

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.14717 OF 2014

ORDER:

The petitioners pray for writ of certiorari to call for the records relating to order No. YW/ 277 /W.V/Encr/MLY-MJF/13 including the order dated 02.04.2014 passed by the Estate Officer, South Central Railway, Hyderabad Division, Secunderabad and quash the same as illegal, arbitrary and without jurisdiction.

The order impugned is passed under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short 'the Act').

The petitioners being aggrieved by the order of eviction under Section 5(1) of the Act have filed the present writ petition. The orders of eviction are independent and the exact location of alleged unauthorized occupation by the petitioners is shown through the sketch annexed to the respective orders. The petitioners have invoked the jurisdiction of this Court under Article 226 of the Constitution of India by not availing the statutory remedies available under the Act. The petitioners place strong reliance upon the decision reported in **Roshan Minoo patel and others v. Union of India and others**^[1].

The learned counsel appearing for the parties have made their submissions on the remedy of appeal under the Act and on the merits of the case.

I have perused the material available on record and noted the contentions of learned counsel for the parties. Having regard to the nature of disposal of writ petition, I am adverting to the circumstances necessary for this limited purpose.

The case of petitioners is that one S.Madhusudhan Reddy was the original owner and possessor of Ac.0-22gts. of land in Survey No.5, Ac.0-20gts. of land in Survey No.6, Ac.1-11gts of land in Survey No.8, Ac.1-14gts. of land in Survey No.9, Ac.2-34gts. of land in Survey No.913 of Malkajgiri Municipality. One B.Ranga Reddy was the owner and possessor of Ac.0-14gts. of land in Survey No.11 of Malkajgiri. The petitioners admit that the Railways/respondents 2 to 4 herein acquired different extents of land in Survey Nos.8, 9, 11, 913 of Malkajgiri. The petitioners describe the land acquired by Railways with sub divisions. It is the case of the petitioners that the plots purchased by them through registered sale deeds from the owners are forming part of the un-acquired land in the above survey numbers and the Malkajgiri Municipality assigned door numbers to the houses constructed on these plots, 25' wide road was laid and the entire locality is called Rajiv Gandhi Nagar. The acquired land is on the southern side to the 25' road laid by Malkajgiri municipality. The petitioners filed O.S.No.1062 of 2006 on the file of III Additional Junior Civil Judge, Ranga Reddy District for perpetual injunction restraining the respondents herein from interfering with the possession of petitioners. On 15.09.2011, O.S. No.1062 of 2006 was decreed. The 4th respondent issued notice in Form-A under the Act calling for explanation from the petitioners as to why they should not be evicted from the unauthorized occupation of public premises belonging to Railways. The petitioners replied to the show cause notice and it is the case of the petitioners that the decree and judgment in O.S.No.1062 of 2006 was brought to the notice of 4th respondent. On 2.4.2014, the 4th respondent without considering the explanation passed the impugned order. Hence, the writ petition.

The primary objections of petitioners against the impugned

order are that the possession of petitioners is protected by decree and judgment in O.S.No.1062 of 2006. The 4th respondent lacks jurisdiction to pass orders under the Act for the land in possession of petitioners is not land belonging to Railways and can be treated as public premises for the purpose of Act. Thus the order is vitiated for lack of jurisdiction. The findings of the 4th respondent firstly without enquiry and secondly in a summary procedure are unsustainable. The Pahanis clearly show that Survey Nos.5, 6, 8, 9, 11 and 913 were subdivided after acquisition of land from S.Madhusudhan Reddy. The house plots are situated in the land not affected by acquisition. The petitioners rely upon **Roshan Minoo Patel's** case (supra) for the proposition that the 4th respondent cannot decide what is nature of property in the possession and enjoyment of petitioners and exercise the jurisdiction under the Act.

The respondents filed counter and by way of reply, it is contended that under Section 9 of the Act appeal against the orders of 4th respondent under section 5 is provided and without availing the remedy of appeal the filing of writ petition under Article 226 is misconceived. Adverting to facts in issue the respondents justified the eviction order by contending that the Railways acquired land in connection with shifting metre-gauge transshipment yard from Secunderabad to Moulali and for laying Malkajgiri - Moulali Chord line. The land acquisition proceedings were initiated in File No.A4/711/LA/63 on 04.07.1967 award was passed. Through the instant award the Railways acquired Ac.15-01gt. land in Survey Nos.885/1, 914, 915, 919, 920, 10 and 11 and another extent of Ac.4-38gts. of land in Survey Nos.913, 921, 8,2,916, 496 and 9 from land owners B. Ranga Reddy and Madusudhan Reddy respectively. The possession of the acquired land in an extent of Ac.20-00 was given to

Railways on 26.12.1963. The case of respondents is that the eviction order is passed in respect of the land acquired through award dated 04.07.1967. On the question of identity of property, the respondents rely upon joint survey report dated 23.08.2001 and assert that the schedules covered by the orders of eviction are part of acquired land. It is further stated that Railways acquired the said land for public purpose and to maintain 140' on either side of railway track in accordance with the statutory requirements. It is contended that the competent civil Court has given the Railways liberty to proceed in accordance with law and no exception can be taken to the order of eviction. It is further averred that a few of the petitioners aggrieved by orders dated 02.12.2002 filed writ petition Nos.2692, 2693,2959 and 2975 of 2003 and batch and on 21.03.2006 the writ petitions were dismissed by holding that the petitioners therein were encroachers of the Railway property. From the pleadings, summarily stated the objections on the maintainability are that the Railways being the owner of the property need not every time prove that it is the owner of the property and the Act is attracted for eviction. The petitioners in the name of disputed question of title cannot invoke the jurisdiction of this Court under Article 226. Section 9 of the Act reads as follows:

“Appeals:—

[\(1\)](#) An appeal shall lie from every order of the estate officer made in respect of any public premises under [section 5 or section 5B] [or section 5C] or section 7 to an appellate officer who shall be the district judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years' standing as the district judge may designate in this behalf.

[\(2\)](#) An appeal under sub-section (1) shall be preferred,—

[\(a\)](#) in the case of an appeal from an order under section 5, [within twelve days] from the date of publication of the order under sub-section (1) of that section;

[\(b\)](#) in the case of an appeal from an order (under section 5B or section 7, within twelve days] from the date on which the order is communicated to the appellant; and

[\[\(c\)](#) in the case of an appeal from an order under section

5C, within twelve days from the date of such order:]

Provided that the appellate officer may entertain the appeal after the expiry of the [said period], if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time,

(3) Where an appeal is preferred from an order of the estate officer, the appellate officer may stay the enforcement of that order for such period and on such conditions as he deems fit:

[Provided that where the construction or erection of any building or other structure or fixture or execution of any other work was not completed on the day on which an order was made under section 5B for the demolition or removal of such building or other structure or fixture, the appellate officer shall not make any order for the stay of enforcement of such order, unless such security, as may be sufficient in the opinion of the appellate officer, has been given by the appellant for not proceeding with such construction, erection or work pending the disposal of the appeal;]

(4) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible.

(5) The costs of any appeal under this section shall be in the discretion of the appellate officer.

(6) For the purposes of this section, a presidency-town shall be deemed to be a district and the chief judge or the principal judge of the city civil court therein shall be deemed to be the district judge of the district.”

The learned counsel for the petitioner does not dispute the existence of remedy of appeal under the Act. The submission in this behalf is that the remedy of appeal is not efficacious as jurisdictional issues of facts are involved. The learned counsel by placing strong reliance upon the decision in **Roshan Minoo patel and others v. Union of India and others** submits that the impugned eviction order should be set aside without relegating the parties to the remedy of appeal.

The findings on issue No.4 in O.S. No.1062 of 2006 are relied upon to contend that even the civil Court after seeing the fact in issue gave limited injunction and given liberty to Railways to proceed in

accordance with law for eviction. The findings reads as follows:

“In the result, the suit is decreed by granting perpetual injunction restraining the defendants their men and subordinates from interfering with the possession and enjoyment of the plaintiffs over the plaint schedule property. Though, the plaintiffs are granted perpetual injunction, the defendant railways are at liberty to take steps against the plaintiffs, to evict them from the suit schedule property, by following the due process of law. No order as to costs.”

On the other hand, learned standing counsel vehemently contends that the judgment and the decree in O.S.No.1062 of 2006 have not declared the title of petitioners, on the other hand, the competent civil Court has given liberty to the respondents to proceed against the encroachers in accordance with law. The Joint Inspection Report prima facie shows that the schedule properties covered by encroachment orders are well within the acquired land. Further, the findings of the Court in Writ Petition No.2962 of 2003 and batch in respect of same stretch of land cannot be ignored and the Railways are directed to work out their remedy in properly instituted suit. The learned counsel in the opinion of this Court has rightly distinguished the principle laid down in **Roshan Minoo Patel**'s case (supra).

The issue is not one of title to the property covered by eviction orders, but the location of property covered by eviction in the respective orders. The identity or location as is evident was also taken up as early as 01.08.2001. Prima facie it appears the boundaries of acquired land are determined. Once the boundaries of acquired land can be determined, the issue of title to the schedule covered by eviction order is not an issue. Such examination of eviction orders defeats the very object and scope of the Act. The appeal is provided to the appellate authority. The District Judge is the appellate authority. The petitioners' submissions on the statutory appeal are prima facie untenable. The issue is one of localization of acquired land and land excluded from acquisition. The same is matter of record and

appreciation. The petitioners claim to have purchased the property from B.Ranga Reddy and Madusudhan Reddy who were the claimants in land acquisition proceedings and this is all the more a reason to observe that a title dispute does not arise between the parties for the acquired land. The writ petition is not maintainable under Article 226 of the Constitution of India. The writ petition is disposed of by giving four weeks time from today to file appeal before the appellate authority and the appellate authority is directed to dispose of the appeal preferably within a period of four months from the date of filing of appeal. Subject to the filing of appeal the status quo order granted by this Court shall remain in force for a period of four months from today.

The writ petition is disposed of. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

J

S.V.BHATT,

Date:17-03-2015

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