

High Court for the State of Telangana

The Hon'ble The Acting Chief Justice Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice A.Rajasheker Reddy

W.P. No.908 of 2016

Date: 17-04-2019

Between:

Smt. B. Jyothi Reddy

...Petitioner

and

The Sub-Area Commander,
Andhra Sub-Area,
Bolarum, Secunderabad and 3 others

...Respondents

Counsel for the petitioner: Mr. S. Malla Rao

**Counsel for the respondents: Mr. K. Lakshman,
Asst. Solicitor General**

The Court made the following:

Order: (per Hon'ble Sri Justice Raghvendra Singh Chauhan)

The petitioner, Smt. B. Jyothi Reddy, has challenged the legality of order dated 27-09-2013, passed by the Special Tribunal under the A.P. Land Grabbing (Prohibition) Act – cum- Chief Judge, City Civil Court, Hyderabad (for short 'the trial court'), in I.A. No. 1746 of 2013 in L.G.O.P. No. 639 of 2006, whereby the learned trial court has rejected the application filed by the petitioner under Order XXVI Rule 9 read with Section 151 CPC requesting for appointment of an advocate-commissioner to conduct a joint survey with regard to the lands in survey Nos. 250 and 251 of Thokatta Village, Trimulgherry Mandal, Secunderabad Cantonment.

This petition has a rather checkered history, which is as under:-

In 2006, the petitioner had filed a Land Grabbing Petition, namely L.G.O.P.No.639 of 2006, before the trial court under Section 8 (1) of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982, seeking a declaration that the respondent Nos.1 to 3 *i.e.*, the Sub Area Commander, the Defence Estate Officer, and the Defence Secretary, Government of India respectively, have illegally occupied the

petition schedule property *i.e.*, the petitioner's plot admeasuring 920.92 square yards lying in Survey No.251, and to direct the respondent Nos.1 to 3 to vacate the said plot, and to hand over its possession to the petitioner. During the pendency of the said petition, the trial court directed the Mandal Revenue Officer, Trimulgherry Mandal, to carry out a joint survey, and to submit his verification report. On 22-09-2005, the Mandal Revenue Officer, Trimulgherry Mandal, submitted his report along with a sketch showing that the petition schedule property was lying in Survey No.251 of Thokatta village.

In order to buttress her case in LGOP.No.639 of 2006, the petitioner examined two witnesses and submitted eleven documents. On behalf of the respondents, a single witness was examined, and eight documents were submitted. However, by order dated 29-10-2009, the trial court dismissed the petition filed by the petitioner.

Since the petitioner was aggrieved by the order dated 29-10-2009, she filed an appeal, namely L.G.A.No.3 of 2010, before the Special Court under the Act (for short 'the appellate court'). The learned appellate court allowed the

appeal, and remanded the case to the learned trial court. While doing so, the appellate court observed that, in fact, two survey reports existed, namely Ex.A.10 and Ex.B.3. Ex.A.10 was the report of the joint survey conducted with the direction of this High Court. It contained a sketch clearly showing the placement of the property in dispute. However, according to the appellate court, Ex.A.10 was an incomplete document. The appellate court further noticed that Ex.B.3 was the report of the unilateral survey carried out by the Mandal Surveyor, which, too, was an incomplete document.

Therefore, while remanding the case to the learned trial court the learned appellate court clearly stated that “*the complete reports of Ex.A.10 and Ex.B.3 are necessary. Moreover, it was necessary to examine the officers, who conducted the survey and prepared those reports.*” Hence, it directed the learned trial court to examine the witnesses, and to pass the necessary order.

After the case was remanded to the trial court, and during the pendency of those proceedings, the petitioner filed her application under Order XXVI Rule 9 r/w Section

151 of CPC., for appointment of an advocate-commissioner for carrying on a joint survey of the property in dispute. However, by the impugned order, dated 27-09-2013, the said application has been dismissed. Hence the present petition before this Court.

Mr. S. Malla Rao, the learned counsel for the petitioner, has raised the following contentions before this Court:-

Firstly, although the petitioner has admitted that Ex.A.10 (survey report) is a correct one, the learned appellate court had declared it to be an incomplete one. Moreover, the learned appellate Court has also declared Ex.B.3 (the unilateral survey report) as an incomplete one. Hence, the learned trial Court was faced with two incomplete survey reports. Therefore, it was imperative to get a complete survey report by appointing an advocate-commissioner, who, in his report, could clarify the position with regard to the location of the property in dispute. Therefore, the learned trial Court was unjustified in rejecting the application filed by the petitioner.

Secondly, though the appellate court had observed that “as far as Ex.A.10 is concerned, a complete report was never submitted, and has never seen the light of the day,” obviously, no such complete report even exists. Therefore, the appellate court was unjustified in directing, or in opining that the complete report of Ex.A.10 is necessary. Since the report is non-existent, it cannot even be considered by the learned trial court even if it were necessary. Hence, it was crucial that an advocate-commissioner be appointed, and a fresh complete survey be conducted in the presence of both the parties. Hence, again the learned trial court was unjustified in rejecting the application filed by the petitioner.

On the other hand, Mr. K. Lakshman, the learned Assistant Solicitor General, submits that once the petitioner has conceded that the joint survey report (Ex.A.10) is a valid one, the petitioner is unjustified in requesting for the appointment of an Advocate-Commissioner. Hence, the learned trial Court was justified in rejecting the application filed by the petitioner. Therefore, the learned Assistant Solicitor General has supported the impugned order.

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

The crucial question before the learned trial court is, whether the property in dispute lies in Survey No.250, which is claimed by the respondent Nos.1 to 3 as belonging to them, or it lies in survey No.251, which according to the respondent Nos.1 to 3 does not belong to them? A bare perusal of the order passed by the appellate court clearly reveals that Ex.A.10 (survey report) was not followed by a complete report of the surveyor. Moreover, Ex.B.3 (the unilateral survey report) was not relied upon for the simple reason that it is a unilateral survey conducted by the respondent Nos.1 to 3 behind the back of the petitioner. According to the appellate court, even the said survey report is an incomplete one. Thus, obviously, the learned trial court is faced with two incomplete survey reports. Hence, neither of the two survey reports will shed a complete light on the issue with regard to the location of the property in dispute. Therefore, the petitioner was absolutely justified in praying that an advocate-commissioner should be appointed, who would carry out a joint survey, and would submit a complete

report with regard to the location of the property in dispute. Hence, the learned trial court was unjustified in dismissing the application filed by the petitioner.

For the reasons stated above, this petition is hereby allowed. Order dated 27-09-2013, passed by the learned trial court, in I.A.No. 1746 of 2013 in O.P.No.639 of 2006 is set aside. The trial court is directed to appoint an advocate-commissioner within a period of two weeks from the date of receipt of a certified copy of this order, and to proceed further in accordance with law.

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of.

(Raghvendra Singh Chauhan, ACJ)

(A.Rajasheker Reddy, J)

Dt: 17th April, 2019
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