

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 22121 OF 2008

ORDER :

The Writ Petition is filed questioning the Memo dated 29.09.2008 issued by the 1st respondent – District Panchayat Officer, whereunder the Panchayat Secretary, Gram Panchayat, Bhupalpally (M) was directed to stop the construction work undertaken by the 1st petitioner in Survey No. 319 immediately, if required, with the assistance of police; and the notice dated 30.09.2008 issued by the 2nd respondent stating that the permission granted on 28.06.2008 to Burra Bondaiah & brothers for construction was temporarily stopped as Sri Renukuntla Komuraiah, the 3rd respondent herein filed an objection on 15.09.2008 and the same is under consideration.

The petitioners claim to be the owners of the land in Survey No. 319, over an extent of Ac. 1.25 guntas situated at Bhupalpally Village, by way of inheritance. It is stated that when there is a dispute with respect the said land between the petitioners on the one hand and Sri Gone Venkata Rajasimha Rao, S/o Venkata Muthyam Rao on the other before the Land Reforms Tribunal & Revenue Divisional Officer, Manthani, the land in Survey No. 319 in an extent of Ac.1.25 cents was held to be in possession of the petitioners' father since 1967-68 and the said land was excluded from the holding of the declarant original pattadar - Sri Gone Rajasimha Rao. Further, the petitioners were issued 13(B) Certificate under the ROR Act on 21.09.2002 declaring them as pattadars of the land. Respondent No.3 and his family members, when sought to interfere with the petitioners' possession and enjoyment, the latter had filed O.S. No. 275 of 2004 on the file of

the II Additional Senior Civil Judge's Court at Warangal and the said suit also came to be decreed on 20.01.2005. subsequently, the petitioners filed Writ Petition No. 19951 of 2003 questioning the action of the Mandal Revenue Officer and others in interfering with their possession of land. It is further submitted that the 3rd respondent also filed Writ Petition No. 12865 of 2004 seeking a direction to consider his representation dated 16.08.2002 filed before the Mandal Revenue Officer to issue pattadar pass book and title deeds, wherein the Revenue Divisional Officer filed a counter-affidavit stating that the 3rd respondent and his brothers had forged and fabricated pahanis and filed a case in Land Reforms Tribunal (LRT) in the Land Reforms Proceedings claiming that they had purchased the said land and obtained order from the LRT by deleting Ac.1.00 in Survey No. 319 from the holding of the original pattedar based on the forged documents. Thereafter, the Mandal Revenue Officer gave a report on 08.08.2003 in the Police Station, Bhupalpally against the 3rd respondent and his brothers, for forging the revenue records, against whom, Crime No. 85 of 2003 was registered and later, a charge sheet was filed which was registered as C.C.No. 143 of 2006. The Revenue Divisional Officer had asserted that the 3rd respondent and his brothers were never in possession of the land. Based on the information provided, the said Writ Petition also came to be dismissed.

It is further stated that the 3rd respondent has no manner of right over the property. The petitioner had therefore, submitted the Application on 21.06.2008 to the 2nd respondent Gram Panchayat along with necessary documents requesting grant of permission for construction of five sheds in the subject property and the authorities, after enquiry, granted permission on

18.08.2008 to construct compound wall and five sheds. In the process of constructing the compound wall and sheds in accordance with the sanctioned plan, the respondents issued the impugned notice at the instance of the 3rd respondent. The notice dated 30.09.2008 does not state the reasons under what circumstances and for what reasons, the petitioners were required to stop construction, except stating that an objection was raised by the 3rd respondent.

Heard learned counsel for the petitioners, learned Government Pleader for Panchayat Raj on behalf of the 1st respondent and Sri G. Narender Reddy, learned Standing Counsel on behalf of the 2nd respondent. Though served, there is no appearance on behalf of the 3rd respondent, in person or through an advocate.

This Writ Petition is of 2008. While admitting the Writ Petition on 06.10.2008, interim stay of the impugned proceedings was granted in favour of the petitioners. So far, no counter-affidavit is filed by any of the respondents denying the averments in the Writ Petition. Since there is no dispute with respect to any of the assertions made in the affidavit by the petitioners, particularly as to their title and ownership of the property over which permission for construction of compound wall and sheds was granted in their favour and that there being no allegation of deviation from the sanctioned plan, on mere objections filed by the 3rd respondent, the petitioners could not have been directed to stop the construction. Even assuming that there would have been some violation, the proper course required to be followed by the official respondents is to follow the principles of natural justice i.e. to issue a show cause notice putting the petitioners on notice of

the objection raised by the 3rd respondent, calling for their explanation and thereafter consider and pass necessary orders. In the present case, the respondents, having not followed such procedure, directing the petitioners to stop construction, cannot be sustained, particularly in the absence of any assertion on the part of the respondents that there is violation of the sanctioned plan, even at this stage. It is well-settled that specific averments made on oath before the Court, in the absence of denial thereto, can be taken as true and correct on its face value.

For the above reasons, the interim order dated 06.10.2008 passed in W.P.M.P.No. 28815 of 2008 is made absolute. The Writ Petition is accordingly, allowed setting aside the memo dated 29.09.2008 of the 1st respondent and the notice dated 30.09.2008 issued by the 2nd respondent. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

26th October, 2018

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CHALLA KODANDA RAM, J

