

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.5312 of 2018

ORDER :

This Civil Revision Petition is filed assailing the order dt.09.08.2018 passed in I.A.No.514 of 2018 in O.A.No.120 of 2018 on the file of the Telangana Endowments Tribunal, at Hyderabad.

2. The petitioners herein are applicants in the said O.A. which they filed under Section 87 (1) (C) of T.S.C. & H.R.I. and Endowment Act, 30 of 1987 for declaration that the property shown in the Schedule thereto is the endowed property belonging to the 2nd applicant-Temple, and for injunction restraining the respondents from interfering with the peaceful possession and enjoyment of the 2nd petitioner-Temple.

3. The plaint schedule property mentioned in the O.A. is as under :

“

Schedule of Property

That that premises bearing No.11-5-347 (Old No.1339) admeasuring 139 Sq.Yds. situated adjacent to Sri Venugopala Krishna Mandiram, Red Hills, Hyderabad and bounded by :

East : Neighbour's property

South : Temple property

West : Main Road

North : Part of House belonging to Devi Prasad”

The allegations of petitioners in the O.A. :

4. In the said O.A., it is alleged that 2nd petitioner herein / 2nd applicant in the O.A. is a Temple registered in *Kitab-ul Wakf* maintained by the Ecclesiastical Department of the then Nizam,

Hyderabad vide F.No.850/2 1350 Fasli; that it is a Section 6(c) Institution under the Statute; that it was earlier known as Deval Kishan Swamy Temple and that the Old Municipal number allocated to the said Temple was No.1339 bounded on the North by House No.1340 to 1354 of one Narsing Rao, in the East by the House of Asgar Hussain, in the South by Road, and in the West by Road and H.No.1339 belong to one Rameswar Prasad, Nuzul Holder of the temple.

5. It is alleged that the total area of the 2nd petitioner temple consists of 1750 Sq.Yds., and that it fell in Ward No.39, Block-D of Nampally area. It is alleged that the respondent and his ancestors started grabbing the land belonging to the subject Temple and doctored certain documents which do not confer any title on the respondent. It is also stated that the respondent made attempts to encroach and alienate the property belonging to the 2nd petitioner-Temple; and the 1st petitioner then issued a notice on 15.02.2017 to the respondent requesting him to stop any further construction in the O.A. Schedule premises which belongs to the 2nd petitioner-Temple; and that the respondent gave reply legal notice on 18.02.2017 refuting all allegations and claiming ownership over the O.A. Schedule property.

The stand of the respondent in the O.A. :

6. Written Statement was filed by the respondent denying the allegations in the O.A. and contending that when the Western

boundary of the temple is H.No.1339, Municipal number of the temple cannot also be 1339. It was further contended that petitioners failed to produce any valid document to show that the area of the subject temple is 1750 Sq.Yds; that the *Munthakab* Ex.A.1, relied upon by the petitioners, did not contain any map or extent; and the O.A. Schedule property is not part of the temple property. It was contended that the ancestors of the respondent had purchased the O.A. Schedule property under a registered sale deed in Court litigation; that the petitioners were falsely claiming O.A. Schedule property as property belonging to the 2nd petitioner-Temple; and that it was in fact the property of the respondent. Other contentions were also raised which are not necessary to be taken into account at this stage.

I.A.No.514 of 2018 :

7. Along with the O.A., the petitioners filed I.A.No.514 of 2018 under Order XXXIX Rules 1 and 2 of Civil Procedure Code, 1908 with a request to grant *ad interim* injunction restraining the respondent from making any changes, alternations, vesting of, or any other changes to the nature of the O.A. Schedule property.

8. In the affidavit filed in support of the application, it was stated specifically that the permission granted to the respondent by the Greater Hyderabad Municipal Corporation on 24.01.2017 was allegedly revoked on 29.05.2018, and that the respondent was carrying on construction activity without having valid permission.

Counter of respondent in I.A.No.514 of 2018:

9. The respondent filed counter-affidavit reiterating the stand taken by him in the written statement filed in the O.A. It was further contended that in the year 2000 the respondent's father obtained a certificate from the Mandal Revenue Officer, Nampally, Hyderabad mentioning that the House bearing No.11-5-347 is classified as 'Patta' land, that the enquiries of the respondent revealed that the property of the temple has Door No.1338 only and since its boundary is House No.1339 (Western boundary), the petitioners are not entitled to relief.

Order dt.09.08.2018 of the Endowment Tribunal :

10. By order dt.09.08.2018, the Endowment Tribunal vacated the *status quo* order which it had earlier granted on 20.07.2018, and dismissed the I.A.

11. It considered the documents filed by petitioners and observed that petitioners themselves have admitted that the respondent is in possession of the O.A. Schedule property, and that he was making unauthorized construction; that the *Munthakab* Ex.A.1, whose English translation is Ex.A.2, shows that the Western boundary of the temple property is '*Road and House No.1339 of Rameshwar Prasad*'; that the Municipal Door number of the temple is 1338; and petitioners are not correct in contending that the door number of the Temple property is 1339, but not 1338; that Ex.A.3, photocopy of the *panchanama* dt.04.03.2017 prepared by the Inspector of Survey and Land Records, Ex.A.4(a)-Sketch map prepared by the same Inspector of Survey and

Land records, do not support the case of petitioners that the door number of the O.A. Schedule property is 1339; and Ex.A-4(b), which is the photocopy of the extract of the Town Survey Register shows in Column No.4 that the door numbers of the Temple property is 11-5-340 to 343, and that of the O.A. Schedule property as Municipal No.11-5-347; and that the Registers maintained under Section 38 of the Act 17 of 1976 or Section 43 of Act, 30/87 had not been filed by the petitioners.

12. The Tribunal also relied on the response Ex.B.18 dt.12.10.2017 to a Right to Information application dt.04.09.2017 by one Devi Prasad Jaiswal that records pertaining to Sri Krishna Mandir, Red Hills, Nampally, Hyderabad are not traced out in his Office records, and they would be furnished after they were traced. It held that the statement in Ex.B.18 made by the 1st petitioner raised several doubts about the genuineness of the claim of the petitioners, and Exs.B.1 to B.3, filed by the respondents, show that the respondent had come into possession of the property under the said documents. It also took note of the undertaking given by the respondent that he would forego the O.A. Schedule property without seeking any equities in the event the petitioners succeed in the O.A.

13. Assailing the same, the present Civil Revision Petition is filed.

14. Heard the Government Pleader for Arbitration for petitioners, and Sri Sujith Jaiswal, counsel for respondent.

15. The learned Government Pleader for Arbitration contended that the Municipal number of the Temple is Old No.1339 and Exs.A.1 to A.12 filed by the petitioners establishes the said fact. He further contended that the Court below got swayed by the undertaking given by the respondent that he may be permitted to construct without claiming any equities, and that it had not correctly exercised jurisdiction by accepting the said undertaking and refusing interim injunction to petitioners.

16. I have noted the contentions of both sides.

17. The contents of Ex.A.1-*Munthakab*, whose English translation is Ex.A.2, show that the boundaries of the Temple property covered by the said *Munthakab* are as under :

BOUNDARIES OF THE ENDOWED PROPERTY

<i>East</i>	:	<i>House No.1323 of Mr. Asghar Hussain</i>
<i>West</i>	:	<i>Road and House No.1339 Rameshwar Pershad</i>
<i>North</i>	:	<i>Property of Mr. Narsing Rao, 1354, 1340/1</i>
<i>South</i>	:	<i>Road"</i>

18. This indicates that the western boundary of the Temple property is a road and H.No.1339 of Rameshwar Pershad. The *Munthakab* itself indicates that the Municipal number of the temple property is "II Nampally 1338". Thus, it is *prima facie* evident that the temple property had Municipal No.1338 only and not 1339, as is contended by the Government Pleader. Even Ex.A.4(b), *panchanama* of the extract of the Town Survey Register pertaining to Town Survey No.14, Ward No.39, Block – D, filed by petitioners before the Tribunal indicates in Column No.4 that the Temple property is given

Municipal No.11-5-340 to 343, but not present Door No.11-5-347, which is claimed to be corresponding to old Municipal no.1339 by the petitioners. The petitioners have also not chosen to file the Registers under Section 38 of the Act 17 of 1976 or Section 43 of Act, 30/87, because such registers would contain the details of the properties owned by the 2nd petitioner-Temple, and *prima facie*, an adverse inference is required to be drawn against petitioners for suppressing the same.

19. In any event, the petitioners themselves have admitted in the injunction application that the respondent is making construction over the O.A. Schedule property. But, they have not chosen to seek for recovery of possession in the O.A.

20. When *prima facie* title of the petitioners over the O.A. Schedule property is itself doubtful and when they have admittedly no possession of the O.A. Schedule property even on the date of filing of the I.A., they cannot contend that they should be granted an interim injunction pending disposal of the O.A. restraining the respondent from making any constructions or making changes, alterations, in the nature of the O.A. Schedule property, pending disposal of the O.A.

21. Therefore, I do not find any merit in the Revision and it is accordingly dismissed. No order as to costs.

22. However, the Telangana Endowments Tribunal is directed to decide the O.A. uninfluenced by any observations made in the impugned order passed by it or in this order by this Court.

23. The interim order granted on 12.10.2018 in I.A.No.1 of 2018 in CRP.No.5312 of 2018 shall stand vacated.

24. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 08.02.2019

Ndr/*

