

SRI JUSTICE S.V. BHATT

Writ Petition No.18189 of 2018

ORDER

Heard Sri K. Ramakrishna, learned counsel for petitioner, Sri K. Ramakotaiah, the learned Assistant Government Pleader for R1 to R4 and learned Government Pleader for Home for R5 to R9.

2. The petitioner prays for mandamus declaring the action of respondents in demolishing the structures and causing loss to the persons and also property in Sy.No.149 measuring Ac.22.00 gts., situate at Nanakramguda Village, Serilingampalli Mandal, Ranga Reddy District, without following the procedure stipulated by law, as illegal, arbitrary and unconstitutional.

3. The petitioner is plaintiff No.4 in O.S.No.729 of 2011 on the file of the District Judge, Ranga Reddy District. The suit is filed by petitioner along with 7 persons for the reliefs of declaration of title and perpetual injunction. The suit schedule property consists of Ac.7.00 in Sy.No.149 of Nanakramguda Village, Serilingampally Mandal, Ranga Reddy District.

4. Petitioner refers to another suit pending in O.S.Nos.2 and 59 of 2012 on the file of the District Judge, Ranga Reddy District, filed for the reliefs of declaration of title and perpetual injunction. O.S.No.2 of 2012 is filed by Devarakonda Balaiah and 9 others and O.S.No.59 of 2012 is filed by Chapala Balaram and another. O.S.No.2 of 2012 covers the land to an extent of Ac.9.30 gts in Sy.No.149 of Nanakramguda Village, Serilingampally Mandal and the schedule in O.S.No.59 of 2012 covers

the land to an extent of Ac.2.00 in Sy.No.149 of same village. The District Collector/second respondent is impleaded as one of the defendants in the both the suits. The respondents as defendants have filed written statements and are contesting the suit prayers.

5. While matters stood thus, according to petitioner, on 26.05.2018, the respondents with police force and bulldozers have reduced the structures to debris. The respondents while removing the structures have not followed the procedure stipulated by law. According to petitioner, the respondents are required to follow procedure to ensure that the right of petitioner and other parties referred to above is in no way pre-judicially affected or infringed. What the respondents have done according to petitioner is contrary to law and the learned counsel for petitioner, hence, prays for direction to either restrain the respondents from removing the structures or creating third party interest in the subject matter of the writ petition.

6. Learned Government Pleader appearing for respondents contends that the writ petition is not maintainable as suits are pending for the substantive reliefs of declaration of title and perpetual injunction etc., in the trial Court. The petitioner now canvasses the cause of plaintiffs in both the suits. He further contends that the grievance, if any subsists against respondents, is worked out in accordance with law in the suits pending before the Principal District Judge's Court, Ranga Reddy District. He prays for dismissing the writ petition.

7. I have perused the record and noted the submissions of the counsel appearing for the parties. The writ prayer refers to the land to an extent of Ac.22.00 gts in Sy.No.149 of Nanakramguda Village,

Serilingampally Mandal. The petitioner does not have locus to challenge the alleged commission or omission of respondents for and on behalf of the plaintiffs in the suits referred to above. The petitioner refers to inclusion of the names of the plaintiffs in possessor column and the lis for substantive prayer, namely, declaration of title etc., is pending adjudication before the trial Court. For the reasons, I am proposing to record and to prevent causing prejudice to any of the parties to lis, further details or arguments made in this behalf are not adverted to, much less a finding is recorded. After perusing the record, this Court is of the view that the parallel enquiry or pursuing parallel remedies one before the civil Court and another under Article 226 of the Constitution of India is misconceived. This Court to consider the writ prayer has to independently consider all the three ingredients, namely, *prima facie* case/title, possession and balance of convenience, either to accept the prayer or refuse the same. The issues which are determined on trial and by recording a finding, if taken up under Article 226 of the Constitution of India results in prejudice to one party or the other. The petitioner ought to have worked out either preventive or ancillary prayers in the pending suits. This Court, if exercises jurisdiction under Article 226 of the Constitution of India, the same would result in parallel enquiry in respect of the very same subject matter i.e., one before the trial Court for substantive relief and another before this Court for ancillary relief. This Court is not persuaded to exercise its jurisdiction or discretion for the above said purpose.

8. For the above reasons, I make it open to the petitioner to work out the remedies in accordance with law in pending suits.

9. Accordingly, the Writ Petition is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

12th June, 2018

sj

S.V. BHATT, J

