

(2014) 02 AP CK 0136
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 737 of 2011

Dr. M. Krishna Prasad

APPELLANT

Vs

Amadalavalasa Municipal Corporation

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Citation : (2014) 3 ALD 589 : (2014) 5 ALT 594

Hon'ble Judges : Kalyan Jyoti Sengupta, C.J.; Sanjay Kumar, J

Bench : Division Bench

Advocate : Gangadhar Chamorthy, for the Appellant; S. Nageswara Reddy, for the Respondent

Judgement

Kalyan Jyoti Sengupta, C.J.—This appeal is admitted for hearing. Controversy in this appeal is not serious one for which it needs elaborate hearing. After service of notice to the respondent, learned Counsel for the respondent is present. The writ petition was filed for setting aside the proceedings No. 16/07 dated 5th October, 2007, whereby the respondent has called upon the petitioner to remove the constructions made by him in Survey No. 129 of Krishnapuram village.

2. The respondent is of the view that such structures are unauthorized and asked for removal of the same from the land owned by the Municipal Corporation. The writ petitioner challenged the same contending that the aforesaid notice is contrary to the decree of the Civil Court. The respondent was restrained from evicting the writ petitioner in any manner except by way of filing a civil suit.

3. The learned single Judge, after considering the matter, felt that the Civil Court's decree restraining the municipal authority from initiating action under the provisions of the A.P. Land Encroachment Act, 1905 is bad and contrary to law. Hence, the above notice was upheld and the writ petition was dismissed.

4. Learned Counsel for the appellant has invited our attention to the decree of the Civil Court. The relevant portion of which is set out as follows:

That the suit be and is hereby decreed in part declaring that the plaintiff is not the owner of the land, but he is the owner of the superstructures and possessor of the land;

That the defendants be and are hereby restrained from interfering with the plaintiff's possession and enjoyment of the suit schedule property by way of qualified prohibitory injunction, except in due process of law i.e., approaching the Civil Court, but not under Andhra Pradesh Land Encroachment Act, 1905.

(emphasis supplied by us)

5. It is argued by the learned Counsel for the appellant that when the decree has rightly or wrongly allowed the respondent to file a civil suit for removal of the structures, which amounts to eviction, it is not open for the respondent to initiate action under the provisions of the Andhra Pradesh Municipal Corporation Act, 1965.

6. Learned Counsel for the respondent, on the other hand, while supporting the judgment and order of the learned single Judge, submits that the restraint order is applicable in respect of the proceedings under the provisions of the Andhra Pradesh Land Encroachment Act, 1905. Moreover, after the declaration of the Civil Court that the writ petitioner is a trespasser, he can be evicted in due process of law and the proceedings sought to be initiated under the provisions of the Andhra Pradesh Municipal Corporation Act, 1965 is one of the due process of law. The intention of the Civil Court was that the writ petitioner should be evicted in due process of law and one of such due process of law has been by way of approaching the Civil Court. Thus, there is no illegality or infirmity in the order of the learned single Judge.

7. We are of the view that, as correctly urged by the learned Counsel for the appellant, when the decree itself provides the mode of eviction and that mode has to be adhered to, which has been specifically stated. We have noticed that the Civil Court has rightly or wrongly allowed the respondent to approach the Civil Court, meaning thereby, they cannot initiate any action under any provision of law except by approaching the Civil Court. In other words, the respondent was restrained from initiating any action to evict the writ petitioner from the land in question, other than by Civil suit. It is true that this order may be right or wrong, but the decree is not a nullity on ground of inherent lack of jurisdiction in order to ignore the same. The learned single Judge, in our view, is not correct in ignoring the aforesaid direction of the Civil Court.

8. Passing a decree or order without jurisdiction is one thing and passing the judgment and order without applying proper law is another thing. In the case of second mistake, the respondent has no option to approach that Court for review of the order or to approach a statutory Court for preferring an appeal. This is not such an order, which can be ignored, in collateral proceedings. If any order is passed without jurisdiction, the same can be ignored even in collateral proceedings.

9. Under the circumstances, we are unable to uphold the judgment and order of the learned single Judge and we set aside the same. However, it would be open for the respondent authority either to have a clarification from the learned Civil Judge or to appellate forum in accordance with law, if they want to proceed under the provisions of the Andhra Pradesh Municipal Corporation Act, 1965. If they want to approach the Civil Court, they will be free to do so if the Municipal Corporation Act, 1965 does not put an embargo.

10. Accordingly, this Writ Appeal is allowed to the extent as indicated above. Pending miscellaneous Petitions, if any, shall also stand closed. No order as to costs.