

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

-

W.A.No.697 OF 2015

Between:

State of Andhra Pradesh,
Rep. by its Principal Secretary,
Revenue (Land Acquisition),
Secretariat, Hyderabad
and another

....Appellants

A n d

M/s Ishwariya Orchards and Plantations,
Rep. by its Managing Partner Mr.Kishanlal
Tiruvallur Taluk, Tiruvallur District,
Tamilnadu State
and others

....Respondents

DATE OF JUDGMENT PRONOUNCED:

20.08.2015

SUBMITTED FOR APPROVAL:

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT**

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| 1. | Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. | Whether their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

**AND
THE HON'BLE SRI JUSTICE S.V. BHATT**

W.A.No.697 OF 2015

PC: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Respondent Nos. 1 and 2 in W.P.No.12759 of 2015 are the appellants.

The appeal is directed against the order dated 29.06.2015 in W.P.M.P.No.16798 of 2015 in W.P.No.12759 of 2015. The order in appeal reads thus:

“In the light of the decree passed by the competent civil Court, which covers 193 acres in this survey number, and in the light of the injunction granted by this Court as long back as in 2007 as regards the remaining extent of the land in plaint B schedule in O.S.No.22 of 1998 on the file of the learned Judge, Family Court-cum-V Additional District Court, Tirupati, which comprises the land in this survey number, there shall be a direction to the respondents to maintain *status quo* as regards the construction activity said to have been undertaken by them pending further orders”.

We have heard the learned Additional Advocate General for the appellants and Sri D.Prakash Reddy, learned Counsel for the 1st respondent, at considerable length. Ordinarily, we would not have entertained the instant appeal arising from the interim order passed by the learned Single Judge pending hearing and final disposal of the writ petition. Having regard to the peculiar facts and circumstances of the case and the prayer made in the miscellaneous petition as well as the substantive prayer in the writ petition, by consent we have heard learned counsel for the parties for final disposal of the appeal at the stage of admission.

The 1st respondent filed W.P.No.12759 of 2015 for Mandamus declaring the action of the appellants and respondent Nos.2 to 4 in allotting land admeasuring Acs.600.00 cts in Sy.No.1 of Madanapalem Village, Satyavedu Mandal, Chittoor District to

7th respondent, without following the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Act"), as illegal and unconstitutional.

It is not in dispute that if the respondents have any right or interest in the above land, and if respondent Nos.2 to 4 desire to allocate the land to the 7th respondent, they can do so by following the provisions of the Act and in that event, respondent No.1 would be entitled for compensation thereunder. In other words, respondent No.1, as submitted by their learned counsel, would be satisfied if they get compensation under the provisions of the Act.

The case of 1st respondent is that the 1st respondent is the owner of Acs.53.93 cts in Sy.Nos.4 to 14 and Acs.844-00 in Sy.No.1 of Madanapalem Village, Satyavedu Mandal, Chittoor District (for short "the petition land"). The 1st respondent filed O.S.No.22 of 1998 in the Court of the V-Additional District Judge, Tirupathi against a few private individuals for the relief of declaration of title and permanent injunction. The District Collector, Chittoor/ 2nd respondent herein and the Mandal Revenue Officer, Satyavedu/4th respondent herein got themselves impleaded as defendants 21 and 22 in the suit. The 1st respondent claims to be having *ad interim* injunction in I.A.No.568 of 1998 in his favour against defendants in the suit and the injunction was made absolute on 26.04.2004. On 05.06.2007, O.S.No.22 of 1998 was decreed-in-part. The 1st respondent, against the disallowed portion, filed A.S.No.553 of 2007. This Court through order dated 30.10.2007 in A.S.M.P.No.2170 of 2007 granted *ad interim* injunction restraining the respondents in the appeal from interfering with 1st respondent's possession and on 08.04.2008, the interim injunction was extended until further orders by a learned Single Judge. In this background, 1st respondent avers that his title and possession are

accepted by the trial Court to some extent and against the disallowed portion, an appeal is pending and this Court has granted interim injunction protecting the possession of 1st respondent. While matters stood thus, attempts are made to adversely affect the interest of 1st respondent and such attempts are illegal and unconstitutional. It is not in dispute that respondents 2 and 4 herein have filed appeal against the decree and judgment dated 05.06.2007 in A.S.No.211 of 2009 and the said appeal is pending adjudication.

It is further submitted that the 1st respondent desired to have the property covered by 'A' schedule of O.S.No.22 of 1998 for the purpose of establishing an industrial park by creating a Special Economic Zone. In the said process, on 28.09.2011, an award came to be passed in favour of 1st respondent for an extent of Ac.53.93 cts which forms part of suit schedule property. Now, the petition land is allotted in favour of 7th respondent without acquiring and paying compensation under Act 30 of 2013 to 1st respondent. The 1st appellant, having regard to the pendency of A.S.No.553 of 2007 and A.S.No.211 of 2009, ought not to be meddling with the property covered by the appeal suits in this Court. For the purpose of record, it is alleged that proceedings have been concocted by appellants and respondents 2 and 4 to show that possession of petition land was handed over to APIIC/5th respondent herein.

Adverting to the grievance in the writ petition, the 1st respondent contends that the appellants cannot treat the petition land as Government land and without recourse to the procedure under Act 30 of 2013, in exercise of its imminent domain, affect the proprietary right of 1st respondent. The 1st respondent refers to a few representations alleged to have been made and without considering these representations issuance of G.O.Ms.No.199 dated 04.12.2014, G.O.Ms.No.28 dated 27.03.2015 and payment of compensation to 302 people/ encroachers etc., are stoutly

objected to. The cause of action for filing the writ petition is alleged construction of compound wall at petition land by appellants from 20.04.2015.

The appellants filed counter affidavit and the averments, in brief, are that the injunction granted in I.A.No.568 of 1998 is not binding on the State of A.P/^{1st} appellant, because the State of A.P., is not a party/defendant in O.S.No.22 of 1998 in the Court of

V-Additional District Judge, Tirupathi. The ^{1st} respondent, on his own volition and with a view to having comprehensive adjudication of his alleged right and title, filed I.A.No.940 of 2001 seeking to implead the State of A.P., represented by the District Collector and the Tahasildar, Satyavedu Mandal as defendants in the suit.

On 15.07.2004, I.A.No.940 of 2001 was dismissed and the order has become final. The ^{2nd} and ^{4th} respondents filed I.A.No.178 of 2005 to implead them as District Collector and Tahasildar respectively. On 07.12.2005, I.A.No.178 of 2005 was allowed. Therefore, the case of ^{1st} appellant firstly is that there is no injunction operating against the State and secondly that the temporary injunction granted in I.A.No.568 of 1998 on 26.11.1998 and made absolute on 26.10.2004 cannot be treated as an injunction restraining the District Collector, Chittoor and the Tahasildar, Satyavedu from interfering with the possession of ^{1st} respondent, for they were impleaded in the suit on 07.12.2005 and there was no injunction operating against them. It is further alleged that continuation of injunction before this Court in A.S.M.P.No.2170 of 2007 dated 30.10.2007 is on the premise

that against all the defendants in O.S.No.22 of 1998, temporary injunction was in force or operating. Therefore, the ^{1st} respondent cannot take advantage of his own commissions and omissions and prevent the State from dealing with Government land for development purpose by issuing appropriate Government Orders.

It is the further case of ^{1st} appellant that the petition land is part of

Madanapalem Village, which is an “inam estate”. The inam estate was notified under Section 3 of the A.P. (Andhra Area) Estates (Abolition and Conversion Into Ryotwari) Act, 1948 (for short “Act XXVI of 1948”) and was taken over on 05.10.1964 under Act XXVI of 1948. Through G.O.Ms.No.1160 dated 29.11.1967, notification was issued under Section 22(1) of Act XXVI of 1948 to introduce ryotwari settlements in the “inam estate”. In the survey and settlement operations, it is recorded that the total extent of village is Ac.713-81 cts, out of which an extent of Ac.632.96 cts is classified as UAW shown as **adavi (forest)** (*emphasis added*) in the remarks column. Insofar as Sy.Nos.4 and 5 (P) of the village are concerned, the name of temple is recorded. It is further replied that in the Inam Fair Register of Madanapalem Village, the classification of petition land is shown as non-ryoti and therefore the authorities are not under obligation to regularize tenures of non-ryoti land under the Act.

The 1st appellant further alleges that in S.R.No.1/15(1)/2002 a claim for grant of ryotwari patta was made by one Lakshmi Narasimham and in the said case the 1st respondent impleaded himself before the authorities under Act XXVI of 1948 as objector. The 1st respondent is aware of pending claims for grant of ryotwari patta and the 1st respondent objected to consideration and disposal of individual claims. The Joint Collector-cum-Settlement Officer through order S.R.No.1/15(1)/2002 dated 02.06.2007 has rejected the claim for grant of ryotwari patta under Section 15 of the Act. The findings by the Settlement Officer about the classification of petition land, enjoyment etc., cannot be ignored, having regard to the effect of notification issued under Section 3 of Act XXVI of 1948. According to the 1st appellant, the order dated 02.06.2007 of the Joint Collector-cum-Settlement Officer was confirmed in E.A.T.A.S.No.2 of 2007 vide judgment dated 17.12.2013. Aggrieved by the order of Estates Abolition Tribunal, the claimants filed W.P.No.6537 of 2014 and the same is pending

adjudication.

It is the definite case of 1st appellant that with the rejection of claim of alleged landholders through order dated 02.06.2007, the 4th respondent was directed by the 2nd respondent to clear the obstruction for removal of possession of petition land under Section 3(d) of Act XXVI of 1948 and secure possession with the State. The communication reads as follows:

“I invite kind attention to the references cited. I submit that in pursuance of the instructions issued in the reference 2nd cited, I have taken possession of the land in S.No.1 measuring an extent of Acs.632.96 cents as per Fair Adangal of Madanapalem Village, Satyavedu Mandal U/s 3(d) of the E.A Act, 1948.

Thereafter, on 04.06.2007, an extent of Acs.632.96 cts was handed over to APIIC/5th respondent. According to 1st appellant on 16.09.2014, the 1st appellant entered into Memorandum of Understanding with Hero Motor Corporation Limited/6th respondent herein to provide land for establishing an industry to manufacture two wheelers and spare parts with a proposed investment of Rs.1600 crores and further investment of Rs.1600 crores for establishing ancillary units. According to the 1st appellant, the establishment of industries etc., would provide employment to 15,000 people and the 1st respondent on the strength of injunction and decree dated 05.06.2007 ignoring the orders passed under Act XXVI of 1948 cannot claim possession or compel the 1st appellant to pay compensation under Act 30 of 2013. The 1st appellant denies the actual and physical possession of 1st respondent of petition land. The averments in the counter affidavit read thus:

“The writ petitioner (1st respondent herein) was never in the possession of the writ petition government land and the Government of A.P. is the owner of entire land which has handed over the possession of the lands to respondent No.6 herein on 04.06.2007 i.e., even prior to the judgment and decree of the Hon’ble V-Additional District Judge, Tirupathi”.

The APIIC/6th respondent has entered into Memorandum of Understanding with 7th respondent for establishing the facilities referred to above. Therefore, the case of 1st appellant is that the 1st respondent does not have right, title or re-grant of petition land under Act XXVI of 1948 and by reference to injunction order to which State is not a party cannot prevent the 1st appellant from constructing a compound wall on the petition land.

The learned Additional Advocate General appearing for the appellants contends that the premise on which the impugned *status quo* order is granted is erroneous and the learned Single Judge has not taken note of various factual and legal submissions made by the appellants. According to the learned Additional Advocate General, reference to injunction for granting *status quo* order is erroneous, for chronology of the dates and events show that admittedly *ad interim* injunction was granted in favour of 1st respondent on 26.11.1998 and made absolute on 26.10.2004, by which date neither the appellants nor respondents 2 to 4 were parties to the suit. The 1st respondent filed I.A.No.940 of 2001 to implead the State as one of the defendants. The said IA was dismissed through order dated 15.07.2004. The dismissal of I.A.No.940 of 2001 changes the legal implication of the decree in O.S.No.22 of 1998.

Thereafter, the impleadment of District Collector as defendant cannot be put against the State and that on 02.06.2007, the competent authority viz., Settlement Officer under Act XXVI of 1948 has recorded a finding that the petition land is not a ryoti land and no one is entitled for grant of ryotwari patta. The said finding of the Settlement Officer under Act XXVI of 1948 was confirmed by the Estates Abolition Tribunal in judgment dated 17.12.2013 in E.A.T.A.S No.2 of 2007. Re-grant by way of ryotwari patta is a significant circumstance under the scheme of Act XXVI/1948 and without re-grant to any person/ryot, the petition land vests in the Government. According to the learned Additional Advocate General, the title of petition land as claimed by the

1st respondent has not become final and on the other hand, the findings recorded through order dated 02.06.2007 that the petition land is “adavi (forest) poramboke” goes a long way in appreciating prayer in the instant writ petition. He further contends that unless and until the State is a party and injunction is specifically directed against the State, the 1st respondent cannot take advantage of injunction order passed on the representation of the 1st respondent. Further, the protection of injunction is available, if a party is in possession of the petition schedule property. The learned Additional Advocate General points to the inconsistency in the judgment and decree drawn by the trial Court on parties, against whom the perpetual injunction is granted. According to him, without possession, mere injunction cannot be relied upon to prevent the appellants from constructing a compound wall to secure petition land for utilization by the 7th respondent by establishing a factory. A request for comprehensive hearing of pending cases viz., on the petition land viz., A.S.Nos.553 of 2007 and 211 of 2009, W.P.No.6537 of 2014 and W.P.No.12759 of 2015 is made and such hearing of pending matters would result in comprehensive adjudication on the rights of parties.

Per contra, Sri D.Prakash Reddy, learned Senior Counsel for 1st respondent, vehemently contends that the order of *status quo* granted by the learned Single Judge is tenable and according to him, the decree and judgment in O.S.No.22 of 1998 are conclusive insofar as Ac.175.18 cts of plaint ‘B’ schedule property and perpetual injunction is granted against all the defendants. The temporary injunction granted in I.A.No.568 of 1998 was continued through A.S.M.P.No.2170 of 2007 vide orders dated 13.10.2007 and 18.04.2008 by this Court. Therefore, in the teeth of injunction, it cannot be countenanced that the appellants have right to proceed with the construction of compound wall and the impugned *status quo* order meets the ends of justice. According to him, the order of Settlement Officer dated 02.06.2007 cannot be strictly put

against the 1st respondent, for the 1st respondent was not a claimant in S.R.No.1/15(1)/2002 and the 1st respondent was only an objector and the taking of possession on 04.06.2007 suffers from contradiction with the payment of compensation to alleged encroachers and further belies the assertion that 1st appellant is in possession of the petition land. Any initiative affecting the right of 1st respondent by the appellants should be by following the procedure stipulated under Act 30 of 2013 and this Court ought not to permit the appellants to construct compound wall, for such permission amounts to disobeying the order of injunction in A.S.M.P.No.2170 of 2007. Therefore, he prays for dismissal of the appeal.

Before proceeding further, we make ourselves clear that in the instant writ appeal, we are not considering the merits or rival claims of the parties which are pending issues in the cases referred to above. Through the instant order, we consider whether the direction of the learned Single Judge to maintain *status quo* of construction of compound wall at petition land is tenable in the facts and circumstances of the case or not.

It is not in dispute that Madanapalem Village was notified under Section 3 of Act XXVI of 1948. The notification under Section 3 of Act XXVI of 1948 is exhibited as Ex.A-33 in O.S.No.22 of 1998. The legal effect of a notification under Section 3 of Act XXVI of 1948 is no more *res integra*. The 1st respondent admittedly filed I.A.No.940 of 2001 to implead the 1st appellant as party defendant to O.S.No.22 of 1998 to obtain a binding decree on the State as well. On 15.07.2004, the request of 1st respondent to implead the State was rejected and the said order has become final.

The 1st respondent, to bind the State with the judgment or decree in O.S.No.22 of 1998, should array the State as one of the defendants in O.S.No.22 of 1998. It is matter of record and also undisputed that the temporary injunction granted on 26.11.1998 in I.A.No.568 of 1998 was

made absolute on 26.10.2004 by the trial Court. Till 07.11.2005, neither the appellants herein nor respondents 2 to 4 are parties to I.A.No.568 of 1998 or O.S.No.22 of 1998. There is nothing on record to show that after respondents 2 and 4 are impleaded as defendant Nos.21 and 22 in O.S.No.22 of 1998, the order of injunction is extended or made operative against respondents 2 and 4 as well. As already noticed, a claim for grant of ryotwari patta for petition land is pending in S.R.No.1/15(1)/2002 (Old number (SO Nellore) Ref.F/311/79) before the Settlement Officer under Act XXVI of 1948. Through order dated 02.06.2007, the competent authority by considering the classification of petition land as "adavi (forest) poramboke" held that the petition land stood vested in the Government and no ryot or claimant is entitled for grant of ryotwari patta. The said order was confirmed by the Tribunal vide judgment dated 17.07.2015. W.P.No.6537 of 2014 filed against the orders dated 02.06.2007 and 17.07.2015 is pending in this Court. Likewise, against the decree and judgment in O.S.No.22 of 1998, the unsuccessful parties viz., 1st respondent and respondents 2 to 4, against the disallowed or aggrieved portion, have filed A.S.Nos.553 of 2007 and 211 of 2009 in this Court. Likewise, W.P.No.6537 of 2014 and W.P.No.12759 of 2015 are pending

final adjudication. As rightly pointed out by learned Additional Advocate General, there is no consistency in the grant of injunction between the judgment and decree in O.S.No.22 of 1998. The 1st appellant, having regard to the effect of Section 3 of Act XXVI of 1948, removed obstruction/encroachment of petition land by 3rd parties. On 04.06.2007, possession of petition land was handed over to APIIC. Now, in terms of Memorandum of Understanding entered into between APIIC and 7th respondent, the land is allotted for establishment of industries. The grant of *status quo* by the learned Single Judge is by reference to injunction granted in O.S.No.22 of 1998. We have difficulty in accepting this observation of the learned Single Judge, for the observations ignores the crucial aspects referred to above. If the operation of injunction is

extended to a third party viz., State, in the instant case, such extension of injunction order is unsustainable. Further, the claim of 1st respondent, as already noticed is, for payment of compensation under Act 30 of 2013 in the event of State adversely affecting his rights. We are compelled to observe that the entitlement of compensation is dependant upon the outcome of the cases referred to above. As on date, the adjudication of rights of parties has not become final. The appellants, subject to the decision in the cases referred to above, if are permitted to construct compound wall, the same does not cause irreparable hardship and injury to the claims of parties and the development activities undertaken by the appellants are not hampered. Therefore, the appellants can be permitted to undertake construction of compound wall subject to the outcome of the cases referred to above. The substantive relief in W.P.No.12759 of 2015 is for compensation and appropriate relief can granted to 1st respondent while disposing of W.P.No.12759 of 2015.

For the above reasons, we are satisfied that the following order would meet the ends of justice:

- i. The Registry is directed to obtain appropriate orders from the Hon'ble the Acting Chief Judge for combined hearing of A.S.Nos.553 of 2007 and 211 of 2009, W.P.No.6537 of 2014 and W.P.No.12759 of 2015 by a learned Single Judge to avoid conflicting decisions.
- ii. We request the learned Single Judge to whom the cases are assigned to consider and dispose of these matters as expeditiously as possible, preferably within a period of eight weeks from the date the cases are shown for hearing.
- iii. The order impugned in the appeal is set aside and the appellants are permitted to undertake the construction of compound wall only subject to the outcome of the cases referred to above. In the event the 1st respondent is successful in establishing right, title and possession of petition land, then the appellants are under obligation to pay compensation to 1st respondent in accordance with law.

- iv. It is reiterated that having regard to the peculiar facts and circumstances of the case, we have considered the circumstances for *prima facie* findings and the findings in the instant order shall not be treated as expressing any view by this Court on the merits or issues pending in the matters referred to above.

Writ appeal is allowed and the order impugned is set aside

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

ACJ

DILIP B. BHOSALE,

S.V.BHATT,

J

Date: 20.08.2015

Lrkm