

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION Nos.12351, 18418 and 19473 of 2015

W.P.No.12351 of 2015 :

Between :

K.Sugunamma, W/o. K.Ramaswamy, Aged about 65 years,
R/o.H.no.2-19-75/2/A, Teacher's Colony, Kalyanpuri
Colony, Uppal, Ranga Reddy District and another.

.... Petitioners

And

The State of Telangana, rep.by its Principal Secretary,
Municipal Administration & Urban Development Department,
Secretariat Buildings, Hyderabad and others.

.... Respondents

W.P.No.18418 of 2015

Between :

K.Sugunamma, W/o. K.Ramaswamy, Aged about 65 years,
R/o.H.no.2-19-75/2/A, Teacher's Colony, Kalyanpuri
Colony, Uppal, Ranga Reddy District and another.

.... Petitioners

And

The State of Telangana, rep.by its Principal Secretary,
MA & UD Department, Secretariat Buildings, Hyderabad
and others.

.... Respondents

W.P.No.19473 of 2015

Between :

Jaya Raghavendra Co-operative House Building Society
Limited, rep.by its Secretary Sri S.Shankaraiah,
s/o.Rajaiah, Aged about 65 years, Occu:Retired Employee,
Plot No.1, H.No.2-19-58/12/1/C, Kalyanpuri, Uppal,
Hyderabad.

.... Petitioner

And

The State of Telangana, rep.by its Principal Secretary,
MA & UD Department, Secretariat Buildings, Hyderabad
and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED : 20.07.2015

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SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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1. Whether Reporters of Local Newspapers may : Yes / No
Be allowed to see the Judgments ? :

2. Whether the copies of judgment may be marked : Yes / No
To Law Reporters/Journals :
3. Whether Their Lordship wish to see the fair : Yes / No
Copy of the Judgment ? :

***HON'BLE SRI JUSTICE P.NAVEEN RAO**

+WRIT PETITION Nos.12351, 18418 and 19473 of 2015

% 20-07-2015

W.P.No.12351 of 2015 :

Between :

#K.Sugunamma, W/o. K.Ramaswamy, Aged about 65 years,
R/o.H.no.2-19-75/2/A, Teacher's Colony, Kalyanpuri
Colony, Uppal, Ranga Reddy District and another.

.... Petitioners

And

\$The State of Telangana, rep.by its Principal Secretary,
Municipal Administration & Urban Development Department,
Secretariat Buildings, Hyderabad and others.

.... Respondents

!Counsel for the petitioners : Sri K.V.Rusheek Reddy in
W.P.Nos.12351 & 18418 of 2015;
Sri Vanam Vishwanatham in
W.P.No.19473 of 2015

Counsel for the Respondents: 1)Government Pleader for
Municipal Admn. & Urban
Development (TS) for
respondent No.1 in all three
Writ petitions
2) Sri Pasham Krishna Reddy,
standing counsel for GHMC for
respondents 2 to 4 in all three
writ petitions

<Gist :

>Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION Nos.12351, 18418 and 19473 of 2015

COMMON ORDER:

These three writ petitions concern the claim of Smt K.Sugunamma and Sri K.Ramaswamy not to interfere with possession and enjoyment of small dwelling house and to regularize their unauthorized occupation of house bearing No.2-19-75/2/A, Teachers Colony, Kalyanpuri Colony, Uppal, Ranga Reddy district. Smt K.Sugunamma and Sri K.Ramaswamy are petitioners in W P Nos. 12351 and 18418 of 2015. Opposing such continuation in the subject premises claim of regularization and seeking to demolish the illegal structures made by Smt K.Sugunamma and Sri K.Ramaswamy, W.P. No. 19743 of 2015 is filed by Jaya Raghavendra Cooperative House Building Society Limited.

2. With the consent of the learned counsel appearing for respective parties the writ petitions are disposed of finally. As subject matter of all these three writ petitions concern the same property, they are disposed of by this common order. For the sake of convenience, Smt K.Sugunamma and Sri K.Ramaswamy are referred to as petitioners and Jaya Raghavendra Cooperative House Building Society Limited is referred to as Society.

3. The case of the petitioners in W.P.Nos.12351 and 18418 of 2015

is that second petitioner was appointed as watchman in the year 1984 to protect the land belonging to Jaya Raghavendra Cooperative House Building Society. In the year 1986 a room was built to store the construction material. Second petitioner along with his wife (first petitioner herein) were permitted to live in the said room. That in the year 2001 after obtaining due approval from the society, petitioners have added another small room to the said existing store room and living in peacefully and are in continuous possession of the same. Greater Hyderabad Municipal Corporation (for short corporation) has allotted house number being H No. 2-19-75/2/A and assessing the same for property tax since 2002 and petitioners are regularly paying the property tax. The electricity connection is provided on their name. Abutting the house in occupation of the petitioners, vacant land exists out of which 1500 sq yards of land is earmarked for establishing a Park. A compound wall was constructed and respondent corporation is in possession of the said land. The premises in which petitioners are living is not part of the open space earmarked for Park.

4. Petitioners further claim that since they are in continuous possession and paying the property tax regularly, in terms of G.O.Ms.No.58 Revenue (Assignment-I) Department, dated 30.12.2014, they are entitled for regularisation of land and accordingly, submitted an application dated 16.1.2015 and same is pending. Petitioners allege that pending consideration of their application for regularisation of land in their possession, at the behest of some of the members of the society, the respondent corporation threatened the petitioners to vacate the subject premises. Questioning the said action petitioners filed W.P.No.12351 of 2015 and obtained interim order dated 28.4.2015. While so, third respondent issued notices dated 30.4.2015 and 18.5.2015 directing second petitioner to submit title documents of subject house and since no explanation was submitted, notice dated 2.6.2015 was issued revoking the assessment in respect of subject

house. On receipt of notice dated 2.6.2015, petitioners submitted their explanation and without considering the same third respondent issued notice dated 18.6.2015 directing the petitioners to remove the subject house within 24 hours.

5. Questioning the action of the respondents in taking coercive steps pending consideration of the petitioners application for regularisation in terms of G.O.Ms.No.58, dated 30.12.2014, W.P.No.18418 of 2015 is filed.

6. According to the averments of the society in the affidavit filed in support of W.P.No.19743 of 2015, government alienated land to an extent of Ac.4.00 in favour of society in Survey No. 789/1, Uppal Khalsa village, Ranga Reddy district vide G O Ms. No. 778 (Revenue (Q) Department dated 10.5.1984. A lay out was prepared and same was approved by Hyderabad Urban Development Authority (for short HMDA) by converting the said land into residential colony. The society has engaged a contractor for development of the lay out. As per HMDA approved lay out three open spaces are earmarked. In one of such open spaces consisting of 1500 square yards the contractor constructed a temporary room with asbestos roof for the purpose of storing construction material. The contractor engaged a watchman to guard the material stored in the room. After laying the roads, the roads and open spaces have been transferred and handed over to Uppal municipal authorities on 18.12.1987 by way of a gift deed. The society further alleges that the said room constructed for the purpose of storage of material was lying vacant and taking advantage of the same, second petitioner unauthorizedly occupied it and was using the said room and later constructed one more room attached to the existing structure, thereby occupying 120 square yards out of 1500 square yards of open space. Against illegal occupation by petitioners, society has complained to the municipal corporation requesting to remove the illegal structures. Since there was no further action taken

in spite of consistent persuasions, on 25.6.2015 another representation was submitted alleging deliberate inaction on the part of the municipal authorities and since no action is taken, W.P.No.19473 is instituted. The society opposes grant of regularization in accordance with G.O.Ms.No.58 dated 31.12.2014.

7. Learned counsel for petitioners contends that petitioners are in occupation and enjoyment of the said property for over 30 years and electricity connection, water connection are provided and they are paying the municipal tax and the piece of plot occupied by petitioners is not earmarked as open space. The open space is already handed over to the municipal corporation and compound wall around the said open space was constructed by the municipal corporation and the rooms constructed by the petitioners are outside the said open space. Learned counsel further contends that in accordance with the policy of the Government granting permission for regularization of unauthorized/illegal occupations of government lands, as formulated in G.O.Ms.No.58 dated 30.12.2014, petitioners are entitled for regularization of the land and structures in unauthorized occupation. Petitioners having come from poor background and having been living in the said house for last 30 years, throwing them out at this stage, would cause grave hardship and suffering and unless regularization is granted, they will be without any shelter and at this advanced age, it is impossible for them to secure alternative accommodation. He further submits that petitioners have applied for regularization in accordance with orders issued in G.O.Ms.No.58 dated 31.12.2014 and without considering the said application, no coercive steps can be taken. He further contended that Chief Commissioner of Land Administration vide Circular No.6, dated 20.3.2015 has clarified that open spaces in approved lay outs, roads and park lands can also be regularized. He therefore submits that in terms of the said circular, the claim of the petitioners has to be considered.

8. Heavy reliance is placed on the receipts issued by the Municipal Corporation, TSSPDCL and Hyderabad Metropolitan Water Supply and Sewerage Board, to contend that petitioners are in possession and enjoyment of the property for more than 30 years and throwing them out from the said property at this stage is illegal.

9. Learned standing counsel Sri Pasham Krishna Reddy submits that petitioners are in illegal occupation of the place earmarked for Park. The land which is earmarked for Park, Municipal Corporation is the custodian and such land cannot be used for any other purpose other than establishment and maintenance of the Park. Park is meant for public utility, no private person can claim as a matter of right to regularize his illegal occupation. Learned counsel further submits that due process was followed before taking coercive steps and there is no illegality or irregularity in directing the petitioners to remove the illegal structures and to vacate the premises. He further submits that the receipts filed by the petitioners do not concern the subject property. He further submits that even assuming that the payments made by them are received and they were provided water connection and electricity supply, it does not amount to granting status as owner of the property. He further submits that the claim of regularization notified by the Government in G.O.Ms.No.58, Revenue (Assignment-I) Department, dated 30.12.2014, has no application to the properties standing in the name of the respondent corporation, more particularly does not apply to the properties earmarked for establishment and maintenance of Parks.

10. Sri Vanam Vishwanatham, learned counsel appearing for the society submits that petitioners are in illegal occupation of the open space earmarked for plots and open spaces vests in municipal corporation. The open spaces being public places, they cannot be in occupation and there cannot be any regularization of such open spaces. He contends that the land occupied by the petitioners cannot

be classified as one belonging to Government nor surplus land under Urban Land Ceiling Act and only in the restricted spaces belonging to government, such regularization can be granted and in the instant case, the land occupied by the petitioner is not covered by such scheme of regularization and therefore petitioners have no manner of right to continue and steps initiated by the respondent corporation to evict the petitioners and remove the illegal structures is legal and valid.

11. In reply to the contentions urged by the learned counsel for society and standing counsel, learned counsel for petitioners contends that as clarified by the Chief Commissioner of Land Administration in Circular No. 6 referred to above, the claim of the petitioners is valid and before such regularization application is considered, no coercive steps can be taken.

12. The averments stated in the affidavits filed in support of the writ petitions disclose that the petitioners are in illegal, unauthorized occupation of the land vested in GHMC. Though learned counsel for the petitioners vehemently contended that to the extent the land earmarked for Park a compound wall was already constructed and separated, leaving this portion of the property and, therefore, this property does not form part of the Park, but no material is placed on record to support the said contention.

13. G.O.Ms.No.58 is applicable only to the assignment of un-objectionable Government land and surplus land under Urban Land Ceiling Act, but does not apply to the land standing in the name of GHMC and more particularly, earmarked for Park. The orders in G.O.Ms.No.58 are exception to the normal principles of prohibiting unauthorized occupation of public places/properties belonging to State or its instrumentality. No right vests in a person in illegal occupation of property belonging to the Government or its instrumentalities to grant

patta. Thus, any scheme of regularization has to be viewed narrowly and concerned scheme must require strict interpretation.

14. The very concept of urbanization means large number of human beings live within the restricted space as compared to non-urban and rural areas. On account of huge concentration of people within specified agglomeration, poses enormous challenge to the local authority on various fronts. Several infrastructure facilities are required to be provided, such as roads, drainage system, drinking water, clean air, environmental protection etc. For a systematic development of urban areas, long term planning is required. The master plan bring out the nature of present demand and potential of growth of population in the concerned Urban agglomeration and lays down plan of action required over a period of time to meet growing needs and seeks to regulate utilization of urban spaces. Net effect of exponential growth of urbanization is reduction of open spaces. Huge multistory complexes come up touching one another, reducing open spaces. Hyderabad of 1980s is not same as it is today. There were lot of open spaces for people to enjoy, play and relax. Now there is huge reduction of open spaces. These days we hardly find play grounds for children to play out-door games.

15. Regulator mandates that whenever a housing colony is proposed, the developer must provide open spaces within the colony. Such open spaces will yield to establishment of play grounds and development of parks. As per the norms and regulations governing the development of lay outs, the open space and the roads formed in the lay out become the property of the concerned local body and they become property of the community as a whole. These days we call them as lung spaces and they are essential for proper living.

16. In addition to conversion of private properties into residential colonies/multistory buildings, over a period of time due to negligence

of authorities of the State and local bodies, communal lands are unauthorisedly occupied. Strangely over a period of time, such unauthorized occupations are allowed and schemes are formulated for regularization of such unauthorized occupations. The scheme as formulated vide G.O.Ms.No.58 dated 30.12.2014 is one such scheme and petitioners want to take advantage of said scheme. The scheme of regularization, *per se*, is nothing but conferring right on a person to enjoy the property of the community, on which possession was illegally obtained. There are several such open spaces which are in illegal occupation. The scheme of regularization itself being conferring legitimacy to unauthorized occupation of communal lands cannot be stretched to eat into limited lung spaces available in residential colonies. Thus, insofar as spaces which are earmarked in residential colonies as open spaces, which are actually intended for development as parks and play grounds cannot be touched by any such scheme and no regularization can be granted on occupation of such open spaces. On a strict construction of G.O.Ms.No.58, vis-à-vis mandatory requirement of maintaining lung spaces, the scheme of regularization cannot be stretched to cover open spaces in a residential colony intended for common use of the people living in the colony.

17. Parks are public places intended for the benefit of the people. Such public places which are intended for public utility cannot be encroached upon by any person and it is against public interest to grant regularization of such encroachments. Thus, diluting the scope of restrictions imposed in the scheme of regularization by way of circular by the Chief Commissioner, Land Administration, itself is not legal and valid in order to justify the claim of the petitioners for regularization.

18. As per lay out approved by HMDA, 1500 sq yards was earmarked as open space to be developed by municipal corporation

as park. Initially contractor constructed small shed for the purpose of storage of construction material for formation of the lay out and such temporary construction was not removed even after the work was executed and petitioners were put in possession of such temporary construction and they continue to occupy the same even though the contractor completed the lay out work. Admittedly, place on which rooms are constructed is within the open space earmarked for Park and possession was handed over to HMDA. Though physical possession of the petitioners was not disturbed by anybody. Strangely no steps are taken by the municipal corporation for development of the park in the open space earmarked and it left unattended. Petitioners took advantage of the negligence on the part of the authorities of the municipal corporation in continuing to occupy the said space.

19. Valiant attempt is made by learned counsel for petitioners to contend that space on which rooms are constructed is not part of 1500 sq yards earmarked as open space and therefore petitioners are entitled to seek regularization. As noticed above, it was residential colony developed on four acres of land by the society. As part of the development of residential colony, certain open spaces are earmarked which are later handed over to HMDA along with roads formed. If the petitioners' occupation is not part of said open space, then the question of petitioner applying for regularization does not arise and such occupation does not amount to illegal/unauthorized occupation of Government land. The scheme of regularization is only on Government lands and surplus urban lands and not on private lands. Thus, the very fact that the petitioners have applied for regularization would show that it is forming part of open space earmarked in lay out. Pursuant to interim orders of this Court in W.P.No.12351 of 2015, municipal corporation required petitioners to submit proof of ownership and that it is not part of land earmarked for Park. As seen from the various notices issued by the respondent- corporation, petitioners were

given notices calling upon them to submit the documents in support of their claim of ownership. In spite of giving sufficient opportunity, no documents were submitted by the petitioners. No material is placed on record of these writ petitions to show that piece of land in their occupation is not part of open space of 1500 square yards earmarked for Park. Merely because house number was assigned or water and electricity connections are provided, though seriously disputed by learned standing counsel, does not legitimize the occupation by petitioners.

20. On a strict construction of G.O.Ms.No.58, as the claim for regularization of the unauthorized occupation is not valid, merely because regularisation application is pending, cannot be a ground for the petitioners to stall the proceedings initiated by the respondent corporation in accordance with the mandate of Hyderabad Municipal Corporation Act.

21. I, therefore, see no error in the proceedings initiated by the respondents warranting interference by this Court. Admittedly petitioners in W.P.Nos.12351 and 18418 of 2015 are in unauthorized occupation of the place earmarked for park. No leniency need be shown in favour of the petitioners. Hence, these writ petitions deserve to be dismissed and accordingly dismissed. However, petitioners are granted six weeks time to remove all the belongings and vacate the subject premises. It is open to respondent corporation to take such action as warranted by law after six weeks.

22. Accordingly, W.P.Nos.12351 and 18418 of 2015 are dismissed. In view of the orders passed in above two writ petitions, no orders are required to be passed in W.P.No.19473 of 2015 and it is accordingly closed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 20.07.2015

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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**WRIT PETITION Nos.12351, 18418 and
19473 of 2015**

Date: 20.07.2015

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