

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.4064 of 2006

Order:

This Writ Petition is filed to declare the action of the respondents in interfering with the land of the petitioners situated in Survey No.25/2B (old) 31/5 (new), 28/2C (old) 35/2 (new) and 28/3A (Old) 36 (new) of Buchirajupalem village, near NAD Kotha Road, Visakhapatnam, and constructing houses for poor people, as illegal and arbitrary and consequently to direct the respondents not to proceed with the further construction and hand over the said property to the petitioners.

The brief facts of the case, according to the petitioners, are that the petitioners father Malla Mallu Naidu purchased the land admeasuring Ac.3.50 cents covered by old Survey Nos.28/2B, 28/2C and 28/3 of Buchirajupalem, Near NAD Kotha Road, Visakhapatnam, by way of three sale deeds in 1969; since then, he was in possession of the same; he kept an extent of 774 sq. yards in Survey No.28/3 and an extent of 320 sq. yards in Survey No.28/2B for their own purpose and made layout in the remaining land into plots vide layout dated 21.05.1969 and the plots were sold in the year 1987; in the last week of November 2005 the petitioners noticed some group housing constructions in the property and already three (3) floors were constructed and construction of further floors is under progress; on enquiry they came to know that the respondents are constructing group houses for the houseless poor; the respondents encroached into their private property and without acquiring the land by following due process of law they are constructing houses; hence the Writ Petition.

A counter affidavit has been filed by the District Collector, Visakhapatnam District, stating, *inter alia*, that the GVMC, Housing and ULC authorities have conducted joint inspection of the subject lands and reported that one block of JNNURM houses i.e., about 40 houses were constructed during the year 2005-2006 on the layout road, to the slum dwellers who occupied the said road; total area constructed is 333 sq. meters; the area occupied by the slum dwellers is a "Road" in the approved layout by the Director of Town Planning, Hyderabad, vide LP No.48/1969 covered by Survey Nos.28/3A, 28/2B and 28/2C of Buchirajupalem; the said "Road" is a proposed 40' road i.e., 20' covered in the layout and the remaining 20' is covered in Survey No.28/3B (Railway land); the slum dwellers have occupied the proposed road portion in the layout and part of the railway land; house site pattas were also allotted to them and since then they are living therein; the petitioners father made layout in Ac.3.24 cents and sold away the house site plots and the schedule land is part of the "Road" in the approved layout and it does not belong to the petitioners father; as per the layout rules, all the roads and open spaces are deemed to have been handed over to the local body, hence the schedule land belongs to the local body; the ULC Surveyor has reported that JNNURM houses are situated in Survey No.28/3A; the land in Survey No.28/2B measuring an extent of 0.4009 sq. meters is a surplus land as per CC No.4720 of 1976 and no houses were constructed in this portion; hence the said constructed JNNURM houses are situated in the Government land portion; as per SFA of Butchirajupalem village, RS No.25/2B is a poramboke road and Sy.Nos.28/2C and 28/3A are Sarkar Punjas; Malla Mallu Naidu, the father of the petitioners, filed OS No.74 of 1996 on the file of the II Additional District Judge, Visakhapatnam against K. Mallesu in connection with the lands in Sy.Nos.28/3A (774 sq. yards)

and 28/2B (320 sq. yards) with a prayer for eviction of the defendants from the suit schedule land and for handing over of the vacant possession to the plaintiffs and for a permanent injunction restraining defendant No.28, GVMC and their men from issuing any patta certificates to the defendants 1 to 27; the said suit was dismissed on 21.09.2004 as the plaintiff is not the rightful owner of the suit schedule land and the defendants proved their case by adducing voluminous documentary evidence; hence, the respondents prayed to dismiss the Writ Petition.

A counter affidavit has also been filed by the third respondent GVMC reiterating what is stated by the District Collector, Visakhapatnam, in his counter affidavit.

No reply affidavit is filed by the petitioners denying the averments made in the counter affidavits.

Heard learned counsel for the petitioners Smt. S.A.V. Ratnam, learned Assistant Government Pleader for Revenue and Sri S. Lakshmi Narayana Reddy, learned Standing Counsel for GVMC.

As seen from the affidavit filed along with the Writ Petition, the petitioners' father purchased an extent of Ac.3.50 cents situated in Survey Nos.28/2B, 28/2C and 28/3 of Buchirajupalem village in 1969 and that he applied for layout on 21.05.1969 and sold the plots in the year 1987. He retained an extent of 774 sq. yards in Survey No.28/3 and an extent of 320 sq. yards in Survey No.28/2B. It is further stated that in November 2005 the petitioners noticed some group houses are under construction in the subject land and that by then already three floors were constructed and that the construction of 4th floor was under progress. According to the writ affidavit, the father of the petitioners retained an extent of 774 sq. yards in Sy.No.28/3 and 320 sq. yards in Sy.No.28/2B, but the prayer in the writ petition is to direct the respondents not to proceed with the

further constructions in Survey Nos.25/2B, 28/2C and 28/3A. Admittedly, the petitioners father did not retain any land in Survey Nos.25/2B, 28/2C and 28/3A for which the relief is sought by the petitioners. Further, according to the writ affidavit, the petitioners father retained 320 sq. yards in Survey No.28/2B, but the said Survey number is not mentioned in the prayer to the writ petition. The relief is sought for Survey Nos.25/2B, 28/2C and 28/3A, in which, admittedly, the petitioners father did not retain any land at all. Further, according to the writ affidavit, the petitioners father retained an extent of 774 sq. yards in Survey No.28/3, but in the prayer the relief is sought for Survey No.28/3A. No further details are given in the writ affidavit as to the total extent of Sy.No.28/3, except saying that the petitioners father retained an extent of 774 sq. yards in Survey No.28/3. It is also not stated as to what is the total extent of land in Survey No.28/3A for which the relief is sought for in the present Writ Petition. In fact, the survey numbers mentioned in the writ affidavit do not tally with the Survey Numbers mentioned in the prayer portion.

Admittedly, the petitioners approached this Court after three floors were constructed and from the facts explained above the petitioners themselves are not clear and sure as to where the remaining extent of land of the petitioners father is situated. Admittedly, the constructions were noticed by the petitioners up to three floors in the last week of November 2005, but the writ petition was filed in February 2006.

One of the documents filed along with the writ petition is a photograph of the said construction showing three floors which also contains the foundation stone showing the date as 10.08.2006, which is much subsequent to the filing of the writ petition. The document filed by

the petitioners shows that by the date of filing of the writ petition, three floors were already completed.

From the counter affidavit filed by the District Collector, it is clear that the petitioners father filed OS No.74 of 1996 on the file of the II Additional District Judge, Visakhapatnam against one K. Mallesu, with regard to the same Survey Nos.28/3A (774 sq. yards) and 28/2B (320 sq. yards), for eviction of defendants 1 to 27 from the suit schedule property and for handing over possession, wherein the GVMC is also a party, and the said suit was dismissed on 21.09.2004, but the petitioners suppressed the fact of filing the said suit by their father and dismissal of the same on 21.09.2004 in their writ affidavit. The Writ Petition is liable to be dismissed on this ground alone.

According to the counter affidavit filed by the District Collector, the petitioners father got the layout approved for an extent of Ac.3.24 cents and sold away the house site plots and that the disputed land in the writ petition is part of the "Road" in the approved layout, which does not belong to the petitioners father. As seen from the counter, according to the ULC Surveyor the JNNURM houses are situated in Survey No.28/3A. It is also specifically stated in the counter that the land in Survey No.28/2B, admeasuring an extent of 0.4009 sq. meters, is a surplus land as per CC No.4720 of 1976 and that no houses were constructed in the said portion. In the writ affidavit the petitioners claim that their father retained an extent of 320 sq. yards in this very Survey No.28/2B, whereas the prayer to the writ petition does not speak about this survey number.

It is also categorically stated in the counter affidavit that the slum dwellers have occupied the portion of the "Road" in the layout and the part of the railway land and, as a part of slum development, during the

year 2005-06 houses were constructed for the slum dwellers under JNNURM scheme and allotted to them.

Having regard to the facts and circumstances of the case and in view of the fact that by the time of filing the writ petition, admittedly, three floors were already constructed for houseless poor people under JNNURM scheme in the "Road" portion of the layout, which was surrendered by the petitioners father, and in the railway land and also in view of the fact that the petitioners claimed their land to be in Survey Nos.28/2B and 28/3, whereas the relief is sought for Survey Nos.25/2B, 28/2C and 28/3A, the Writ Petition fails and the same is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. However, the petitioners are at liberty to avail the alternative remedies available to them under law, if they are so advised. 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: 30th August 2018
Nsr

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI



Date: 30th August, 2018

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