

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.14348 of 2017

ORDER:

This Writ Petition is filed assailing the action of the respondents in attempting with the possession of the petitioners as lessee in respect of land situated in Sy.Nos.194, 193/2, 196, 197 and 185 to an extent of Acs.6.19 gts, Acs.2.35 gts, Acs.2.28 gts, Ac.0.30 gts, Acs.13.08 gts, respectively, total admeasuring Acs.26.00, situated at Devenpally Village, Kamareddy Mandal, Nizamabad District.

It is the case of the petitioners that the 1st petitioner society had availed property in the year 1998 admeasuring Acs.26.00 in Sy.Nos.185, 193/2, 194, 196 and 197, situated at Devenpally Village, Kamareddy District on lease from Kamareddy Educational Society-3rd respondent, for a period of 99 years for an annual rent of Rs.50,000/-. Since the objects of the petitioner society as well as the 3rd respondent were the same, the subject property was leased to the petitioner, to run an engineering college. Pursuant to which, the petitioner society constructed a building. While so, in the year 2004, there were *inter se* disputes between the members of the 3rd respondent, as a result of which, there were hurdles created for setting up of the Institute. Consequently, the petitioner society shifted its institute to Hyderabad. Subsequently, due to public outcry amongst the local community, the 3rd respondent decided to establish an engineering college and

submitted its proposals. Since the 3rd respondent being unable to process the same, they approached the petitioner society for proper assistance, as such, a proposal was mooted for inducting the petitioners and its members so that they have equal representation in the running of the respondent society and its affairs. Subsequently, the 3rd respondent inducted new members and reconstituted the society through proceedings of the General Body meeting held on 04.03.2004 and the 3rd respondent was successful in obtaining permissions for establishment of engineering college, as a result of the expertise and guidance of the petitioners. Pursuant to obtaining the requisite permits, Auroras Technological Institute was started on the premises of the petitioner society. As the college was to be run in the name of the Kama Reddy College Educational Society using the building constructed by the petitioner on the property leased to the petitioner, the petitioner and the 3rd respondent reached to an understanding that the annual lease amount to be paid by the petitioner society would be waived in lieu of the use of the petitioners' building for running of the engineering college. While so, the 1st and 2nd respondents entered into the campus situated on the property and attempted to illegally oust the petitioner society from the same. On enquiry, it came to know that one G.Ramachandra Reddy had illegally conveyed the property admeasuring Acs.149.09 gts, through sale deed dated 22.03.2017, which also comprises the property, which had been leased to the petitioner. It is stated that the lease deed executed in favour of the

petitioner society is valid and subsisting and no steps had been taken by any of the respondents or the lessor society to cancel the same. Aggrieved by the action of the respondents 1 and 2 in trying to dispossess the petitioners from the subject property, present writ petition is filed.

Counter affidavit is filed denying the averments in the affidavit filed in support of the Writ Petition stating that the writ petition is neither maintainable on law nor on facts; that the officials of the respondents have nothing to do with the *lis* between the petitioners and the 3rd respondent; that if any lease is cancelled, the appropriate procedure is to approach the Civil Court. It is stated that the 3rd respondent, who is the owner of the property, executed a sale deed dated 22.03.2017 and handed over the possession to the Government/Principal, as such, the 2nd respondent taken possession of the property as the custodian of the same. The petitioner was not in possession of the property as on the date of executing the sale deed, as such, the question of taking possession from him, does not arise. It is also stated that the respondents 1 and 2 never tried to interfere into the possession of the petitioners at any point of time over the subject land.

Heard learned counsel for the petitioners and learned Government Pleader for Education appearing for respondents 1 & 2.

Learned counsel for the petitioners submits that when the petitioner's society is in possession, the respondents 1 and 2

cannot take possession, without following due process of law. He also submits that the 3rd respondent, being society registered under the Societies Registration Act, can only transfer the property in favour of the other society, but cannot transfer in favour of the Government, as such, the alleged sale deed itself is to be set aside. He also submits that the petitioners' fundamental rights are violated. In support of his contentions, he relied on the judgment reported in **Bishan Das v. State of Punjab**¹.

On the other hand, learned Government Pleader for Education appearing for respondents 1 and 2, submits that the petitioners are never in possession of the subject property; that they have been running the Engineering College outside the premises and address of the 3rd respondent is also wrongly given, though it belongs to N.Raja Babu, the so called Secretary of the petitioner. She also submits that the disputed questions of fact cannot be gone into in the writ petition and that the petitioners have to approach Civil Court. She also submits that when once the petitioner has efficacious alternate remedy, they cannot maintain the Writ Petition. She also submits that due to Status quo order granted by this Court, the 2nd respondent is unable to run the college and sought for vacating the same.

In this case, it is to be seen that essentially, petitioners have not filed this Writ Petition for enforcing the fundamental rights or any legal rights. A perusal of the averments in the affidavit as well as the arguments advanced by the learned counsel for the

¹ AIR 1961 Supreme Court 1570

petitioners, goes to show that the petitioners want to protect their possession basing on the lease deed, alleged to have been entered into between the petitioners and the 3rd respondent. In the counter affidavit, it is specifically disputed about the possession of the petitioners over the subject property. In the judgment relied on by the learned counsel for the petitioners, the Hon'ble Supreme Court observed as follows:

“8.We now come to the last part of the story. After the death of Ramji Das on December 10, 1957, the petitioners continued the management of the Dharmasala, temple and the shops appurtenant thereto. This was not seriously disputed before us.....”

In the present case also, it is the specific contention of the petitioner society that they took the subject premises on lease and managed the affairs of the society, but the respondents 1 and 2, seriously disputes the very rights of the petitioners. As such, judgment cited by learned counsel for petitioner has no application to the facts of the case. More so, it is not the case of the petitioners that they have no alternative remedy. When once the petitioners has efficacious alternate remedy, by way of approaching Civil Court, for enforcing of rights, if any, under the lease deed, it is open for the petitioners to approach the Civil Court. If the petitioner is aggrieved by the sale deed, said to have been executed in favour of the Government, petitioners can seek relief before the competent Civil Court, as such, this Court is not inclined to entertain the writ petition.

In view of above facts and circumstances, there are no merits in the Writ Petition and accordingly, the same is dismissed.

Interim order granted on 26.04.2017, which is extended from time to time, stands vacated.

There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A.RAJASHEKER REDDY,J

11-07-2019
kvs



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY



Writ Petition No.14348 of 2017

Date: 11.07.2019

kvs