

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.786 of 2019

Date: 27.11.2019

Between:

The Tahsildar,
Nampally Mandal,
Hyderabad district
And 3 others

...Appellants

And

Shah Roopraj & others

...Respondents

Standing Counsel for the appellants : Mr. Harischandra Prasad
Special Government Pleader
For Advocate General

Counsel for the respondents : Mr. Vedula Venkataramana,
Senior Counsel
For M/s.Bharadwaj Associates

The Court made the following:

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

The present writ appeal is filed by the appellants aggrieved by the order of the learned Single Judge, passed in I.A.No.1 of 2019 in W.P.No.13524 of 2019, dated 25.09.2019, wherein the learned Single Judge has directed the appellants herein to deliver the possession of the subject property to the respondents herein.

2. Hereinafter, the parties are referred to as they are arrayed in the writ petition.

3. The brief facts of the case are that the petitioners/respondents herein have filed the writ petition mainly contending that they are the owners and possessors of house properties bearing No.5-3-851/1/A, admeasuring 240 Sq.Yds., 120 Sq.Yds., 240 Sq.Yds., 240 Sq.Yds., and 240 Sq.Yds., situated at Surya Mahal, Mouzamjahi Market, Hyderabad. When the authorities of Greater Hyderabad Municipal Corporation tried to interfere with the construction activity undertaken by the petitioners, they were constrained to approach a Civil Court by filing a suit for injunction. The the suit was numbered as O.S.No.2120 of 2018, on the file of the IV Junior Civil Judge, City Civil Court, Hyderabad. In the said suit, a temporary injunction was granted vide order, dated 12.10.2018, in I.A.No.773 of 2018. It is further stated that earlier when the respondents-revenue officials tried to interfere with the construction activity undertaken by the petitioners, they were constrained to approach the Civil Court seeking permanent injunction restraining the respondents from interfering with the construction activity, and the same was numbered as O.S.No.1197 of 2017 on the file of the III Junior Civil

Judge, City Civil Court, Hyderabad. In the said suit, petitioners filed I.A.No.139 of 2017 for grant of temporary injunction pending the suit, but the trial Court dismissed the same. Aggrieved by the same, they have filed C.M.A.No.87 of 2017 before the X Additional Chief Judge, City Civil Court, Hyderabad; and the said C.M.A. was allowed by Order, dated 02.11.2017. Aggrieved by the Order, dated 02.11.2017, the respondents had filed C.R.P. No.6718 of 2017 before this Court; the same was dismissed on 20.09.2018. Thereafter, the respondents have carried the matter to the Hon'ble Supreme Court vide SLP No.4305 of 2019. The Hon'ble Supreme Court while setting aside the Orders of this Court in C.R.P., as well as the appellate Court in C.M.A., has confirmed the order of the trial Court, dated 17.08.2017, passed in I.A.No.139 of 2017 in O.S.No.1197 of 2017. The respondents taking advantage of the order of the Hon'ble Supreme Court, have high-handedly, without following the due procedure of law, have seized the subject property vide seizure panchanama, dated 27.06.2019. Aggrieved by the same, the writ petition was filed, and in the said writ petition, vide Order, dated 25.09.2019, passed in I.A.No.1 of 2019 in W.P.No.13524 of 2019, a learned Single Judge while *prima facie* holding that the petitioners are in possession of the suit schedule land, has directed the respondents to put them back in possession. The respondents aggrieved by the said order have filed the present Writ Appeal.

4. Heard Mr.Harichandra Prasad, the learned Special Government Pleader, appearing on behalf of the learned Advocate General representing the appellants-respondents, and Mr. Vedula Venkataramana, the learned Senior Counsel, appearing on behalf

of M/s.Bharadwaj Associates representing the respondents-writ petitioners.

5. The learned Special Government Pleader, appearing on behalf of the appellants, has vehemently argued that the order of the learned Single Judge directing the respondents to put the petitioners in possession of the suit schedule land is contrary to the orders of the trial Court passed in I.A.No.139 of 2017 in O.S.No.1197 of 2017, dated 17.08.2017, which order was confirmed by the Hon'ble Supreme Court in S.L.P.No.4305 of 2019. He further argued that the writ petitioners are land grabbers; they were never in possession of the suit schedule land; and under the guise of some fictitious and fake documents, they are trying to take possession of the land and undertake construction activity illegally without there being any construction permission from the competent authority. When the civil Court has categorically held that the petitioners are not in possession of the subject property, the High Court under Article 226 of the Constitution of India cannot take a contrary view and direct the respondents to put them back in possession.

6. Per contra, Sri Vedula Venkataramana, the learned Senior Counsel appearing on behalf of the respondents/writ petitioners, has contended that *prima facie* neither the trial Court vide order passed in I.A.No.139/2017, nor the Supreme Court in S.L.P.No.4305 of 2019, dated 15.04.2019, has never stated that the writ petitioners are not in possession. On the other hand, it was only interference with the construction activity that was sought to be assailed in the suit, and it is the case of the

Government itself that they are not in possession. As per the Government, the land is acquired under the Andhra Pradesh Slum Areas (Improvement and Clearance) Act, 1956, and pattas were allotted to various people and as such, it cannot be contended that the Government is in possession. Taking advantage of the order of the Hon'ble Supreme Court, dated 15.04.2019, the Government officials have high-handedly dispossessed them under cover of seizure panchanama, and therefore, the learned Single Judge having *prima facie* found that they are in possession has rightly directed that they be put back in possession.

7. After going through the record, it is seen that the writ petitioners have initially approached the Civil Court, when the respondents tried to interfere with their alleged possession by way of civil suit. In the Interlocutory Application filed for temporary injunction, the trial Court has held as follows:

“To get the relief of injunction, the petitioners ought to have prove (sic) their possession of the schedule properties as on the date of filing of the petition. No proof was filed by the petitioner to show their actual possession of the suit schedule property. As there are severe disputes with regard to the title and possession of the petitioners over the suit schedule property is involved in this case at this juncture it is not fit and proper to conclude that the petitioners are the absolute owners of the suit schedule properties and they are in possession and enjoyment of the schedule properties. The said fact can be decided only after full fledged trail. Unless and until the evidence adduced by both parties it is not fit and proper to grant ad-interim injunction by restraining the respondent to interfere in construction activities of the petitioners. As per my afore said decision it can be concluded that the petitioners are not entitled for the relief as prayed for. Accordingly, the point is answered.”

Aggrieved by the same, the petitioners have filed C.M.A.No.87 of 2017 wherein the order of the trial Court was set aside, and injunction was granted in favour of the petitioners vide Order, dated 02.11.2017, passed by the X Additional Chief Judge, City Civil Court, Hyderabad. Thereafter, the respondents have filed C.R.P.No.6718 of 2017 before this Court, and the same was dismissed by this Court vide Order, dated 20.09.2018. The respondents thereafter filed a Special Leave Petition No.4305 of 2019 (Civil Appeal No.3938 of 2019) before the Hon'ble Supreme Court, and the Hon'ble Supreme Court vide Order, dated 15.04.2019, while setting aside the Orders passed in C.R.P.No.6718 of 2018 and C.M.A.No.87 of 2017 has confirmed the Order of the trial Court passed in I.A.No.139 of 2017 in O.S.No.1197 of 2017, dated 17.08.2017, and held as follows:

“For the above reasons, we are of the view that the grant of an injunction by the first Appellate Court and, as affirmed by the High Court, does not meet the parameters laid down under settled principles of law. It is not possible at this stage to come to a conclusion that the respondents have established a prima facie case or that the requirements of balance of convenience and irreparable prejudice have been met by the original plaintiffs.

*We accordingly set aside the impugned judgment and order of the High Court. **We accordingly restore the order passed by the trial judge dismissing the application for interlocutory application.** (Emphasis added)*

8. In view of the order of the Hon'ble Supreme Court restoring the order of the trial Judge passed in I.A.No.139 of 2017 in O.S.No.1197 of 2017, dated 17.08.2017, wherein the trial Court

has held that the petitioners are not in possession of the suit schedule property. In view of the order dated 15.04.2019 passed by the Hon'ble Supreme Court in Civil Appeal No.3938 of 2019 (SLP (C) No.4305/2019), confirming the order, dated 17.08.2017, passed by the trial Judge, the order of the learned Single Judge giving a finding to the effect that *prima facie* the petitioners are in possession of the suit schedule property and that they were dispossessed by the appellants-respondents without following due process of law and further directing the appellants-respondents to deliver possession of the subject property to the writ petitioners was not only unwarranted, but contrary to the orders of the Hon'ble Supreme Court and as well as the findings recorded by the trial Court.

9. Further, the order impugned in this writ appeal is passed in an Interlocutory Application, and by virtue of the interim orders granted by the learned Single Judge, the main prayer in the writ petition is allowed without there being any counter by the contesting respondents.

10. In **B.P.S.C. v. DR.SHIV JATAN THAKUR**¹ the Hon'ble Supreme Court held at paragraph No.38 as under:-

.....It is true that Article 226 of the Constitution empowers the High Court to exercise its discretionary jurisdiction to issue directions, order or writs, including writs in the nature of habeas corpus, certiorari, quo warranto and mandamus or any of them for the enforcement of the rights conferred under the Constitution or for an other purpose, but such discretion to issue directions or writs or orders conferred on the High Court under Article 226 being a judicial discretion to be exercised on the basis of well-established judicial norms, could not have been used by the High Court to make the said interim orders which could not have in any way helped or aided the Court in granting the

¹ 1994 Supp (3) SCC 220

main relief sought in the writ petition. The said interim orders, therefore not being those made to maintain the status quo or undo an order, the review of which is sought, so that the ultimate relief to be granted to the party approaching it, may not become futile, they become wholly unsustainable.

11. A Division Bench of this Court in **STATE OF ANDHRA PRADESH v. M/s.MAHESWARI MINERALS**² held at paras 25 and 26 as under:-

25. *The interim order, under challenge in this appeal, requires the appellants herein to forthwith issue transit passes to the respondent-writ petitioners. The said order has the effect of allowing the Writ Petition itself. The main purpose of passing an interim order is to evolve a workable formula or a workable arrangement to the extent called for by the demands of the situation, only in order that no irreparable injury is occasioned. The Court has to strike a delicate balance after considering the pros and cons of the matter to ensure that larger public interest is not jeopardized thereby. Interim orders, which practically give the principal relief sought in the writ petition, only for the reason that a prima-facie case has been made out, without considering the balance of convenience, the public interest and other considerations, should not be passed.*

26..... *Interim relief is granted during the pendency of proceeding so that, while granting final relief, the court is not faced with a situation of the relief having become infructuous or that, during the pendency of the proceeding, an unfair advantage has been taken by the party in default or against whom interim relief is sought. The object behind granting interim relief is to maintain the status quo so that the final relief can be appropriately moulded without the party's position being altered during the pendency of the proceedings.*

12. A Constitution Bench of the Hon'ble Supreme Court in **THE STATE OF ORISSA v. MADAN GOPAL RUNGTA**³ held that “an interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding”.

² 2016 (6) ALT 460 (DB)

³ AIR 1952 SC 12

13. In **STATE OF A.P. v. DATLA KRISHNA VARMA**⁴, a Division Bench of this Court at para 11 held as under:-

By the interim order in WPMP No.47767 of 2017, dated 15.11.2017, which is under challenge in W.A.No.36 of 2017, the Sub-Registrar was directed to consider registration of the documents, without reference to the District Collector's proceedings dated 23.08.2017. The said interim order is not only a direction to the Sub-Registrar to violate the law (Section 22-A of the Registration Act), but also amounts to granting a relief which could only have been granted consequent upon the main relief, sought for in the Writ Petition, being granted. Such an order would, ordinarily, not be passed at the stage of admission without the appellants herein (respondents in the Writ Petition) being given an opportunity of filing their counter-affidavit.

14. Even otherwise, the trial Court in I.A.No.139 of 2017 in O.S.No.1197 of 2017 has held that the writ petitioners are not in possession of the subject property and the same has been affirmed by the Hon'ble Supreme Court in Civil Appeal No.3938 of 2019 (SLP (C) No.4305/2019), learned Single Judge under Article 226 of the Constitution of India ought not have entered into the disputed questions of fact more particularly when the competent Civil Court has held that the petitioners are not in possession of the subject property.

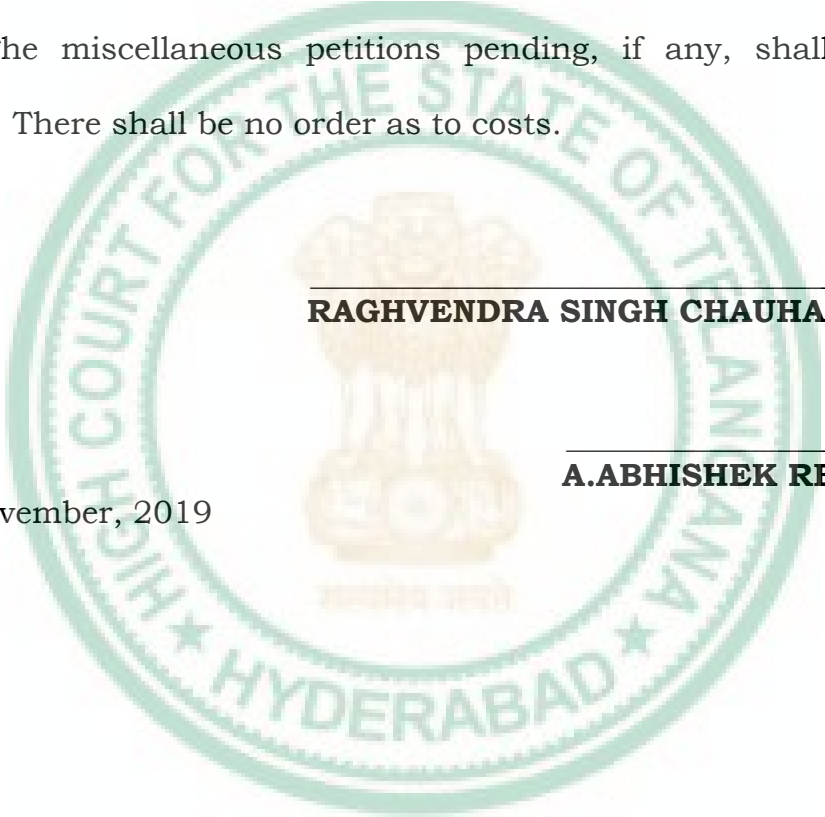
15. It is brought to our notice that subsequent to the filing of this writ appeal, the respondents have filed their counters and a rejoinder has also been filed by the writ petitioners. Under these circumstances, we deem it fit to set aside the order passed in I.A.No.1 of 2019 in W.P.No.13524 of 2019, dated 25.09.2019, and remit the matter back to the learned Single Judge to hear the main writ petition itself and pass appropriate orders, as expeditiously as

⁴ 2018 (3) ALT 34 (DB)

possible, preferably within a period of three months from the date of receipt of a copy of this order.

16. Accordingly, the Writ Appeal is allowed. However, any observations made in this Writ Appeal are only for the limited purpose of deciding the writ appeal, and should not be construed as making any remarks on the merits or demerits of the main case; the learned Single Judge shall pass the order uninfluenced by the observations made in this judgment.

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

27th November, 2019
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