

(2022) 06 TEL CK 0035

In the Telangana High Court

Case No : Writ Petition No. 22918 Of 2020

Mohammed RiyazVs State Of Telangana And 4 Others

Date of Decision : 09-06-2022

Acts Referred:

Citation : (2022) 06 TEL CK 0035

Hon'ble Judges : P.Madhavi Devi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This Writ Petition is filed by the petitioner seeking a Writ of Mandamus declaring the action of the respondent No.4 i.e., Commissioner, Khammam Municipal Corporation in passing the mutation orders in favour of the respondent No.5 in respect of H.No.8-1-265 in ROC No.R1/241243/Revenue/2020 as illegal, arbitrary and consequently to set aside the same in the interest of justice.

2. Brief facts of the case leading to filing of this writ petition are that the petitioner and his father, Sri Mohammed Abdul Haleem and other family members claim to be the residents of H.No.8-1-264, Bogumkunta Bazar, Khammam Town. It is stated that he filed a suit vide O.S.No.41 of 2017 on the file of the Court of Judge for SCs & STs (POA) Act-cum-VII Addl. District Judge, Khammam, for declaration and cancellation of sale deed, dated 05-09-2009 and also for partition of the suit property into (10) equal shares. The petitioner's father was plaintiff No.5 and pending the adjudication of the suit, the petitioner's father in I.A.No.113 of 2016, had obtained ad-interim order, dated 23-08-2016 against the respondent No.5 herein and other defendants therein, restraining them from alienating or encumbering the petition schedule property till the disposal of the suit. It is submitted that the said suit was dismissed due to non production of evidence on 10-08-2017 and thereafter, the petitioner had filed I.A.No.1 of 2020 and I.A.No.2 of 2020 for restoration and for condonation of delay in filing the restoration application and the same are pending adjudication. It is submitted that taking advantage of the dismissal of the suit, the respondent No.5 has approached the respondent No.4 on 21-07-2020 and applied for

mutation of the property in his name in respect of the dwelling house i.e., H.No.8-1-265. It is submitted that the petitioner has filed objections/complaint to the same vide his letter dated 27-08-2020. It is the case of the writ petitioner that without considering the objections of the petitioner's father, respondent has issued a notice to the petitioner's father to appear in person. Challenging the said notice, the petitioner had filed W.P.No.18000 of 2020 on the ground that even though the respondent No.4 was aware of the pendency of the writ petition, he has proceeded with the mutation of the name of the respondent in respect of house bearing No.8-1-265. Challenging the same, the present writ petition is filed.

3. The learned counsel for the petitioner submits that the petitioner and his family members are residing in the subject house and therefore, the respondent No.4 could not have mutated the name of the respondent No.5 as the owner and possessor of the said property, as the suit for declaration and cancellation of sale deed were pending before the Court.

4. Learned counsel for the respondent No.5 however, filed the counter affidavit and submitted that the respondent No.5 has purchased the subject property from the father of the petitioner by way of a registered Sale Deed and suppressing the same, the petitioner had filed the present writ petition and the father of the petitioner is trying to blackmail the respondent No.5 through futile proceedings. With regard to Writ Petition No.18000 of 2020 filed by the petitioner and the petitioner claimed it to be pending. Learned counsel for the respondents submits that subsequently it was closed on account of the impugned orders being passed. It is further submitted that the respondent No.4 in his proceedings dated 06-11-2020 had given a specific direction to the father of the petitioner, M.A.Haleem that if he desires to challenge the title of the property, he could approach the Civil Court to establish his right and title and that O.S.No.712 of 2020 was already filed on the file of Court of the IV Additional Junior Civil Judge, City Civil Court for cancellation of sale deed and the said suit is pending for adjudication. Therefore, according to the respondents, the present writ petition is not maintainable and further that the order passed by the respondent No.4 is appealable before the appellate authority and therefore, there is an alternative remedy available and hence, the writ petition is not maintainable for this reason as well.

5. The official respondents have also filed their counter affidavit stating that the respondent No.4 has followed the due procedure by issuing notice to the petitioner's father and that only after verification of the relevant record, the mutation orders, dated 06-11-2020 have been passed. Therefore, the writ petition is not maintainable.

6. Having regard to the rival contentions and the material available on record, this Court finds that the petitioner's father has executed a registered Sale Deed in favour of the respondent No.5 and, thereafter, has filed the suit for cancellation of Sale Deed. It is also seen that on the date of impugned orders,

the said suit was dismissed and the restoration application has not been allowed yet.

7. It is also noticed that after considering the factual situation as on the date of application and also after considering the objections of the petitioner's father to the mutation proceedings only, the respondent No.4 has passed the impugned order, dated 06-11-2020.

8. Further, it is also noticed that there is no violation of principles of natural justice as the petitioner's father was given a notice and in spite of sufficient time given to him, the petitioner's father had not submitted any authentic documents for proceeding further.

9. The learned counsel for the petitioner has relied upon the decision of this Court in W.P.No.3979 of 2003 in a case between V.Jaya Prakash v. Commissioner of Municipality, Khapra Municipality, Kapra, Ranga Reddy District and another reported in 2006 (4) ALD 807 wherein it was held that :

"In the proposition – with regard to the title and it is ---

- it shall be the duty of the Commissioner to postpone the permission, for the public authority must respect the Court's decision and implement it and/or aid in implementing the same"

10. However, this Court is of the opinion that the said decision is not helpful to the petitioner as there was no dispute pending before the Court with respect to the title of respondent No.5 in the said case.

11. The suit for declaration and cancellation of Sale Deed has not been restored and, therefore, as on the date of impugned order, there was no direction of any Court in favour of the writ petitioner. Further, all the factual issues needs to be considered by a Civil Court or the Appellate Court.

12. In view of the above, this Court does not find any merits in the application filed by the petitioner and hence this writ petition is liable to be dismissed. Further, since the appellate remedy is available to the petitioner, the writ petition is not maintainable. However, the petitioner is given liberty to file an appeal before the Civil Court if he so chooses and pursue the matter for cancellation of the Sale Deed.

13. In the result, the writ petition is dismissed.

14. Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.