

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

Writ Appeal No.829 of 2019

Date:11.11.2019

Between:

Karshak Vidya Parishad
Rep.by its Secretary
N.Raja Bau
And another

...Appellants

And

The State of Telangana,
Rep.by its Principal Secretary,
Education Department,
Secretariat Building,
Hyderabad and others

...Respondents

Standing Counsel for the appellants : Mr. N. Naveen Kumar

Counsel for the respondents : Smt.Vani Reddy,
G.P. for Education

The Court made the following:

JUDGMENT: (Per the Hon'ble Sri Justice A.Abhishek Reddy)

Aggrieved by the dismissal of W.P.No.14348 of 2017, vide order, dated 11.07.2019, passed by the learned Single Judge, the present Writ Appeal is filed.

2) The brief facts of the case are that the petitioner-Karshak Vidya Parishad, which claims to be the leaseholder of the 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 gts., situated at Devenpally Village, Kamareddy Mandal, Nizamabad District, for a period of 99 years. The petitioner has assailed the attempts of the respondents No.1 and 2, in trying to dispossess the petitioners from the leased premises without resorting to any legal methods of dispossession and trying to take the law into their own hands. The learned Single Judge, after going through the record and the counter filed by the official respondents, concluded that the petitioners were not in possession of the property as on the date when the 3rd respondent, who is the owner of the property, has executed the registered sale deed, dated 22.03.2017, in favour of the official respondents. Further, there was nothing on record to show that respondent Nos.1 and 2 tried to interfere in the possession of the petitioners at any point of time over the subject land. The learned Single Judge thereby dismissed the writ petition. The learned Single Judge went on to observe that the petitioners have an alternative and efficacious remedy of approaching the Civil Court, if there is any violation of the terms of the lease deed.

3) Heard Mr. N. Naveen Kumar, the learned Counsel appearing for the appellants, and Smt.Vani Reddy, the learned Government Pleader appearing for the respondents.

4) It is mainly contended that the official respondents cannot violate Article 300(A) of the Constitution of India by forcefully trying to take possession of the subject property; and the learned Single Judge failed to appreciate that the official respondents could not have taken possession of the subject property, more particularly, in view of the fact that lease was subsisting between the parties for a period of 99 years.

5) Learned Counsel has relied on a decision reported in **BISHAN DAS & OTHERS v. STATE OF PUNJAB AND OTHERS**¹ wherein the Hon'ble Supreme Court held that if the petitioners are in possession of any land, it would not be right on the part of the official respondents to dispossess them high-handedly without approaching the Civil Court for taking back the possession.

6) A perusal of the Order passed by the learned Single Judge and the record reveals that the petitioner-Parishad is only a lease-holder from the 3rd respondent, and there is nothing on record to show that as on the date of execution of the sale deed by the 3rd respondent in favour of the official respondents, the petitioner-Parishad i.e., the lease-holder was in physical possession and occupation of the subject property. On the other hand, the sale deed executed in favour of the respondents No.1 and 2 shows that they have been put in physical possession as on the date of the execution of the sale deed. It is well accepted principle of law that disputed questions of fact cannot be agitated under Article 226 of the Constitution of India as laid down in a catena of judgments. Moreover, if

¹ AIR 1961 SC 1570

the petitioners are so aggrieved by violation of any of the terms of the lease by respondent No.3, they have an alternative and efficacious remedy of approaching the Civil Court for enforcement of their rights.

7) While this Court has no quarrel with the proposition laid down by the Hon'ble Supreme Court in **BISHAN DAS (supra)**, with due respect to the Counsel for the appellants herein, the facts in **BISHAN DAS (supra)** and the case on hand are distinguishable as there is a finding of fact by the learned Single Judge that the appellants are not in possession of the subject property as on the date of the execution of the sale deed in favour of the official respondents. When the recitals of the sale deed clearly reveal that the possession has been handed over to the official respondents, there is no contra evidence adduced by the appellants herein to disbelieve the same.

8) In view of the above mentioned facts and circumstances, we do not find any merit in the writ appeal and the same is accordingly dismissed, leaving it open to the appellants to seek out their remedies before an appropriate forum.

The miscellaneous petitions pending, if any, shall stand closed.
There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

A.ABHISHEK REDDY, J

11th November, 2019
smr