

THE HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.40015 OF 2017

DATED :20.02.2019

Between :

Mohammed Ali Imam Najaff,
S/o.Late Khurshid Ali Khan,
Aged about 60 years, Occu : Business,
R/o.10-3-521/16/A/1, Vijayanagar Colony,
Hyderabad & others.

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Petitioners

And

The State of Telangana,
Rep., by its Principal Secretary,
Housing Department, Secretariat,
Hyderabad & others.

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Respondents



This court made the following :

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ORDER :

Heard learned counsel for the petitioner, learned Government pleader for respondent No.1, Sri C.Buchi Reddy, learned Standing counsel for the 2nd respondent and Sri V.Venkataramana learned Senior Counsel appearing for Sri Mohammed Adam.

2. Petitioners 1 and 2 claim to be the owners of land to an extent of 1000 square yards in Sy.No.162 (old) co-relating to Sy.No.10, 11 and 6/2 of Mallepalli Village, Golconda Mandal, Hyderabad District.

3. Petitioners claim to have entered into an agreement of sale for part of the above said property with the 3rd petitioner and also granted possessory rights and interest in the subject matter. Petitioners are aggrieved by alleged sale transaction taken up by the Housing Board with one Major Bishan Singh transferring the land to him by purported reference to G.O.Ms.No.46 dated 02.07.2005.

4. According to petitioners, though they are owners, the Housing Board is illegally claiming the land as belonging to it and is also in illegal possession of the subject land. Therefore petitioners filed O.S.No.657 of 2016 on the file of IX Additional Chief Judge, City Civil Court, Hyderabad, seeking declaration that they are the owners and to redeliver possession of the said land. Petitioners contend that the orders of Government issued

in the said G.O., are valid only for one year i.e., from 02.07.2005 and after 01.07.2006 no title can be conferred on the lessee after lapse of one year, whereas, the alleged transaction took place in the year 2016 i.e., after more than 10 years and the same is *ex-facie* illegal. On the same day Mr. Major Bishan Singh, sold the property to other unofficial respondents and now they are undertaking construction.

5. According to learned counsel for the petitioners, if the unofficial respondents undertake construction and resort to create third party interest, grave prejudice would be caused to the petitioners, in the event of petitioners succeeding in the pending suit.

6. Learned Senior counsel appearing for the unofficial respondents points out that as of now, the ownership claim of petitioners vis-à-vis the Housing Board is not established and since petitioners have already filed the suit, they should have worked out their remedies in the pending suit and this writ petition is not maintainable.

7. Learned Standing counsel as well as learned counsel for the petitioners by referring to averments in Paragraph No.11 of the counter affidavit filed on behalf of the Housing Board, point out that the Housing Board was not aware of the alleged sale transaction that took place on 17.10.2016, and it is a fraudulent transaction. Therefore, the Housing Board has already set in motion the steps against the said transaction. The Housing Board prays the Court to allow the writ petition by setting aside the sale transaction.

8. The issue whether valid transaction took place in the year 2016 between the Housing Board and Mr. Major Bishan Singh and thereafter between Major Bishan Singh and others is an independent issue and nothing prevented the Housing Board from taking appropriate legal course of action, as warranted by law, to protect its property. This Court is not expressing any opinion on this issue.

9. The limited issue for consideration in this writ petition is whether petitioners are entitled to assail the transaction that took place between Housing Board and third parties ?

10. As noted above, there are *inter se* disputes between the petitioners and Housing Board and O.S.No.657 of 2016 is pending on the file of IX Additional Chief Judge, City Civil Court, Hyderabad, where they sought for declaration, title and re-delivery of possession. Thus, as on today, petitioners are not declared as owners of the subject property and they are not in possession. Therefore, whatever transaction that took place between the Housing Board and third parties cannot be considered at this stage. However, as contended by learned counsel for the petitioners that in the event, if petitioners succeed in the pending suit, it is difficult for them to re-claim possession if physical features of the property is altered, it is always open to the petitioners to raise this plea before the competent Court where the suit is pending and seek appropriate directions.

11. As fairly submitted by learned counsel for the petitioners the unofficial respondents are also impleaded as defendants in the pending suit.

12. Thus, leaving it open to the petitioners to work out their remedies and to seek appropriate relief, as warranted by law, in the pending suit, this Writ Petition is dismissed. Pending miscellaneous petitions, if any, shall stand closed.

P.NAVEEN RAO,J

20th February, 2019
Rds

