

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.12619 OF 2019

ORDER:

This writ petition is filed challenging the order dated 08-05-2019 passed by the 1st respondent, wherein the claim made by petitioners was found to be unsubstantiated and accordingly, their claim was rejected.

The case of the petitioners is that they are residents of Balamrai, Secunderabad near Sri Nalla Pochamma Temple. Respondents 9 and 10 who are claiming to be the owners of the land admeasuring 586 sq.yards are trying to encroach upon the Government land/lane 12 feet and open space of the Government around 100 sq.yards thereby illegally and wrongfully restraining them from using the Government road/lane. Some of the neighbouring residents including few petitioners filed WP.No.33723 of 2018 before this Court and this Court passed order dated 24-09-2018 directing respondent No.1 to consider the objections before considering the application of respondents 9 and 10 for grant of permission for construction of compound wall. Respondent No.11 representing respondent No.1 passed an order dated 08-05-2019. It is also averred that respondent No.1 colluded with respondents 9 and 10. Respondent No.11 is attempting to illegally grant permission for construction of compound wall and thereby acting as an accomplice for encroaching/grabbing the Government land/lane and open space of the Government around 100 sq.yards. Respondent No.12 called for an enquiry on 05-11-2018 and when some of petitioners appeared before the Joint C.E.O. and he informed them that he would once again issue notice but without doing the same, passed the impugned order. On a representation of neighbouring resident to stop the

illegal encroachment of the Government road/lane, the Survey department, Government of Telangana and the Tahsil surveyor, Secunderabad Tahsil conducted a joint inspection and the Deputy Director, Survey in Land Records, Hyderabad vide letter No.A5/570/2018, dated 17-07-2018 submitted a report along with location sketch wherein the survey report shows the existence of lane and open space which also correlates to the village map. The said report was furnished to petitioners when they made an application to the Joint Collector on 25-06-2018. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioners submits that by relying on affidavits filed in I.A.No.55 of 1994 in O.S.No.48 of 1994 on the file of First Assistant Judge, City Civil Court, Secunderabad and also copies of the documents i.e. plaint in O.S.No.48 of 1994, copy of judgment in O.S.No.48 of 1994, copy of order of Secunderabad Cantonment Board marked as Exhibit in O.S.No.48 of 1994, copy of plaint and written statement in O.S.No.426 of 2014 on the file of Senior Civil Judge's Court, City Civil Court at Secunderabad submits that there exist a lane from the property of respondents 9 and 10, but without considering the said aspects rejected the claim of the petitioners while passing the impugned order.

Learned Standing Counsel for Cantonment Board submits that there is no document to show that existence of lane from the property of respondents 9 and 10 and respondent No.11 considered all the aspects and objections raised by the petitioners were considered and rejected and roving enquiry regarding the title cannot be considered at the stage of granting building permission.

On the other hand, learned counsel appearing for respondents 9 and 10 also submits that written statements stated supra and

documents relied on by learned counsel for petitioners do not pertain to subject property. He also submits that respondent No.1 cannot go into the complicated questions of title and decide the issue. The claim of the petitioners have been considered in detail and rejected and the same cannot be subject matter of writ petition. This Court cannot also decide the disputed questions of fact and even respondent No.1 has prima facie come to conclusion that the claim of the petitioners is unsubstantiated and no interference is called for.

In this case it is to be seen that the petitioners filed W.P.No.33723 of 2018 in respect of same issue. This Court passed order dated 24.09.2018 directing respondent No.1 to consider the objections of the petitioners before considering the application of respondents 9 and 10 for grant of permission for construction of compound wall. The impugned order is passed after considering the objections of the petitioners as well as respondents 9 and 10. Respondent No.11 categorically by relying on the documents came to conclusion that there does not exist a lane from the petitioners property and the so-called documents relied upon by them in the writ petition were not filed before respondent No.1, as such, it cannot be said that respondent No.1 has not considered the case of the petitioners. More so, the issue pending before respondent No.1 is for grant of permission to construct compound wall only and he is not expected to go into disputed questions of fact and decide the title. It is also to be seen that no specific documents are filed showing that there exist a lane from the subject property of the petitioners.

In view of the same, this Court cannot conduct roving enquiry of title in the writ petition and I do not see any reason to interfere with the impugned order.

Accordingly, the writ petition is dismissed. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

25-07-2019
Nvl



