

**HON'BLE THE ACTING CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
HON'BLE SRI JUSTICE A. RAJASHEKER REDDY**

WRIT APPEAL No. 379 of 2019

JUDGMENT: *(per the Hon'ble the Acting Chief Justice Raghvendra Singh Chauhan)*

The appellants have challenged the legality of the order dated 12.03.2019, passed by the learned Single Judge, in I.A.No.2 of 2018 in writ petition No.25634 of 2018, whereby the learned Single Judge had vacated the stay order granted by him on 24.07.2018, and upon the request of both the parties, had finally dismissed the writ petition.

Briefly, the facts of the case are that the petitioners are absolute owners of the total land, admeasuring 600 sq.yards, out of the land of an extent of Acs.17.00 guntas, located in survey Nos.40/1, 40/2, 42 and 43, situated at Kesavaswamy Samadhi, Jiaguda, Hyderabad. The petitioners further plead that at the instance of the respondent No.4, Prabhu Datta Maharaj, the Municipal Authorities are laying roads stating that the existing road needs to be strengthened. The petitioners further claim that the respondent No.1, Greater Hyderabad Municipal Corporation (GHMC), issued proceedings dated 30.11.2017, wherein they were informed that the Tahsildar, Asif Nagar Mandal, Hyderabad, had informed that the land falls in T.S.No.8, Block-K, Ward-28 of Kulsumpura Village, Asif Nagar Tahsil,

Hyderabad. As per the TSLR records, in Column No.10, the said land is recorded as “Haji Iqbali Deva Saxina”, and in Column No.20, it is recorded as “Government Vested with Municipality”. The said conclusion was drawn on the basis of the fact that there is an existing road. Moreover, according to the Tahsildar, certain private persons had encroached upon the Government land by misrepresenting the facts. Fearing that the respondent Nos.1 to 3 may encroach upon the land belonging to the petitioners, the petitioners had filed the writ petition praying that the respondent Nos.1 to 3 should be enjoined from encroaching upon their land, and from disturbing their peaceful possession over the same. By order dated 24.07.2018, the learned Single Judge had directed “status quo” to be maintained. Subsequently, I.A.No.2 of 2018 was filed by the respondent No.4 for vacating the said interim order. By the impugned order, dated 12.03.2019, the learned Single Judge has not only vacated the stay order, but has also decided the writ petition finally. Hence, this appeal before this Court.

The learned counsel for the appellants has raised the following contentions before this Court:-

Firstly, in exercise of the writ jurisdiction, the learned Single Judge, in fact, has decided the title of the petitioners to the

property in dispute. Secondly, the learned Single Judge has overlooked the fact that while unilaterally cancelling the sale deeds, the Tahsildar had not given any opportunity of hearing to the petitioners. Thirdly, since the respondents were threatening to dispossess the petitioners from their land, since there was insufficient time for the appellants to approach a Civil Court, the dispute ought to have been adjudicated by the learned Single Judge. Therefore, the learned Single Judge has erred in not only vacating the stay order, but also in dismissing the writ petition. Hence, the impugned order deserves to be set aside by this Court; the status quo order deserves to be restored by this Court.

On the other hand, the learned counsel for the respondent Nos.1 and 2, Mr. N. Ashok Kumar, and the learned Government Pleader for Medical and Health appearing for the respondent No.3 have pleaded that firstly, the appellants were required to make out a *prima facie* case in their favour. Since the sale deeds, on the basis of which the appellants claimed to be in possession of and as owners of the land, have been cancelled, the appellants no longer have a right over the said land. Therefore, their very title to the land is under a cloud of suspicion. Hence, they do not have a *prima facie* case in their favour.

Secondly, disputed questions of facts have arisen in the writ petition. The appellants claim to be the owners of the land. Yet, the respondent Nos.1 to 3 claim to be the owners of the land as well. Such disputed questions of facts cannot be adjudicated upon under the writ jurisdiction. Therefore, the learned Single Judge was justified in concluding that the appellants would be well advised to approach the civil Court. Therefore, the learned counsel has supported the impugned order.

Heard the learned counsel for the parties, and perused the impugned order.

It is, indeed, trite to state that for grant of stay, the party seeking the stay has to establish the three factors, namely, the existence of *prima facie* case, the balance of convenience, and the sufferance of an irreparable loss. In case the stay was not granted, if any of these elements are not subsisting, the learned Court would be justified in refusing to grant a stay or to vacate the stay, in case the stay has already been granted.

It is needless to say that there are certain self-imposed limitations on the vast writ jurisdiction enjoyed by this Court. One of the self-imposed restrictions is that in case of disputed questions of facts, which require the production of oral and

documentary evidence, this Court would be well justified in refusing to invoke its writ jurisdiction.

As mentioned above, according to the respondents, the sale deed of the petitioner No.2 has been cancelled. Therefore, the right of the petitioner No.2 on the land claimed by him is under cloud. Therefore, disputed question of fact has arisen as to whether the land belongs to the petitioner No.2, or to the Government. Therefore, the learned Single Judge was well justified in concluding that in case of a disputed question of fact, the writ jurisdiction should not be exercised.

A perusal of the impugned order clearly reveals that the learned Single Judge has also noticed the fact that the petitioner No.2 had already filed a civil suit against the respondent No.4. However, the said fact was not even mentioned in the writ petition. Therefore, the petitioner No.2 has not even come before the Court with clean hands.

Moreover, the learned Single Judge has noticed the fact that the petitioners are seeking an injunction against the respondent Nos.1 to 4. Therefore, the alternative remedy of approaching the civil Court is open to the appellants. After all, an injunctory suit can easily be filed by the appellants against the respondent Nos.1

to 4. Therefore, the learned Single Judge was justified in concluding that even a *prima facie* case does not exist in favour of the appellants. Hence, the learned Single Judge was not only justified in vacating the stay order, but also, in dismissing the writ petition.

For the reasons stated above, this Court does not find any merit in the writ petition; and it is, hereby, dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, ACJ

Date: 30.04.2019

A. RAJASHEKER REDDY, J

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