

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.13684 of 2009

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Date: 19.03.2015

Between :

Dandamudi Babu Rao s/o.Seetharama Bhramam,
Aged about 59 years, Occu: Business, r/o.43-11-56,
Subbalakshmi Nagar, Visakhapatnam and others.

... Petitioners

And

Govt. of A.P., Revenue (UC-I) Department,
rep.by its Principal Secretary to Govt.
Secretariat and others.

... Respondents

This Court made the following :

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ORDER:

This writ petition is instituted challenging G.O.Ms.No.1514, Revenue (UC-I) Department, dated 07.12.2007.

2. Brief facts which are necessary for consideration of the issue in the writ petition are as under:

3. One Mr.Pampana Appala Konda and Mr.Pampana Sambasivarao succeeded the land to an extent of Ac.1.95 cents situated in Sy.Nos.18/3 and 9/2A of China Waltair village. As this land falls within urban agglomeration, both Pampana Appala Konda and Pampana Sambasivarao filed declarations under Section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the Act") individually. Consequent to the declaration filed by Mr.Pampana Appala Konda, the competent authority passed orders on 18.05.1996 holding that he is entitled to retain 850 square meters and declared 392 square meters as surplus land in accordance with the provisions of the Act. In so far as Mr.Pampana Sambasivarao, the competent authority passed orders on 03.08.1996 holding that he is entitled to retain 850 square meters and 73 square meters was declared as surplus land. Later, the son of Mr.Pampana Appala Konda (3rd respondent herein) filed application under Section 20(1) of the Act before the competent authority seeking to regularize the land to an extent of 392 square meters, contending that he is in possession

and enjoyment of the same and possession was not taken from him. The land fallen to the share of Mr.Pampana Sambasivarao changed hands and the writ petitioners are the subsequent purchasers to an extent of 830 square yards vide four separate sale deeds.

4. It appears that there is *inter se* dispute with reference to identification of the respective extents of land owned by the original owners. The 3rd respondent filed O.S.No.301/2008 on the file of the IV Additional District Judge, Visakhapatnam seeking declaration of title and consequential injunction and the same is pending. As a counterblast, the petitioners herein instituted O.S.No.648/2008 on the file of the I Additional Junior Civil Judge, Visakhapatnam seeking permanent injunction. The 3rd respondent is the sole defendant in the said suit. As per the information furnished by the parties, interim injunction was granted in O.S.No.648/2008 and on an application the same was transferred to the Court of IV Additional District Judge, Visakhapatnam to be tried along with O.S.No.301/2008 and after transfer, O.S.No.648/2008 was re-numbered as O.S.No.90/2009.

5. Along with WPMP.No.3309/2015, the petitioners filed additional set of documents which include a letter dated 18.09.2009, written by the Special Officer, Urban Land Ceiling, Visakhapatnam addressed to the Principal Secretary to Government, Revenue (UC.I) Department, Secretariat, Andhra Pradesh, Hyderabad. The said letter was annexed with a sketch.

6. Learned counsel for the petitioners would submit that the contents of the letter dated 18.09.2009 would disclose that original proposals were submitted to the Government which resulted in issuing the impugned G.O.Ms.No.1514, dated 07.12.2007. The learned counsel further contends that the boundaries were not correctly earmarked, and therefore, there was necessity to reconsider the issue and restart the entire exercise for granting general exemption. The

learned counsel would further submit that on account of wrong reflection of boundaries, the land which belongs to the petitioners, now sought to be encroached upon by the 3rd respondent; therefore, the letter would clearly disclose that the earlier proposals were wrongly made and only based on the said proposals, the orders were issued by the Government. The learned counsel submits that on account of wrong proposals the impugned G.O.Ms.No.1514, dated 07.12.2007 was issued and the same is liable to be set aside. The learned counsel fairly conceded that the grievance of the petitioners is not with reference to the claim of the 3rd respondent for regularization of 392 square meters in accordance with the provisions contained in Section 20(1) of the Act, but their grievance is with reference to wrong reflection of the boundaries of the respective extents of land and location originally belong to Mr.Pampana Appala Konda and Mr.Pampana Sambasivarao.

7. In response, the learned counsel, representing the 3rd respondent, would contend that the petitioners, who are third parties, cannot challenge the orders issued in G.O.Ms.No.1514, dated 07.12.2007, as they are no way concerned to the issue of regularization under Section 20(1) of the Act, which is in fact between the applicant and the Government. The learned counsel further submits that the original owners never applied for grant of similar benefit under the Act and the issue raised in this writ petition is *sub judice* before the IV Additional District Judge, Visakhapatnam and in I.A.No.907 of 2014 in O.s.No.301 of 2008, the IV Additional District Judge, Visakhapatnam, appointed Advocate Commissioner vide orders dated 03.09.2014 to localize and note down the physical features of the suit scheduled land with the help of VUDA surveyor. The learned counsel further submits that since the core issue raised by both parties is pending adjudication before the IV Additional District Judge, Visakhapatnam, the present writ petition is not maintainable,

does not survive and is liable to be dismissed.

8. As fairly contended by both counsels, there is no *inter se* dispute regarding ownership of the extent of land and only dispute is the boundaries and allocation of respective shares of the subject property. On the same issue, the IV Additional District Judge, Visakhapatnam, passed orders on 03.09.2014 in I.A.No.907 of 2014 appointing Advocate-Commissioner to localize and note down the physical features of the suit schedule property. Once the Advocate-Commissioner submits his report, the exact boundaries and the physical features of the property would be known and when the physical features of properties were identified by the Advocate-Commissioner, the respective claims in the suit can be adjudicated. In view of the fact that both parties have instituted suits, which are pending on the file of IV Additional District Judge, Visakhapatnam, I am not inclined to go into the merits of the respective contentions at this stage. The claim of the petitioners in the writ petition is that the identification of the boundaries was not properly made before the orders impugned in this writ petition were issued. This grievance of the petitioners is integral to the two suits pending before the IV Additional District Judge, Visakhapatnam and can be adjudicated once the Advocate-Commissioner submits his report. Therefore, the interest of the petitioners in the writ petition are also sufficiently protected.

9. Having regard to the same, writ petition is disposed of, leaving it open to the petitioners to work out their remedies after the suits are finally decided. There shall be no order as to costs.

Miscellaneous petitions if any pending in the writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

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