

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE THIRTY FIRST DAY OF OCTOBER
TWO THOUSAND AND EIGHT

PRESENT
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY
WRIT PETITION NO : 11998 of 2008

Between:

- 1 D.Prabhakar S/o.D.Raghunanda
R/o.H.No.11-2-515/1, Uppara Basti, Namalagundu,
Secunderabad.
- 2 Smt.M.Aruna D/o.Sri D.Raghunanda
R/o.H.No.11-2-472/1/B, Namalagundu, Secunderabad.
- 3 Smt.A.Latha D/o.Sri D.Raghunanda
R/o.18-5-439, Mekala Banda Laldarwaja, Hyderabad.
- 4 D.Raghunanda S/o.lateD.Venkataswamy
R/o.H.No.11-2-515/1, Uppara Basti, Namalagundu,
Secunderabad.

.....
PETITIONER(S)

AND

- 1 The Greater Hyderabad Municipal Corporation, rep. by its
Commissioner, Tank Bund, Hyderabad.
- 2 The Commissioner & Spl. Officer (Town Planning Section,
H.O.) The Greater Hyderabad Municipal Corporation,
Tank Bund, Hyderabad.
- 3 The Asst. City Planner, Circle No.18, The Greater Hyderabad
Municipal Corporation,
Secunderabad.
- 4 P.Linga Das S/oLate P.Lakshmaiah
R/o.H.No.12-11-171/1/9&9A, Flat No.301, Manasa Residency,
Uppara Basti, Namalagundu,
Secunderabad.

.....**RESPONDENT(S)**

Petition under Article 226 of the constitution of India
praying that in the circumstances stated in the Affidavit filed
herein the High Court will be pleased to to issue a Writ of
Mandamus declaring Lr.No.0526/CSC/TP7/2007/1656 dated 17/23-
5-2008 of R-1 and R-2 as illegal, arbitrary and violative of Art. 14,
300-A of Constitution of India the Hyderabad Municipal
Corporation Act, 1955 and principles of natural justice and
consequently set aside the same and pass such other order or
orders.

Counsel for the Petitioner:MR.M.S.RAMCHANDRA RAO

**Counsel for the Respondent No.: (SC FOR MCH CIRCLES
3&5)KALPANA EKBOTE**

WRIT PETITION NO : 1241 of 2008

Between:

P.Linga Das, S/o.Late P.Laxmaiah,
R/o.H.No.12-11-171/1/9& 9A Flat No.301, Manasa
Residency,Uppar Basthi Namalagundu,
Sec-Bad

..... PETITIONER

AND

- 1 G.H.M.C. Lower Tank Bund,Hyderabad Rep.by its
Commissioner
 - 2 D.Prabhakar & Prabhakar Rao, S/o.D.Raghunanda,
R/o.H.No.11-2-515/1/A,Uppar Basthi,Namalagundu, Sec-Bad
 - 3 Smt.D.Krishnaveni@ Kistamma, W/o.Sri D.Raghunanda,
R/o.11-2-515/1/A Uppar Basthi Namalagundu, Sec-Bad
-RESPONDENT(S)**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ of Mandamus,or any other appropriate writ,order or direction declaring the action of the respondent corporation in sanctioning plan vide permit No.176/13, Dt.20-12-2007 File No.0526/CSC/TP7/2007 for construction of Multistorised Apartments by the Second Respondent as illegal and arbitray and set aside the same and pass

Counsel for the Petitioner:MR.C.RAGHU

Counsel for the Respondent No.: .

The Court made the following :

O R D E R:

1. The subject matter in both the writ petitions is one and the

same and therefore they are heard together and are being disposed of by this common order.

2. The background facts of the case, in a nutshell, leading to filing of these two writ petitions are:

Ramaswamy had four brothers viz., Papayya, Rangayya, Venkaiah and Kistaiah. He had three wives viz., Atchamma, Mallamma and Santamma. He developed intimacy with one Narsamma who gave birth to three daughters viz., Sayamma, Bharathi and Kishtamma. Ramaswamy acquired moveable and immovable properties during his life time. He executed a WILL dated 7.6.1957 under which he bequeathed certain properties in favour of Narsamma and her three daughters. The details of dispossession of the properties are not required to be narrated for the disposal of these writ petitions.

3. Ramaswamy died on 14.9.1957. His brothers filed O.S.No.100 of 1958 on the file of III Additional District Judge, Secunderabad seeking a declaration that they succeeded to the property left by Ramaswamy being his brothers. Mandara Narsimha, Mandara Yadagiri, Mandara Narsamma were defendants in the said suit. Yadagiri contested the suit claiming to be the adopted son of Ramaswamy. Narsamma and Narsimha claimed the property under the WILL executed by Ramaswamy on 7.6.1957. The suit filed by brothers of Ramaswamy ended in dismissal on 30.1.1960. The plaintiffs therein filed CCA.No.26 of 1960 which ended in dismissal on 20.12.1965. LPA.No.149 of 1960 also ended in dismissal on 2.7.1969. Smt.Narsamma filed O.S.No.52/70 for partition and separate possession of her half share. A preliminary decree came to be passed on 24.12.1979. thereafter, Narsamma filed an I.A. in O.S.No.52 of 1970 on the file of XI Additional Chief Judge, CCC, Hyderabad for passing final decree. The final decree came to be passed on 24.10.2003. The relevant portion of the order passed in the final decree reads as under:

“ 120. In the result, the petition is allowed and suit is finally decreed as under:

- i) Part 'A' land admeasuring 17,333.08 square yards already allotted to the plaintiffs and put in possession of by them would stand allotted to them and further they are allotted 1421.58 square yards of 'B' part land obtaining towards its south west corner from out of the land delineated in Pencil by me in the plan prepared by Sri.Purushotham, Advocate Commissioner, towards their half share and half of the balance consideration of Ex.C-9 sale deed i.e. Rs.231.25 ps.
- ii) 3367.48 square yards of 'B' part land already allotted to the defendants + the balance of part 'B' land except 1421.50 square yards of south west corner of 'B' part land as delineated in pencil in the plan, prepared by Mr.Purushotham, Advocate Commissioner, admeasuring 13,965.58 and 3443 sq.yards of land covering Ex.C-9, C-10, C-64 to C-84 stands allotted to D-2, D41 and D-42 towards their half share;
- iii) with regard to 221 sq.yards of land said to have been laid by MCH in 'B' part land, subsequently, defendants 2, 41 and 42 shall alone have right to claim compensation, if any;
- iv) With regard to MCH lavatory (569 square yards) open drain (608 sq.yards) Roads A & B (1411.11 sq. yards), septic tank (80.36 sq. yards) both parties shall be entitled to equal compensation, if any, paid by the MCH or concerned authorities.
- v) There shall be no costs."

4. Some of the plaintiffs filed CCCA.No.421 of 2003 assailing the judgment and decree dated 21.12.2003 passed in I.A.No.211 of 1980 in O.S.No.52 of 1970 on the file of XI Additional Chief Judge, CCC, (FTC), Hyderabad. The appeal ended in dismissal by judgment dated 5.8.2005. The relevant portion of the judgment passed in the appeal reads as under:

" The main contention urged before this court is that the Commissioner had included the land in Sy.No.20/1, held by Ramaswamy, and which was not covered by the will. This would certainly have appealed to this court, had there been any evidence on record to disclose that Ramaswamy possessed of the land in Sy.No.20/1, the extent thereof, etc. Learned counsel for the appellants and learned counsel for the respondents 5 to 7 are not able to refer to any evidence in this regard. On the contrary, a perusal of Ex.A-1, the will, discloses that Ramaswamy executed it, in relation to the entire property held by him. He did not keep any of his properties outside the will. At any rate, the contesting respondents have not put up any claim to such land. If the appellants and other legal representatives of the first appellant are of the view that there exists an independent item of land in Sy.No.20/1, they can certainly enjoy it, or recover it from the third parties, if it is not in their possession. As of now, there is no material to suggest that the land in Sy.No.20/1, is included in the one shown in the sketches, prepared by the Commissioner. If ultimately, the appellants and the respondents who are sailing with them, are able to prove in independent proceedings, instituted in accordance with law, that Ramaswamy possessed of a separate item of property in Sy.No.20/1, that it is not part of his disposition through the will, and that it is included in the partitioned properties, the delivery of possession, through this decree, does not come in their way to recover it.

The proceedings became more than three decades old. The

appellants and the respondents who are sailing with them, have received their share of property. The legal representatives of the first respondent cannot be denied of their share of properties.

For the foregoing reasons, the CCCA is dismissed. It is, however, made clear that in case the appellants and respondents 5 to 7 are able to prove and establish in a properly constituted suit that (a) there exists independent Sy.No.20/1, (b) it was possessed by late Ramaswamy and was not included in his WILL dated 7.6.1957; and that (c) it was distributed among the parties under the final decree; it shall be open to them to recover such part of the land, as is found to have been allotted and delivered to the respondents 2 to 5. If it ultimately emerges that there existed a separate item of land in Sy.No.20/1, validly and legally owned by late Ramaswamy, the respondents 2 to 5 shall not have any claim over it. There shall be no order as to costs."

5. The dispute between the parties did not rest with the disposal of the appeal, which arises out of the order passed in the final decree. B.Lingadas filed W.P.No.1138 of 2006 seeking cancellation of the house numbers allotted to D.Krishna Veni.

The said writ petition came to be disposed of on 24.1.2006. The Additional Commissioner, MCH, Secunderabad Zone issued proceedings dated 13.2.2006 where under the assessments are ordered to be kept as a "holder" in the assessment register till the dispute is settled between P.Lingoda and P.Krishna @ Kistaiah. P.Lingadas filed W.P.No.3665 of 2006 seeking a Writ of Mandamus declaring the proceedings dated 13.2.2006 as illegal and in violation of the provisions of H.M.C.Act and arbitrary. A further direction has been sought for to the Additional Commissioner, MCH, Secunderabad zone to cancel the assessment made pursuant to the show cause notice vide letter dated 10.8.2005. The said writ petition came to be disposed of on 10.7.2006 with a direction to the Additional Commissioner, MCH, Secunderabad zone to consider the representations of both the petitioner and D.Krishnaveni who are petitioner and 2nd respondent in the writ petition and to pass orders. P.Lingadas filed C.C.No.245 of 2007 complaining disobedience of the order-dated 10.7.2006 passed in W.P.No.3665 of 2006. The said Contempt Case came to be disposed of on 24.9.2007 directing the parties to approach the competent authority with relevant documents within a period of ten days and thereafter appropriate action be taken by the competent authority in accordance with law. The respondent-

Corporation sanctioned plan permit No.176/13, dated 20.12.2007 in favour of D.Prabhakar who is son of Kistamma. The said proceeding is under challenge by P.Linga Das in W.P.No.1241 of 2008. While D.Prabhakar and others were proceeding with the construction basing on permit No.176/13 the Commissioner and Special Officer, (Town Planning Section, H.O), GHMC, Hyderabad issued proceedings keeping the building permission in abeyance till the dispute is decided by the competent court. The text of the proceedings issued by the Commissioner vide letter dated 17/23-05-2008, reads as under:

“ With reference to the subject cited, it is to inform that one Sri.P.Linga Das and Others have lodged a complaint petition which reveals that there is a dispute in between you and the petitioner with regard to the ownership in respect of Pr.No.12-11-171/1/10/A/1, & 12-11-171/1/10/B/1, at Upperbasti, Namalgundu, Secunderabad and they have also filed a writ petition vide W.P.No.1241 of 2008 before the Honourable High court questioning the permission granted by the Corporation on 20-12-2007 over the premises in question.

Since the matter is subjudice and the complaint has been received disputing the title, the permission granted vide permit No.176/13, dated 20.12.2007 in file No.0526/CSC/TP7/2007 is kept in abeyance till the dispute is decided by a competent Court. You are informed not to commence or proceed with any type of construction till further orders.”

6. For completion of narration of facts I may also state that after the disposal of the appeal, which arises out of the order passed in the final decree petition, the parties have filed various suits. D.Krishna Vani @ D Kistamma filed O.S.No.155 of 2005, whereas P.Jaya, P.Madhusudan, P.Bhagyavathi and N.Shailaja Alias Aruna filed O.S.Nos.136, 137, 140 and 141 of 2005. The plaintiffs in the respective suits have also moved applications seeking interim reliefs. The XI Junior Civil Judge, CCC, Secunderabad passed a common order in all the interlocutory applications on 17.10.2005, whereunder and whereby the interim relief as sought for by D.Krishna Vani @ D.Kistamma came to be granted while refusing the interim relief as sought for by P.Jaya and three others.

7. D.Krishna Veni executed gift deeds on 15.3.2007 in favour of her son D.Prabhakar in respect of 556 square yards. She also executed a gift deed dated 22.3.2007 in favour of her two

daughters and one D.Raghunanda in respect of 510 square yards forming part of the premises bearing No.12-11-171/1/10/B/1 comprising S.Nos.20, 23, 24, 25 and 31 of Upperbasti, Namalgundu, Secunderabad. The donor applied for building permission for construction of cellar, stilt + five upper floors in the said premises. The Greater Hyderabad Municipal Corporation considered the application and accorded permission. Pursuant to the permission construction has been commenced. While so, P.Lingadas lodged a complaint with Greater Hyderabad Municipal Corporation resisting his objection for grant of building permission in favour of D.Prabhakar and others. Acting on the complaint, Greater Hyderabad Municipal Corporation kept the permission granted to D.Prabhakar and others in abeyance under proceedings dated 17-23/5/2008. Challenging the said proceedings D.Prabhakar, smt.M.Aruna, Smt.A.Latha and D.Raghunanda filed W.P.No.11998 of 2008 and whereas P.Lingadas filed W.P.No.1241 of 2008 assailing the action of Greater Hyderabad Municipal Corporation in according building permission vide permit No.176/13, dated 20-12-2007.

8. For the sake of convenience parties hereinafter be referred to as they are arrayed in W.P.No.11998 of 2008.

9. Heard learned counsel appearing for the petitioners, learned Standing Counsel appearing for R1 to R3 and learned counsel appearing for R4.

10. Learned counsel appearing for the petitioners submits that keeping the building permission in abeyance on the complaint of P.Lingadas is wholly unjustified in view of the refusal of injunction in favour of P.Lingadas by the civil court. Learned counsel took me to the findings recorded by the civil court in the interlocutory applications moved by P.Lingadas. He would also contend that the Commissioner, GHMC is not required to adjudicate on the title of the parties and what is required by the Commissioner is to satisfy himself about prima facie title of the

parties. In support of his contention reliance has been placed on the decisions of this Court in T.RAMESHWAR V. COMMISSIONER, MUNICIPAL CORPORATION OF HYDERABAD^[1] and K.PAVAN RAJ V. MUNICIPAL CORPORATION OF HYDERABAD, HYDERABAD^[2].

11. In the first cited decision, learned single Judge of this Court held that the Commissioner may either grant permission or postpone grant of permission in a pragmatic manner taking into consideration only prima facie factors. It is further held that the Commissioner cannot assume the role of an adjudicator or arbitrator and decide the title inter se between the applicant for building permission and the objector of such building permission. Much emphasis has been laid by learned counsel on para 10 of the cited judgment, which reads as under:

“ Therefore, the law as interpreted by this Court with reference to HMC Act and the Act, which requires the Commissioner to consider the objections, as and when they are raised, for grant of permission on the ground of title in a pragmatic manner taking into consideration only prima facie factors. While doing so, the Commissioner cannot assume the role of an adjudicator or arbitrator and decide the title inter se between the applicant for building permission and the objector of such building permission. If the applicant is able to show that prima facie such applicant has a right to proceed with the construction notwithstanding the pendency of any litigation by way of a suit or other proceeding subject to the applicant applying the certain conditions, the Commissioner may either grant permission or postpone the grant of permission.”

12. In the second cited decision, learned single Judge of this Court held that the Commissioner, if prima facie, satisfied about the legal title of the applicant and his lawful possession, is bound to consider the application for building permission on merits, leaving objector free to approach an appropriate court of law and that the Commissioner is not empowered to entertain a title dispute and adjudicate the same before disposing of application for grant of building permission.

13. Learned Standing Counsel appearing for R1 to R3 submits that the building permission sanctioned in favour of the petitioners is kept in abeyance in view of the title dispute between the petitioners and R4 and therefore the action of R1 to

R3 cannot be found fault.

14. Learned Counsel appearing for R4 submits that D.Krishna Veni who executed gift deeds in favour of the petitioners have no right over the property in respect of S.No.20/1 and in which case, the sanction of building permission in favour of the petitioners for putting up constructions in S.No.20/1 is liable to be recalled. A further submission has been made that R1 to R3 considered the objections raised by R4 and proceeded to keep the building permission in abeyance and therefore the action of R1 to R3 is legal and proper and does not warrant interference.

15. A fact remains that R4 and the petitioners approached the civil court by filing suits. Both the parties tried to secure interim orders. D.Krishna Veni through whom the petitioners are claiming title became successful in securing interim order vide common order dated 17-10-2005 passed in I.A.No.160/05 in O.S.No.155/2005 on the file of XI Junior Civil Judge, CCC, Secunderabad. I may refer the relevant portion of the common order passed by the civil court, which reads as under:

“ 42. The contention of the petitioners/plaintiffs is that they are absolute owners and possessors of their respective suit schedule property by virtue of a registered settlement deed executed by Sri.P.Lingadas who is the respondent No.1 in I.A.No.160/05. Here it is pertinent to mention that plaintiff Smt.P.Jaya in I.A.No.137/05 is wife of P.Lingadas, the petitioner in I.A.No.138/05 is son the petitioner in I.A.No.141/05 is daughter and the petitioner in I.A.No.142/05 is daughter of Sri.P.Lingadas. Now the specific case of the petitioners/ plaintiffs is that they are absolute owners and possessors of the suit schedule property by virtue of registered settlement deed executed by Sri.P.Lingadas. But the original settlement deeds are not produced before this court for perusal. However, it is their contention that the suit schedule properties are situated in Sy.No.20/1. As above said the Honourable Addl.Chief Judge vide orders in Ex.P.3 and the Honourable High Court of A.P. in CCA.No.421/03 have categorically held that there exists no Sy.No.20/1 as of now. Therefore, when there is no existence of Sy.No.20/1 the question of claiming of possession or title over the suit schedule property does not arise. The petitioners herein have produced Ex.R3 to R6 in the extract copies from the assessment book of Municipal Corporation of Hyderabad, Secunderabad Division to show the existence of suit schedule house numbers. But the learned counsel for the respondents herein submitted that Ex.R3 to Ex.R6 are created and bogus documents for the purpose of this case and he strongly contended that when the Honourable High Court of A.P. held that there exist no Sy.No.20/1 then the question of the existence of any house numbers in the said survey number does not arise and it is all creation by Sri.P.Lingadas who is master of litigation. In view of the judgment rendered by the Honourable High Court of A.P. in CCA.No.421/03 prima facie I am of the opinion that Ex.R3 to R6 are bogus

documents created for the purpose of this case since the Sy.No.20/1 do not exist. When the survey number itself does not exist then the question of any house on the said land and possession there of by the petitioners/plaintiffs does not arise.

43. With the foregoing discussion and in view of the material evidence available on hand and in view of answers given to point No.1 I therefore find that the petitioners neither proved their possession or title over their respective suit schedule properties. Therefore, the petitioners herein are not entitled for grant of temporary injunction. Accordingly, this point is answered against the petitioners and in favour of the respondents."

16. The main contention of R4 is that he has a claim over S.No.20/1. As on this day there is a specific finding recorded by the civil court that the existence of S.No.20/1 is very much doubtful in which case the proceedings issued by R1 and R2 keeping the building permission in abeyance cannot be sustained. However, I make it clear that the finding recorded in these writ petitions does not in any way effect the rights of the parties required to be decided in the civil court. The building permission granted in favour of the petitioners i.e. D.Prabhakar and others would be subject to final result in the civil suits.

17. Accordingly, W.P.No.11998 of 2008 is allowed declaring the proceedings vide Lr.No.0526/CSC/TP7/2007/1656, dated 17/23-5-2008 as illegal and arbitrary. Whereas W.P.No.1241 of 2008 is dismissed. No order as to costs.

31st October, 2008.

(B.Seshasayana Reddy,J)

tnb

// TRUE COPY //

..... REGISTRAR

SECTION OFFICER

To
1.2CCs to
2.2CD copies

THE HONOURABLE SRI JUSTICE
B.SESHASAYANA REDDY

WRIT PETITION NOS.11998 AND 1241 OF 2008
(COMMON ORDER)

31ST OCTOBER 2008.

[\[1\]](#) 2006(3) ALD 337

[\[2\]](#) 2008(1) ALD 792