

(2023) 01 TEL CK 0036
In the Telangana High Court
Case No : Writ Petition No. 19540 Of 2020

Mohd. Mazarulla Khan

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 31-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 01 TEL CK 0036

Hon'ble Judges : K.Sarath, J

Bench : Single Bench

Advocate : Krishna Kishore Kovvuri

Final Decision : Dismissed

Judgement

1. This writ petition is filed for the following relief:

".....to issue an order or orders or direction or writ more particularly one in the nature of Writ of Mandamus declaring the action of the respondent No.2 to 4 in trying to dispossess the petitioner from his patta land of an extent of Ac.1.27 gts in Sy.No.70/2-B of Kataram Village and Mandal, Karimnagar District for construction of Bus depot as illegal, arbitrary, malafide, intentional, and in violation to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and consequently restrain the respondents not to take any forcible possession in the interests of justice"

2. Heard Sri K.V.Bhanu Prasad, Learned counsel for the petitioner and Sri Andapalli Sanjeev Kumar, Learned Special Government Pleader for Additional Advocate General appearing for the respondents.

3. Learned counsel for the petitioner submits that the father of the petitioner Late Sri Anwarulla Khan purchased land admeasuring to an extent of Ac.2.37 gts in Sy.No.70/2-B Situated at Kataram Village and Mandal, Jayashankar Bhupalpalli District on 01.06.1991 under a registered sale deed. After death of the father of the petitioner, the petitioner came over the said property as absolute owner.

During the life time, the father of the petitioner sold the land admeasuring to an extent of Ac.1.10 gts to the third party and the balance extent of Ac.1.27 gts of land with the possession and enjoyment of the petitioner.

4. Learned counsel for the petitioner submits that at one point of time, at the instance of local MLA there was a proposal of construction of bus-station to cater the needs of the public and contacted whether any individual was willing to give the land at free of cost. The Ex-sarpanch of the village Sri Mohd. Rahimulla Khan because of his political affiliation agreed to give an extent of land Ac.0.20 gts for construction of bus-station. The father of the petitioner never agreed to give any piece of land without paying any compensation as the land is adjacent to the main road. However, there was correspondence between the Executive Engineer and Assistant Engineer of the then A.P.S.R.T.C and in letter dated 20.07.1988, the site No.1, Ac.0.35 guntas of land was offered by V.Nanda Kishore at Garapalli Village and the site No.2, Ac.0.20 guntas of land in Sy.No.70/3 was offered by the father of the petitioner. Curiously the said letter does not indicate the survey number of Ac.0.35 guntas which is site No.1 and in respect of site No.2 though the father of the petitioner name was mentioned in survey number was wrongly mentioned and directed the Assistant Engineer to contact the persons to take over the sites. Thereafter, the said Assistant Engineer could not take any possession as father of the petitioner cannot agreed to give land free of cost and he was in enjoyment till his death. As on today there is no bus-station and idea to construction of bus-station was dropped. However, due to local politics the petitioner and his mother was sought to be dispossessed stating that there was an unregistered gift in favour of the respondent Nos.1 to 3. In fact, there was no such unregistered gift and the same is created to justify the illegal action. Under those circumstances, the petitioner and his mother filed W.P.No.575 of 2014 to questioning the highhanded action of the respondents herein before this court. Initially, granted interim orders passed by this court on 09.01.2014. Thereafter, mother of the petitioner was died and the petitioner realized that the correct facts were not stated in the said writ petition and the same was withdrawn with liberty to file a fresh writ petition. Now, the petitioner filed present writ petition to questioning highhandedness of the respondents in trying to dispossess the petitioner from patta land in violation to the Right to Fair Compensation and Transparency according to Land Acquisition, Rehabilitation and Resettlement Act, 2013 and requested to allow the writ petition.

5. Learned Special Government Pleader appearing for the respondents submits that this Writ Petition is liable to be dismissed on the ground of suppression of material facts and the father of the petitioner was gifted the land admeasuring to an extent of Ac.1.00 Gts in Sy.No.70/B in Kataram Village as per Muslim Law by way of (Hiba) gift dated 10.06.1989 for construction of bus-station and on the same day the Respondent-Corporation took over the possession of the subject property by way of conducting Panchanama. Since then, the Respondent-Corporation is in peaceful possession and enjoyment of the subject property. The petitioner and his mother earlier filed W.P.No.575 of 2014, and the respondents

filed counter in the writ petition and in Para 5 of the counter categorically stated that the petitioner and his mother filed O.S.No.2 of 2014 before the Junior Civil Judge Court at Manthani praying for a direction against the respondent Nos.2 to 3 not to interfere into the possession of the petitioner in Ac.1.27 guntas of land in Sy.No.72/B at Kataram Village. After receiving counter the petitioner withdrawn the same, seeking permission to file a fresh writ petition with liberty. In the present writ petition also the petitioner suppressed the said fact of filing of O.S.No.2 of 2014. The Respondent-Corporation contested the said suit. The trial court dismissed O.S.No.2 of 2014 on 12.03.2019 by recording the reasons that "the Court has given lot of opportunities and chances to the plaintiff, but the plaintiff could not take any steps to lead their evidence even though the stage is coming for finally. It seems that the plaintiff is not interested to proceed with the suit and the suit was dismissed for default". This writ petition is liable to dismissed on the ground of suppression of the fact of dismissal of the above suit.

6. Learned Special Government Pleader further submits that the father of the petitioner was gifted (Hiba) the subject property to the respondent-Corporation for construction of bus-station and in the present writ petition, the petitioner is disputing the gift (Hiba) given by his father and also for the construction of the Bus-Station. There is disputed question of title and facts. This court cannot decide the disputed question of title and facts under Article 226 of Constitution of India. The settled principle of law that all disputed question of title and facts should be decided by the competent Civil Court only. In view of the same, requested to dismiss the writ petition.

7. Learned Special Government Pleader appearing for the respondents relied the following judgments.

i) M.C.D Vs State of Delhi and Ors 2005 (4) SCC 605 .

ii) Municipal Corporation, Aurangabad Vs State of Maharashtra and Ors 2015 (16) SCC 689.

iii) Kishore Samrite Vs State of U.P and Ors 2013 (2) SCC 398.

8. After hearing both sides this Court is of considered view that as per the writ affidavit, father of the petitioner purchased scheduled property through registered document on 01.06.1991 and in contra the petitioner stating that there was a correspondence between the authorities vide letter dated 20.07.1988 and the Assistant Engineer directed to take over the possession of the land from father of the petitioner. The respondent-Corporation also stating that there was gift (Hiba) in their favour given by father of the petitioner on 10.06.1989 for construction of bus-station. Moreover, the petitioner and his mother filed suit for perpetual injunction against the respondent-Corporation herein in O.S.No.2 of 2014 on the file of the Principal Junior Civil Judge at Manthani and the same was dismissed for default on 12.03.2019. The petitioner and his mother filed W.P.No.575 of 2014 before this Court and the respondents categorically stated in their counter in W.P.No.575 of 2014 that the petitioner

filed O.S.No.2 of 2014 before the Principal Civil Judge, Manthani and the same was dismissed for default. The above said writ petition was withdrawn without filing the reply to the said counter. After that the petitioner filed the present writ petition on the same ground suppressing the fact that O.S.No.2 of 2014 was dismissed for default on 12.03.2019. On the other hand, the respondents stating that the bus-stand was inaugurated by the then MLA on 16.06.2000 and at no point of time, the petitioner was in the possession of the property and the question of initiating proceedings according to Land Acquisition Act, 2013 does not arise. The judgments relied by the Special Government Pleader apply to the instant case.

9. The Hon'ble Supreme Court in *Municipal Corporation, Aurangabad Vs The State of Maharashtra and Ors* (Supra 2015 (16) SCC 689) at Para 8, categorically held that:

'.....the disputed question of fact was raised by the parties with regard to the title over the land in possession is not a fit case for the High Court to decide the question of mutation doubting the title in a petition under Article 226 of the Constitution of India....'

10. In *M.C.D Vs State of Delhi and Ors* (Supra 2005 (4) SCC 605) the Hon'ble Apex Court, at para No.21, held that :

'.....in our opinion it would be guilty of playing fraud on the Court as well as on the opposite party. A person whose case is based on falsehood can be summarily thrown out at any stage of the litigation. We have no hesitation to say that a person whose case is based on falsehood has no right to approach the Court and he can be summarily thrown out at any stage of the litigation..."

11. In the instant case the petitioner suppressed the fact that O.S.No.2 of 2014 on the file of the Principal Junior Civil Judge at Manthani filed by the petitioner and his mother was dismissed for default on 12.03.2019. The same was brought to the notice of the Court by the respondent in their counter in the earlier litigation also. The petitioner and his mother withdrawn the said writ petition with a liberty to file present writ petition and not brought to the notice of this Court till additional counter filed by the respondents on 15.12.2022. Moreover, in this writ petition there are disputed question of facts and at the time of arguments the learned Counsel for the petitioner submits that before registered sale deed also father of the petitioner was in possession of the property. In the above circumstances, the Writ Petition cannot be entertained under Article 226 of the Constitution of India as there are disputed question of facts and also the petitioner suppressed the facts while filing the present writ petition. The writ petition is devoid on merits.

12. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in these Writ Petitions shall stand closed.