

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

S.A.M.P. Nos.534 & 535 of 2015

in/and

S.A.No.1009 of 1998

COMMON JUDGMENT:

The appellant No.1-Ghasiram Dhananiwala is the sole plaintiff in O.S.No.17 of 1994 on the file of the Sub-ordinate Judge, Nirmal, which is a suit for declaration of right over the plaint schedule property of 1270 square meters with permanent prohibitory injunction restraining the defendants viz., The Special Officer/Chairperson of Nirmal municipality and the Commissioner of Nirmal Municipality and their men from interfering with the same including with the constructions made therein by the sole plaintiff. Appellant No.2 by name Ankith Dhananiwala is impleaded during pendency of the Second Appeal as per the orders in S.A.M.P.No.533 of 2015 dated 08.06.2015.

2. The defendants contested the suit and the trial Court decreed the suit as prayed for by judgment and decree dated 13.03.1997. The context of the municipality mainly in opposing the suit was that whatever the plaintiff said to have been purchased of 990 square meters out of the plaint schedule of 1270 square meters under Ex.A2 from a private party, the municipality has no claim or dispute. However, so far as the remaining 280 square meters site is concerned

claimed by the plaintiff as assigned by the municipality under Ex.A7, the same belongs to the Government and thereby, the municipality has no power to alienate the claim based on Ex.A7 by the plaintiff is unsustainable and the plaintiff is thereby encroacher of the said extent of 280 square meters and cannot seek declaration and injunction in relation thereto. Aggrieved of the trial Court's decree and judgment, the municipality preferred the First Appeal in A.S.No.20 of 1997. The learned Additional District Judge, Adilabad, allowed said appeal on 20.10.1998 by setting aside the trial Court's decree and judgment in so far as 280 square meters concerned in dismissing the suit claim and further with a direction to the plaintiff to deliver back the possession of 280 square meters to the defendants, and in the event of failure, to take possession by the municipality. Aggrieved of said judgment, the plaintiff filed the present Second Appeal.

3. The grounds urged in the Second Appeal by saying involving the substantial questions of law are that the reversal judgment and decree of the lower appellate Court referred supra is erroneous and vitiated by substantial errors of law; that the lower appellate Court is erred in going into the question of title of the third party viz., the Government, when the Government did not appear and plead any title though otherwise the suit can be decreed based on possessory

title; leave apart no basis to the assignment of land belongs to the Government in the absence of any documentary proof filed by the municipality for no evidence let in on behalf of the defendants before the trial Court; even the lower appellate Court should have seen that the defendants admitted the title of plaintiff in a resolution by granting permission to construct the compound wall and thereby, estopped from contending contra; and even nothing shown of the land does not belongs to the municipality, but owned by the Government; leave apart the plaintiff can continue the possession unless the Government evicted through due process of law otherwise, and the lower appellate Court acceded its jurisdiction in granting decree to the defendants for taking possession in asking to deliver possession with no counter claim in the suit.

4. Though this Court on 18.12.1998 admitted the **Second Appeal** by simply saying 'Admit' without compliance with the requirements of Section 100 C.P.C. while granting injunction in favour of the plaintiff and against the defendants, in the course of hearing the appeal this Court on 02.04.2018 from the hearing and from involvement of the substantial questions of law framed the following:

- 1) Whether the reversal finding of the lower appellate Court insofar as it relates to 280 sq. mtrs out of the suit schedule property of 1270 sq. mtrs that was decreed in entirety by the

trial Court for the relief of declaration and title and consequently permanent prohibitory injunction, that too without formulating the points for determination for giving a specific reasoned respective findings thereon as contemplated by Order XLI Rule 31 CPC is unsustainable and perverse being the final fact finding Court for entire matter is at large? If so,

- 2) To what relief of the plaintiffs entitlement, if any either for declaration of title or for possessory title, as the case may be?

5. Pending the Second Appeal, the appellants-plaintiffs filed two applications viz., S.A.M.P.No.534 of 2015 and S.A.M.P.No.535 of 2015, to receive the additional evidence, which are the copy of patta proceedings in No.HA/ 396/ 90 issued by the M.R.O, copy of challan dated 11.03.1993, copy of Gift Settlement Deed bearing document No.2827 of 2004 dated 29.07.2007 and copy of Encumbrance Certificate dated 27.03.2015, and copy of the proceedings of the District Collector, Adilabad, in No.B3/ 9430/ 1983 dated 21.11.1983, to mark the same as exhibits A15 to A19 respectively by receiving additional evidence. The same were opposed by the respondents Municipality.

6. Heard both sides at length and perused the material on record.

7. The case of plaintiff before the trial Court in nut shell in addition to what is referred supra is that one Babu Khan purchased in 1336 Fasli in an auction from the Local Fund

Department Nirmal through Tahsildar, Nirmal, 1250 square yards for Rs.200/- vide Assignment Deed No.063291 dated 26.07.1336 Fasli (Ex.A1) executed in his favour by them, including with map of the land and put the auction purchaser Babu Khan in possession. The plaintiff purchased out of it 990 square meters from the legal heirs of Babu Khan under a registered Sale Deed dated 03.07.1973 for Rs.8,000/- covered by Ex.A2 bounded by East-30 feet wide road, West – Open compound and PWD Banglow, North – Public road, and South – House of Sri Nathmal and PWD Banglow. It is averred further of the plaintiff applied to the Nirmal municipality for mutation of his name in the municipal record and it was done vide mutation proceedings dated 29.09.1973 (Ex.A3). The plaintiff applied for permission to construct compound wall around the said purchased land, that was granted by the municipality vide Ex.A4 proceedings of the Commissioner dated 17.05.1974 and the plaintiff constructed compound wall as per the permission accorded supra. It was whileso, in the year 1982 at the instance of the then Municipal Chairman the permission for construction of compound wall, accorded under Ex.A4 to the plaintiff, was cancelled and the municipality chosen to demolish the compound wall, which made the plaintiff to maintain O.S.No.129 of 1982 for declaration of title and injunction against the Commissioner, Nirmal

municipality in the District Court, Adilabad, and said suit was transferred to the Court of District Munsiff, Nirmal, and tried as O.S.No.106 of 1984. The plaintiff also preferred appeal to the Municipal Commissioner, aggrieved by the cancellation of the permission of compound wall constructed, and the municipality allowed the appeal by its resolution, dated 22.12.1984, setting aside the cancellation resolution dated 29.10.1982 by restoring the original permission for the compound wall construction covered by Ex.A4-Proceedings dated 17.05.1974. There the plaintiff deposited Rs.3,250/- vide Ex.A14 receipt dated 13.07.1984, pursuant to the notice under Ex.A13 dated 02.07.1984. It is covered by resolution No.58 dated 22.12.1984 the plaintiff was allotted 280 square meters of land and the plaintiff was put in possession by proceedings dated 24.12.1984 covered by Ex.A7 and the plaintiff is in possession and enjoyment since then also by paying property tax and land revenue covered by exhibits A8 to A12 and Ex.A14 is the receipt showing payment of Rs.3,250/-. According to the plaintiff, 280 square meters site allotted covered by resolution No.58 dated 22.12.1984 (Ex.A5) was bounded by East – Open land of plaintiff, West – PWD Banglow, North – Road, and South – PWD Bungalow. It is thereby the claim of plaintiff is for the plaint schedule total extent of 1270 square meters viz., 990 square meters + 280

square meters. The further claim of plaintiff in the suit filed on 13.04.1994 is that for the past one week the defendants are trying to demolish the compound wall constructed in the year 1974 and intended to dispossess from 280 square meters site allotted to the plaintiff vide resolution No.58 dated 22.12.1984 and as the plaintiff unable to desist them he constrained to file the suit from the cause of action referred supra.

8. The written statement of the defendants municipality is in saying the dimensions of the area assigned are North – 30.50 meters municipal land and municipal road, South – 30.50 meters Government land & PWD Banglow and wire fencing, East – 45.75 meters small public way, Chalpabanda Government open land, and West – 22.87½ meters Government land Gouthan and the plaintiff purchased 990 square meters out of 1046.30 square meters. The southern boundary is wrongly shown. It is further contended that out of the plot purchased by the plaintiff of 990 square meters from family of Babu Khan, an area of 418 square meters is effected under the proposed master plan road, that was prepared in the year 1954 and balance area of 572 square meters can only be utilized for construction purpose with a set back of 5 feet towards road. After obtaining permission to construct the compound wall covered by Ex.A4 proceedings

dated 17.05.1974, the plaintiff constructed boundary wall by encroaching the surrounding Government land vested in the municipality to a large extent illegally viz., North side encroachment of 20.3 meters in addition to what was purchased of 30.50 meters, South side encroachment of 16.00 meters in addition to what was purchased of 30.50 meters, and Eastern side encroachment of 8.95 meters in addition to what was purchased of 42.70 meters. Out of the effected portion in the proposed municipal road of 13.40 meters, the permission for construction of 29.30 meters comes only and not 42.70 meters, and on the Western side permission given for 8.87 meters and not 22.87 ½ and there is encroachment of 14.00 meters and permission can be given only as referred supra, but the plaintiff unauthorizedly occupied by raising compound wall for area of 1262.10 square meters by an encroachment of 690.10 square meters in addition to what was the balance area after the master plan road of 418 square meters excluded from 990 = 572 square meters and thereby, liable to be evicted from the encroached land, which belongs to the Government, and the municipality is a custodian for Municipal Commissioner or Council not competent to accord permission for making construction over such vacant lands belong to the Government and the plaintiff is under obligation to vacate the encroached land belong to the Government by

removing the compound wall was liable to be evicted. The Commissioner issued provisional order to the plaintiff dated 02.11.1982 for demolition of the compound wall raised by the plaintiff and even served on the plaintiff and as such there is no ownership right vested in plaintiff beyond what is stated supra and his possession is illegal and not entitled to the relief. Therefrom the trial Court framed the issues as under:

- 1) Whether the plaintiff is entitled to be declared as owner of the suit land?
- 2) Whether the plaintiff is entitled for perpetual injunction as prayed for?
- 3) Whether the plaintiff has no cause of action?
- 4) Whether the suit is barred by limitation?
- 5) To what relief?

9. The trial Court, for answering the issues from the controversy involved, recorded the evidence of parties; wherein the plaintiff was examined as PW1 and also examined one Rajkumar Agarwal as PW2 and placed reliance on the exhibits A1 to A14 referred supra and the defendants did not adduce any oral or documentary evidence. It is after hearing both sides in answering the issues, the findings of the trial Court were that the plaintiff became owner of 280 square meters land also covered by resolution No.58 dated 22.12.1984 under Ex.A5 supra of the Municipal Council, Nirmal. It is consequent to (cancellation of the compound wall permission) cancellation proceedings

by reviving the original permission, the suit in O.S.No.129 of 1982 (renumbered as O.S.No.106 of 1984) on the file of the District Munsiff, Nirmal, for injunction was withdrawn.

10. There is no dispute on the factum of the plaintiff purchased 990 square meters from Babu Khan under a registered Sale Deed dated 03.07.1973 (Ex.A2) for Rs.8,000/ -. What the defendant municipality claims is part of the land covered by the master plan and the plaintiff is not entitled to construct compound wall for the said 990 square meters, but for on the remaining, and so far as the 280 square meters assigned referred supra is concerned, the contention of the defendants is the municipality has no right and it is the Government land and it is only vested for management and not for alienation and the resolution is invalid and the plaintiff cannot claim any title or right over 280 square meters supra. PW2 deposed in support of the evidence of PW1 of the plaintiff is in possession of 990 square meters purchased from Babu Khan family and 280 square meters acquired from the municipality having constructed the compound wall. What he deposed in the cross-examination is 2½ years back the municipal authorities got measured and found encroachment to demolish the compound wall of plaintiff. However, the defendants did not adduce any evidence in this regard to

discharge their burden to rebut the evidence let in by the plaintiff. PW1 in his cross-examination stated that no patta certificate was issued to him by the defendants for 280 square meters, though assigned by the municipality in his favour, and there was no any panchanama conducted evidencing the delivery of possession. PW1 denied the suggestion of said 280 square meters land not assigned to the plaintiff. In fact, the defendants admitted for not even disputing about the cancellation resolution No.58 dated 22.12.1984 setting aside the resolution No.114 dated 29.10.1982 restoring the proceedings covered by resolution dated 17.05.1974 for the construction of compound wall from allowing of the departmental appeal against that cancellation in the restoration of the original permission dated 17.05.1974 supra under Ex.A4. Ex.A3 is the mutation proceedings of what the plaintiff purchased from Babu Khan family under Ex.A2 Sale Deed dated 03.07.1973 and the municipality also assigned the door number and collected taxes for 990 square meters covered by the Sale Deed and also granted permission to construct the compound wall for it and pursuant to Ex.A5 resolution No.58 dated 22.12.1984 and from notice of the municipality dated 02.07.1984 covered by Ex.A13 the plaintiff paid the amount of Rs.3,250/- covered by Ex.A14 on 13.07.1984 for 280 square

meters assigned, whereunder the plaintiff was put in possession. In Ex.A13 notice it was mentioned at reference No.2 Taluka Officer, Nirmal, letter dated 30.09.1983 intimated the Municipal Council to assign the Government land to the persons, who are in occupation, and it is based on the letter of the Taluka Officer, Nirmal Municipality, directed the plaintiff to pay under Ex.A13 Rs.3,250/- by referring to Rule 8 of the Rules covered by the Andhra Pradesh Municipalities Act, 1965. No doubt, Rule 8 speaks such alienation or assignment of vacant sites vested in the municipality and Rule 3 speaks immovable property vested, but not belongs to the Municipal Council, shall not be transferred or charged in contravention of the conditions and the Government authorized the Municipal Council under letter No.3983 to collect Rs.3,250/- from the plaintiff, pursuant to the municipality recommended for allotment of said site to the plaintiff and the defendants collected the amount and delivered the possession and it can be same therefrom of the Government authorizations to the municipality to alienate to the occupiers, thereby, the municipality is estopped to contend contra to 280 square meters; and in the course of arguments; the plaintiffs' counsel submitted the proceedings of the District Collector in B3/ 9430/ 83 dated 21.11.1983, which was not marked,

wherein it is stated the Tahsildar sent list of 278 encroachers under occupation of the Government land in Nirmal town and requested to accord sanction for regularization of encroachments by proposing @ Rs.5/- per square yard by requiring the Tahsildar, Nirmal to obtain resolution from the municipality fixing the rate at various slabs and the Sub-Committee of the Municipal Council, Nirmal fixed the rates and the order of the Collector speaks the enhancement of rates from what was recommended by the Municipal Council Sub-Committee for the regularization covered by G.O.Ms.No.577 (Revenue) dated 26.04.1982 and G.O.Ms.No.4976 (Revenue) dated 10.12.1983 and it is the same that is consequent to resolution No.58 dated 22.12.1984 of the Municipal Council referred supra the allotment made having issued notice to pay the amount and received under exhibits A13 & A14 earlier to it, and once the District Collector authorized the Municipal Council to alienate the land, the Government vested in their management. As held in H.Nagabhushanam v. The Government of A.P, rep. by its Secretary, Housing, Municipal Administration & Urban Development, Hyderabad¹ saying once under the Acquisition and Transfer of Immovable Properties Rules, 1967, framed under the A.P. Municipalities Act, there was allotment of municipal

¹ 1991 (1) ALT 280

land to its employees under a resolution of the Municipal Council accepted by the District Collector, subsequent cancellation of said allotment by the District Collector is held not valid and thereby held the plaintiff is entitled to the declaration with consequential injunction.

11. The lower appellate Court, in the appeal maintained by the municipality in relation to said 280 square meters concerned, observed in its judgment dated 28.10.1998 in A.S.No.20 of 1997 the plaintiff no doubt paid the amount of Rs.3,250/- for 280 square meters site in pursuance of Ex.A7-proceedings of the Municipal Council dated 24.12.1984 proceeded by Ex.A13-demand notice and Ex.A14-receipt showing payment made in July 1984. However, it is as if the property belongs to the municipality though it is that of the Government and even the plaintiff is in possession of the same, pursuant to said allotment or assignment the status is only a transfer but not the sale or assignment by the Government and no patta issued for that in favour of the plaintiff nor any document executed and the learned counsel failed to examine this issue in this line with reference to the evidence on record, more particularly from Section 37 of the A.P.Municipalities Act of vacant lands of the Government in the municipal limits are under the control of the Government and the deemed possession of

the municipality for management; and once there is no title and Ex.A7 assignment proceedings is illegal, which is in violation of Rule 3 of the Acquisition and Transfer of Immovable Properties Rules, 1967, there is no entitlement to the declaration of title and consequential permanent injunction.

12. So far as the additional evidence documents now sought to receive are concerned, even the proceedings of the District Collector sought to receive as Ex.A15 of the year 1983 filed in the course of the arguments before the trial Judge as referred in the judgment, those were not filed atleast during pendency of the appeal on behalf of the plaintiff-respondent in the appeal and there is no explanation to receive the same or the other documents as additional evidence and thereby, there are no grounds to receive these additional documents as additional evidence in the Second Appeal stage for nothing to show even to exercise any power by the Court under Order XLI Rule 27(1)(b) CPC for not a case made out of for effective disposal of the appeal /is those are relevant to be received as additional evidence and to exhibit or therefrom to remand the matter to the lower Court by giving further life to litigation. Thus, the two additional evidence applications are dismissed.

13. Now, in deciding the Second Appeal two aspects are crucial. So far as 990 square meters, which the plaintiff undisputedly purchased from Babu Khan under Ex.A2-registered Sale Deed dated 03.07.1973 is concerned, there is no dispute. The only dispute in relation thereto before the trial Court by the municipality with no independent evidence let in in this regard was as referred supra of part of the land covered by the master plan and permission to construct the compound wall would not have been granted thereby cancelled though restored. Even then if it is covered by the master plan and no construction can be permitted, there is no provision shown of any private land automatically vested when shown in the master plan with the local body or municipality, but for if at all to acquire and but for if at all not to give any permission for construction of any building. It is not a case of any building constructed and if at all constructed without permission, remedy is left open to the municipality to invoke the provisions of the Act and so far as the compound wall permitted and constructed therein and part of the land covered by the master plan is concerned, permission since already granted wayback in 1974 under Ex.A4 and the subsequent cancellation in 1982 was set aside and the original permission restored by allowing the appeal against

it as per Ex.A6 proceedings dated 24.12.1984, the plaintiff is entitled to declaration and injunction in relation thereto and is no way entitled for any public purpose any property or part of it required to be acquired. Now, coming to 280 square meters site, which is the subject matter of Second Appeal mainly from what the lower appellate Court reversed the trial Court's decree of declaration with consequential injunction also in relation thereto concerned, the lower appellate Court is not fully right for the reason even the property belongs to the Government and vested with the municipality for management and the municipality has no right to alienate and assign without permission of the Government, leave the fact that there are proceedings of the Tahsildar and Collector in relation thereto to treat the same as per the observation of the trial Court as the Government sanctioned no doubt. As observed by the lower appellate Court there is no document of assignment much less by granting of patta even from the demand notice under Ex.A13 and payment under Ex.A14 of Rs.3,250/- for 280 square meters concerned from the say of the municipality has no ownership and competency, by virtue of the documents the municipality is estopped from resumption, but for paramount owner only the Government if at all and those were not properly considered by the

lower appellate Court and the trial Court and thereby, though the plaintiff is not entitled to the declaratory relief so far as 280 square meters is concerned covered by Ex.A5 resolution and Ex.A7-proceedings for no title created thereunder from the evidence on record, however, the possession delivered as also observed by the Courts below, the municipality is not entitled to recover back the possession by virtue of the proceedings from operation of estoppel, that too when the paramount owner if at all the Government is not chosen to resume possession which remedy is left open, if at all to the Government and in such event, the contest left open to the plaintiff if at all there are proceedings of the Collector of the year 1983 according permission to satisfy with Rules 3 or 8 of the Acquisition and Transfer of Immovable Properties Rules, 1967 and Section 37 of the A.P. Municipalities Act as the case may be.

Accordingly and in the result and with these observations, S.A.M.P. Nos.534 & 535 of 2015 are dismissed and S.A.No.1009 of 1998 is allowed in part in so far as the 280 square meters site covered by Ex.A5 and Ex.A7 proceedings of allotment by the municipality, the municipality is estopped to resume, but for if at all it is the land of the Government being the paramount owner to resume by the Government and the lower appellate Court's

direction to the extent of directing the plaintiff to deliver possession or giving liberty to the municipality to resume the possession is set aside by making clear of the plaintiff is not entitled to declaration for said site, however, entitled to continue the possession pursuant to the possessory right till evicted through due process of law by the Government. No order as to costs.

Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

15.06.2018
MVA

Dr. B. SIVA SANKARA RAO, J

