

HONOURABLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No.7481 of 2010

Dated 31-10-2012

Between:

R.Sardar Patel.

...Petitioner.

And:

The Greater Hyderabad Municipal Corporation,
represented by its Commissioner, Hyderabad and
another.

...Respondents.

HONOURABLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No.7481 of 2010

ORDER:

This writ petition is filed seeking to issue a Writ of Mandamus declaring the action of the 1st respondent in sanctioning the layout showing the land in Survey No.16/1 situated at Ammuguda village, Vallabhnagar Mandal, Ranga Reddy District owned and possessed by the petitioner as open space for parks and play grounds, as illegal, arbitrary and contrary to the principles of natural justice and consequently, direct the 1st respondent not to proceed further in developing the park in the alleged open space.

The case of the petitioner, in brief, is as follows:

He is the absolute owner and possessor of the land in Survey No.16/1 admeasuring Ac.7-28 Guntas situated at Ammuguda village, Malkajgiri Mandal, Ranga Reddy District, having purchased the same from the L.Rs. of its lawful owner late Heeraman Singh by virtue of an unregistered sale deed dated 23-8-1985. He applied for regularization of the sale through ROR proceedings under Section 5-A of the A.P.Rights in Land and Pattedar Passbooks Act, 1971 before the Tahsildar, Malkajgiri in the year 1989. The said application was pending for consideration for nine years. On 14-10-1998,

the Tahsildar, Malkajgiri issued a memo stating that his vendors have not obtained any permission under the A.P.Land Reforms (Ceiling on Agricultural) Holding Act, 1973 or under the Urban Land (Ceiling and Regulation) Act, 1976. Aggrieved by the same, he filed an appeal before the Revenue Divisional Officer in Appeal No.C/2557/2000. The Revenue Divisional Officer allowed the appeal by order dated 6-10-2001 and directed the Mandal Revenue Officer to conduct fresh enquiry into his claim filed under Section 5-A of the ROR Act. The Mandal Revenue Officer issued a memo dated 31-3-2008 stating that there is no agricultural land and the same is converted into plots.

The 1st respondent seems to have sanctioned a lay out in respect of his owned and possessed land in Survey No.16/1 situated at Ammuguda village, Vallabhnagar Mandal, Ranga Reddy District in favour of third parties in which his land is shown as open space for parks and play grounds. The said sanction by the first respondent is illegal and without any authority and on knowing the said fact, he brought the same to the notice of the 1st respondent, however, the 1st respondent in a hurried manner built a compound wall and now is making attempts to develop a park in the said land, which is detrimental to his rights and interest. In this view of the matter, he has no other alternative remedy except to approach this Court.

A counter affidavit has been filed on behalf of the 1st respondent and the averments of which, in brief, are as follows:

The L.Rs. of the original pattedar and possessor S.Ramachander and others have applied to the Government seeking change of Land use in Sy.No.16/1 of Ammuguda village from conservation use zone to residential use zone and the Government has also issued Memo No.348/1(1)/91-3 Municipal Administration and Urban Development dated 6-1-1992 in respect of the

same and the said memo was published in Andhra Pradesh Gazettee on 13-1-1992. S.Ramachander and 10 others represented by their GPA Holder D.Ravi Chander have submitted application dated 3-6-1994 to the 2nd respondent seeking permission for development of Group Housing Scheme in an extent of land Ac.7-01 gts in Sy.No.16/1 situated at Ammuguda village, Vallabhanagar Mandal, Ranga Reddy District submitting all the relevant documents showing their right and title and after completion of all the required formalities, the 2nd respondent has issued tentative permission to them by a letter No.12202/MP2/HUDA/92 dated 7-1-1995. Basing on the said permission, the then Municipal Commissioner, Kapra Municipality has granted permission vide No.G7/443/94-95 dated 23.5.1995. The 2nd respondent i.e., HUDA by a letter dated 4-1-2002 has requested the Commissioner, Kapra Municipality to release Final Layout permission to them and basing on the same, the Commissioner, Kapra Municipality approved Final Layout in Sy.No.16/1 of Ammuguda village by an order dated 17-1-2002.

It is further stated that in the said lay out, the said Ramchander and others have shown the land admeasuring 10,105-54 sq.yds. towards open space for the park and 461.66 sq.yds for other amenities and that the said S.Ramchander and others represented by their GPA Holder have executed gift settlement deed for public purposes dated 4-12-2001 in favour of the Municipal Commissioner, Kapra Municipality to an extent of 20,226.54 sq.yds. for the purpose of roads, park, open, space and nala and delivered the said land to the said Municipality. In pursuance of the said Gift Settlement Deed dated 4-12-2001 for public proposes, the said Municipality has laid the roads in the said area and also constructed the compound wall during the year 2006-2007 to the open space. The locality people formed a Jai Jawahar Nagar Foot Ball Club long back and they have

been using the said open space as Foot Ball ground and two toilets were also constructed therein.

It is further stated that this writ petition is filed making false and baseless averments and allegations with an intention to grab the public property by creating some fictitious documents and suppressing the facts.

A counter affidavit has also been filed on behalf of the 2nd respondent and the averments of which, in brief, are as follows:

The unregistered sale deed dated 23-8-1985 is not valid and created for the purpose of knocking away the open area in the lay out vested with the then Kapra Municipality. The said unregistered sale deed does not confer any right or title to the petitioner over the land in question. An application dated 3-6-1994 was made to the then HUDA seeking permission for development of group housing scheme over an extent of Ac.07-01 Gts. In Sy.No.16/1 situated at Ammuguda village, Vallabnagar Mandal, Ranga Reddy District along with the relevant documents relating to title. The then HUDA has approved and issued a tentative permission vide Lr.No.12202/MP2/HUDA/92 dated 7-1-1995. A condition was imposed while approving the lay out that the land admeasuring 10,105.54 sq.yards towards the open spaces for park and 461.66 sq.yds for other amenities was earmarked in the said lay out.

The applicants of the lay out have executed a gift settlement deed dated 4-12-2001 in favour of the then Municipal Commissioner, Kapra Municipality for an extent of 20226.54 sq.yards for the purpose of roads, park, open space and nala and delivered the possession of the said land to the said Municipality. The said Municipality has become the absolute owner of the said land. Thereafter, the answering respondent has released the final lay out permission through the then Commissioner, Kapra Municipality to the applicant. The petitioner, with a view to knock away the open spaces area, which is already vested with the Municipality, has filed this writ petition.

Hence, the 2nd respondent seeks to dismiss the writ petition.

Heard the learned counsel on either side.

Learned counsel for the petitioner submits that the petitioner is the absolute owner and possessor of the land in Survey No.16/1 admeasuring Ac.7-28 Guntas situated at Ammuguda village, Malkajgiri Mandal, Ranga Reddy District, having purchased the same from the L.Rs. of its lawful owner late Heeraman Singh by virtue of an unregistered sale deed dated 23-8-1985. He applied for regularization of the sale before the Tahsildar, Malkajgiri and the said application was pending for consideration for nine years and on 14-10-1998, the Tahsildar, Malkajgiri issued a memo stating that his vendors have not obtained any permission under the A.P.Land Reforms (Ceiling on Agricultural) Holding Act, 1973 or under the Urban Land (Ceiling and Regulation) Act, 1976 and hence, aggrieved by the same, he filed an appeal before the Revenue Divisional Officer and the Revenue Divisional Officer allowed the appeal directing the Mandal Revenue Officer to conduct fresh enquiry into his claim and the Mandal Revenue Officer issued a memo dated 31-3-2008 stating that there is no agricultural land and the same is converted into plots.

He further submits that the 1st respondent seems to have sanctioned a lay out in respect of his owned and possessed land in Survey No.16/1 situated at Ammuguda villge, Vallabhnagar Mandal, Ranga Reddy District in favour of third parties in which his land is shown as open space for parks and play grounds and the said sanction by the first respondent is illegal and without any authority and that on knowing the said fact, he brought the same to the notice of the 1st respondent, however, the 1st respondent built a compound wall and now is making attempts to develop a park in the said land, which is detrimental to his rights and interest and that he has no other alternative remedy except to approach this Court

and hence, he seeks to declare the action of 1st respondent is illegal and consequently, direct the 1st respondent not to proceed further in developing the park in the alleged open space.

On the other hand, the learned Standing Counsel for the 1st respondent submits that the L.Rs. of the original pattedar and possessor S.Ramachander and others have applied to the Government seeking change of Land use in Sy.No.16/1 of Ammuguda village and the Government has also issued Memo dated 6-1-1992 in respect of the same and S.Ramachander and 10 others have submitted application to the 2nd respondent seeking permission for development of Group Housing Scheme and that the 2nd respondent has issued tentative permission to them and that basing on the said permission, the then Municipal Commissioner, Kapra Municipality has granted permission dated 23.5.1995 and the 2nd respondent i.e., HUDA by a letter dated 4-1-2002 has requested the Commissioner, Kapra Municipality to release Final Layout permission to them and basing on the same, the Commissioner, Kapra Municipality approved Final Layout in Sy.No.16/1 of Ammuguda village by an order dated 17-1-2002.

It further submits that in the lay out, Ramchander and others have shown the land admeasuring 10,105.54 sq.yds. towards open space for the park and 461.66 sq.yds for other amenities and that the said S.Ramchander and others represented by their GPA Holder have executed gift settlement deed for public purposes in favour of the Municipal Commissioner, Kapra Municipality to an extent of 20,226.54 sq.yds. for the purpose of roads, park, open, space and nala and delivered the said land to the said Municipality.

He further submits that in pursuance of the said Gift Settlement Deed dated 4-12-2001 for public proposes, the said Municipality has laid the roads in the said area and also constructed the compound wall during the year 2006-

2007 to the open space and hence, this writ petition is filed making false and baseless averments and allegations with an intention to grab the public property.

On the other hand, the learned Standing Counsel for the 2nd respondent submits that the unregistered sale deed does not confer any right or title to the petitioner over the land in question and that an application dated 3-6-1994 was made to the then HUDA seeking permission for development of group housing scheme over an extent of Ac.07-01 Gts. In Sy.No.16/1 situated at Ammuguda village, Vallabnagar Mandal, Ranga Reddy District along with the relevant documents relating to title and that the then HUDA has approved and issued a tentative permission.

He further submits that the applicants of the lay out have executed a gift settlement deed dated 4-12-2001 in favour of the then Municipal Commissioner, Kapra Municipality for an extent of 20226.54 sq.yards for the purpose of roads, park, open space and nala and delivered the possession of the said land to the said Municipality and the said Municipality has become the absolute owner of the said land and hence, the petitioner, with a view to knock away the open spaces area, has filed this writ petition and as such, the 2nd respondent seeks to dismiss the writ petition.

Perused the material available on record.

Both the learned Standing Counsel for respondents 1 and 2 vehemently submitted that basing on the application filed by the L.Rs. of the original pattedar and possessor, lay out for the land in question was approved and said the lay out land was gifted to the Municipality by way of a Gift Settlement Deed and therefore, the Municipality has become the absolute owner of the land in question and that the petitioner has no right over it and further, only with a view to knock away the property, he has filed this writ petition.

The title of the property is to be decided before the appropriate forum. Apart from, that it is for the petitioner to

establish his right or title before the appropriate forum in respect of the property in question by submitting his grievance.

Having regard to the submissions made by both the learned counsel, without going into the merits of the case, this Court feels it just and proper to direct the petitioner to agitate his claim before the appropriate forum.

With the above direction, this writ petition is disposed of. No costs.

Justice G.CHANDRAIAH

Dated 31-10-2012.

Dvs

HONOURABLE SRI JUSTICE G.CHANDRAIAH

