

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.27374 OF 2018

ORDER:

Heard learned Counsel for the petitioner and the learned Government Pleader for Endowments representing respondents No.1 and 4, Sri K.Jaganmohan Reddy, learned Standing Counsel for R.2 and R.3 and the learned Government Pleader for Home for respondents No.5 and 6.

This Writ Petition is filed under Article 226 of the Constitution of India for the following relief:-

“..... issue a Writ or Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in interfering into the private patta land of the petitioner in an extent of Ac.0.16 guntas (1936 sq.yards) in Sy.No.174/RU, situated at Gundlapally village, Yadagirigutta Mandal, Yadadri-Bhongir District, under the guise of development of 3rd respondent-temple, without giving any notice to the petitioner and without giving any opportunity of hearing and without acquiring the same by initiating any land acquisition proceedings, is illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India apart from being violative of principles of natural justice and consequently direct the police authorities not to interfere into the personal lives and liberty of the petitioner and to pass.....”

According to the affidavit filed in support of the Writ Petition, the petitioner, namely Mohammed Ibne Ali, is the absolute owner and possessor of the land admeasuring Ac.0.16 guntas (1936 Sq.Yds.) in Sy.No.174/RU, situated at Gundlapally village, Yadagirigutta Mandal, Yadadri-Bhongir District, and the petitioner

acquired the same by inheritance from his forefathers. It is further stated in the writ affidavit that the petitioner herein executed a registered Agreement of Sale-cum-General Power of Attorney with possession vide document No.1071 of 2010, dated 03.02.2010, in favour of Mohd.Ahmad, So.Mohd.Hussain and Smt.Pallepati Suguna. According to the petitioner, the respondent-temple authorities have absolutely no right in the subject property and without recourse to law, they are interfering with the possession and enjoyment of the subject property.

When the matter is taken up, it is brought to the notice of this Court that earlier one Dr.Pallepati Srilatha, who is the daughter of Smt.Pallepati Suguna, who is the deponent of the affidavit filed in support of the present Writ Petition, along with five others filed W.P.Nos.7547 and 7806 of 2015 before this Court. This Court, by way of a common order dated 03.07.2017, dismissed the said Writ Petitions. The operative portion of the said order at paragraph No.10 reads as under:-

“A perusal of the record would show that the declarant Mohd. Momin Ali, made a statement, stating that out of Ac.23.29 gts., an extent of Ac.6.29 gts., in Sy.No.174 was sold to Narasimha Swamy Temple Committee, Yadagirigutta in the year 1970 and Ac.2.00 of land was given to Panchayat Board, Yadagirigutta for construction of water tank under protected water supply scheme. That being the position, a doubt would arise with regard to sale of land by the son of Mohd. Momin Ali to the petitioners. It is to be noted that said Mohd. Momin Ali made a declaration in the year 1970 itself, alienating Ac.6.29 gts., in favour of Narasimha Swamy Temple Committee, Yadagirigutta and Ac.2.00 of land was given to Panchayat Board for construction of a

water tank. Therefore, the question of his son selling the very same land in favour of the petitioners cannot be accepted. Be that as it may, it is to be noted that there was no injunction in favour of the vendors of the petitioners. The C.M.A. filed by them was also dismissed. Having lost in both forums, the registered sale deeds which were executed after the dismissal of C.M.A. are made the basis for initiating the present proceedings. On the other hand, the respondent temple placed on record documents to show that they are in possession of the property, constructed huge structures and a compound wall around the said structure, which is being used as a Goshala. Further, the order passed by the Joint Collector, Bhongir also show that the Tahsildar issued pattadar pass books in favour of the vendors of the petitioners without examining the physical possession of the land. It was further held that on detail examination of the records and evidence filed by the parties, it stands established that the vendors of the petitioners are not having any land in Sy.No.174 of Gundlapally village as Ac.11.01 gts., which was transferred in favour of the protected tenants under Section 38-E of the Act was sold in favour of the respondent temple, by the father of the vendor of the petitioners. The Joint Collector also directed the Revenue Divisional Officer, Bhongir, to submit proposals to initiate disciplinary action against the then Tahsildar and his staff, who have issued illegal pattadar pass books to the vendors of the petitioners without considering physical possession, title and right.”

It is also evident from the material available that the petitioner herein represented by G.P.A.Holders filed O.S.No.8 of 2011 on the file of the Court of the V-Additional District Judge, Bhongir, Nalgonda District, against the respondent-institution for declaration and perpetual injunction in respect of the subject land

in Sy.No.174/RU, admeasuring Ac.0.16 guntas. It is also brought to the notice of this Court that I.A.No.205 of 2011 filed in the said suit under the provisions of Order 39 Rules 1 and 2 C.P.C., for temporary injunction to restrain the defendants therein from interfering with the suit land was dismissed by the learned District Judge, by way of an Order, dated 22.03.2012. It is also to be noted that as against the said Order, the petitioner herein filed C.M.A.No.362 of 2012. A Division Bench of this Court, by way of an Order, dated 22.01.2013, dismissed the said C.M.A.No.362 of 2012. Paragraph Nos.5 and 6 of the said Order read as under:-

“The Court below considering the evidence adduced by the parties, *prima facie*, found that the plaintiffs are not in the possession of the suit land and accordingly dismissed the I.A. After perusing the impugned order and hearing the learned Counsel, we do not see any infirmity in the impugned order warranting the interference of this Court. The appeal is accordingly dismissed. Consequently, the miscellaneous petitions filed in the appeal are also dismissed. However, the suit shall be disposed of expeditiously, on priority basis.

The appellants sought to file certain documents in support of their claim. It is open for the appellants to file those documents before the Court below and on such filing of the documents, the same can be received subject to relevancy and admissibility. No order as to costs.”

As observed supra, one of the G.P.A.Holders – Smt.Pallepati Suguna is no other than the mother of the 1st petitioner in W.P.Nos.7547 and 7806 of 2015, which ended in dismissal before this Court. In the considered opinion of this Court, in view of the pendency of the suit, wherein the injunction application filed by

the petitioner herein was dismissed and in view of the dismissal of the Writ Petitions, mentioned supra, the petitioner herein cannot re-agitate the issue before this Court under Article 226 of the Constitution of India. However, it is open for the petitioner herein to pursue the civil suit already instituted.

Accordingly, with the above observations, the Writ Petition is disposed of. No order as to costs.

Miscellaneous Petitions pending consideration, if any, in this Writ Petition shall stand closed.

Date :07.08.2018
Smr

JUSTICE A.V.SESHA SAI

