

In the High Court for the State of Telangana

WRIT PETITION No. 17695 of 2018

Between:

M. Rajeswari

... Petitioner

and

State of Telangana

Rep. by its Principal Secretary,

Municipal Administration & Urban Development Department

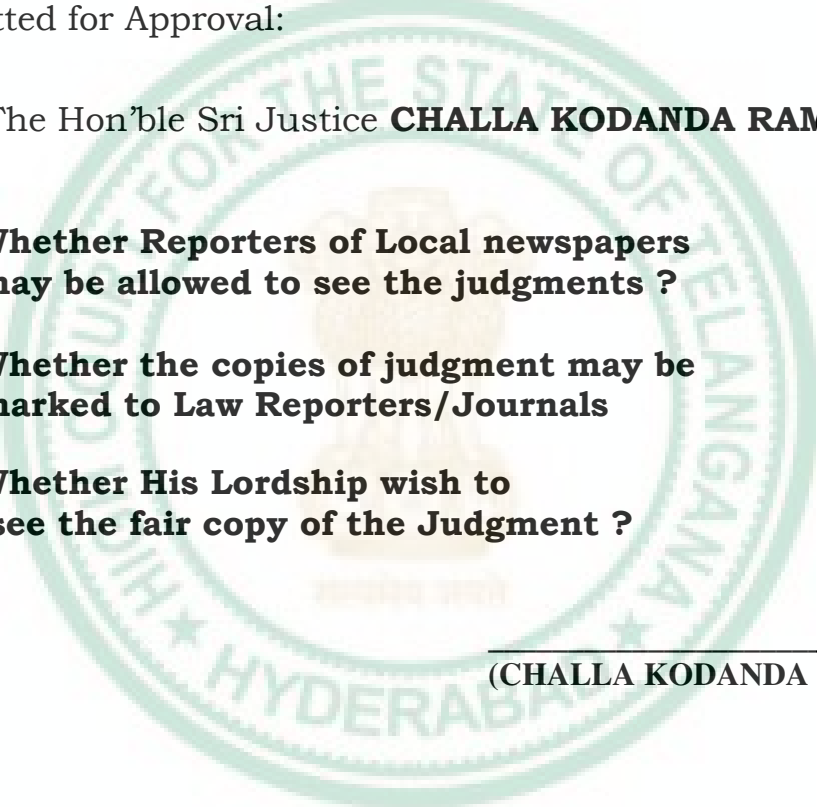
& others

...Respondents

Date of Judgment Pronounced: **10-04-2019**

Submitted for Approval:

The Hon'ble Sri Justice **CHALLA KODANDA RAM**

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- 1. Whether Reporters of Local newspapers may be allowed to see the judgments ?** **No**
 - 2. Whether the copies of judgment may be marked to Law Reporters/Journals** **yes**
 - 3. Whether His Lordship wish to see the fair copy of the Judgment ?** **yes**

(CHALLA KODANDA RAM, J)

* The Hon'ble Sri Justice CHALLA KODANDA RAM

WRIT PETITION No. 17695 of 2018% Dated 10.04.2019

Between:

M. Rajeswari

... Petitioner

and

State of Telangana
 Rep. by its Principal Secretary,
 Municipal Administration & Urban Development Department
 & others

... Respondents

! Counsel for the petitioners : Sri K.S. Murthy

^ Counsel for Respondents 1 to 5 : GP for Municipal Administration
 Counsel for Respondent No. 6 : Ms. M. Bhagyasri
 Counsel for Respondents 7 & 8 : GP for Revenue
 Counsel for Respondents 9 to 13: Sri G. L. Narasimha Rao

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>HEAD NOTE:

? Cases cited:
 2006(5) ALT 582
 W.P.No. 7680 of 2016
 2017 (4) HLT 378

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**WRIT PETITION No. 17695 OF 2018**

ORDER:

This Writ Petition challenges the action of the respondent Municipal Corporation in processing the Application of Respondents 9 to 11 seeking permission for construction of building in Survey No. 596, Ward No. 45, Markandeya Colony, Godavarikhani. A consequential direction is also sought to set aside the building permit No. 3015/W452017/1194 dated 28.04.2018.

The petitioner claims to be the owner and possessor of Ac.0.20 guntas of land in the above-said Survey Number. Anticipating that the respondents may approach the Municipal Corporation, Ramagundam and obtain permission to raise construction in the subject land, the petitioner claims to have got issued notice to the authorities on 24.11.2017 through their counsel not to grant permission to Respondents 9 to 11 or anyone claiming through them, without putting her on notice. The petitioner would assert that on 30.11.2017 and on 09.05.2018 also, representations were made, wherein the pendency of O.S. No. 18 of 2017 on the file of the VI Additional District Judge's Court at Godavarikhani between herself and the unofficial respondents, was mentioned. In spite of the same, the respondent Corporation had granted permission in favour of Respondents 9 to 11 through the impugned order. Hence, the same is liable to be set aside, as it was passed ignoring her case, claims the petitioner.

On behalf of Respondents 9 to 11, a counter-affidavit was filed, wherein it is stated that the petitioner had, in fact, filed a suit seeking declaration of her rights over the suit schedule property and till such time she succeeds in the suit, she cannot really have

any claim thereon. Pending suit, the petitioner also filed I.A.No. 430 of 2017 and the trial Court, having considered the respective claims, had dismissed the said I.A. by order dated 23.02.2018, duly taking into consideration the earlier proceedings in O.S. No. 91 of 2010 and O.S.No. 267 of 2006 against the vendors of Respondents 9 to 13. For the reasons best known to the petitioner, she did not press the said suit, which was dismissed. The petitioner having failed to obtain interim order and having suffered negative orders in the trial Court as well as before this Court in C.M.A. No. 668 of 2018, had resorted to file the Writ Petition.

Learned counsel for the petitioner submits that there is a duty cast on the authorities to consider the objections raised by his client. He further submits that what the petitioner seeks is an innocuous order of consideration of her representation, hence, prays for disposal of the Writ petition with a direction to the respondent authorities to consider the objections of the petitioner and pass necessary orders.

On the other hand, learned counsel for the contesting respondents asserts that the respondents are being put to unnecessary trouble and the whole object of the petitioner is to harass them through litigation after litigation. He would further assert that the petitioner, having failed to get any order in the civil Court, is trying to utilise the official machinery and causing objection to his clients in every respect. According to him, Respondents 9 to 11 are the *bona fide* purchasers of the property and hence, prays for dismissal of the Writ Petition. He would

further point out that this Court had already taken care of the grievance of the petitioner in C.M.A. No. 668 of 2018.

Having regard to the respective submissions, the question which requires consideration is 'whether the unofficial respondents have to be driven once again to the ordeal of justifying their claim before the municipal authorities'.

Admittedly, since there is no convention of maintaining a record anticipating objections that may be raised in future by the interested parties / 3rd parties with respect to a particular property, non-consideration of the objections, which the petitioner alleged to have submitted before the municipal authorities, at the time of considering the Application of the unofficial respondents seeking grant of building permission, cannot be found fault. Further, the authorities cannot predict, at that stage, the objections to be filed in future. If the respondents are to adhere to / adopt such system, there would be chaos in the administration and that they would be left with no other work than keeping track of the letters / Applications that may be received from time to time.

In normal circumstances, in the absence of the litigation pending between the parties, this court would have directed the objections of the petitioner to be considered by the authorities, but, in the present case, it is not in dispute that the petitioner filed a suit against the vendors of Respondents 9 to 13 and that the said suit came to be dismissed as withdrawn. While withdrawing the suit, whether the petitioner had sought leave to initiate further proceedings and/ or whether such withdrawal would disentitle her from filing the suit, are all the matters required to be considered in the pending suit, wherein the petitioner had sought a declaration

against Respondents 9 to 13 to assert her right in the property. The fact of the matter is that Respondents 9 to 13 had acquired the property through a registered sale deed and as on the date of consideration of the Application made by them, they are the legal owners of the property. In those circumstances, this Court is not inclined to express any opinion on the merits of the matter.

However, in the peculiar facts of the case, the apprehension expressed by the learned counsel for the petitioner that grant of permission by the Municipal authorities may be construed as deciding title in favour of the unofficial respondents, can be allayed by observing that in the process of consideration of the Application for grant of building permission, the municipal authorities are entitled to examine the title / come to a decision whether there exists a title and right in favour of the applicant on the property for which permission is sought. Here it is to be noted that in the permission granted by the respondent authorities itself, it is clarified that *“The permission accorded does not confer any ownership rights, at a later stage if it is found that the documents are false and fabricated the permission will be revoked u/s 450 HMC Act 1955 / 344 Act 1965”*.

In considering the Application filed by an intending citizen seeking permission to raise the construction, when a doubt arises as to the title over the property, the course to be adopted has been clearly laid out by this Court in ***T. Rameshwar v. Commissioner, Municipal Corporation of Hyderabad***¹, ***Guntuka Raja Ram v. The State of Telangana***² and ***SSPDL Limited rep. by its***

¹ 2006(5) ALT 582

² W.P.No. 7680 of 2016

Managing Director Prakash Challa v. State of Andhra Pradesh³ which would serve as a guiding factor for the authorities.

Hence, in the present case, it is made clear that, as the civil suits are pending, it is for the trial Court to come to a just conclusion with respect to the title of the property based on the evidence that may be produced before the Court and not solely on the factum of permission having been granted to the unofficial respondents by the municipal authorities.

Subject to the above, the Writ Petition is dismissed.

The miscellaneous Applications, if any pending in this Writ Petition shall stand closed.

CHALLA KODANDA RAM, J

10th April 2019

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³ 2017(4) HLT 378