commercial plots and all the constructions were come up except 2 plots in site A which is situated at the southern side of the alleged property of the petitioner and prayed to dismiss the Writ Petition.

Reply affidavit has been filed by the petitioner to the counter affidavit filed by the third respondent reiterating the writ averments.

Heard learned counsel for the petitioner, learned Government Pleaders and learned Standing Counsel for Municipality.

The case of the petitioner is that three layouts have been sanctioned in his property. To prove his title the documents relied upon by the petitioner, as shown in his reply affidavit, are; (1) deposition of the

Assistant Director of Survey and Land Records, Adilabad in OS No.25 of 2004 on the file of the Judicial Magistrate of First Class-cum-Junior Civil Judge, Adilabad recorded on 04.04.2007, (2) dependant certificate issued by the Mandal Revenue Officer, Adilabad dated 04.12.1989, (3) panchanama report conducted by the Assistant Director, Survey and Land Records dated 26.12.2004, (4) Sketch Map and Tonch Map issued by the Assistant Director, Survey and Land Records, (5) Adangal Pahanies for the years 2004 to 2006. None of those documents would prove the title of the petitioner to the subject land. Apart from that, the present Writ Petition is filed in 2007 questioning the layouts granted in the years 1977, 1979 and 1983. No explanation whatsoever has been given by the petitioner as to why there is abnormal delay in approaching this Court, if at all he is the owner of the property and the subject layouts were granted to third parties in his land. The judgment and decree of the Court below in OS No.89 of 2005 which the petitioner relies upon is not filed along with the Writ Petition or along with the reply affidavit. The other document which he relies upon is the order of this Court in WP No.113263 of 2004, dated 29.07.2004. The said Writ Petition was filed seeking a direction to the respondents to conduct a survey for demarcating and pointing out the correct boundaries of the land of the petitioner to an extent of Ac.1.07 gts., in Survey No.118 of Bhuktapur village, Adilabad Mandal and District. The said Writ Petition was disposed of directing the respondents therein to inspect and demarcate the land of the petitioner. According to the petitioner, the Assistant Director, Survey, Settlements and Land Records, Adilabad has issued notices, inspected the land, demarcated the same and fixed the boundaries.

As seen from the counter and additional counter affidavit filed by the third respondent, the site was inspected with reference to the submitted documents and the boundaries of site shown in OS No.89 of 2005 which is admeasuring 278.18 sq. yards situated at Bhukthapur near Sai Nursing Home, near House No.7-2-52/10/1 and 7-2-59/10/3, but the petitioner has erected a shed admeasuring 11' x 30' made up of thatched and zinc shed and also fenced the land to an extent of 52' x 76'.6" which is situated behind Natraj theatre which is nearest House No.6-6-15 which is a totally different site and which is not tallying with the documents submitted by the petitioner. In view of the same, the petitioner could not prove his title over the subject land by showing the relevant documents and as the site shown is not tallying with the boundaries in OS No.89 of 2005 the petitioner is not entitled to seek for cancellation of three layouts which were issued during the period from 1977 to 1983.

The petitioner did not file copy of judgment and decree in OS No.89 of 2005 which he is relying upon in the Writ Petition. The petitioner did not even give the details of the parties in the said suit and details of the Court which passed the judgment and decree in his favour. Even though the reply affidavit refers to about five Writ Petitions, except the order copy in Writ Petition No.13263 of 2004, none of the copies of the Writ Petition Nos.4858 of 2006, 24736 of 2006 and 28032 of 2010 or orders passed by this Court in those three Writ Petitions were filed along with the Writ Petition or thereafter.

On 24.10.2017 this Court directed the petitioner to file an application to implead the persons who the petitioner alleges have obtained three layouts over his land as party respondents in the Writ Petition. Thereafter, the matter underwent several adjournments from

09.11.2017 to 23.10.2018, but the petitioner did not take any steps to file implead petition as directed by this Court on 24.10.2017. However, on 23.10.2018, learned counsel for the petitioner sought permission to implead the persons who obtained the layouts in the years 1977, 1979 and 1983. Even though time was granted to implead the persons who obtained the layouts over the land of the petitioner and who will be affected if the layouts were cancelled, they were not impleaded as parties to the Writ Petition. The Writ Petition is liable to be dismissed even on the ground of non-impleadment of the necessary and proper properties to the Writ Petition.

As the Writ Petition is filed for cancellation of the three layouts of the years 1977, 1979 and 1983 and as the persons who obtained the said layouts in the subject land were not made parties to the Writ Petition and also for the other reasons discussed above, the Writ Petition is liable to be dismissed and is, accordingly, dismissed. However, the petitioner is at liberty to avail the alternative legal remedies available to him under law, if he is so advised, by producing all the necessary documents pertaining to his title to the subject land. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 17th December 2018
Nsr

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI



Date: 17th December 2018

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