

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL No.1570 OF 2018

JUDGMENT: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard Mr.V.Ravi Kiran Rao for the appellants and the learned Special Government Pleader for respondents.

The writ appeal is at the instance of unsuccessful writ petitioners. The subject matter of the writ petition is Sy.No.1251 an extent of 133 sq. yards or 111.72 sq. metres at Jyothinagar Area of Karimnagar City, within the limits of Municipal Corporation, Karimnagar. The appellants complained threatened action of respondents herein in dispossessing the appellants from the subject matter without recourse to law and further taking steps to install statue of Swamy Vivekananda as illegal, arbitrary and unconstitutional.

The learned Single Judge through the order under appeal after taking note of the rival submissions put forward by the counsel appearing for both the parties held as follows:

“In view of the above, it is clear that the petitioners themselves do not have any right in the land in question, as such, their dispossession does not arise. Inasmuch as the erection of the statue being done by the Corporation in terms of the resolution passed by the Standing Committee, it cannot be found fault with the same. If the petitioners claim any right in the land in question, they are at liberty to approach the civil Court for ascertaining their rights in accordance with law”.

Hence, the appeal.

Mr.Ravi Kiran Rao by referring to G.O.Ms.No.262, Revenue (Assignment-I) dated 31.03.2010 and the order of the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No.8519/2006 and also the basic document through which title is claimed by the appellants contends that the appellants have, in fact, established *prima facie* right, title and the possession is presumed in favour of such claim established by the appellants. Therefore, he contends that attempting to dispossess the appellants without recourse to law and/or establishing a statue in the subject matter is violative of Article 300-A of the Constitution of India. He prays for allowing the writ appeal.

Mr.SSharath Kumar contends that the appellants claim to have purchased the subject matter through registered sale deed dated 09.03.2009. He refers to the stand taken in the counter affidavit of 3rd respondent and contends that the learned Judge has rightly found that there are disputed questions on title and, therefore, this Court instead of deciding the title between the parties preserved the rights of appellants herein to work out the remedy before the competent Court. For any purpose i.e., either to set aside the order under appeal or accept the case of appellants on the disputed title, this Court undertakes an enquiry which is normally avoided.

The stand taken by 3rd respondent in the counter affidavit is that the subject land which the writ petitioners claim belongs to the

Corporation as per Town Planning No.11/70 as the original owner late Shaik Junaid divided his land in Survey No.1251 into plots and while selling the same, the subject land is shown as part of road tri-junction island. According to the Town Planning Rules and Regulations, the Corporation alone has right in respect of all roads situated within the approved layout. The petitioners cannot claim right over the subject land. The Standing Committee of respondent vide Resolution No.560 dated 03.01.2007 approved for installing statue of Swamy Vivekananda. The subject land was fenced by the Corporation in accordance with RDP No.10/88/WRO and also a name board was installed stating that the land belongs to the Corporation. For the last more than 20 years, the land is in possession of Corporation. The 3rd respondent prays for dismissing the writ appeal.

We have adverted to the claim of appellants and also the stand taken by the 3rd respondent in the counter affidavit. We are satisfied that the view taken by the learned Single Judge in the fact situation of this case is consistent with the principle of law on the point and the order whereby no relief is granted to the appellants herein is completely justified. This Court for any purpose, including the limited purpose of deciding the *prima facie* case now made out by the appellants if considers and records a finding, the same would be prejudicial to the suit that may be filed in this behalf by the appellants. By preserving the liberty granted by the learned Single Judge, the writ appeal is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending,
stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

03rd December, 2018

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