

(2023) 03 TEL CK 0051
In the Telangana High Court
Case No : Writ Appeal Nos. 317, 319 Of 2023

Simma Mahesh Mahnder

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 14-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Civil Procedure, 1908 — Order 39 Rule 2A

Citation : (2023) 03 TEL CK 0051

Hon'ble Judges : Ujjal Bhuyan, CJ;N. Tukaramji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Mohd. Islamuddin Ansari, learned counsel for the appellants and Mr. M.Roopender, learned Government Pleader for Home representing respondents No.1 to 3. We have also heard Mr. Zeeshan Adnan Mahmood, learned counsel for respondent No.9.

2. W.A.No.317 of 2023 under Clause 15 of the Letters Patent has been filed by the appellant assailing the common order dated 20.01.2023 passed by the learned Single Judge dismissing W.P.No.38384 of 2022 and batch including W.P.No.38521 of 2022.

3. W.A.No.319 of 2023 under Clause 15 of the Letters Patent has been filed by the appellant assailing the same common order dated 20.01.2023 passed by the learned Single Judge dismissing W.P.No.38384 of 2022 and batch including W.P.No.38441 of 2022.

4. At the outset, learned counsel for respondent No.9 submits that W.A.No.272 of 2023 arising out of W.P.No.38384 of 2022 was dismissed by this Court on 06.03.2023 and therefore the present appeals are squarely covered by the aforesaid decision.

5. Learned counsel for the appellants however proceeded to argue the matters

on merit and when this was intervened by the Court pointing out that he could not reargue the matter and that such type of arguments would lead him nowhere, he submitted "Your Lordship may not like my face, but I represent the interest of my clients. Hear me for two minutes". Notwithstanding the intemperate and highly discourteous and disrespectful conduct of learned counsel for the appellants towards the Court, we have heard him in detail as well as learned counsel for the respondents.

6. The related writ petitions were filed by the appellants for declaring the action of respondent No.3 in threatening to dispossess the appellants from the subject properties at the behest of respondents No.4 to 9 as without jurisdiction and illegal. Similar prayers were made in all the connected writ petitions.

7. Learned Single Judge however took up W.P.No.38384 of 2022 as the lead case and adverted to the averments made therein. Thereafter, learned Single Judge held as follows:

9. As noted above, several claims and counter claims have been made by the parties. Serious disputed questions of title are involved. On one hand, the petitioners contend that plot/s in their occupation is in Survey No. 194/8/1, Prakash Nagar, Begumpet and on the other, unofficial respondent Nos.7 and 9 contend that the land being claimed by the petitioner/s is in Survey Nos.184, 185, 186 and 195 and that Survey No.194/8/1 is not existing as per the records. It is also a matter of record that the suit in O.S. No.2 of 2021 was filed by respondent No.9 before the learned XV Additional District Judge, Kukatpatty which is pending against Syed Zainulla Abedin. Injunction order was passed in favour of respondent No.9 and others and for implementing the said injunction order, W.P. No.24085 of 2022 was filed.

10. It is contended by the learned counsel for respondent Nos.7 and 9 that the police aid was provided as per the orders of this Court dated 10.08.2022 in W.P. No.24085 of 2022. The learned counsel further submitted that the petitioners and other similarly placed persons do not have any semblance of title as they have constructed unauthorized structures and are trying to perpetuate their illegal possession. There is no injunction order prohibiting the official respondents or GHMC from removing the unauthorized structures. Under the guise of small plot/s admeasuring 100 square yards, the petitioners and others are trying to encroach into the land of respondent No.9 and others. It may be noted that this Court has already passed an order in W.P. No.24085 of 2022 and it is stated that pursuant to the said order, police protection was given to implement the injunction order passed in I.A. No.31 of 2021 in O.S. No.2 of 2021. Thus, in the opinion of this Court, if any order is passed granting relief to the petitioners and others, it would be in conflict with the orders passed by this Court in W.P. No.24085 of 2022. Apart from that as observed above, there are serious disputed questions of title. There are disputes regarding survey numbers also. However, it is admitted by respondent Nos.7 and 9 that the petitioners have raised unauthorized structures.

11. In the above facts and circumstances. this court is not inclined to exercise its jurisdiction under Article 226 of the Constitution of India.

12. Therefore, all these writ petitions are dismissed. However, as it is admitted that there are unauthorized structures on the subject plot/s, both parties are directed to maintain status quo obtaining as on today for a period of three (3) weeks from the date of receipt of a copy of this order. The petitioner/s is/are given liberty to approach the civil Court within the said time and file suit/s seeking relief of perpetual injunction or any other relief. The petitioner/s may also seek for grant of interim injunction order. The civil suit, if any, filed and injunction petitions therein shall be adjudicated uninfluenced by any of the observations made in this order. No order as to costs.

8. In W.A.No.272 of 2023 arising out of the said common judgment and order passed in W.P.No.38384 of 2022 wherein learned counsel for the present appellants also represented the appellant in that appeal, this Court held as follows:

2. This intra-court appeal is directed against the order dated 20.01.2023 passed by the learned Single Judge dismissing Writ Petition No.38384 of 2022 filed by the appellant along with batch.

3. Appellant had filed the related writ petition taking exception to the action of the Station House Officer, Begumpet Police Station in threatening to dispossess the appellant from the house bearing Municipal No.1-10-27/34/A/37/2/A, admeasuring 100 sq.yds. in Sy.No.194/8/1 situated at Prakash Nagar, Begumpet, Hyderabad at the behest of respondent Nos.4 to 9.

4. Learned Single Judge vide the order dated 20.01.2023 declined to entertain the writ petition and accordingly dismissed the same. However, learned Single Judge granted liberty to the appellant to approach the competent Civil Court for redressal of his grievance and for a period of three (3) weeks directed maintenance of status quo by both parties.

5. Learned counsel for the appellant submits that respondent No.9 herein had earlier approached this Court by filing W.P.No.24085 of 2022 seeking police protection for implementation of injunction order. This Court by order dated 10.06.2022 directed respondent No.9 herein to approach the concerned Police Station and to submit representation whereafter, the concerned Police station was directed to provide police protection to the petitioner. He submits that on the basis of the aforesaid order, respondent Nos.4 to 9 are misusing police authority and are trying to dispossess the appellant.

6. This Court has already held on more than one occasion that writ petitions filed seeking police protection / police aid for enforcement of civil rights or for enforcement of injunction orders may not be entertained in view of the remedy provided under Rule 2A of Order XXXIX of Civil Procedure Code, 1908. If the appellant was aggrieved by the aforesaid order of the learned Single Judge dated

10.06.2022, he ought to have questioned the aforesaid order by filing appeal.

7. Be that as it may, the said order cannot be the basis for passing another order to adjudicate admittedly civil dispute between the parties.

8. Therefore, learned Single Judge was justified in relegating the parties to the forum of the competent Civil Court for adjudication of their respective civil rights and therefore justified in dismissing the writ petition. However, we are of the view that having dismissed the writ petition, it was not appropriate for the learned Single Judge to pass a positive direction of maintaining status quo for a period of three (3) weeks.

9. While dismissing the appeal, we also set aside the order of status quo passed by the learned Single Judge.

10. Writ appeal is accordingly dismissed.

9. Learned counsel for the appellants is unable to point out any distinguishing feature in the present appeals to take a view different from the one extracted above. We therefore see no good reason to entertain these appeals. However, in view of liberty granted by the learned Single Judge, appellants may approach the competent civil court for redressal of grievance.

10. The appeals being devoid of any merit are accordingly dismissed.

11. Though we thought of imposing exemplary costs because of the conduct of learned counsel for the appellants, however considering that appellants are not at fault, we refrain from imposing such costs.

Miscellaneous applications pending, if any, shall stand closed.