
(2022) 02 TEL CK 0075
In the Telangana High Court
Case No : Writ Petition No. 17201 Of 2020

Silver Line Projects Pvt. Ltd. And Another	APPELLANT
Vs	
Hyderabad Metropolitan Development Authority And 2 Others	RESPONDENT

Date of Decision : 22-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 02 TEL CK 0075

Hon'ble Judges : A.Abhishek Reddy, J

Bench : Single Bench

Advocate : S V Ramana

Final Decision : Disposed Of

Judgement

This Writ Petition is filed seeking to declare the action of the respondent No.1 in entertaining the application from respondent No.3 and issuing the proceedings in application No.035391/SMD/ LT/U6/HMDA/16 032020, dated 18.08.2020 even though the layout was approved in favour of the petitioners in Lr.No.10020/LO/ Plg/SHZ/HMDA/2009, dated 13.01.2011, as illegal and arbitrary.

The case of the petitioners, in brief, is that originally one Mudavath Lachman Lambada had purchased the land admeasuring Acs.84.24 guntas situated at Pulimamidi Village, Kandukur Mandal, Ranga Reddy District, by means of a registered sale deed bearing document No.375/1964, dated 18.11.1964 from one Smt.Nizamunnisa Begum. The said land was classified as 'Dasthugarda' and his name was also recorded in the occupant column and as on 01.11.1973, he was in possession of the said property. Out of the said land, an extent of Acs.40-00 of land was sold in favour of the Krishna Raju and three others by way of three registered sale deeds bearing document Nos.1273, 1274 and 1275 of 1989 dated 29.04.1989 and also in favour of Smt.Uma Rajeshwari vide document No.3763/1988 dated 19.11.1988. After the purchase of the property, the vendors of the petitioners have made an application before the Revenue Divisional Officer for issuance of Occupancy Rights Certificate and the same was

granted on 30.09.1993 after recording the statement of Mudavath Chinna Lachanna, who admitted the alienation of the land in favour of vendors of the petitioners. The 1st petitioner herein purchased an extent of Acs.40.00 from its vendors by way of an agreement of sale-cum-GPA with possession vide document No.11139/2006, dated 21.07.2006. Thereafter, he sold an extent of Acs.10-00 in favour of petitioner No.2 vide registered sale deed No.5620/2008, dated 13.06.2008 and further sold an extent of Acs.5-00 of land in favour of Anil Kishan on 12.06.2008 and further extent of Acs.7.20 guntas in favour of Navayuga Engineers Company on 22.12.2006. Thereafter, the petitioners and other purchasers have jointly made an application to respondent No.1 for granting layout permission and vide letter No.01/LO/HMDA/Plg/SHZ/2011, dated 13.01.2011. After grant of layout, the petitioners have fenced the layout with a compound wall and also sold some plots in favour of third parties. On noticing that the compound wall was demolished, petitioners made enquiries and found that Occupancy Right Certificate was issued in favour of Mudavath Shukil and others in respect of land to an extent of Acs.12-12 guntas in survey No.93/2 of Pullimamidi Village, Kandukur Mandal,. It is stated by the petitioners that at the time of issuance of the certificate by the Revenue Divisional Officer, the Mandal Revenue Officer, based on the report of the Mandal Giridwar, has submitted a report on 14.10.2018 stating that the possession of the applicants was not identified and they have not shown the land in their possession in survey No.93/2 and that the land was divided into survey Nos.93/1 and 93/2 in the year 1971-72. Thus, it is stated that in view of the said report, the order of the RDO granting ORC is illegal. While so, the respondent No.3 made an application to respondent No.1 for approval of layout in the land. In spite of filing objections before respondent No.1 on 14.09.2020, the respondent No.1 is proceeding further in the matter. It is further averred that in respect of the very same land in survey Nos.93/2/E to 93/2/RU of Pulimamidi Village, Kandukur Mandal, Ranga Reddy District, the respondent No.1 had already issued proceedings dated 13.01.2011 and the same is in force as on today. Without cancelling the said proceedings, the respondent No.1, based on the application for approval of layout made by respondent No.3, had issued proceedings dated 18.08.2020, which is not legal and correct. Hence, questioning the proceedings dated 18.08.2020, the present writ petition is filed.

Respondent Nos.1 and 2 filed a counter to the effect that based on the prima facie title and on the application made by respondent No.3, a draft approval has been granted on 18.08.2020. That after the draft approval was granted, the objections of the petitioners dated 14.09.2020 were received by respondent Nos.1 and 2. Thereafter, the respondent authorities have issued show-cause notice dated 08.10.2020 to respondent No.3 asking him to submit his explanation on the objection petition. However, no such explanation/reply is filed till date.

Respondent No.3 filed a counter affidavit along with a vacate stay petition mainly stating that the land claimed by the petitioners and the land claimed by

respondent No.3 are altogether different. It is further stated that the petitioners having admitted that out of the entire extent of Acs.84-24 guntas of land in survey No.93/2, they have purchased only Acs.40-00 guntas, they cannot make claim over the remaining land. It is further stated that while issuing the ORC in favour of vendor of respondent No.3, the authorities have fixed the boundaries by issuing sketch map. It is further stated that as per the report of the Mandal Girdawar, Kanduku Mandal, dated 14.10.2018 in survey No.93/2 there is an excess land of Acs.3-06 guntas over and above the original extent of Acs.84-24 guntas. Further, the writ petitioners have filed O.S. No.663 of 2020 on the file of VII Additional Senior Civil Judge, Ranga Reddy District, against respondent No.3 and his vendors for declaration of title in respect of the land to an extent of Acs.4-00 guntas, however, no injunction order is granted in the said suit. Respondent No.3 also denied to have received any show cause notice from the respondent authorities, as stated by them in their counter. Therefore, it is prayed that there are no merits in the writ petition and the same is liable to be dismissed.

Heard Sri O. Manohar Reddy, learned Senior Counsel, appearing for Sri S.V. Ramana, learned counsel for the petitioners, Smt. D. Madhavi, learned Standing Counsel for HMDA, for respondent Nos.1 and 2, and Sri Tarun G. Reddy, learned counsel for respondent No.3.

Learned Senior counsel appearing for the petitioners has contended that the official respondents having approved the lay out of the petitioners way back in the year 2011, ought not have again issued the impugned proceedings approving the lay out in favour of the third respondent, without verifying the ground position. Learned counsel has further stated that the petitioners are the owners and possessors of the land to an extent of Acs.40-00 having purchased the same through registered sale deeds from the original pattadars and title holders and obtained Occupancy Rights Certificate (ORC) in respect of the said land in the year 1993, and thereafter they have applied for lay out approval to the HMDA in the year 2011 and the same was granted by HMDA. After a lapse of more than 10 years, on the application made by respondent No.3, the official respondents, without conducting any survey or verifying the ground position, have granted draft approval in favour of respondent No.3 vide proceedings dated 18.08.2020 and the same is illegal. That under the guise of the draft layout, respondent No.3 is trying to encroach into the land of the petitioners. Hence, he prayed to allow the writ petition setting aside the impugned proceedings dated 18.08.2020.

Per contra, the learned counsel appearing on behalf of respondent No.3 has stated that respondent No.3 is the owner and possessor of the land admeasuring Acs.12-12 guntas in survey No.93/2. That the vendors of respondent No.3 have obtained ORC vide proceedings dated 27.05.2019 from the Revenue Divisional Officer, Kandukur Division, and thereafter, the draft lay out was obtained from the HMDA. That the petitioners after filing of the present writ petition have also filed a suit seeking declaration to the effect that the sale deed executed in favour

of respondent No.3 be declared as null and void and for other reliefs. That without awaiting the result of the said suit, the prayer sought for in the present writ petition cannot be granted. That unless and until the petitioners succeed in the suit filed by them, no relief can be granted in the present writ petition.

Heard and perused the material on record.

When the matter came up for admission on 14.10.2020, this Court has granted interim suspension of the impugned proceedings for a period of five weeks. Thereafter, the said interim order was extended from time to time.

On 23.02.2021 after hearing the parties at length, this Court having come to the conclusion that there is a dispute with regard to the identity of the subject land and to find out as to whether there is any overlapping of the land claimed by petitioner as well as respondent No.3 with one another has directed the HMDA to conduct survey with the help of the Mandal Surveyor and file a report before this Court. Pursuant thereto, HMDA has filed a memo stating that the Tahasildar has reported that due to the absence of sub-division sketches, it was not possible for the authorities to conduct survey and demarcate the survey No.93/2.

After going through the pleadings and also the documents filed by both the parties, it is found that the land of the petitioners is abutting the road passing from Pulimamidi Village to Maheshwaram, as seen from the maps enclosed to the registered sale deeds dated 27.12.2006, 12.06.2008 and 13.06.2008 relied by the petitioners, whereas as per the layout permission granted to respondent No.3 and the site map annexed thereto, the land claimed by respondent No.3 is not abutting the road passing from Pulimamidi Village to Maheshwaram, but is located behind the lands claimed by the petitioners herein. The question as to whether the land claimed by respondent No.3 is overlapping into the land of the petitioners or not is a matter which has to be gone into either by the Civil Court or HMDA before the draft lay out is finalized. This Court exercising the power under Article 226 of the Constitution of India cannot go into the disputed questions of fact, as held by the Hon'ble Supreme Court in the following judgments:

In Lord Shiva Birajman in H.B. Yogalaya vs. State of U.P. (2004) 13 SCC 518, the Hon'ble Supreme Court has held that a disputed question of fact should not be adjudicated upon in the absence of sufficient pleadings on those facts.

In Indian Bank vs. Satyam Fibers (India) Pvt. Ltd., (1996) 5 SCC 550, the Hon'ble Supreme Court has held that where the judgment, decree or order has been obtained by allegedly committing fraud on the Court, it is obliged to decide the question regarding fraud by recording evidence and in appropriate cases it can recall its decree or order.

In Sanjay Kumar Jha vs. Prakash Chandra Chaudhary [CA No.11857-11859 of 2018 SC], the Hon'ble Supreme Court has held that it is well settled that in proceedings under Article 226 of the Constitution of India the High Court does

not adjudicate upon affidavits, disputed question of fact. In general, therefore, a disputed question of fact is not investigated in a proceeding under Article 226, particularly where an alternative remedy is available for example :

The merits of rival claims to property or a disputed question of title;

Claim arising out of breach of contract or tort;

Where the petition rests on allegations of malice in fact;

Whether a person is a 'foreigner' within the meaning of the Foreigners Act, 1946, or whether the petitioner was casual labourer or not

Therefore, this Court is not inclined to allow the prayer sought for in the present writ petition seeking cancellation of the draft layout issued in favour of the respondent No.3. As it is stated in the counter filed by respondent Nos.1 and 2 that the authorities concerned have already issued notice to respondent No.3, it would be apt for this Court to direct respondent Nos.1 and 2 to verify the exact location of the land claimed by the petitioners as well as respondent No.3. It is also to be noted that the petitioners are claiming that only in respect of Acs.40-00 guntas approval has been given vide proceedings dated 13.01.2011 and the same is abutting the road from Pulimamidi Village to Maheshwaram.

The other contentions raised with regard to the ORCs issued in favour of the vendors of the petitioner as well as respondent No.3 are concerned, the same is not the subject matter of challenge in the present writ petition and it is left open to the parties to agitate their rights before appropriate Forum in accordance with law.

That insofar as the suit filed by petitioners for cancellation of the sale deed is concerned, the same is the subject matter of O.S. No.663 of 2020 on the file of VII Additional Senior Civil Judge, Rangareddy District, and till such time the said suit is decreed in favour of the petitioners, the sale deeds executed in favour of respondent No.3 are valid, more so, when the ORC issued in favour of the vendor of respondent No.3 is still in subsistence and not cancelled till date.

That insofar as the allegation of the petitioners that respondent No.3 taking advantage of the draft approval is interfering with the possession of the petitioners is concerned, it is a disputed question of fact and the petitioners are free to file an appropriate application in the pending suit seeking an appropriate relief to protect their possession and it is not for this Court to decide as to whether the petitioners are in possession or respondent No.3 is in possession of the subject lands.

Therefore, HMDA is directed to verify and demarcate the land claimed by the petitioners as approved vide proceedings in Lr.No.10020/LO/Plg./SHZ/HMDA/2009, dated 13.01.2011, and the land claimed by respondent No.3 as per the draft approval, dated 18.08.2020. If the HMDA comes to a conclusion that there is no overlapping of the land claimed by respondent No.3 with that of the

land of the petitioner, the final approval shall be issued in accordance with law. The HMDA is directed to complete the enquiry and pass necessary orders, as expeditiously as possible, preferably, within a period of eight weeks from the date of receipt of a copy of this order.

With the above directions, the writ petition is disposed of. However, it is made clear that any observations made in this order are only for the purpose of disposing of the present writ petition. The HMDA, quasi judicial authority, and Civil Court will decide the issue pending before them independently uninfluenced by the observations made in the present writ petition.

Miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.