

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**FRIDAY, THE TWENTIETH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SRI JUSTICE J.SREENIVAS RAO**

WRIT APPEAL NO: 1410 OF 2024

Writ Appeal under clause 15 of the Letters Patent preferred against the order dated 19/04/2024 in W P No 8871 of 2017 on the file of the High Court.

Between:

A.R. Nagar Gudisevasulu Sangam, Arutla Ramchandra Reddy Nagar, Near Vegetable Market, Kazipet, Warangal District, rep. by its new President R.Sarangapani

...APPELLANT/RESPONDENT No.5

AND

1. Y. Ramakumari, W/o Sri Vishnuvardhan Rao Age. about 77 yrs., Occ. Household R/o H.No. 41-121-149/A, V.S.T. Colony, Nacharam, Rangareddy District (Old), Medchal, Malkajgiri District (New).

...RESPONDENT/WRIT PETITIONER

2. The State of Telangana, rep. by its Principal Secretary Revenue Department, Secretariat, Hyderabad.
3. The District Collector, Warangal Urban District Warangal Urban District, Hanamkonda
4. The Revenue Divisional Officer, Warangal(Urban), Warangal Urban Dist.
5. The Tahsildar, Hanamkonda Mandal (Old), Kazipet Mandal(New), Warangal Urban District

...RESPONDENTS/RESPONDENTS Nos.1 to 4

IA NO: 2 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the operation of the orders passed in W.P.No. 8871 of 2017 dt. 19-4-2024, pending disposal of the main Writ Appeal.

Counsel for the Appellant: SRI PRABHAKAR BOMMAGANI

**Counsel for the Respondent No.1: SRI MAYUR REDDY, Sr. COUNSEL, REP.
FOR SRI PODILA HARI PRASAD**

**Counsel for the Respondent No.2 to 5: SRI K.MURALIDHAR REDDY KATRAM,
GP FOR REVENUE**

The Court delivered the following: JUDGMENT

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE J. SREENIVAS RAO

WRIT APPEAL No.1410 of 2024

JUDGMENT: *(Per the Hon'ble Sri Justice J.Sreenivas Rao)*

This intra court appeal has been filed by the appellant against the common order dated 19.04.2024 passed by the learned Single Judge in Writ Petition No.8871 of 2017, by which the writ petition filed by respondent No.1 was disposed of.

2. Heard Sri Bommagani Prabhakar, learned counsel appearing on behalf of the appellant, Sri B.Mayur Reddy, learned Senior Counsel representing Sri P.Hari Prasad, learned counsel appearing on behalf of respondent No.1 and Sri K.Muralidhar Reddy, learned Government Pleader for Revenue appearing on behalf of respondent Nos.2 to 5.

3. **Brief facts of the case:**

3.1. Facts giving rise to filing of this writ appeal briefly stated are that respondent No.1 filed the writ petition

claiming that she is the absolute owner and possessor of the land to an extent of Ac.2-26 gts. in Sy.No.904 (old Sy.No.1135), situated at Madikonda Village, Hanmakonda Mandal (old), Kazipet Mandal (new), Waranagal Urban District (old), Hanmakonda District (new) (herein after referred to as "subject property") and the said property was purchased from Mr.G.Yadava Reddy on 25.02.1968 by paying entire sale consideration on 03.06.1968 and since then, she has been cultivating the same and her name was mutated in the revenue records and obtained pattadar pass book and title deed.

3.2. Respondent No.1 further averred that respondent Nos.3 to 5 have taken possession of the subject property and the same is under their custody and she made an application for seeking possession and other claims. When the said proceedings are pending before respondent Nos.3 to 5 that the members of the appellant Sangam have illegally occupied the subject property at the instance of respondent Nos.3 to 5, to protect the subject property, respondent No.1 along with others filed

O.S.No.1043 of 2002 before the II Additional Junior Civil Judge, Warangal against the members of the appellant Sangam, namely, Mr.P.Kamalakar Rao and others, seeking perpetual injunction restraining the defendants from interfering with the subject property and the said suit was dismissed by its judgment and decree dated 26.08.2009. Aggrieved by the same, respondent No.1 along with others filed A.S.No.70 of 2013 before the VII Additional District Judge, Warangal and the said appeal was dismissed for default on 28.03.2018.

3.3. It is further averred that respondent No.1 submitted representation before respondent Nos.3 to 5 on 14.02.2017 requesting them to hand over the vacant possession of the subject property by vacating the members of the appellant Sangam. When respondent Nos.3 to 5 failed to take any steps, respondent No.1 had filed W.P.No.8871 of 2017 before this Court questioning the inaction of respondent Nos.3 to 5 herein in handing over vacant physical possession of the subject property

by evicting all illegal occupants including members of appellant Sangam.

3.4. Learned Single Judge has disposed of the said writ petition on 19.04.2024 directing respondent No.3-District Collector, Warangal Urban District, Hanamkonda, to conduct enquiry on the representation of respondent No.1 whether any encroachment of subject property has taken place during the period 2000-2004 or not and permitted respondent No.1 to file representation before respondent No.3 for removal of encroachments by furnishing details as to the period of encroachment and also issued further direction to respondent No.3 to take steps to evict the members of the appellant Sangam and deliver vacant peaceful possession of the subject property to respondent No.1. Aggrieved by the above said order, the appellant has filed the present writ appeal.

4. **Submissions of learned counsel for the appellant:**

4.1. Learned counsel for the appellant submitted that the members of the Sangam have been in possession of

the subject property and constructed houses and they have submitted applications before respondent Nos.3 to 5 for grant of house site pattas and the said applications are pending for consideration. He further submitted that respondent No.1 and others have filed O.S.No.1043 of 2002 for grant of perpetual injunction in respect of very same subject property and the said suit was dismissed on 26.08.2009. Aggrieved by the same, respondent No.1 filed A.S.No.70 of 2013 and the same was dismissed on 28.03.2018 and the same has become final.

4.2. He further submitted that to establish the rights and title over the subject property including the recovery of possession, respondent No.1 filed writ petition for recovery of possession is not maintainable under law and respondent No.1 has to approach the competent civil Court.

5. Submissions of learned Senior Counsel for Respondent No.1:

5.1. Learned Senior Counsel submitted that the subject property belongs to respondent No.1 and respondent

Nos.3 to 5 have taken possession of the same illegally and the same was in their custody and they have to protect the said property, on the other hand, at their instance the members of the appellant Sangam have encroached the same. Respondent No.1 has submitted representation on 14.02.2017 to respondent Nos.3 to 5 to hand over vacant possession by evicting the members of appellant Sangam from the subject property. He further submitted that the learned Single Judge has not decided the rights over the subject property and only issued direction to respondent No.3 to conduct enquiry on the representation submitted by respondent No.1 and take further steps after giving notice to the appellant and the appellant is entitled to submit their grievance before respondent No.3. He further submitted that the name of respondent No.1 was continuing in the revenue records and the members of the appellant Sangam are not having any rights over the subject property and they are encroachers. Respondent Nos.3 to 5 are having power and authority to initiate the proceedings against the

appellant and deliver the possession of the subject property to respondent No.1.

5.2. He further submitted that the relief sought by respondent No.1 and others in O.S.No.1043 of 2002 is simple suit for perpetual injunction basing upon possession only and not a title suit. Mere dismissal of the said suit will not create any rights in favour of appellant. He further submitted that aggrieved by the common order passed by the learned Single Judge in W.P.No.27093 of 2022, the appellant has not filed writ appeal.

6. **Reply submissions of learned counsel for the appellant:**

6.1. Learned counsel for the appellant submitted that the appellant is only aggrieved by the order of the learned Single Judge passed in W.P.No.8871 of 2017 directing respondent Nos.3 to 5 to conduct enquiry on the representation submitted by respondent No.1 to find out whether encroachment of the subject land has taken place during the litigation period i.e., 2000 to 2004 and

permitting respondent No.1 to file representation before respondent Nos.3 to 5 for removal of encroachments by furnishing details as to the period of encroachment and issued further directions to respondent Nos.3 to 5 to take appropriate steps to evict members of the appellant Sangam and deliver vacant peaceful possession of the subject property to respondent No.1.

Analysis of the case:

7. This Court considered the rival submissions made by the respective parties and perused the material available on record. It is an undisputed fact that respondent No.1 herself admitted that members of the appellant Sangam are in possession of the subject property and filed representation dated 14.02.2017 before respondent Nos.3 to 5 to hand over possession of the subject property by vacating the members of the appellant Sangam. It is also an undisputed fact that respondent No.1 and others have filed suit *vide* O.S.No.1043 of 2002 in respect of the very same subject property before the II Additional Junior Civil Judge,

Warangal seeking perpetual injunction and the said suit was dismissed on merits, by its judgment and decree dated 26.08.2009. Aggrieved by the same, respondent No.1 and others have filed appeal in A.S.No.70 of 2013 before the VII Additional District Judge, Warangal and the same was dismissed for default on 28.03.2018 and the decree and judgment passed by the trial Court has become final.

8. It is pertinent to mention here that respondent No.1 filed Writ Petition *vide* W.P.No.8871 of 2017 seeking a direction to respondent Nos.3 to 5 to hand over the vacant physical possession of the subject property by evicting the members of the appellant Sangam by invoking the provisions under Article 226 of Constitution of India. However, respondent Nos.3 to 5 are having authority to initiate the proceedings under the Telangana Land Encroachment Act, 1905, (hereinafter referred to as "the Act") if any person/persons encroaches the Government land. In the case on hand, according to respondent No.1, she is the owner of the subject property and respondent Nos.3 to 5 have

taken possession of the subject property and they have to evict the members of the appellant Sangam and hand over the physical possession to her by initiating the provisions of the Act. The specific stand of respondent Nos.3 to 5 is that the subject property is not Government land and the same is not in their custody and the claim of respondent No.1 for handing over the vacant physical possession by them by evicting the members of the appellant does not arise and respondent No.1 has to approach the competent civil Court for appropriate reliefs.

9. Admittedly, as on the date of filing of the writ petition, the subject property is in possession of the members of appellant Sangam and others. Though respondent No.1 has raised several disputed questions of fact with regard to possession and title in respect of the subject property, the same cannot be adjudicated in writ petition under Article 226 of the Constitution of India, which is summary in nature.

10. It is equally well settled legal principle that the disputed questions of fact cannot be decided in a summary proceeding

under Article 226 of the Constitution of India as per the judgments of the Apex Court in **Shubhas Jain v. Rajeshwari Shivam**¹ and **Radha Krishan Industries v. State of Himachal Pradesh**².

11. In **Shalini Shyam Shetty v. Rajendra Shankar Patil**³ the Supreme Court referring to two Constitution Bench decisions in **Sohan Lal v. Union of India**⁴, and **Thansingh Nathmal v. Superintendent of Taxes, Dhubri**⁵, and referring to two other decisions in **State of Rajasthan v. Bhawani Singh**⁶ and **Mohan Pandey v. Usha Rani Rajgaria**⁷ held that a proceeding under Article 226 of the Constitution of India is not an appropriate remedy for adjudication of property disputes or disputes relating to title. It was further held in para Nos.59 to 61, which read as follows:

“59. It has repeatedly been held by this Court that a proceeding under Article 226 of the Constitution is not the appropriate forum for adjudication of property disputes or disputes relating to title. In **Mohd. Hanif v.**

1 2021 SCC OnLine SC 562

2 (2021) 6 SCC 771

3 (2010) 8 SCC 329

4 AIR 1957 SC 529

5 AOR 1964 SC 1419

6 AIR 1992 SC 1018

7 (1992) 4 SCC 61

State of Assam [(1969) 2 SCC 782] a three-Judge Bench of this Court, explaining the general principles governing writ jurisdiction under Article 226, held that this jurisdiction is extraordinary in nature and is not meant for declaring the private rights of the parties. (See SCC p. 786, para 5 of the Report.) In coming to the aforesaid conclusion in **Hanif** [(1969) 2 SCC 782], this Court referred to the Constitution Bench decision in **T.C. Basappa v. T. Nagappa** [AIR 1954 SC 440].

60. Following the aforesaid principles in **Hanif** [(1969) 2 SCC 782], this Court in **Hindustan Steel Ltd. v. Kalyani Banerjee** [(1973) 1 SCC 273] held that serious questions about title and possession of land cannot be dealt with by writ court. In formulating these principles in **Kalyani Banerjee** [(1973) 1 SCC 273], this Court relied on the Constitution Bench decision in **Sohan Lal** [AIR 1957 SC 529].

61. Again in **State of Rajasthan v. Bhawani Singh** [1993 Supp (1) SCC 306] this Court held that a writ petition is not the appropriate forum to declare a person's title to property. (See SCC p. 309, para 7 of the Report.)”

12. For the foregoing reasons as well as principle laid down in plethora of judgments mentioned supra, the impugned order passed by the learned Single Judge in W.P.No.8871 of 2017 is set aside. However, liberty is

reserved to respondent No.1 to approach the Competent Civil Court seeking appropriate relief.

13. Accordingly, the writ appeal is disposed of. No costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

SD/- B. SATYAVATHI
DEPUTY REGISTRAR

//TRUE COPY//

To,

SECTION OFFICER

1. The Principal Secretary, Revenue Department, Secretariat, Hyderabad, State of Telangana.
2. The District Collector, Warangal Urban District, Warangal Urban District, Hanamkonda
3. The Revenue Divisional Officer, Warangal(Urban), Warangal Urban Dist.
4. The Tahsildar, Hanamkonda Mandal (Old), Kazipet Mandal(New), Warangal Urban District.
5. The Section Officer, Writ DB Section, High Court for the State of Telangana at Hyderabad.
6. The Section Officer, Posting Section, High Court for the State of Telangana at Hyderabad.
7. 11 LR Copies
8. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
9. The Secretary, Telangana Advocates Association, Library, High Court Buildings, Hyderabad.
10. One CC to SRI PRABHAKAR BOMMAGANI, Advocate [OPUC]
11. One CC to SRI PODILA HARI PRASAD, Advocate [OPUC]
12. Two CCs to GP FOR REVENUE, High Court for the State of Telangana at Hyderabad [OUT]
13. Two CD Copies

BSR

HIGH COURT

DATED: 20/12/2024

JUDGMENT

WA.No.1410 of 2024



DISPOSING OF THE WRIT APPEAL,
WITHOUT COSTS

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