

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.26912 of 2018

ORDER:

This writ petition is filed under Article 226 of the Constitution of India, with the following relief:

“To issue Writ of Mandamus, declaring the action of the Respondents and its men in interfering and trying to make constructions in land admeasuring Ac.1-03 gts in Sy.No.1287/B and 1288/B situated at Jyothinagar Locality, Karimnagar Town and Mandal, as illegal, arbitrary, violation of principles of natural justice and violation of Articles 14, 21 and 300-A of the Constitution of India and consequently direct the Respondents and their men and employees or any others claiming through the Respondents from interfering and making any constructions in the subject land”.

2. Heard the learned counsel for the petitioner and Sri S.Sharath, learned Special Government Pleader appearing for the Respondents, apart from perusing the material available on record.

3. Earlier, the petitioner herein instituted O.S.No.531 of 1978 before the Court of District Munsiff, Karimnagar against Lions Club, Karimnagar and City Municipality, Karimnagar (2nd respondent herein) for perpetual injunction, to restrain the defendants therein from interfering with the rights, possession and enjoyment of plaintiff in respect of Ac.1-03 gts of land in Sy.No.1287/B and 1288/B situated at Karimnagar. The said suit was decreed by the learned District Munsiff on 14.7.1987, directing the defendants therein, their agents, workers, assignees and servants not to interfere with the rights and possession and enjoyment of plaintiff in respect of land in the said survey numbers.

4. According to the learned counsel for the petitioner herein, the said decree was carried in Appeal before the District Judge, Karimnagar vide A.S (CF) No.3966 of 2004 with a delay of 6275 days in presenting the Appeal. It is further submitted by the learned counsel that the learned District Judge, Karimnagar dismissed the said application for condonation of delay and therefore, the decree granted by the learned District Munsiff on 14.7.1987 attained finality. It is further submitted that one Hiranmai Educational System Private Ltd., Karimnagar filed O.S.No.130 of 2011 on the file of Court of III Additional District Judge, Karimnagar for declaration of title and for perpetual injunction in respect of a part of the property. In the said suit, the Municipal Corporation, Karimnagar and the petitioner herein were impleaded as Defendants 1 and 2 respectively. The learned III Additional District Judge, Karimnagar vide judgment and decree dated 17.7.2018 dismissed the said suit. The grievance of the petitioner in the present writ petition is that taking advantage of the finding recoded by the learned District Judge in the said judgment at paragraph 39, the Respondent Municipal Corporation authorities have started interfering with the possession of the petitioner in respect of the subject land and started making constructions in the subject property and the said action on the part of the Respondent authorities is directly in contravention of the judgment and decree in O.S.No.531 of 1978, which attained finality in view of dismissal of Appeal filed by the Respondent Municipal Corporation.

5. On the contrary, it is submitted by the learned Special Government Pleader, appearing for the Respondents that the present writ petition filed under Article 226 of the Constitution of India is not maintainable and if the petitioner is aggrieved by the judgment and decree rendered in O.S.No.130

of 2011, it is open for the petitioner to assail the said judgment and decree in an appropriate forum and filing of the present writ petition is an attempt to circumvent the said procedure of law.

6. It is not in dispute that the suit i.e. O.S.No.531 of 1978 instituted by the petitioner herein on the file of the District Munsiff, Karimnagar was decreed on 14.7.1987, granting perpetual injunction in favour of the petitioner herein and against Karimnagar Municipal Corporation. Now in O.S.No.130 of 2011 at paragraph 39, the Court of III Additional District Judge, while dismissing the suit instituted by Hiranmai Educational System Private Ltd., Karimnagar held that the plaintiff failed to prove their possession over the schedule property and the interference of the defendants is without any rights. The said court further held that the first defendant i.e. Municipal Corporation of Karimnagar proved that the suit land is an open space left for public purpose and vests in it while answering Issue No.3. According to the learned counsel for the petitioner, taking advantage of the said finding, the Respondent authorities are interfering with the possession and enjoyment of the petitioner herein.

7. As rightly pointed out by the learned Special Government Pleader, when there is a finding recorded by the learned III Additional District Judge, Karimnagar in O.S.No.130 of 2011, the petitioner herein cannot maintain the present writ petition and it is always open for the petitioner to assail the said finding if the petitioner is aggrieved by the same in appropriate proceedings. In the considered opinion of this Court, the writ petition under Article 226 of the Constitution of India obviously against the finding of the trial Court cannot be maintained. However, it is open for the petitioner herein to avail the remedy open under law.

8. With the above observation, the writ petition is accordingly disposed of. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 31.7.2018
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



31.7.2018

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