

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.13533 of 2009

ORDER:

The brief facts of the case are that petitioner No.1 filed O.S.No.51 of 1985 against respondent No.1 - Commissioner, Gadwal Municipality, in the Court of Junior Civil Judge, Gadwal, Mahaboobnagar District, for perpetual injunction over the subject land and the said suit came to be decreed in 1989; that aggrieved by the same, respondent No.1 filed A.S.No.21 of 1989 before the Subordinate Judge, Gadwal, and it came to be dismissed on 13.08.1993 and also SA No.250 of 1994 before this Court and it was dismissed on 04.02.2004; that thereafter, the mother of respondent No.2 filed W.P.No.3890 of 2005, which came to be disposed of by this Court vide order, dated 28.04.2005, directing her to workout the remedies before the civil Court and that aggrieved by the said order, the mother of respondent No.2 filed W.A.No.1115 of 2005, which in turn, was dismissed by the Division Bench of this Court vide judgment, dated 17.06.2005.

While the matter stood thus, alleging that the petitioners are making construction affecting his ingress and egress, respondent No.2 submitted representations to respondent No.1 for taking necessary action against them, but, when respondent No.1 did not take action, respondent No.2 filed Writ Petition No.2464 of 2009, which in turn, was disposed of by this Court vide order, dated 11.02.2009 directing respondent No.1 to consider his representations and take necessary action against the petitioners

by issuing notices. Thus, respondent No.1 issued a Provisional Order vide notice, dated 13.05.2009 to the petitioners and thereafter, confirmation order/notice, dated 22.05.2009, directing them to remove the unauthorized constructions of latrine bathroom within three days from the date of receipt thereof. In the circumstances, they filed the present Writ Petition seeking a writ of Mandamus.

In the counter-affidavit, respondent No.1 while not disputing the facts of the case, asserted that the petitioners were granted permission only for construction of a compound wall, but, they have constructed the bathroom and latrine without obtaining any permission, thereby, they have violated the municipal building regulations and thereby, the notice in Provisional Order, dated 13.05.2009 and the impugned confirmation order came to be passed and that they have failed to give reply thereto.

In the counter-affidavit filed along with WVMP.No.2393 of 2009, respondent No.2 states that his father purchased land admeasuring 2750 square feet from the Municipality, which made the plots of Kandak land, and the same was approved by the Municipal Council in the year 1962 with boundaries from east to west 50 feet and north to south 55 feet; that in spite of his best efforts, he could not secure the documents evidencing the making of plots by the Municipality; that he filed LGOP No.1 of 2006 before the Special Tribunal-cum-District Judge, Mahaboobnagar under the provisions of the A.P. Land Grabbing (Prohibition) Act 1982; that the Tribunal as required under Rule 6 of the APLG (P)

Rules 1988 called for a report from the Mandal Revenue Officer and took cognizance wherein the Mandal Revenue Officer was specifically directed to get the land measured through Municipal Surveyor for which separate application was filed; that the Tribunal appointed an Advocate Commissioner by order, dated 19.09.2008; that as the petitioners had started construction blocking his easementary rights, he submitted a complaint to respondent No.1; that after verification, respondent No.1 got issued a notice, dated 13.05.2009, to the petitioners and thereafter, the impugned confirmation order and thus, there is no illegality in issuing the same.

From the above, it is evident that there is no dispute with respect to the decreeing of the suit and dismissal of the appeal as well as the second appeal. Though it is the contention of respondent No.2 that the petitioners had encroached upon the land of respondent No.1 over an extent of 1007 of Kandak land and made constructions, respondent No.1 stated in its counter-affidavit that the petitioners sought permission for construction of compound wall but made illegal constructions over the place without obtaining necessary permission. In other words, the construction which has been made prima facie is on the land of the petitioners.

It may be noted that the present writ petition is not with respect to the dispute in relation to the alleged occupation of the petitioners over an extent of 1007 square yards. The only reason which respondent No.1 stated in the counter-affidavit is the orders

of this Court in W.P.No.2464 of 2009 filed by respondent No.2 wherein this Court directed it to consider the representation of respondent No.2 for taking action against the petitioners and passing appropriate orders in accordance with law. Yet another reason stated in the counter-affidavit is that non-filing of the reply by the petitioners to the provisional notice. Even assuming that the petitioners had failed to give any reply to the notice, in view of admission of respondent No.1 in the counter-affidavit that the suit filed against respondent No.1 was decreed in favour of petitioner No.1, it can be said that respondent No.1 issued the impugned confirmation order/notice without application of mind and the same is liable to be set aside.

Accordingly, the writ petition is allowed setting aside the impugned order.

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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