

HON'BLE SRI JUSTICE P.NAVEEN RAO

W.P.M.P.No.47359 of 2013

AND

WRIT PETITION No.12392 of 2005

Date: 19.02.2015

Between:

Smt. Anees Fatima W/o.Syed Mubeen Ahmed,
Aged about 54 years, Occu:Household,
r/o.H.No.3-6-630, Himayathnagar, Hyderabad
and another

.. Petitioners

AND

The Special Officer and Competent Authority,
Urban Land Ceiling and Regulations, Andhra
Pradesh, Hyderabad.

.. Respondent

The Court made the following:

HON'BLE SRI JUSTICE P.NAVEEN RAO
W.P.M.P.No.47359 of 2013
AND
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COMMON ORDER:

Petitioners claim to be owners and in possession of premises bearing Municipal Nos.12-2-790/M-23 & 35, 12-2-70/M-36 & 37, 12-2-790/M-84 and 12-2-790/M-82-83 of Mustafa Hills, Mahdipatnam, Guddimlakapur, Hyderabad. The said properties were purchased by the petitioners by way of registered sale deeds in the year 1990.

Subsequently, petitioners were informed that the properties so purchased by them were on the lands which were declared as surplus under the Urban Land (Ceiling and Regulation) Act, 1976, (for short, 'Act, 1976'), which fact was not known to them when they made the purchase. In the mean time, Government notified scheme of regularisation in G.O.Ms.No.455, Revenue (U.C.I) Department, dated 29.07.2002, which enables regularisation of illegal occupation of urban properties which were declared as excess properties under the Act, 1976. Having come to know of the said G.O., petitioners submitted application on 03.06.2005 as prescribed in the scheme, but the said application was not accepted by the respondent. Aggrieved thereby, this writ petition was instituted.

2. In the writ petition, relief sought is that in terms of G.O.Ms.No.455, dated 29.07.2002, the application of the petitioners for regularisation of above mentioned house numbers should be received and processed. Petitioners filed W.P.M.P.No.47359 of 2013 praying to amend the prayer by adding the words, 'to direct the respondent to

allot the plots purchased by the petitioners or in the alternative to allot any suitable land to the petitioners'. Along with the said petition, certain documents were also enclosed including copies of representations dated 09.05.2008, 12.05.2008 and 09.05.2008.

3. Learned counsel for petitioners contends that petitioners were *bona fide* purchasers of subject properties. The properties were purchased by way of registered sale deeds and petitioners were not aware the properties which they have purchased were declared by the original owner as surplus under the Urban Land Ceiling Act. Thus, they being *bona fide* purchasers and as they were in possession, they are entitled to avail the benefit provided by the State under G.O.Ms.No.455 to regularize the unauthorized occupation by paying the amount as determined by the State. Learned counsel contends that not accepting the applications submitted by the petitioners and not considering the prayer of the petitioners for regularization is arbitrary and amounts to discriminatory exercise of power and authority.

4. Learned counsel extensively made submissions and relied upon sale deeds executed in the year 1990 to show that they were the *bona fide* purchasers. In the additional material enclosed to the W.P.M.P.No.47359 of 2013, petitioners also enclosed the orders issued by the Government in G.O.Ms.Nos.218, 219, 220 and 221 of Revenue (UC.IV) Department, dated 22.02.2008, granting such regularization in favour of persons similarly situated. Learned counsel further contends that scheme of regularization was in force and petitioners are entitled to avail the benefit of the same. During the pendency of the writ petition, petitioners have submitted representations and same ought to have been received and considered the claim of the petitioners for regularization.

5. Learned Assistant Government Pleader submits that the house numbers which are mentioned in the sale deeds do not exist in the

municipal records and, therefore, question of assigning door numbers for municipal tax and petitioners paying municipal tax would not arise. No material is filed by the petitioners in support of their contention that houses existed. Learned Assistant Government Pleader further contends that no application was submitted by the petitioners as claimed by them. Since there was no such application filed by the petitioners, the question of considering the application of the petitioners would not arise.

6. Learned Assistant Government Pleader, relying on the contents of the counter-affidavit filed on behalf of the respondents, further submits that properties which petitioners claim to have purchased do not contain the details of the survey numbers and municipal authorities dispute the existence of any such house numbers. The claim of petitioners that they are in possession and enjoyment of the land, which was declared surplus under the Urban Land Ceiling Act is not established. Unless the petitioners establish that the land which was declared as surplus and possession was not taken by the State, petitioners were in possession and enjoyment of the same, petitioners are not entitled to avail benefit of G.O.Ms.No.455.

7. The averments in the writ petition would go to show that petitioners purchased house properties mentioned in the affidavit by way of registered sale deeds in the year 1990. However, a perusal of registered sale deeds filed along with writ petition would show that except mentioning of house numbers and extent, the survey number in which layout was formed were not mentioned in the sale deeds. There is vague description of properties. When this Court questioned, the learned counsel for the petitioners unable to say the relevant survey number in which the layout was formed. Though, learned counsel vaguely referred to the existence of housing colony and regularization of certain houses under the scheme and submits that the houses of the petitioners are also part of the said housing colony, however, no

material is filed in support of the said contention.

8. The specific stand of the respondent that no such application for regularization was submitted by the petitioners as claimed by them and that house properties mentioned in the registered sale deeds do not exist as per the municipal records are not denied as no reply was filed. No material is filed in support of the stand of the petitioners that application was submitted on 03.06.2005. Thus, the contention of the respondent that no such application was filed stands unrebutted.

9. It appears that no house was existing on the so-called premises as claimed by the petitioners. This is clear from the representations stated to have been submitted by the petitioners in the year 2008, during the pendency of this writ petition. Petitioners categorically stated in the said representations that during their absence in the city, the compound wall and rooms were demolished by some group of persons belonging to CPM party, occupied and have put up huts on the said lands. Thus, there is no residential houses in existence and they were not in possession even by the time so-called representation was submitted in the year 2005. Even the contents of the affidavit filed in support of the petition to amend the prayer would show that the petitioners were not in possession of the land.

10. For consideration of application for regularization in terms of G.O.Ms.No.455, a person should be in possession of property, on which application for regularization should also be submitted within time frame, whereas apparently petitioners have not submitted any such application till the year 2008. By the time petitioners submitted representations in the year 2008, even according to the petitioners, they were not in possession of the land. Thus, the essential requirement for consideration of application for regularization is not satisfied.

11. Learned counsel for the petitioners relied on two decisions of the Supreme Court in the cases of **Gajanan Kamliya Patil v. Additional Collector and Comp. Auth. & others**^[1] and **State of U.P. v. Hari Ram**^[2]. In both cases, the issue considered was what amounts to taking possession. In **Hari Ram**, Supreme Court held that taking possession in accordance with the provision contained in Section 10(6) of the Act vesting land in Government would mean that possession must be physically taken and not paper possession. Unless the State takes physical possession of the property concerned, the possession under the Urban Land Ceiling Act, 1976 is not complete and, therefore, in accordance with the provision contained in Section 4 of the Repealed Act, 1999, the land vests in the original owner. The same principle is followed in **Gajanan Kamliya Patil**. In the instant case, though learned counsel for petitioners strenuously contended that as the issue of possession by the State is not complete in the year 2005, the provisions of Urban Land Ceiling Act are not attracted, to appreciate said contention, in the first instance, it is necessary for the petitioners to establish that in the concerned properties which were originally declared as surplus under Urban Land Ceiling Act, 1976, possession was not taken by the State and petitioners were in possession of the said land by the time Repealing Act came into force. In such a case a person is entitled to take advantage of the Repealing Act. In the instant case, the essential details of the property which was subject of Urban Land Ceiling Act are not brought on record except referring to house numbers. Further details of the property, the person who was the owner and the declaration made by the owners etc., are not brought on record. Therefore, in the absence of such essential details and the physical possession of the petitioners having not been proved, the two decisions relied by the counsel for petitioners do not come to the aid of the petitioners.

12. Admittedly, even according to the petitioners, the property which they claim to be in occupation was declared as surplus Urban land and vests in Government and a person in unauthorized occupation cannot as a matter of right insist that his unauthorised occupation should be regularized. Therefore, to avail benefit of scheme of regularization of such unauthorized occupation, person must satisfy the conditions required for such regularization. There is no material on record to show that the petitioners submitted application in the year 2005. As per their own averments in the representations submitted in the year 2008, they were not in possession even in the year 2005. No other material is brought on record to substantiate the claim of the petitioners that houses were existing even by the time alleged representation was submitted in the year 2005, that they were in occupation and enjoyment of the said houses and only subsequently, that is much later they were displaced. The further contents of the representation of the year 2008 posit serious dispute with reference to the extent of land and formation of layout. Thus, the question of granting liberty to the petitioners to make an application for regularization at this stage also does not arise. Having regard to the fact that the essential conditions of the G.O.Ms.No.455 are not fulfilled, the petitioners are not entitled to seek regularization and, therefore, question of providing alternative site to the petitioners also does not arise. The prayer sought in the W.P.M.P. itself defeats the very claim of the petitioners. Having regard to the above facts, amendment of the prayer at this stage is not *bona fide* made. Such claim was available to the petitioners when the writ petition was instituted, whereas the present relief by way of amendment would defeat the original scope of the relief sought in the writ petition. Hence, the W.P.M.P.No.47359 of 2013 is liable to be dismissed and it is accordingly dismissed.

13. I see no merit in the contentions made by the petitioners. Writ petition deserves no consideration and it is accordingly, dismissed.

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

JUSTICE P.NAVEEN RAO

Date : 19.02.2015
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[\[1\]](#) 2014 (1) Decisions Today (SC) 77

[\[2\]](#) AIR 2013 Supreme Court 1793