

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.15472 of 2017

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioners requesting to issue a writ of Mandamus declaring the action of 3rd respondent in entertaining the request of the respondents 5 & 6 *vide* application, dated 14.09.2016, to implement the orders of the 4th respondent, dated 16.01.2010, in case No.C/3867/2016 as bad, arbitrary, capricious and contrary to Sections 5(b) & 8 of A.P. Rights in Land and Pattadar Pass Books Act, 1971. A consequential direction to the 3rd respondent to terminate the proceedings in case No.C/3867/2016 is also sought.

2. I have heard the submissions of Sri Eranki Phani Kumar, learned counsel appearing for the petitioners, of the learned Government Pleader for Revenue appearing for respondents 1 to 4, and of Sri Challa Gunaranjan, learned counsel appearing for the respondents 5 & 6. I have perused the material record.

3. The case of the writ petitioners is this: - 'The petitioners purchased land admeasuring Ac.10.03 guntas in Sy.No.218 and Ac.6.12 guntas in Sy.No.224 of Kummera village, Chevella Mandal, under registered sale deeds bearing document nos.2212/2005 & 2213/2005, dated 11.04.2005. They were put in physical possession of the said properties on the said date. Later, the petitioners applied for mutation of the said properties in their names in revenue records; and, the 4th respondent *vide* his proceedings, dated 12.05.2005 in No.G/915/2005 and G/916/2005 affected mutations and issued pattadar pass

books and title deed documents to the petitioners. Apart from the lands purchased under the above two sale deeds, the 1st petitioner also purchased another piece of land admeasuring Ac.3.00 guntas in Sy.No.224 from Bode Ram Reddy under a registered sale deed bearing document no.2335/2006, dated 22.02.2006 and obtained mutation proceedings from the 4th respondent *vide* proceedings, dated 23.03.2007 in No.G/1185/2006. After purchasing the said properties, the petitioners developed the property by planting Eucalyptus trees by purchasing saplings from ITC limited. They also obtained permissions from Gram Panchayat, Kummera, for the purpose of constructing a dwelling house and compound wall around the lands purchased by them. They also obtained power connection. They are, thus, in physical possession of the above referred lands ever since the dates of said purchases. While so, the vendors of the respondents 5 & 6 approached the 4th respondent for correction of entries in revenue records on the ground that they purchased the very same land and that the same belongs to them. Without notice to these petitioners, the 4th respondent appears to have passed orders in file nos.4/6262 and 6263 of 2002, dated 07.04.2007, and entered the names of the vendors of the respondents 5 & 6 by deleting the names of the predecessors in title of the petitioners from the records. The petitioners are not aware of the said orders, which are passed behind their back. Based on the said orders, the 4th respondent appears to have communicated a letter in No.G/38/10, dated 16.01.2010, to the 3rd respondent to cancel the mutation orders which were passed in favour of the petitioners herein and for rectification of the names in the revenue records. Afterwards, the respondents 5 & 6 made an application, dated 14.09.2016, to the 3rd respondent intimating about the property

purchased by their vendors on 29.07.2000 and the subsequent sale of the property in their favour, that is, the respondents 5 & 6, on 27.03.2006. They suppressed about the pendency of the suit [OS.No.70 of 2016 on the file of the Additional District Court, Vikarabad] filed by them against the petitioners seeking the relief of declaration of title. In the said suit, the petitioners herein filed an application for rejection of the plaint on the ground that the suit is barred by limitation. The respondents 5 & 6 filed a counter in the said application. It is pending consideration before the civil Court. The respondents 5 & 6 could not have made an application before the 3rd respondent for the implementation of the order of the 4th respondent, which was passed behind the back of the petitioners, that too, after a period of sixty days. Despite the objections taken by the petitioners before the 3rd respondent by filing a memo and a counter, the 3rd respondent is now attempting to proceed further in the matter. In view of the pendency of the civil suit, the 3rd respondent ought to have kept the matter in abeyance or could have terminated the proceedings. Since the 3rd respondent is acting in excess of the authority conferred upon him by law, the petitioners filed this writ petition.

4. On 27.04.2017, this Court, while ordering notice before admission, posted the matter to 05.07.2017 and granted interim stay till then. On 23.08.2017, this Court, while admitting the writ petition, granted the following order in WPMP.No.19086 of 2017: -

‘...*Prima facie*, order impugned in the writ petition is not sustainable. Balance of convenience is in favour of the petitioner. Interim order granted earlier is extended until further orders.’

5. No counter is filed by the official respondents. However, learned Government Pleader for Revenue while making submissions supported the actions of the revenue authorities by stating that the impugned actions of the said respondents are justified in the facts and circumstances of the case and contended that the writ petition is not maintainable.

6. The non official respondents 5 & 6 filed IA.No.1 of 2018 requesting to vacate the afore-stated interim order.

7. The case of the non official respondents 5 & 6, in brief, is this:

Originally, Narayan Reddy, Ramlinga Reddy, Pratap Reddy, Janga Reddy, Madhav Reddy, Ram Reddy, Kishta Reddy and Srinivas Reddy were joint owners and possessors of lands in Sy.Nos.218/A, 218/AA & 218/E admeasuring Ac.10.03 guntas and in Sy.No.224/AA, 224/E & 224/EE admeasuring Ac.8.24 guntas in Kummera village. They sold the land in Sy.No.218/A, 218/AA & 218/E admeasuring Ac.10.03 guntas to the vendors of these respondents namely Sushila Vyapari, Kamala, Kanchan Jaiswal, Namratha Anand and Prabhavathi Mandelwalker under a registered sale deed, dated 29.07.2000; and, also lands in Sy.No.224/AA, 224/E & 224/EE admeasuring Ac.8.24 guntas to the vendors of these respondents namely Chaya G. Shah, Ruchita Srivastava, Vasuda Upadhyaya and Yasmin Abid under a registered sale deed, dated 29.07.2000. Thus, on 29.07.2000, the above properties have been sold to the vendors of these respondents. After 29.07.2000, the original owners of the said property had no right, title and interest over the said properties to convey the said properties to the vendor of the writ petitioners. Hence, the allegations in the affidavit filed in support of

the writ petition that the writ petitioners are the owners of the property are false. After the purchase of the property, the vendors of these respondents filed applications for mutation of the property in their names in the revenue records. Notices were served on the original owners; they contested the said proceedings. After detailed enquiry, the authority concerned allowed the request of the vendors of the respondents 5 & 6 *vide* proceedings no.G/6262 & 6263 of 2002 and properties were directed to be mutated in the names of the vendors of these respondents. As the said orders are not complied with, the said authority *vide* letter, dated 16.01.2010, requested for affecting mutation. Neither the original owners nor the vendors of the writ petitioners or the writ petitioners have challenged the said orders; and, the said orders have become final. The said orders have to be implemented and the properties are to be mutated in the names of the vendors of these respondents in the revenue records. But the vendor of the writ petitioners along with original owners colluded and created fraudulent sale deeds, dated 10.11.2004 in his favour and 11.04.2005 in favour of the writ petitioners though the original owners have sold their properties on 29.07.2000 to the vendors of these respondents. Any sale deeds executed by the original owners or the legal heirs of the original owners after 29.07.2000 are illegal, void and do not convey any title to the purchasers. The mutations affected *vide* proceedings in G/2384/04, dated 24.01.2005; G/915/2005, dated 12.05.2005; G/916/2005, dated 12.05.2005; G/1185/2006, dated 23.03.2007; and, RS/20/2005, dated 05.12.2005 were cancelled. Hence, writ petitioners cannot contend that the properties are mutated in their names by virtue of the above said proceedings. The said allegations need no countenance. The petitioners are put to strict proof that

they had obtained permissions from Gram Panchayat for construction of dwelling house and compound wall and purchased saplings from ITC and obtained power connection and that they are in possession of the property. The said allegations are false and denied. Since the orders in favour of the vendors of these respondents are not implemented, the application is filed for implementation of the said orders. The writ petitioners cannot re-agitate their claims, which are settled by orders passed by the Tahasildar, Chevella in G/6262/02 & G/6263/02, dated 07.04.2007, wherein the case put-forth by the original owners was rejected and as no appeal has been preferred against the said orders of the Tahasildar, the said orders have become final. When the writ petitioners, taking advantage of their sale deeds, tried to interfere with the possession of the respondents, OS.No.70 of 2016 was filed by these respondents against the writ petitioners on the file of IV Additional District Court, Vikarabad. The writ petitioners, if aggrieved have to question the orders passed by the 3rd respondent before a competent authority. They are not entitled to file a writ petition. The writ petition is not maintainable. These respondents filed a private complaint under Section 200 of CrPC before the Court of the learned Judicial Magistrate of First Class, Chevella; and, on reference of the said complaint to the police, case in Crime No.298 of 2009 was registered by the Station House Officer, Chevella Police Station, for the offences punishable under Sections 420, 423, 463 & 465 of IPC against Bode Prathap Reddy and others including the writ petitioners. The CrI.P.No.397 of 2010 which was filed requesting to quash the said FIR was dismissed as withdrawn. Though these respondents have specifically stated about the orders, dated 07.04.2007, in proceedings in G/6262 & 6263/2002, in the year

2009 and though the writ petitioners are aware of the same, they did not take any steps for assailing the said orders. Hence, the interim order may be vacated and the writ petition may be dismissed.

8. I have given earnest consideration to the submissions made in line with the pleadings. I have gone through the material documents filed by both the parties.

9. The petitioners contend that they purchased Ac.10.03 guntas in Sy.No.128 and Ac.6.12 guntas in Sy.no.224 of Kummera village under two registered sale deeds, dated 11.04.2005, executed respectively in favour of petitioners 1 & 2 by their vendor K. Santhosh. They further contend that their vendor in his turn purchased the properties sold to them under sale deed, dated 10.11.2004 executed by members of Bode family viz., Pratap Reddy, Ramlinga Reddy, Madhava Reddy, Malla Reddy, Ranga Reddy, Padma and Malla Reddy.

9.1 Respondents 5 & 6 also contend that the original owners are B. Narayana Reddy, Ramlinga Reddy, Prathap Reddy, Janga Reddy, Madhav Reddy, Ram Reddy, Kishta Reddy and Srinivas Reddy and that from the said original owners, their vendors in two sets viz., (i) Sushila Vyapari, Kamala, Kanchan Jaiswal, Namratha Anand & Prabhavathi Mandelwalker purchased Ac.10.03 guntas in Sy.nos.218/A, 218/AA & 218/E under a registered sale deed, dated 29.07.2000; and, (ii) Chaya G. Shah, Ruchita Srivastava, Vasuda Upadhyaya & Yasmin Abid purchased Ac.8.24 guntas in Sy.nos.224/AA, 224/E & 224/EE under a registered sale deed, dated 29.07.2000.

9.2 The vendors of the respondents 5 & 6 represented by their GPA holder, T. Narasimha Reddy, filed OS.No.76 of 2003 on the file of Senior Civil Court,

Vikarabad, against B. Madhav Reddy, B. Ramlinga Reddy, B. Pratap Reddy, B. Malla Reddy, B. Malla reddy, V.Shekar Reddy for a perpetual injunction in respect of the very same subject lands. Some of the said defendants are the original owners is not in dispute. In the said plaint, the above said plaintiffs, who are the vendors of the respondents 5 & 6 stated about their purchase of the subject lands under two registered sale deeds, dated 29.07.2000, and described the properties covered by the said sale deeds as 'A' & 'B' schedule in the schedule annexed to the plaint in the said suit. On merits, the said suit was decreed, on 20.04.2006, in favour of the vendors of the respondents 5 & 6. The appeal preferred by one of the defendants, V. Shekhar Reddy, in AS.No.120 of 2006 on the file of VI Additional District Judge (Judge, Fast Track Court) was dismissed, on 31.12.2007. O.S.no.70 of 2016 was filed by the non official respondents 5 & 6 against the writ petitioners on the file of IV Additional District Court, Vikarabad. One of the contentions of the respondents 5 & 6 which need a reference is that though the writ petitioners are aware of the orders, dated 07.04.2007, in proceedings in G/6262 & 6263/2002, they have not challenged the same and, therefore, they are not entitled to resist the implementation of the said orders without assailing the said orders. It is also the contention of the respondents 5 & 6 that the sale deeds related to the subject property in favour of their vendors are much prior in point of time to the sale deed in favour of the vendor of the writ petitioners; therefore, they further contend that the vendors/the original owners who sold away their property to the vendors of the respondents 5 & 6 having divested of their right, title and interest in the property could not have conveyed the very same property to any other person/s and that, therefore, any subsequent sale

transactions by the said original owners do not confer any valid title on the subsequent purchaser/s who purchased the very same property, as it is well settled law that no one can convey a better title than what he has. Be that as it may, there is already a decree of a civil Court in OS.No.76 of 2003 on the file of Senior Civil Court, Vikarabad, in favour of the vendors of the respondents 5 & 6 and the same was confirmed by an appellate Court. Further, one more civil suit in O.S.no.70 of 2016, on the file of IV Additional District Court, Vikarabad, filed by the respondents 5 & 6 against the writ petitioners, is pending adjudication. In this back drop, this Court finds that the claim of the writ petitioners in respect of the subject land being a pure and complex question of fact, this Court need not resolve the said claim by resorting to adjudication of the complex issue of fact, as a question of this nature requires detailed examination and is to be determined by a competent authority or the civil Court in an appropriate proceeding, after full-fledged enquiry or trial. The same principle also extends to matters involving mixed questions of fact and law. A petition under Article 226 of the Constitution cannot be converted into a revenue quasi judicial proceeding or a suit to resolve the instant factual controversies. And, in general, disputed question of fact is not investigated into in a writ petition of this nature, more particularly, when it is being contended that civil Courts have already adjudicated the issue squarely in one suit already instituted and when another comprehensive suit of the year 2016 is pending adjudication before a competent civil Court and when an efficacious alternative remedy is available under law and the same is not pursued by the writ petitioners till date. Hence, in the considered view of this Court, there is no need to resolve the complex factual controversies between the parties to the

lis in this writ petition and it is for the competent authority or the civil Court to resolve the issues which are complex factual issues.

10. On the above analysis of facts and settled legal position, this Court finds that the writ petition, which is devoid of merit, is liable to be dismissed.

11. In the result, the Writ Petition is dismissed. It is needless to state that this Court has not expressed any opinion, much less a final opinion, on the merits of the matter.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

29.08.2018
Vjl



M.SEETHARAMA MURTI, J