

Shanta Devi Vs. Municipal Commissioner, Nizamabad Municipality and anr.

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Court : Andhra Pradesh

Decided On : Oct-15-2001

Reported in : 2002(1)ALD59

Judge : V. Eswaraiah, J.

Acts : Andhra Pradesh Municipalities Act, 1965 - Sections 206, 209, 211, 220, 225, 227, 228 and 230; Taxation and Finance Rules; Benami Transactions (Prohibition) Act, 1988 - Sections 3(1) and (2)

Appeal No. : WP No. 9727 of 2001 and WP MP No. 21930 of 2001

Appellant : Shanta Devi

Respondent : Municipal Commissioner, Nizamabad Municipality and anr.

Advocate for Def. : V. Viswanadham and ;K. Durga Prasad, Adv.

Advocate for Pet/Ap. : Sanka Venkateswara Rao, Adv.

Disposition : Petition allowed

Judgement :

ORDER

1. This writ petition has been filed stating that the premises bearing No. 7-10-911/2 admeasuring 1549 Sq.Yds. situated at Station Road, Nizamabad was jointly owned and possessed by the petitioner and her co-sisters namely, Smt. Susheela

Devi (second respondent herein) w/o late Bhikulal Agarwal and Premalatha Devi w/o Suraj Bhan under the registered sale deed dt. 1-7-1972, it is stated that when one of the joint owners i.e., the second respondent herein started construction of the building in the above premises without consent of the other co-owners and without permission from Nizamabad Municipality, the petitioner herein submitted a detailed representation to the first respondent on 11-5-2001 to take immediate action forthwith for stopping the construction sought to be made and to demolish any construction made by the second respondent. When the first respondent did not take any action and as the second respondent was proceeding with construction, the present writ petition has been filed on 14-5-2001 to declare the action of the first respondent for not taking any steps to demolish and stop the illegal construction of the building made by the second respondent as arbitrary and illegal.

2. While admitting the writ petition, this Court by an order dt. 15-5-2001 in W.P.M.P.No. 12254 of 2001 directed the second respondent to stop further construction in the aforesaid premises.

3. The learned counsel for the petitioner submits that though the petitioner filed a representation dt. 17-5-2001 enclosing a copy of the order of this Court before the Commissioner of Municipality, Nizamabad, which order was also communicated by the registry on 21-5-2001, the first respondent granted permit in favour of the second respondent for construction of the building vide proceedings No.B.A./D2/140/2001 dt.22-5-2001 and therefore the petitioner herein was constrained to file W.P. M.P. No.21930 of 2001 seeking amendment of writ prayer as follows:

'to issue a writ of Mandamus declaring the action of the 1st respondent in not taking any steps for demolition and stopping of the construction of the building as contemplated under the mandatory provisions of Section 228 of the A.P. Municipalities Act, 1965, which was commenced illegally and unauthorisedly by the second respondent in the premises bearing No.7-10-911/2 station road, Nizamabad and also granting building permission by the 1st respondent as per his proceedings No. BA/D2/140/2001 dt.22-5-2001 in favour of the 2nd respondent for

construction of the building in the premises bearing No. 7/10-911/2 Station Road, Nizamabad as illegal, unauthorised and arbitrary.'

4. The interim order dt.15-5-2001 passed in W.P.M.P.No.12254 of 2001 was vacated in W.V.M.P. No.1333 of 2001 by my learned brother Justice A. Gopal Reddy vide orders dt. 12-6-2001 on the ground that the writ petitioner's husband had already invoked jurisdiction of the Civil Court in O.S.No.47 of 2001 on the file of the II Additional District Judge, R.R. District and obtained injunction on 27-4-2001 and that the second respondent is proceeding with the construction as per the permission granted by the municipal authorities vide sanctioned permission dt.22-5-2001, which was based on the averment that the property was divided among the family members as per the arbitration award and one share was allotted to the second respondent.

5. Questioning the said order dt. 12-6-2001 passed in vacate stay petition, the petitioner herein filed W.A.No. 1294 of 2001 and a Division Bench of this Court consisting the Hon'ble the Chief Justice and Justice V.V.S. Rao following the decision of a Division Bench of the Calcutta High Court in 1SRAIL v. SAMSET RAHMAN (AIR 1914 Cal. 362) opined that a co-owner should not be permitted to raise constructions on a joint property, as at a later stage, he may claim equities in relation thereto and held that although the rights of the parties are pending adjudication in a civil litigation, it was a fit case where an order of injunction ought to have been passed restraining the second respondent from raising any construction or further constructions in the land in question and accordingly disposed of the writ appeal directing early disposal of the writ petition.

6. Admittedly, no permission was granted to the second respondent by the Municipal Commissioner, Nizamabad prior to the filing of the writ petition and therefore the writ petition was filed praying for a direction not to permit any construction by the second respondent. However, in view of the fact that permission was granted by the Municipal Commissioner vide proceedings dt. 22-5-2001 to the second respondent for making constructions after the interim order was passed by this Court on 15-5-2001, which is said to have been communicated to the Municipal Commissioner, Nizamabad by the petitioner on 17-5-2000 and by

this Court on 21-5-2000, the petitioner was constrained to file W.P.MP.No. 21930 of 2001 to amend the writ prayer for declaration of the permit granted by the first respondent as illegal. It is under those circumstances that W.P.M.P. No. 21930 of 2001 is ordered.

7. The undisputed facts of this case are that the property in question was jointly purchased by the petitioner - Smt. Shanta Devi w/o Ramesh Agarwal, the second respondent - Smt. Susheela Devi w/o late Bhikulal Agarwal and Smt. Prameela Devi w/o Suraj Bhan Agarwal under registered sale deed and the said property is mutated in the municipal records jointly in the names of the three co-sisters and the property tax receipts also show the aforesaid three names of the ladies as owners of the said premises.

8. The learned counsel for the petitioner submits that the petitioner is having one-third share of right and title in the said undivided property and there was neither partition or transfer of any portion of the said property by any of the joint owners nor any change in the municipal records with regard to the ownership of the property was effected and that till date the petitioner, the second respondent and one Prameela Devi are joint owners of the said property.

9. The learned counsel appearing for the second respondent resisted mainly on the ground that there was an award of arbitration. He submits that all the family members have signed the memofandum of understanding for the family partition and as per the award the petitioner has been given half share in the property in question and the second respondent obtained permission of making construction in respect of the remaining half, which fell to her share, and therefore there cannot be any grievance for the petitioner for construction of the building by the second respondent particularly when the property allotted to the petitioner is in tact and was not interfered with either by the second respondent or by the other co-owner. It is his further contention that upon a reading of the award, it is clear that there was reference referring the matter to the arbitrator on 24-9-1998, that the properties mentioned in the schedule belongs to the joint family of late Haricharanji and all the properties were purchased from out of the joint family funds, that the husbands of the aforesaid three ladies, in whose name the property in question

was purchased, are the sons of late Haricharanji and that the husband of the writ petitioner was a party to the arbitration award and the petitioner is bound by the said arbitration award and that if there is any dispute with regard to the partition, it is not open for the petitioner to invoke extraordinary jurisdiction of this court.

10. As per Section 209 of the Municipalities Act, the person intending to construct a building shall send an application to the Commissioner in writing for the approval of the site together with site plan of the land accompanied by a copy of the title deed of the land duly attested by Gazetted Officer of the Government is necessary. As per Section 211 of the Act, if any construction is made without the permission, it shall be demolished. As per Rule 3 of Schedule III of the Building Rules made in respect of Section 230 of the Act, every person who constructs a building shall submit an application for approval of the site and for permission to execute the work in the form specified in Appendix 'A'. The application in Appendix 'A' is prescribed under Sections 209, 206, 220, 225 and 227 of the A.P. Municipalities Act and it contemplates to be filed and signed by the owner of the land and building addressed to the Commissioner of the Municipality.

11. The learned counsel appearing for the petitioner elaborating his submissions submits that a person having right and title to the land and building alone is authorized to file an application and as per the Taxation and Finance Rules in Schedule II, the Commissioner shall enter the name of the owner in the said records relating to the property tax. Admittedly, the name of the petitioner and the names of the other two co-owners are entered as owners of the said property and there is no dispute with regard to the ownership of the property. There is also no claim that the property was in fact transferred. Further, as per the decision of the Calcutta High Court in SAMSET RAHMAN's case (supra) a co-owner should not be permitted to raise construction in the joint property. In the circumstances, grant of permission by the Municipal Commissioner is held to be illegal and invalid.

12. In so far as the arbitration award dt.8-3-1989 is concerned, admittedly, the petitioner is a not party to the arbitration award. She is also not a party to the agreement and the reference dt.24-9-1998. The petitioner's husband, however, is a party to the arbitration award. Further, the arbitration award was not executed on

proper stamp paper and it was not registered. There was neither partition nor settlement. Moreover, the arbitration award was also not made the rule of the Court and it cannot be acted upon particularly when the petitioner is not a party to the award. Further, benami transactions are prohibited under Section 3(1) of the Benami Transactions (Prohibition) Act, 1988 and under Section 3(2) of the said Act there is legal presumption that any property purchased in the name of wife or unmarried daughter shall be presumed that the said property has been purchased for the benefit of the wife or unmarried daughter unless the contrary is proved.

13. In the case on hand, the husband of the petitioner is not entitled for effecting partition or transfer or alienation of the property of the petitioner in any manner. Even otherwise, the said arbitration award is inadmissible in evidence and it cannot be looked into as requisite stamp duty was not paid and registered.

14. The learned counsel for the petitioner has placed reliance on a judgment of the Supreme Court in RATAN LAL v. PURUSHOTTAM, : [1974]3SCR109 , which was followed by this Court in K. VISWANADHAM v. K. RAJESWAR, : 1999(2)ALD301 , for the proposition that the award where certain rights are extinguished or certain rights are created in respect of immovable property worth more than Rs. 100/- requires to be duly stamped and registered, as otherwise, the same cannot be looked into. Relying on the judgment of the Supreme Court in SATISH KUMAR v. SURINDER KUMAR, : [1969]2SCR244 , the learned counsel submits that the rights created in the award cannot be enforced until the award is made rule of the Court. Admittedly the petitioner is not a party either to the reference for the arbitration proceedings or to the arbitration award and further the arbitration award is not duly stamped and registered and therefore the petitioner's rights cannot be dealt with either for partition or for acquiring or extinguishing any rights by the husband of the petitioner as she has not authorized her husband to represent on her behalf and therefore the said award of arbitration has no legal sanctity and the second respondent cannot acquire any right over the property claiming half share in the property in question. The first respondent also cannot entertain the application when the objections raised by the petitioner herein are pending as on the date of granting the permission and the permission was sanctioned only after interim order is passed by this Court.

15. For the aforesaid reasons, the petitioner is entitled to the relief claimed for in the writ petition. The permit granted by the first respondent vide proceedings dt.22-5-2001 is set aside. As the second respondent made constructions without any authority of law and the permit granted in her favour is held as illegal, she is not entitled to claim any equities in respect of the alleged constructions made by her. However, the constructions made by the second respondent may not be demolished for a period of four weeks from the date of receipt of a copy of the order.

16. The writ petition accordingly is allowed. There shall be no order as to costs.

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