

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP No.2168 of 2019

ORDER:

This writ petition is filed seeking to issue a writ of mandamus to declare the action of the respondents 3, 4 and 5 in not restraining the respondents 6 and 7 from proceeding with the illegal construction over the house plot of the petitioner to an extent of 210 sq. yards in Sy.No.241/A situated at Shanagar village, Ramadugu Mandal, Karimnagar District as being illegal, arbitrary and void and for issuance of appropriate consequential directions.

02. Facts briefly stated are:-the petitioner is the absolute owner and possessor of house plot to an extent of 210 sq. yards in Sy.No.241/A situated at Shanagar village. That he was also the owner of land to extent of Ac.2-10 guntas in Sy.No.241/A situated at Shanagar village. That to meet his family necessities, he made the part of land area into house plots and sold out to various persons by retaining 2 ¼ guntas of land in different locations. It seems the petitioner had entered into transactions in respect of the said land with other persons, the details of which are not necessary for the purpose of this writ petition.

03. The case of the petitioner is that he is the owner and possessor of the house plot to an extent of 210 sq. yards in Sy.No.241/A situated at Shanagar village, which the 6th and 7th respondents are also claiming to be owners in their own right. The grievance of the petitioner is that the 6th and 7th respondents are proceeding with illegal construction on

the said house plot without obtaining any permission from the respondent-authorities and the representation dated 17-12-2018 made by the petitioner in that behalf seeking to stop the illegal construction, did not yield any results, he is constrained to file this writ petition.

04. Counter affidavit is filed by the 5th respondent-Gram Panchayat wherein it is stated that 6th and 7th respondent are making constructions on the house plot in question without having any construction permission from the Gram Panchayat and on noticing the same a notice dated 29-12-2018 was issued to them to stop the construction and when they put on deaf ears, two more notices were issued on 10-01-2019 and 13-02-2019. That the 7th respondent submitted an application dated 22-12-2018 seeking for permission for construction in the said plot, but even before the permission could be granted, they were proceeding with the construction activity. That the 7th respondent also made online application on 27-08-2019 seeking permission and the same was rejected for want of layout and land conversion and for non-compliance of Rule 14 of Layout and Building Rules, issued in GO Ms.No.67, dated 26-02-2002. That the construction was stopped pursuant to the interim orders passed by this Court.

05. Counter affidavit is filed by the 7th respondent, on her behalf and also on behalf of 6th respondent wherein it is stated that the petitioner got land in Sy.No.241/A to an extent of Ac.2-10 guntas situated at Shanagar village, in partition, from his father by means of registered gift deed and according to the 7th respondent, the petitioner, in turn for his

family necessities sold the entire land of Ac.2-10 guntas to various persons, the details of persons to whom the land was sold allegedly by the petitioner is furnished in the counter affidavit in a tabular form. It is stated that by the 7th respondent that the petitioner is not possessing any land muchless house plot to an extent of 210 sq. yards. That the 6th respondent being owner of the subject house plot, executed a registered sale deed bearing document no.7160 of 2018, dated 26-10-2018 in favour of 7th respondent and since then she (7th respondent) became owner of the house plot in question. That she made an application dated 22-12-2018 in the prescribed format for grant of building permission by duly enclosing all the relevant documents, which was received by the 5th respondent on 28-12-2018 and made an endorsement to that effect. That the 5th respondent neither rejected the application by raising objections nor granted the permission, therefore, in view of the deeming provision of Section 114 (3) of the Telangana Grampanchayat Act, 2018, the 7th respondent proceeded with the construction by following the building regulations. That the petitioner pressurized the official respondents from granting permission to her for construction of the house. That pursuant to the orders passed by this Court, she has stopped the construction of the building which has come upto the level of pillars and laying of roof. That there are no merits in the writ petition and the same is liable to be dismissed.

06. Heard the learned counsel for the petitioner, the learned Standing Counsel for the 5th respondent and the learned counsel for respondents 6 and 7.

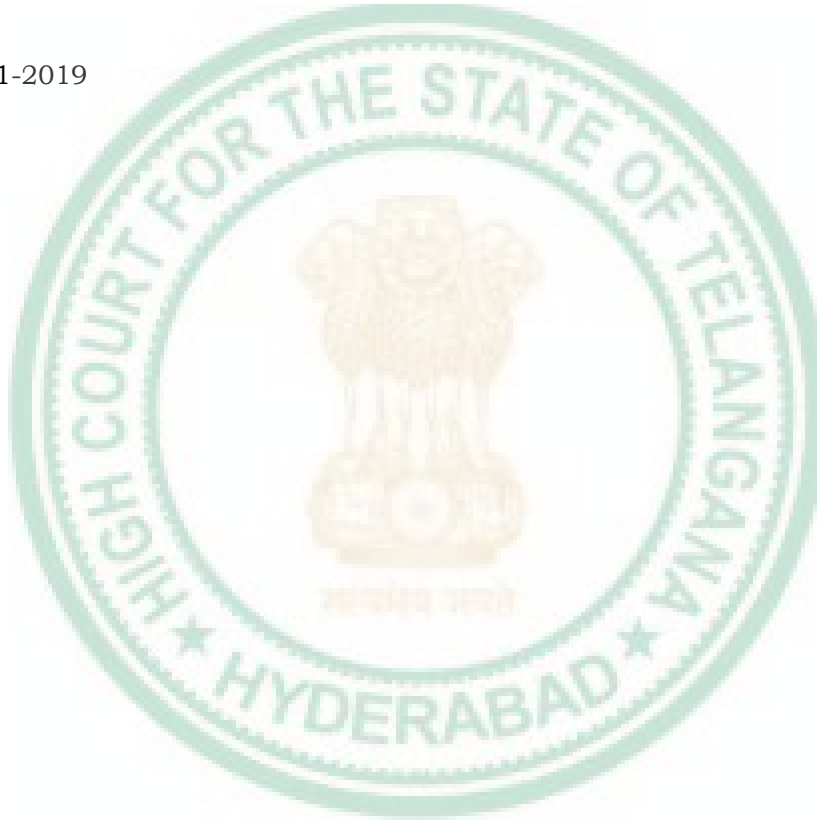
07. It is to be seen that both the parties are claiming the property rights to the house plot in question. But, the 7th respondent claims that she is in possession of the house plot and construction has come upto the level of laying pillars and roof. The averment that 7th respondent has constructed house building upto the roof level is not controverted by the petitioner by filing any reply affidavit. Coming to the grievance of the petitioner that 7th respondent is making constructions without obtaining permission, it is to be examined by the 5th respondent and take action in the light of claim of the 7th respondent that she has proceeded with the construction activity by invoking the deeming provision under Section 114 (3) of the Telangana Grampanchayat Act, 2018. There seems to be title dispute between the parties with regard to the house plot in question, though they are closely related to each other. However, it is settled proposition of law that disputed questions of fact cannot be gone into a proceeding under Article 226 of the Constitution of India.

08. It is the case of the 7th respondent that the application made by her on 22-12-2018 for grant of building permission is not yet disposed of till today, in the circumstances, suffice it direct the 5th respondent to consider the application of the 7th respondent for grant of building permission after considering the objections, if any, by the petitioner and pass orders thereon in accordance in with law. Interim orders granted

by this Court to continue till appropriate decision is taken by the 5th respondent on the application of the 7th respondent. As regards the claim and counter claim to the title of the house plot in question by the contesting parties, it is open for the petitioner to approach the competent civil Court to redress his grievance, if so advised. Miscellaneous petitions if any pending shall stand disposed of. No order as to costs.

A.RAJASHEKER REDDY, J

Dated: 06-11-2019
NRG



THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP No.2168 of 2019

//web//



Dated:06-11-2019

NRG