

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

W.P.No.43547 OF 2018

ORDER:

Heard the learned counsel for the petitioners, learned Government Pleader for Municipal Administration and Urban Development for respondent No.1, learned Standing Counsel for HMDA for respondent No.2 and Sri Shyam Agarwal, learned counsel, for respondent Nos.3 and 4.

The present writ petition is filed seeking the following relief:

“.... to issue Writ, Order or direction, one in the nature of Writ of Mandamus by declaring the impugned proceedings No.103108/MP2/PLG/HMDA/A/13 dated 09.06.2020 approving of final lay out in Plots in Sy Nos 300, 301, 302 and 303/P of Gundlapochampally Village, Medchal Mandal, Ranga Reddy District to an extent of Acs.23-25 guntas, as bad, illegal, arbitrary violative of Articles 14, 21 and 300-A of the Constitution of India and consequently set aside the same and pass such other order/s as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

This Court, on 30.11.2018, while issuing notice before admission passed the following interim order:

“Any alienation made by the unofficial respondents shall be subject to further orders in the writ petition.”

Facts of the case, in brief, are that the husband of petitioner No.1 and the father of the petitioner Nos.2 to 7 viz., Mohd. Jahangir Khan is the owner of the land admeasuring Acs.4-00 in survey No.300 and Acs.10-20 guntas forming part of survey No.301 situated at Gundla Pochampally Village,

Medchal Mandal, Ranga Reddy District having acquired the same through release deed dated 18.07.1985 duly executed by Sri Mogalaiah. Mohd. Jahangir Khan as well as Mogalaiah both have jointly purchased the property vide sale deed dated 11.02.1968. Subsequently, when Mohd. Jahangir Khan noticed the names of the respondent Nos.3 and 4 in the revenue records, he filed O.S.No.848 of 2006 on the file of V Additional District and Sessions Judge, Ranga Reddy at L.B.Nagar seeking declaration of title and perpetual injunction and the same is pending adjudication. Subsequent to the death of Mohd. Jahangir Khan, petitioners were brought on record being the legal heirs. However, by suppressing the pendency of the above suit, the unofficial respondents got approved the final layout by respondent No.2 under impugned proceedings and therefore prays that the same is liable to be set aside.

Learned counsel for the unofficial respondents has stated that the suit filed by the petitioner has already been dismissed for default and even though a petition to set aside the default order has been filed, no orders are passed thereon till date. That mere pendency of the civil suit without there being any interim orders cannot be the impediment for the authorities to issue the impugned proceedings. That unless and until there is any order from the competent Court prohibiting the authorities from granting any permission or passing orders, the authorities are free to pass orders as per the procedure and in accordance with law.

Learned counsel for the petitioners has stated that due to the present pandemic situation, the lower Courts are not taking up the matters and not passing orders and therefore no orders could be passed in the IA filed by the petitioners for setting aside the default order.

Having regard to the fact that the civil suit is pending between the parties and no interim orders granted in the said suit, the challenge to the proceedings issued by respondent No.2 granting of lay out (either draft or final) is a premature one. As can be seen from the lay out approval order dated 16.10.2018, clause 22 thereof clearly stipulates that *“If any dispute litigation arises in future, regarding the ownership of a land, schedule of boundaries etc., the applicant shall be responsible for the settlement of the same, HMDA or its employees shall not be a party to any such dispute/litigation.”* Moreover, the petitioners are adequately protected by Section 52 of the Transfer of Property Act. Irrespective of the fact whether any observation is made that the alienations made by the unofficial respondents are subject to the final result of the suit or not, the doctrine of *lis pendens* will apply. In view of the same, any layout granted in favour of the unofficial respondents will be subject to the result of the civil suit filed by the petitioners. Unless and until the civil Court declares the title of the petitioners and they succeed in the civil suit filed by them, the question of challenging the lay out, at this stage, does not arise. It is premature to challenge the lay out granted in favour of the unofficial respondents.

Moreover, no useful purpose will be achieved even if the matter is remanded back to the HMDA to decide the representation made by the petitioners for cancellation of the final lay out as the Commissioner under the HMDA Act does not have the powers to go into the disputed questions of title.

In view of the above facts and circumstances of the case and without going into the merits or demerits of the case, as the parties have already approached the Civil Court, the writ petition is disposed of leaving it open to the parties to agitate their claims and grounds raised in the present writ petition in the civil suit pending before the Civil Court.

Any observations made in the present writ petition are only for the purpose of deciding the issue in question and shall not be constructed as giving any finding on the merits or demerits of the case. The lower Court shall dispose of the suit independently without being uninfluenced by the observations made in the present writ petition.

Miscellaneous petitions pending, if any, shall stand closed.

A.ABHISHEK REDDY, J

Date : 16-02-2021
sur