

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.19314 OF 2019

O R D E R

This writ petition is filed for the following relief:

“For a writ, order or direction, more particularly in the nature of Writ of Mandamus declaring the action of the respondents 1 to 3 in allowing the registrations in relation to the illegal constructions being made by respondents 4 to 7 in the alleged Plot No.47 and 47/A showing them to be belonging to layout in respect of Sy.No.95/P which in fact is the vacant land and no such plot exists in the layout in relation to Sy.Nos.97, 98, 99, 110, 111 at Neknampur village, Gandipet mandal, Rangareddy District, as illegal, arbitrary and unconstitutional and consequently direct the respondents 1 to 3 to not to allow any registrations in relating to the illegal constructions undertaken by respondents 4 to 7.”

Petitioner is Vivekananda Nagar Colony Plot and House Owners Welfare Association and it is represented by its Secretary – Mr. T.Sudhakar. By way of interim order, petitioner sought for a direction not to register any plots in respect of subject land. This court while admitting the writ petition on 12.09.2019, granted interim direction as prayed for. Seeking to vacate the said interim order, the unofficial respondent No.7 filed the vacate petition in I.A.No.2 of 2019.

Perusal of the counter affidavit goes to show that unofficial respondent No.7 filed suits in O.S.Nos.2213 and 2375 of 2018 on the file of II Additional Senior Civil Judge at L.B. Nagar, in respect of the subject property, for permanent injunction, and the trial court initially granted ad interim injunctions on 09.11.2018 and 27.11.2018 respectively and subsequently vide orders dated 22.04.2019 in I.A.No.795 of 2018 in O.S.No.2213 of 2018, and I.A.No.915 of 2018 in O.S.No. 2375 of 2018, made them absolute, and the said suits are pending for trial. To the said suits, the Mr. T.Sudhakar, who claims to be the Secretary of the petitioner – Association, is a party in his individual capacity. Further, the writ

petitioner, represented by its Secretary, by name P.Sudhakar, s/o P.Prakash, filed O.S.No.551 of 2019 on the file of Principal District Judge, Rangareddy District at LB.Nagar, for declaration and for recovery of possession, against the respondents 4 to 7 herein, and no interim orders were granted, and it is stated that respondent No.7 herein filed objections for rejection of the plaint, and the same is pending at that stage. It is stated that without disclosing these facts, the present writ petition has been filed and interim orders were granted by this court.

Petitioner has not filed any reply affidavit disputing the assertions made in the counter affidavit.

Learned counsel for the 7th respondent, submits that Mr. T.Sudhakar, who, in the present writ petition, claims to be the Secretary of the petitioner – Association, made a complaint against the 7th respondent before the Hyderabad Metropolitan Development Authority (for short ‘the HMDA’) for cancellation of permission granted to the 7th respondent. The said authority conducted inquiry and vide proceedings in Lr.No.011018/Pig/HMDA/2018 dated 05.09.2019, rejected the complaint holding that *“In view of the above, after careful examination of the matter, it is observed that there is no evidence in support of the claim of the complainant that the site under reference is allotted for Swimming Pool and Park. In the circumstances stated above, the objection petition filed before HMDA is disposed herewith.”* Learned counsel also relied on the judgment of the Apex Court in *SWATI FERRO ALLOYS (P) LTD. v. ORISSA INDUSTRIAL INFRASTRUCTURE DEVELOPMENT CORPN*¹, wherein it was held that when there are disputed questions of fact, and the civil suits are pending between the parties in respect of subject property, writ

¹ (2015)4 SCC 204

petition under Article 226 of the Constitution of India, is not maintainable. Learned counsel submits that suppressing these facts, writ petition has been filed, and hence the same is liable to be dismissed.

Heard the learned counsel for the petitioner.

Averments made in the counter affidavit goes to show that 7th respondent herein filed suits in the year 2018 and initially ad interim injunctions were granted on 09.11.2018 and 27.11.2018 respectively, and subsequently, they were made absolute on 22.04.2019. Without mentioning about these material facts, the present writ petition has been filed on 03.09.2019. This amounts to suppression of material facts, and on this ground alone, the writ petition is liable to be dismissed. Further, Mr. T.Sudhakar, who, in the present writ petition, claims to be the Secretary of the petitioner – Association, filed complaint before the HMDA, and the said complaint was rejected by the said authority on 05.09.2019, holding that there is no evidence in support of the claim of the complainant that the site under reference is allotted for Swimming Pool and Park.

Further, it is stated that the petitioner – Association in this writ petition, represented by its Secretary, filed suit in O.S.No.551 of 2019 on the file of Principal District Judge, Rangareddy District at L.B.Nagar for declaration of title and recovery of possession. The same is not disputed by counsel for writ petition, but the said aspect is not mentioned in the affidavit filed in support of the writ petition, which is suppression of fact.

In view of the above, writ petition is dismissed on the ground of suppression of material facts.

Interlocutory applications pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY,J

DATE:30—01—2020
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