

(2022) 03 TEL CK 0087
In the Telangana High Court
Case No : Writ Appeal No. 1363 Of 2018

E.Phani Kumar

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 21-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Slum Areas (Improvement And Clearance) Act, 1956 — Section 3

Citation : (2022) 03 TEL CK 0087

Hon'ble Judges : Satish Chandra Sharma, CJ;Abhinand Kumar Shavili, J

Bench : Division Bench

Advocate : M R S Srinivas

Final Decision : Dismissed

Judgement

1. This Writ Appeal is preferred aggrieved by the order passed by the learned Single Judge in Writ Petition No.20294 of 2018, dated 20.09.2018.

2. Heard Sri M.R.S.Srinivas, learned counsel for the appellants, learned Government Pleader for Municipal Administration appearing for the 1st respondent, learned Advocate General for Revenue appearing for the respondent Nos.2 to 4, Sri Pasam Krishna Reddy learned counsel for respondent Nos.5 and 6, Sri Y.Rama Rao, learned counsel for respondent No.7 and Sri Kowturu Pawan Kumar, learned counsel for respondent Nos.8 to 30 and 32 to 43.

3. It has been contended by the appellants that the land admeasuring Ac.1-26 guntas in Kavadiguda bearing Municipal No.1-3-3 was originally owned by Y.Govindu and he has obtained layout No.66/60 from Municipal Corporation of Hyderabad vide File No.246/BPS/2/60 and divided the land into 52 plots and an area admeasuring 140' x 65' was shown as a park in the midst of the layout, opposite to plot Nos.30, 31, 32 and 33 on the Western side. It has been further contended by the appellants that as per sanctioned layout, an area of 140' x 65' has been earmarked for park and it has been encroached by the unofficial

respondents and the official respondents, instead of removing encroachments, are trying to regularize the encroachments by constructing two bed room houses under 2BHK Scheme in the said park area, which is not permissible. The learned counsel for the appellants had further contended that as per the sanctioned layout, the said area was meant for public park but the encroachers have surrendered the land to the official respondents for constructing two bed room houses and the official respondents cannot be allowed to convert the park area into a concrete jungle. Learned counsel for the appellants had further contended that the park area is only the lung space available for the residents of the approved layout and the Municipal Corporation is the custodian of park area and it did not show any interest in maintaining the same and allowed the encroachers to encroach upon the said park area despite various efforts being made by the appellants. Therefore, the learned counsel for the appellants had contended that appropriate orders in the Writ Appeal may be passed by setting aside the orders of learned Single Judge and further to direct the official respondents to ensure that the park area, is not encroached by unofficial respondents.

4. Learned counsel for the official respondents had contended that when the land covered under Municipal No.1-3-3, admeasuring Ac.1-26 guntas at Kavadiguda was originally owned by one Govindu and when Govindu purchased the said land vide Registered Document bearing No.2035 of 1956 and at the time of 1956 itself there were hut dwellers in an extent of 8 ½ guntas of land and that the said Govindu sold the said land except the extent in occupation of hut-dwellers to the third parties and after the demise of Govindu, his legal heirs gave Power of Attorney to K.R.Jagadeesh and K.Lakshmi Narayana for the purpose of executing and registering sale deeds in favour of hut-dwellers and accordingly, for an extent of 1018 square yards, through the Power of Attorney holders, agreement of sale was entered in favour of hut-dwellers on 04.08.1986 and ever since then the hut-dwellers are residing there and there is no approved layout proving that there is a park and in the absence of any approved layout, the appellants cannot contend that it is a park. It has been further contended that at the time when original purchaser Govindu has purchased the land way back in the year 1956 itself, the hut-dwellers were there and as long as there is no park as per the approved layout, the appellants cannot contend that it should be left open as park and it should not be allowed to be used by hut-dwellers and that the official respondents cannot construct two bed room houses for hut-dwellers in the said area. There are no merits in the writ appeal and the same is liable to be dismissed.

5. Sri Kowturu Pawan Kumar, learned counsel for the hut-dwellers had contended that since many decades hut-dwellers are residing in the said land and when State Government has come up to construct two bed room houses for the poor and slum dwellers, the hut-dwellers have vacated the premises so as to enable the State to construct two bed room houses and that the hut-dwellers have vacated the premises only on the assurance given by the State that the State shall construct two bed room houses and they will be allotted to them and that

the appellants are fully aware that the hut-dwellers are residing in the said land since more than four to five decades and therefore, there are no merits in the Writ Appeal and the same is liable to be dismissed.

6. This Court, having considered the rival submissions made by the parties, is of the considered view that the learned Single Judge has rightly dismissed the Writ Petition on the ground that there is no park area earmarked in final approved layout and in the absence of such park being notified as per the approved plan, the appellants cannot plead that the park area should not be used by the hut-dwellers and the State should not construct two bed room houses/apartments for the purpose of hut-dwellers. The learned Single Judge has rightly dismissed the Writ Petition with the following observations at para Nos.13, 14 and 15 :

"13. It is also not in dispute that in the said counter affidavit, the Municipal Corporation of Hyderabad stated, in clear and vivid terms, about non- existence of layout as pleaded by the petitioners herein. It is also clear from a reading of the order dated 24.12.1979 passed in W.P.No.4663 of 1978 that a request was made to permit the petitioners to withdraw the writ petition having regard to the averments made in paras 6 and 7 of the counter affidavit. It is also significant to note that though a categorical statement was made by Municipal Corporation with regard to non-existence of approved layout as pleaded by the Association, admittedly no efforts were made to get final layout approved. Copy of the proposed layout filed along with writ petition and plan attached to the sale deeds would not render any assistance to the petitioners in the absence of production of approved layout. It is also pertinent to note in this context that on the request made by the Tahsildar, GHMC vide Lr.No.A/3450/ GHMC/TPS/HO/2017 dated 20.8.2018 informed that there is no file or record bearing T.A.No.66/60/MC/ Hyd/246/BPS/ 2/60 and GHMC also enclosed an extract of list of layouts and the same also does not contain any layout said to have been sanctioned in respect of the subject lands. In the absence of any evidence contra, the said document is required to be given credence and necessarily it has to be construed that there is no sanctioned layout for the subject land. In the absence of approved layout, the petitioners herein, in the considered opinion of this Court, cannot seek any relief on the basis of the contention that in the approved layout, the subject area is earmarked for park purpose.

14. Another contention advanced by the learned Advocate General is that in view of the declaration of the subject area as slum area by way of notifications under Section 3 of the Slum Improvement Act, the area stood vested in the Government in the year 1984 and at this length of time, the said notifications cannot be questioned. In fact, in New Bhoiguda Mosque and Grave Yard Committee's case (7 supra), this Court refused to entertain the writ petition after six years and in the instant case, it is more than three and half decades. The contention that the said notifications do not cover the subject land also falls to ground in view of the specific mention of the subject land in the said notifications. Since the petitioners herein failed in establishing that in the

approved layout, the subject area is earmarked as park, the judgments on which they are placing reliance would not render any assistance to the case of the petitioners. It is significant to note that there is no explanation offered by the petitioners as to why they maintained absolute silence in approaching judicial forum after the orders of this Court in W.P.No.4663 of 1978. In the considered opinion of this Court, the said unexplained silence is fatal to the case of the petitioners. Obviously, in order to take advantage of removal of structures of hut dwellers from the subject land, the present writ petition is filed. In view of the above findings, the other grounds raised by the petitioners pale into insignificance.

15. In view of the above reasons, this Court has no scintilla of hesitation to hold that the petitioners have failed in making out a case, warranting interference of this Court under Article 226 of the Constitution of India”.

7. Therefore, this Court is not inclined to interfere with the orders passed by the learned Single Judge. Accordingly, Writ Appeal is dismissed. No order as to costs.

8. As a sequel, miscellaneous applications pending if any in this Writ Appeal, shall stand closed.