

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.16362 of 2012

ORDER:

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

“... to issue any writ, order or direction more in the nature of writ of Mandamus to declare the action of the 1st respondent in issuing the notice dated 23-5-2012 under Sections 405 & 406 of HMC Act, to remove the hut of the petitioner as illegal, unconstitutional, arbitrary & against the principles of natural justice, and consequently set aside the said notice and pass any such other order or orders as this Court deems fit and proper in the circumstances of the case.”

2. I have heard the submissions of *Sri I.Venkata Prasad*, learned counsel appearing for the writ petitioner, of *Sri K.G.Krishna Murthy*, learned senior counsel representing *Sri K.Rammohan Mahadeva*, learned counsel appearing for the 5th respondent, of the learned Standing Counsel appearing for the 1st respondent/ Anantapur Municipal Corporation; and, of the learned Government Pleader for Revenue appearing for the respondents 2 to 4.

3. The case of the writ petitioner and the submissions made on her behalf, in brief, are as follows:

The subject property, viz., house site in T.S.no.139 admeasuring 22 X 11 feet in Kakkalapalli Colony of Anantapur Town within the boundaries mentioned in the writ petition originally

belonged to the Government. The petitioner constructed a house thereon and is exclusively enjoying, since a long time, the said property by residing in the said house bearing Door no.6-5-410. Originally, she had constructed a hut. Recently, she constructed a house in its place with the amount sanctioned to her by the Government under the 'Indiramma Gruha Nirmana Pathakam'. Thus, she is enjoying the said property without violating the conditions of the patta granted to her vide File no.21/ 1417, dated 27.09.2008, in respect of the vacant site. She had also obtained electricity service connection for the said house. The copies of the electricity receipts are filed with the material papers. The property was mutated in her name in the records concerned and she is paying house tax to the 1st respondent/Municipal Corporation. While so, the 3rd respondent/Revenue Divisional Officer, Anantapur, vide proceedings dated 15.02.2012 in D.Dis.No.D2/ 93/ 2009, cancelled the possession certificate issued to the petitioner by the 4th respondent/Tahasildar. Thereupon, on 19.04.2012, the petitioner preferred an appeal before the 2nd respondent/Joint Collector and the said appeal is pending. The 1st respondent/Municipal Commissioner at the instance of the 5th respondent/Vacate petitioner, who has no concern with the subject property and who is an influential person, issued the impugned notice, dated 23.05.2012, to the petitioner under Sections 405 & 406 of the Greater Hyderabad Municipal Corporation Act, 1955, ('the Act', for brevity) calling upon the petitioner to remove the hut

within fifteen days of receipt of the said notice and stating that on her failure to so to do, the same will be removed by the Department without any further notice. The said notice was issued without holding any enquiry; and, no opportunity of hearing was provided prior to the issuance of the said notice. The said notice, holding the petitioner and others similarly placed as encroachers of a road, was issued highhandedly despite having knowledge of the pendency of the appeal of the petitioner before the Joint Collector. Therefore, the action culminating in the impugned notice and the impugned notice are illegal and unconstitutional. Hence, the writ petition is filed.

4. No counters are filed by the respondents 1 to 4.

5. The 5th respondent, having got impleaded himself as per orders, dated 13.03.2017, passed in WPMP No.32311 of 2012, filed the vacate petition along with his affidavit. The case of the 5th respondent and the submissions made on his behalf, in brief, are as follows:

The writ petition is filed without impleading this respondent; and, interim orders were obtained, on 06.06.2012, in WPMP No.21032 of 2012. In the proceedings in D.Dis.No.D2/ 93/ 2009, this respondent is the third appellant. Indeed, the orders, dated 15.02.2012, were passed by the 3rd respondent/ Revenue Divisional Officer at the instance of this respondent. In fact, the petitioner and a few others have occupied the road margin located in front of

the house of this respondent in Sy.no.141-2B of an extent of Ac.0.30 cents in L.P.Nos.17/ 92 and 295/ 78, which originally belonged to one Govindappa. The said Govindappa sold the same to M.Ramanjaneyulu and Parandhamulu under registered sale deed, dated 07.12.2006, and delivered possession to them. They having obtained permission, constructed a house. Door no.6-5-750 was allotted to the said house in which they started residing. In front of the said house, there is a 40 feet road in existence. The petitioner and others occupied the same and constructed huts. However, without proper verification of records, the 4th respondent, vide proceedings in Rc.21/ 1417, issued possession certificates to all such occupants including the petitioner. On coming to know of the same, the said Ramanjaneyulu and Parandhamulu preferred an appeal before the 3rd respondent/ RDO and obtained stay order. Thereafter, this respondent purchased their property and was impleaded as 3rd appellant in the said appeal. This respondent also filed W.P.No.25270 of 2011 by impleading all concerned as party respondents. The said writ petition was not contested. This Court, by orders, dated 22.09.2011, directed the 3rd respondent therein to dispose of the appeal on or before 31.10.2011, however, after giving opportunity to all the concerned. Thereafter, the 3rd respondent disposed of the appeal and passed orders, dated 15.02.2012 cancelling the possession certificates. It appears that the petitioner preferred an appeal before the Joint Collector and the same is pending. Questioning the notices issued under Sections 405 & 406

of the Act, the petitioner filed the present writ petition by suppressing the real facts. Even in the appeal preferred before the Joint Collector, the petitioner has not impleaded this respondent. Since the petitioner occupied a portion of the road and constructed the house, there is no need to issue any notice in view of the provision of Section 405 of the Act, which clearly states that the Commissioner is empowered to remove, without notice, any encroachment, whether permanent or temporary, erected over a street. The revenue records clearly establish that the occupied property is a road site and that the possession certificate was erroneously issued by the Tahasildar without proper verification of the records and that therefore, the same was cancelled by a reasoned order passed by the RDO. In fact, some others who are similarly placed as the petitioner herein also preferred appeals before the Joint Collector; and, one such appeal in D.Dis.No.6183/ 2009/ E4 of Gurupadamma was dismissed by the Joint Collector by an order, dated 24.04.2012. Thus, the Joint Collector confirmed the orders of the RDO, the 3rd respondent herein. If the interim order is continued without being vacated and the petitioner is allowed to continue in possession of the house, which is constructed by encroaching upon the road situated in front of the house of this respondent, he continues to suffer serious and irreparable loss. Hence, the interim order may be vacated and the writ petition may be dismissed.

6. At the hearing, learned counsel for the petitioner reiterated the case of the petitioner, which is stated supra, in detail. He further submitted that in view of the petitioner's long possession over the property and the record produced by the petitioner along with the writ petition and the pendency of the appeal before the Joint Collector, wherein the order of the RDO was assailed, and as the issues regarding the width of the road and the validity of the notice issued under Section 405 of the Act require detailed examination by the Joint Collector, the petitioner is entitled to continue in possession of the property till at least the date of disposal of the appeal by the Joint Collector, in any view of the matter. He would further submit that the house is away from the road and road margin.

7. The case and the submissions of the 5th respondent are already stated supra. Learned senior counsel while reiterating the same prayed for dismissal of the writ petition. He placed reliance on a decision in Jubilee Hills Labour Welfare Association, Hyderabad v. Municipal Corporation of Hyderabad and others¹ and the decision in Mohd. Miskinavelli and others v. Visakhapatnam Municipal Corporation² in support of the proposition that when the road is encroached upon and any construction is erected over the encroached portion of the road, the competent officer of the Municipality/ Municipal Corporation is empowered to remove the

¹ (2003) 6 ALD 790

² (2003) ALD 541

same by invoking the provision of Section 405 of the Act even without notice as such encroachments cause obstruction to free flow of traffic and cause inconvenience to the residents of the locality and the passersby.

8. Learned Standing Counsel for the Municipal Corporation and the learned Government Pleader for Revenue supported the orders of the RDO whereby the possession certificate of the petitioner was cancelled and urged that the impugned notice is valid and the writ petition is liable for dismissal as not maintainable as the petitioner's house is an encroachment over the road site and as the RDO had recorded a finding of fact to that effect and held that the Tahasildar had issued the possession certificate without proper verification of the record.

9. I have given earnest consideration to the facts & submissions.

10. From the pleadings and submissions excerpted supra, it is not in dispute that the petitioner is residing in the subject house which is assigned a house number and is provided with a service connection. The petitioner claims that she is in possession over the said house property since a very long time and that it was constructed by occupying a Government site and that in recognition of her long possession, she was provided certain amount under 'Indiramma Gruhanirmana Pathakam' and that possession certificate was also issued by the Tahasildar. The petitioner was originally issued house site patta in H.S.Dis.21/ 1407, dated 27.09.2003, by

the Tahasildar is not in dispute. However, it is also undisputed that the possession certificate/patta issued by the Tahasildar was cancelled by the RDO on the ground that the possession certificates were issued by the Tahasildar to the petitioner and others similarly placed without proper verification of the records. In the orders of the RDO, it is stated that the Tahasildar issued pattas to the encroachers who erected huts in 40 feet wide road approved in L.P.no.17/ 92 and that the said road was handed over to Municipality and that despite informing the Tahasildar to cancel the pattas, he did not take any action. Eventually, by his orders, the RDO cancelled the possession certificate/ house site patta issued by the Tahasildar to the petitioner as well. Aggrieved thereof, the petitioner preferred an appeal, on 19.04.2012, before the Joint Collector and the said appeal is pending before the said authority. During the pendency of the said appeal, the impugned notice was issued, on 23.05.2012, invoking the provisions of Sections 405 & 406 of the Act calling upon the petitioner to remove the hut and stating that on failure to comply with the said demand, the hut will be got removed by the Department without any further notice. Thereupon, this writ petition was filed by the petitioner. On 06.06.2012, this Court while admitting the writ petition granted an interim direction as prayed for in W.P.M.P.no.21032 of 2012, which is filed seeking a direction not to remove the subject structure and for suspension of the impugned notice.

11. In this backdrop of the facts & circumstances, it is for the Joint Collector before whom the appeal preferred by the petitioner is admittedly pending to consider the contentions of the parties and arrive at a just decision having regard to the facts & circumstances of the case. Therefore, and as the matter is *sub judice* in the appeal pending before the Joint Collector, it is not necessary for this Court to advert to the contentions of either of the parties and record any findings on merits of the matter. The aspect of enforcement of the impugned notice, under Sections 405 & 406 of the Act, and the further course of action, if any, to be taken pursuant to the said notice depends upon the decision, which the Joint Collector eventually arrives at in the appeal pending before him. In the event the Joint Collector sets aside the order of the RDO by allowing the appeal of the petitioner, notice impugned in this writ petition need not be enforced. However, if the Joint Collector holds against the petitioner and dismisses the appeal confirming the orders of the RDO, then further course of action pursuant to the impugned notice may be necessary in the facts & circumstances of the case. Therefore, it is axiomatic that the aspect as to whether the notice impugned in this writ petition shall be enforced or not depends upon the result in the said appeal and hence, the impugned notice shall remain in abeyance till disposal of the appeal by the Joint Collector. On the above analysis, this Court finds that till disposal of the appeal by the Joint Collector, the petitioner is entitled to continue in possession over the subject

house and site property and hence, her such possession deserves protection till the disposal of the above said appeal. In that view of the matter, this Court finds that this writ petition can be disposed of with necessary directions.

12. In the result, the Writ Petition is disposed of directing the Joint Collector to dispose of the appeal preferred by the petitioner as expeditiously as possible and preferably within two months from the date of receipt of a copy of this order. And till such time the appeal is disposed of by the Joint Collector, both the parties are directed to maintain absolute *status quo* as regards the possession of the petitioner over the subject house and site property. It is needless to state that the impugned notice shall remain in abeyance till the disposal of the said appeal by the Joint Collector.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

12.06.2018
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