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**(2003) 09 AP CK 0087**

**In the Andhra Pradesh High Court**

**Case No : Letters Patent Appeal No. 177 of 2002**

Syed Khundmir

APPELLANT

Vs

A.P. Housing Board and Another

RESPONDENT

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**Date of Decision : 24-09-2003**

**Acts Referred:**

**Citation : (2004) 1 ALD 26 : (2003) 6 ALT 462**

**Hon'ble Judges : E. Dharma Rao, J;B.S.A. Swamy, J**

**Bench : Division Bench**

**Advocate : Vilas Afzulpurkar, for the Appellant; T. Prabhakar and G. Rama Rao, for the Respondent**

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## **Judgement**

B.S.A. Swamy, J.—This L.P.A was filed against the judgment and decree passed by the learned Single Judge in C.C.C.A.No. 147 of 1987, dated 4-12-2001 confirming the judgment of the trial court in O.S.No. 400 of 1983, dated 30-7-1987 dismissing the suit filed by the plaintiff-appellant herein seeking for a declaration that he is the owner of the suit schedule property and accordingly sought for a consequential injunction restraining the 1st defendant-1st respondent AP Hosing Board from interfering with his possession.

2. Both the Courts below concurrently held that the plaintiff-appellant miserably failed to establish his title to the suit schedule property and accordingly dismissed the suit. Hence, the present L.P.A.

3. Initially, Mr. Vilas V. Afzulpurkar appearing for the appellant strenuously contented that the suit schedule property is separated by a road from the land acquired for construction of houses by the A.P. Housing Board without proper identification of the lands with regard to its boundaries, both the Courts below erred in dismissing the suit. Having suspected the genuineness of the sale deed produced by him under which the appellant, alleged to have purchased an extent of 4100 square yards from one Abdul Rasheed in the year 1973 and having sold the land in bits to others, retained 500 square yards for his own use and the AP

Housing Board is trying to encroach upon his land. On a perusal of the deed under which he alleged to have purchased the property, we noticed that no survey number or town survey number was mentioned in the sale deed. Secondly while the acquisition is of the year 1963, he alleged to have purchased in 1971, by which time the Housing Board would have developed the entire land and as such the question of encroaching upon the land of the appellant by the A.P. Housing Board may not arise. Suspecting the bona fides of the claim made by the plaintiff-appellant, by order dated 27-8-2003, we called for the following information:

- (1) The names of his vendees and certified copies of the sale deeds executed by him;
- (2) Whether he sold the lands after obtaining permission for lay out or without lay out;
- (3) Whether he sold the open land or houses and whether he sold the open land or houses and whether the vendees filed any suits against M.C.H and they are still pending or disposed of and if they are disposed of, the copies of the judgments in those cases;
- (4) According to the Plaintiff, he has rebuilt the house in the land after obtaining injunction from the court. He shall furnish the suit number and whether it is pending or disposed of.

Learned counsel for the M.C.H. shall file Ex.B-6 cancellation order cancelling the assignment for the house in respect of House No. 19-5-10/12.

He shall also produce the information:

- (1) Whether the Municipal Corporation is collecting tax for this Door number after the assessment was cancelled?
- (2) Whether any house numbers stand in the names of Ravinder, Pushpa Bai, Ram Lobia, Quaderbhanu and others abetting their lands and whether they have constructed the buildings after obtaining building permission from the Corporation?
- (3) The Zonal Master Plan where Makthamama Hameema is situated and to which Survey Number and Town Survey Number; this land was correlated, the map if any, may also be produced before this court.

Counsel appearing on behalf of the Housing Board brought to the notice of this court that he has taken the original documents marked as "B" series from the lower court. He shall produce them before this court.

4. Thereafter Mr. Vilas V. Afzulpurkar, who was appearing for the petitioner has given up the Vakalat and Mr. Visweswara Rao filed Vakalat on behalf of the appellant. Even today when the case was taken up for hearing, the counsel was not able to produce the information sought for by this Court. On the other hand,

the 2nd respondent-Municipal Corporation of Hyderabad, filed counter-affidavit stating that the Corporation collected House tax on the premises bearing Municipal No. 19-5-10/12. This assessment along with other assessments were cancelled vide proceedings No. 212/A6/TC2/MCH/82-393. dated 4-6-1982 issued by the Additional Commissioner (Revenue), M.C.H. Hyderabad, having found that the assessments mentioned therein are on the layout of the Housing Board Colony, Bahadurpura, since the land was found to be the property of 1st respondent A.P. Housing Board. In fact the appellant in the Court stated that he sold the lands to some people and gave certain names.

5. The Commissioner in his affidavit stated that the house bearing premises No. 19-5-10/12 which stands in the name of Puspa Bai is far away from the lands in question. From the sketch filed by the Corporation, it is proved that the appellant filed this suit with false averments, if possible to knock away the public land belonging to the Housing board. In the absence of any rebuttal evidence by the appellant, we have to give credence to the sketch filed by the Municipal Corporation along with the affidavit filed in this case. Hence, we do not find any merit in this case and the judgment and decree passed by the courts below do not call for any interference by this court.

6. On the facts and circumstances of the case, prima facie we are of the view that some highly influential person kept the person in front and fighting a shadow litigation to knock away the public property. Hence, we direct the District Collector as well as the Municipal Corporation, Hyderabad to conduct a detailed enquiry into the matter and submit a report on the remedial measures to be taken to safeguard the public property within three months from the date of receipt of this order.

7. The L.P.A. is, therefore, dismissed accordingly.

8. The Registry shall number the direction given to the authorities as a writ petition.