

**THE HON'BLE SRI JUSTICE T. VINOD KUMAR
AND
THE HON'BLE SMT. JUSTICE P.SREE SUDHA**

WRIT PETITION No.43159 of 2022

ORDER: *(per Hon'ble Smt. Justice P.Sree Sudha)*

This Writ Petition is filed for issuance of Writ of Certiorari calling for the records relating to Docket Order dated 06.09.2022 passed in I.A.No.559 of 2022 (Old I.A.No.947 of 2009), which was wrongly typed as I.A.No.947 of 2019, in L.G.O.P.No.3027 of 2016 on the file of the IX Additional Chief Judge, City Civil Court, Hyderabad, and to quash the same as being erroneous and contrary to law.

2. Brief facts of the case are that the petitioners herein and two others filed the aforesaid I.A.No.559 of 2022, under Order 18 Rule 17 C.P.C., seeking to recall R.Ws.1 and 2 for the purpose of cross-examination by the Counsel for the petitioners so as to elicit some crucial and important facts. The said application was opposed by respondents 3 and 4 herein by filing counter and contended that there is no

provision in the Evidence Act or in the C.P.C. enabling a co-defendant to cross-examine the defendant when he has not spoken anything against him. It is contended that the witnesses have not spoken anything against the petitioners herein and as such they have no right to cross-examine them. It is further contended that the petitioners, who claim their rights in Sy.No.129/104 are strangers to the suit schedule property, which is situated in Sy.No.129/76. On considering the entire material available on record, the trial Court, by docket order dated 06.09.2022, dismissed the said application holding that the evidence of R.Ws.1 and 2 does not indicate anything adverse to the case of the petitioners herein and that the petitioners were conspicuously silent as to what necessitated them to file the present application after long lapse of a decade from the date of their impleadment in the O.P., which is nothing but a mere gambit.

3. Aggrieved by the aforesaid order dated 06.09.2022, the present writ petition has been filed by the petitioners stating that the 1st respondent herein filed LGC No.87 of 1998 against the 2nd respondent alleging that the 2nd respondent grabbed LGC schedule property to an extent of 9467 square yards (Ac.2.14 Guntas) in Sy.No.403/P of Shaikpet village, TS No.5, Block-H, Ward-10. After the death of the 2nd respondent, his Legal Representatives (Respondents 3 and 4 herein) were brought on record. It is stated that neither the 2nd respondent nor his legal representatives are owners or possessors of the schedule property and that they are third parties not concerned with the property. Having come to know about the pendency of the said LGC, the petitioners herein and two others filed I.A.No.1191 of 2006 and got themselves impleaded as respondents 11 to 20 in the said LGC as they are absolute owners and possessors of the schedule land having purchased the same from their vendors for valuable consideration through various

registered sale deeds. It is further stated that the 1st respondent filed the application after lapse of seven decades and as such it is barred by limitation and that there are innumerable sale transactions between various parties with regard to the schedule property and all the purchasers including the petitioners have made certain constructions and they have been paying property tax, water tax, sewerage charges etc., It is further stated that by the time the petitioners got impleaded in the said LGC, the evidence of the applicant as well as R.Ws.1 and 2 was completed and they did not get any opportunity to cross-examine R.Ws.1 and 2 and as such they filed I.A.No.947 of 2009 in LGC No.87 of 1998 seeking to recall R.Ws.1 and 2 for cross-examination by their counsel and the same was allowed by the Special Court under A.P. Land Grabbing (Prohibition) Act, 1982 by order dated 18.09.2009. Aggrieved by the same, some of the respondents in the LGC, filed W.P.No.23536 of 2009 and that this Court by order 07.02.2022 allowed the said Writ Petition

and remanded the matter to the Court below for fresh consideration and to dispose of the said I.A. after hearing both the parties within a period of four weeks from the date of receipt of a copy of that order. In the meantime, in view of abolition of Special Tribunal, LGC No.87 of 1998 was transmitted to the IX Additional Chief Judge, City Civil Court, Hyderabad and was re-numbered as LGOP No.3027 of 2015 and the said I.A.No.947 of 2009 was re-numbered as I.A.No.559 of 2022. It is further stated that the trial Court, without considering the facts and circumstances of the case in right perspective, dismissed the said I.A.No.559 of 2022 by docket order dated 06.09.2022 holding that the evidence of RWs.1 and 2 does not indicate anything adverse to the case of the petitioners herein and there is a serious dispute with regard to title of the property and that the application for recalling of R.Ws.1 and 2 for cross-examination was filed after a decade of their impleadment. Therefore, the petitioners filed this writ petition requesting this Court to set

aside the impugned order as it is erroneous and contrary to the facts and circumstances of the case.

4. Respondents 3 and 4 filed a counter-affidavit, *inter alia*, contending that the petitioners and respondents 5 to 11, who have no connection whatsoever with the LGC property, got themselves impleaded as parties to the LGC stating that the land in question is part of Sy.No.129/104 and wanted them to be declared as land grabbers as *in fact* the said Sy.No.129/104 does not exist at all. It is contended that the vendor of petitioners and respondents 5 to 11 is one and the same and he never made any attempt to implead himself as a party to LGC No.87 of 1998, instead he stated that he was totally aware of the entire proceedings and the submissions made therein and after his death, his legal representatives came on record with a specific purpose to contest the suit and even they did not chose to implead in the LGC. Hence, the present petitioners and respondents 5 to 11 cannot make

different claims. It is further contended that the trial Court has passed a reasoned order basing on the material available on record and, therefore, requested this Court to dismiss the Writ Petition.

5. Heard learned Counsel appearing on either side and perused the entire material available on record.

6. Learned Counsel for the petitioners submits that by the time the petitioners herein got impleaded themselves as party respondents, the evidence of the 1st respondent/applicant and the original respondents was completed and as such they did not get any opportunity to cross-examine R.Ws.1 and 2 to elicit some crucial and material aspects. He further submits that the said cross-examination would also assist this Court in understanding and appreciating the core questions involved in the matter and it would, therefore, be just and proper to give an

opportunity to the petitioners herein to cross-examine R.Ws.1 and 2.

7. Per contra, learned Counsel for the respondents 3 and 4 submits that there is no provision to enable the co-defendant to cross-examine the defendant when he has not spoken anything against them. He further submits that the petitioners, who claim their rights in Sy.No.129/104 are strangers to the schedule property, which is situated in Sy.No.129/76. He finally submits that if at all the petitioners herein have given an opportunity to cross-examine R.Ws.1 and 2, the respondents should also be given an opportunity to adduce further evidence.

8. Admittedly, by the time the petitioners herein got impleaded in the LGC, the evidence of R.Ws.1 and 2 was closed and as such R.Ws.1 and 2 did not speak anything against them. Therefore, the argument of the learned Counsel for the respondents that since R.Ws.1 and 2 have not

spoken anything against the petitioners, they cannot be permitted to cross-examine R.Ws.1 and 2, is not tenable. The petitioners herein stated that they are absolute owners and possessors of the schedule property having purchased the same from their vendor for valuable consideration through various registered sale deeds and that they have also filed certain documents before this Court to substantiate their version.

9. Having regard to the aforesaid discussion, this Court, without going into the merits of the case, finds that it is just and reasonable to grant an opportunity to the petitioners herein to cross-examine R.Ws.1 and 2 with a specific direction to complete the cross-examination within a period of One Week from the date of receipt of a copy of this order and records by the trial Court. Both parties are directed to cooperate with the trial Court for disposal of the matter and

they are at liberty to raise other contentions before the trial Court by duly following the procedure.

10. With the above directions, the Writ Petition is allowed and the impugned order dated 06.09.2022 passed by the trial Court in I.A.No.559 of 2022 in LGOP No.3027 of 2016 is set aside. There shall be no order as to costs.

11. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

T. VINOD KUMAR, J

P.SREE SUDHA, J

17.02.2023
Gsn.

