HON'BLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION No.13200 OF 2020

ORDER:

This Writ Petition is filed seeking to declare the action of the 2nd respondent in forcefully occupying and dispossessing the petitioner from his land admeasuring 1066 sq.yards in Sy.Nos.6 to 12 situated at Peerzadiguda village, Medipally Mandal, Medchal Malkajgiri District (for short, 'the subject property') and to make construction thereon without any right or by following any Rules under law, as illegal and issue consequential direction to the 2nd respondent not to take forcible possession of the land of the petitioner shown in the layout and make construction on the same.

2. Heard Sri G.Vasantha Rayudu, learned counsel for the petitioner and Sri N.Praveen Kumar, learned standing counsel appearing for the 2nd respondent and perused the record.

3. **CONTENTIONS OF THE PETITIONER**

i) The Petitioner and his blood relatives, during the lifetime of the petitioner's father had purchased land admeasuring Ac.10.29 guntas in Sy.Nos.6 to 12 situated in Bibi Saheba village, East Hyderabad taluk, known as Gurka Bowli from A. Kista Reddy s/o Era Reddy, in the year 1961 through a registered sale deed bearing Doc.No.232 of 1961.

ii) Out of the said land admeasuring Ac.10-29 guntas, the extent of Ac.0-10 guntas was sold to Narsaiah and for the remaining extent of the land, a layout was prepared and the same was divided into plots. The

said layout was approved by the then Gram Panchayat, Uppalkalan, Hyderabad East Taluk, Ranga Reddy District in the year 1976.

iii) There was a Well existing in the said land and therefore the same was excluded and shown as Well in the layout and it has been in the petitioner's peaceful possession and enjoyment for decades.

iv) The petitioner and his blood relatives sold the said plots to respective purchasers who have already constructed their respective houses.

v) Due to the fast development over the years, some miscreants tried to forcibly trespass and occupy the Well area.

vi) The petitioner and his blood relatives have constructed a compound wall encircling the land approximately admeasuring 1066sq.yards.

vii) At the instance of land grabbers, the 2nd respondent without any notice or proceedings got the compound wall demolished.

viii) The petitioner issued notice dated 15.02.2020 to the 2nd respondent with a request not to demolish the compound wall and not to dispossess the petitioner from the said property. There was no response from the 2nd respondent. Moreover, there is a threat of dispossession and demolition of the compound wall and the 2nd respondent is also making efforts to construct compound wall by allocating funds.

ix) Therefore, the petitioner filed the present Writ Petition.

4. **CONTENTIONS OF THE 2ND RESPONDENT**

i) At the time of obtaining approval of the layout from the then Gram Panchayat in order to sell the plots to the intending buyers, the Well area was an open public utility space that was left so under the existing regulations.

ii) The petitioner has shown that the Well area as open space because he must have thought that Well area could not be sold as plot area and the Gram Panchayat could accord permission to the layout only because it treated the area shown as Well area as open public utility space.

iii) Merely because of the Well in the open public utility space, it does not become the property of the land owners without there being required public utility open space for the benefit of intending buyers in the layout area.

iv) The fact that other plots are being purchased by buyers and constructions are being made does not mean that the petitioner has right or possession over the subject property.

v) The House Tax receipt and the building plan approval filed by the petitioner are related to Plot No.73 admeasuring 208 sq.yards but it does not relate to the open public utility space of 1066 sq.yards claimed by the petitioner in the present petition.

vi) New compound wall was constructed in the place of old one in order to protect saplings planted as part of Harithaharam programme in Peerzadiguda Village and also to protect them from illegal encroachments.

vii) The land claimed by the petitioner is public utility open space.

viii) A compound wall constructed by the Municipality is in existence even before filing of the present writ petition.

ix) The petitioner himself, being a party in preparing the layout and selling the plots in the said property, cannot claim that the nature of the property is an agricultural property.

x) The public utility open spaces in the layouts approved by Gram Panchayat are vested properties of the 2nd respondent over which the petitioner has no legal right and he cannot be permitted to make a mischievous claim over the public utility open space, after having sold plots in the layout.

xi) The Apex Court has issued directions not to utilize the public utility open space for any other purpose other than public utility and accordingly, the Government has also issued said directions vide G.O.Ms.No.72, M.A.& U.D.(G1), dated 20.02.2002 and it is their obligation to follow the said directions.

xii) With the said contentions, he sought to dismiss the writ petition.

5. CONTENTIONS IN THE REPLY FILED BY THE PETITONER TO THE COUNTER FILED BY THE 2ND RESPONDENT

i) The subject property is a Well and it is not open space and it belongs to the land owners.

ii) The building approvals and House Tax Receipts are filed to demonstrate that the colony was formed and houses were constructed, thereby changing the nature of the property. There is no declaration or gift given to the Gram Panchayat or the Municipality about the Well area, which is his exclusive property, having absolute rights.

iii) The Well always remained his property and he has established his physical possession over the Well area. No one claim any rights over the subject property, either as Well or otherwise since there are no agricultural operations.

iv) Since he is not using the Well, it does not mean that the respondent has any right on his property to claim that it is an open public utility space.

v) The photographs would demonstrate that he has been in peaceful physical possession of the Well area.

vi) The contention that the new compound wall was constructed as part of beautification programme is incorrect. The respondent No.2, deliberately without any right, is interfering with his rights and possession over the subject property.

vii) There is no compound wall constructed by the 2nd respondent.

viii) It is not an open public utility space and it is shown in the layout also before the Gram Panchyat as open space but only as a Well.

ix) With the said contentions, the petitioner sought to allow the writ petition.

CONSIDERATION OF THE COURT

6. The above stated rival submissions would reveal that according to the petitioner, the subject property was shown as Well area which exclusively belongs to him. According to the 2nd respondent, it was shown as open plots while obtaining approved layout by the then Gram Panchayat and therefore, the petitioner did not having any right over the same. A perusal of the record would reveal that the petitioner and three others i.e. A. Sathyanarayana, s/o. A.Mallaiah, A.Rajeshwar Rao s/o A.Mallaiah, and A.Sudershan s/o A.Kumaraiah, have purchased the land admeasuring Ac.10.29 guntas in Sy.Nos.6 to 12 situated in Bibi Saheba Village, East Hyderabad Taluk, known as Gurka Bowli from Anreddy Kista Reddy s/o Era Reddy in the year 1961 through a registered sale deed bearing Doc.No.232 of 1961, dated 15.09.1961. Even according to the petitioner, they have sold Ac.0-10 guntas land to one Narsaiah and thereafter they have applied for approval of layout in respect of remaining land i.e. Ac.10-19 guntas. The layout was obtained on 17.02.1976. The petitioner herein has also filed an approved layout said to have been issued by the then Gram Panchayat, Uppalkalan Hyderabad East Taluk, Ranga Reddy District.

7. A perusal of the said layout would reveal that the same was issued in the year 1976. In the said layout, the subject property is mentioned as Well and other than the said Well, there is one more open space shown in the said layout. The petitioner herein has not filed copy of original layout. Copy of the layout filed by the petitioner has also not legible. However, in the copy of the layout filed by the petitioner, the subject property is shown as Well.

8. The petitioner and three others have purchased the above said land admeasuring Ac.10.29 guntas. The layout was obtained on 17.02.1976 itself. According to the petitioner, they have already sold all the plots to the respective purchasers, who, in turn, have already constructed their respective houses after obtaining permissions either from the then Gram panchayat or from the 2nd respondent-Municipality. Thus, the petitioner alone is not the owner of the said property. There is no explanation much less plausible explanation offered by the petitioner with regard to claim of the other three persons who have purchased the land along with him. The other three persons, who are parties to the sale deed and joint owners of the said property admeasuring Ac.10.29 guntas, are not parties to the present writ petition. Therefore, the petitioner alone cannot claim right over the subject property.

9. As stated above, the petitioner herein and three others have obtained the said layout on 17.02.1976 after a lapse of 44 years. The petitioner alone has approached this Court claiming that he is the owner

of the subject property. Thus, the claim of the petitioner that it is not open public utility space and it is his plot is not tenable. The petitioner and three others, having sold the property after obtaining the approved layout dated 17.02.1976, the petitioner alone cannot claim right over the subject property after a lapse of 44 years. It is the specific contention of the 2nd respondent that the petitioner and three others have shown the subject property as open space and obtained approval of layout from the then Gram Panchayat as per the norms and regulations to obtain approval in respect of land admeasuring Ac.10.19 guntas. The petitioner and three others, land owners have to show certain area as open space including parks, community hall etc., which are for the purpose of public utility. Therefore, the petitioner and three others have shown the subject property as open space and after a lapse of 44 years, the petitioner alone cannot claim right over the subject property. It is the specific contention of the 2nd respondent that it has constructed compound wall under the beautification programme of Harithaharam and they have planted saplings under the said programme.

10. On perusal of the House Tax receipt filed by the petitioner would reveal that it is in respect of Plot No.73 admeasuring 208 sq.yards. It is relevant to note that the said property tax receipt is in the name of wife of the petitioner.

11. Viewed from any angle, the petitioner herein cannot claim that he alone is the owner of the subject property. He also cannot claim that the subject property is not earmarked for the purpose of open space.

CONCLUSION

12. In the result, the Writ Petition is dismissed. There is no order as to costs. The interim order granted on 19.08.2020 shall stand vacated.

13. As a sequel, the miscellaneous petitions, if any, pending in the writ petition shall stand closed.

K. LAKSHMAN, J

Date:30.11.2021
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