

HONOURABLE SRI JUJUSTICE P.NAVEEN RAO

WRIT PETITION NO.4463 OF 2019

Date: 15.07.2019

Between:

K.Shivashankar, s/o. K.Ramulu,
Aged 46 years, occu: Business,
r/o. H.no.2-34, Chengicherla village,
Medipally Mandal, Medchal-malkajgiri
District and two others.

.... Petitioners

and

State of Telangana, rep.by its Prl.Secretary,
Revenue Department, Secretariat Buildings,
Hyderabad and others.

..... Respondents



This Court made the following:

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ORDER:

Petitioners claim that Manchala Ramaiah purchased the land to an extent of Ac.1.11 guntas in Sy.No.15, and Ac.4.04 guntas in Sy.No.16 of Chengicherla village, Ghatkesar Mandal, Ranga Reddy district, through registered sale deed, dated 30.06.1987. He has given Power of Attorney to Sri Vootukuru Sathyanarayana Reddy. Petitioners claim that the Power of Attorney executed sale deed in favour of petitioners in respect of land to an extent of Ac.1.06 guntas in Sy.No.15, and Ac.2.11 guntas in Sy.No.16 vide registered sale deed dated 12.02.2013. The same was ratified by son of Ramaiah on 10.09.2013. Petitioners claim to be in possession and enjoyment of the said land. Petitioners aver that 9th respondent applied for layout based on Registered Development Agreement-cum-General Power of Attorney dated 14.05.2018 executed in his favour by 10th respondent. The layout application discloses total extent as Ac.10.22 guntas of land. This land is spread over various survey numbers. It is alleged that individual extent of land is not shown in respective survey numbers. Petitioners allege that in the guise of layout permission, unofficial respondents are trying to grab their land. Alleging encroachment into their land in Sy.No.15, complaint was filed by the 10th respondent with the Police, who registered the same as Crime No.62 of 2019 in Medipally Police Station. Petitioners claim that they submitted representations to conduct survey of land in Sy.Nos.15 & 16, to fix boundaries, and to cancel draft layout granted on 08.11.2018 in favour of 9th respondent. Alleging inaction on their representations, this Writ Petition is filed.

2. Petitioners seek direction to conduct survey on land in Sy.Nos.12, 15 and 16 of Chengicherla village and consequently to set aside draft layout dated 08.11.2018.

3. Heard learned senior counsel Sri P.Venugopal appearing for Sri K.Goverdan Reddy for petitioners; learned Government Pleader for Revenue for respondents 1 to 4 and 7; Sri V.Narasimha Goud, learned standing counsel for HMDA for respondent No.5; Sri N.Praveen Kumar, learned standing counsel for Municipality for respondent no.6; learned senior counsel Sri S.Malla Rao for 9th respondent; learned senior counsel Sri R.Raghunandhan Rao appearing for Sri T.V.Kalyan Singh for 10th respondent.

4. Learned senior counsel Sri P.Venugopal contended that in the guise of illegal sale transactions, respondents 9 and 10 are trying to encroach into the land of petitioners; that in order to avoid such illegal encroachments and to identify respective extents of land, it is necessary to conduct survey. Once application is made in a prescribed form, it is bounden duty of the authorities to conduct survey and they cannot refuse; and not conducting survey is *ex facie* illegal. He would further submit that the vendor of petitioners filed W.P.No.14709 of 2008 praying to issue directions to conduct survey. Said writ petition was disposed of by order dated 25.11.2008 directing to conduct survey, but so far survey is not conducted. Thus, it is all the more necessary for the respondent authorities to conduct survey.

5. He would further submit that the sale deeds, through which 10th respondent claimed to have purchased the properties, do not

contain the clear boundaries. The layout application submitted by 9th respondent also do not contain the boundaries. Only a sketch is filed without describing the boundaries, extent and survey numbers. Based on such application, layout permission was granted. Under the guise of such illegal layout permission, the unofficial respondents are trying to encroach into the land of petitioners. Without details of survey numbers, boundaries and extent of land, layout permission cannot be granted. Therefore, layout granted to the unofficial respondents is liable to be cancelled.

6. Learned senior counsel vehemently contended that there was no sub-divisions in Sy.Nos.15 and 16, whereas in the sale deeds, through which unofficial respondents claimed to have purchased the said properties, sub- divisions are mentioned. This itself would indicate that sale transactions are not valid. In the counter-affidavit filed by the respondents also, they are silent on the sub-divisions and even now there is no clarity on extent of land in Sy.Nos.15 and 16.

7. *Per contra*, learned senior counsel Sri R.Raghunandhan Rao submitted that the very sale transactions, on which petitioners are relying upon to claim ownership, is a sham transaction. He would submit that on the date when the Power of Attorney holder executed deed of conveyance on 12.02.2013, Sri Ramaiah was not alive. As Sri Manchala Ramaiah died on 07.12.2008, after his death, power of attorney has no validity and GPA holder cannot act on behalf of a dead person. He would further submit that the sale deed contains photograph of late Ramaiah and thumb impression

of a dead person. This clearly brings out fraud played by power of attorney and petitioners to grab the land. Further, by the time said sale deed was executed there was no land owned by Ramaiah in Sy.No.15. The GPA executed two sale deeds on 27.02.2002 in favour of P.Pramod Kumar (Ac.0.31 guntas) and P.Srikrishna (Ac.0.28 guntas) in Sy.No.15. Therefore, the question of further sale transaction in favour of petitioners on land in Sy.No.15 was not valid. He would further submit that while the sale deed dated 27.02.2002 mentioned the sub-divisions, in the sale deeds of petitioners, sub-divisions are not mentioned. This was deliberately done. Though total extent of land in Sy.Nos.15 & 16 put together is Ac.5.15 guntas, and though petitioners also admit that extent of land owned by late Ramaiah in Sy.No.15 part was only Ac.1.11 guntas, but the extent of land in the name of late Ramaiah in the said survey number is shown as Ac.3.04 guntas. Though in Sy.No.16 the total extent of land standing in the name of late Ramaiah was Ac.4.04 guntas, deliberately it was shown as Ac.2.11 guntas and by this process, the petitioners are trying to encroach into larger extent of land in Sy.No.15 than the land that was available to late Ramaiah.

8. He further submitted that petitioners filed O.S.No.1270 of 2013 pending in the Court of II Additional District Judge at L.B.Nagar, Ranga Reddy district. The plaint averments would disclose that extent of land in Sy.No.15 part is Ac.1.11 guntas and in Sy.No.16 part is Ac.4.04 guntas. From the reading of the reliefs sought in the said suit, it is clear that petitioners were not in possession of land in Sy.No.16 even by the time suit was instituted, and that petitioners seek declaration that they are

absolute owners. Some third parties are arrayed as defendants in the said suit. By referring to the schedule appended to the suit, learned senior counsel for 9th respondent asserted that petitioners are aware of the location of their lands and if that being so, it is not stated why they are requesting to conduct survey. He would submit that land of 9th respondent is far away from the land claimed by the petitioners. In support of his contention, he has produced copy of printout of image from the website of Google Maps. He further submitted that even though suit was filed regarding declaration of title and restoration of possession, for the reasons best known the petitioners did not take steps to file application in the pending suit to conduct survey.

9. With reference to the contention that there is no clarity on the extent of land in respective survey numbers, learned senior counsel would submit that revenue records reflect the name of 9th respondent in the respective survey numbers.

10. Learned counsel Sri Malla Rao would submit that as the original landlord died on 07.12.2008, the GPA does not survive and that being so, there cannot be validation of sale transaction by son of late Ramaiah, whereas petitioners are trying to rely upon the validation deed dated 10.09.2013. He would submit that as can be seen from the document it is not even a validation deed and at any rate, it cannot validate void sale transaction.

11. He further contended that as the prayer in the suit itself shows that petitioners were seeking declaration of title and restoration of possession, the prayer to conduct survey is not valid.

The persons who are not in possession and whose title is yet to be asserted cannot ask for conducting of survey.

12. There are two aspects in the prayer sought by the petitioners; firstly to conduct survey of land in Sy.Nos.15 and 16 of Chengicherla village, and consequently to declare the draft layout dated 08.11.2018 as illegal. These are two independent aspects. It is appropriate to note that though in the prayer petitioners are challenging the draft layout stated to have been granted on 08.11.2018, the document is not filed. The contentions of learned senior counsel on lack of clarity on land when layout was granted is by referring to the sketch enclosed to Development Agreement-cum-GPA executed by 10th respondent in favour of 9th respondent. Even without obtaining the document and placing the same on record contentions are advanced. Without looking into the draft layout, Court cannot appreciate the contentions against the draft layout.

13. The main prayer in the writ petition is to conduct survey of land in Sy.Nos.12, 15 and 16. There is no explanation as to why petitioners are asking to conduct survey of land in Sy.No.12. When this was pointed out, the learned senior counsel P.Venugopal fairly submitted that petitioners are not concerned with the land in Sy.No.12.

14. Ordinarily, request to conduct survey cannot be refused, more particularly when there is boundary dispute and no clarity on the extent of land in a particular survey number. In several decisions, this Court, time and again, held that survey authorities cannot refuse to conduct survey. However, person making

application to conduct survey must have some semblance of interest in the subject property, and claimed to be in possession. Petitioners instituted O.S.No.1270 of 2013 alleging that the defendants 1 and 2 illegally claimed the land as belong to them and they in turn sold the land to the defendants 3 and 4; and defendants 3 and 4 in turn further alienated the extent of land to defendants 6, 7 to 12. The averments also disclose that name of Manchala Ramaiah was deleted from the revenue records vide proceedings of the Tahsildar dated 02.11.2006 and incorporated the names of defendants 1 and 2 in the said suit in Sy.No.16 to an extent of Ac.2.11 guntas. Aggrieved thereby petitioners claimed to have filed appeal in February, 2013 and said appeal is pending consideration. If that is so, by the time the alleged sale transactions dated 12.02.2013, there was no land in the name of late Ramaiah and was not in possession. From the reading of the prayer sought in the suit in O.S.No.1270 of 2013, it is seen that petitioners sought declaration that they are owners of the land in Sy.Nos.15 and 16 to an extent of Ac.3.17 guntas and to direct the defendants to vacate the suit schedule 'B' property and to put the petitioners in possession. In other words, petitioners yet to assert their title and are not in possession of land to an extent of Ac.2.11 guntas in Sy.no.16 and some third parties are in possession. Thus, no case is made out to issue directions to conduct survey. Though there appears merit in the contention of learned senior counsel Sri Raghunandhan Rao against validity of sale deed dated 12.02.2013, on which reliance is placed by the petitioners to claim title, since O.S.No.1270 of 2013 is pending consideration of trial Court no opinion is expressed.

15. Writ Petition is accordingly dismissed. However, this order does not come in the way of the petitioners working out civil law remedies as available to them. Pending miscellaneous petitions shall stand closed.

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