

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

WRIT PETITION No.29947 of 2014

ORDER:

This Writ Petition is filed seeking a Writ of Mandamus to declare the action of respondents in interfering with the possession of petitioner over house property on the land measuring 733 sq. yds bearing Municipal No.8-2-293/82/A/A situated at Road No.2, Banjara Hills, Hyderabad, by digging pits and proposing to construct a wall even though request for regularization of the same is pending before the respondent authorities since 23-11-2006, as illegal, arbitrary, contrary to principles of natural justice and violative of Articles 14 and 300-A of the Constitution of India, and for direction to respondents not to interfere with the possession of petitioner over the above property in any manner.

THE PLEADINGS OF THE WRIT PETITIONER

2. The petitioner contended that an extent of 1000 sq. yds situated at Road No.2, Banjara Hills, Hyderabad belonged to one Chunnu Singh, S/o.Narayan Singh. He alienated 500 sq. yds of his land under registered sale deed dt.27-11-1978 to Smt. Fazeelath Jahan Begum, who according to petitioner, executed a General Power of Attorney in her favour. The said

Chunnu Singh, according to petitioner, also entered into an agreement of sale dt.14-06-1978 with Smt.Fazeelath Jahan Begum whereunder he agreed to sell the remaining 500 sq. yds of land also in favour of latter. The said Chunnu Singh filed O.P.No.794 of 1991 before the Special Tribunal for Land Grabbing Cases-cum-Chief Judge, City Civil Court, Hyderabad against the Greater Hyderabad Municipal Corporation (R-3 herein) and Tahsildar, Shaikpet Mandal (R-6 herein) seeking a perpetual injunction restraining them from interfering with his possession. By judgment dt.20-02-2003, the Tribunal held that Sri Chunnu Singh and his legal heirs are not land grabbers and directed the Government to regularize the title and possession of petitioners as per the existing rules after collecting market value of property. This judgment attained finality and was not questioned.

3. According to petitioner, Smt.Fazeelath Jahan Begum executed a registered sale deed dt.08-11-1995 for an extent of 211 sq. yds in favour of one Syed Irshad Hussain Parvez and the said purchaser sold it to petitioner's husband Sri Khalid Shareef under a registered sale deed dt.10-10-1995. According to petitioner, her husband then gifted it in her favour of 08-08-2003. The petitioner also contended that Smt.Fazeelath Jahan Begum sold 500 sq. yds under 2 sale deeds dt.24-05-2000 and 25-04-2000 in her favour.

4. According to petitioner, Smt.Fazeelath Jahan Begum, after purchase of property both under registered sale deed dt.27-11-1978 and under agreement of sale dt.14-06-1978, approached the then Municipal Corporation, Hyderabad in 1979 seeking sanction for construction of a residential house therein. According to petitioner, 3rd respondent accorded permission for construction of a house and a house bearing No.8-2-293/82/A/A was constructed therein, and the said house was also assessed to property tax. Later, an extent of 267 sq. yds of out of 1000 sq. yds was acquired by respondents for road widening in exercise of their powers under Hyderabad Municipal Corporation act, 1955.

5. Smt. Fazeelath Jahan Begum also filed an application on 24-08-1985 for regularization of property bearing No.8-2-293/82/A/A. A report was then called from the 6th respondent and 6th respondent placed his recommendations before the District Level Committee on 04-01-1997. The said Committee agreed for regularization on condition of Smt.Fazeelath Jahan Begum paying Rs.36,65,000/- within 15 days.

6. Since the said amount was high, Smt.Fazeelath Jahan Begum filed W.P.No.29721 of 1998 before this Court to declare the notice in letter

No.14/5577/95 dt.01-03-1997 issued by 2nd respondent where under she was directed to pay the above amount to Government for regularization of her possession of property of 733 sq. yds as illegal, arbitrary and discriminatory and for a direction to respondents to fix the rate at Rs.150/- per sq. yd. as per G.O.Ms.No.960 (Revenue) dt.11-09-1992 in case of one Dr. D.T. Naik. The petitioner also got impleaded in the said Writ Petition. It was disposed on 10-11-2005 directing respondents to reconsider and refix the value of the site of petitioners in the said W.P. keeping in view the location of the land purchased by Smt.Fazeelath Jahan Begum and the lands which are subject matter of the decision rendered by this Court in another case decided by this Court and communicate the decision to petitioner expeditiously while setting aside the notice impugned therein directing petitioner to pay Rs.36,65,000/-.

7. According to petitioner, in spite of the said direction, nothing was done and so she got issued 2 legal notices dt.24-06-2006 and 15-8-2006 to the respondents. There was a reply dt.22-08-2006 on behalf of respondents in that regard to the counsel for petitioner. Ultimately, a decision was allegedly taken on 19-02-2006 by the Government that Smt.Fazeelath Jahan Begum should pay Rs.91,62,500/-.

8. Again the petitioner felt that this

determination was also very high and was higher than that was fixed earlier and which was set aside by this Court in W.P.No.29271 of 1998, and therefore submitted representations dt.09-09-2006 to 4th respondent, 08-11-2006 and 09-11-2006 to the 1st respondent and 18-09-2006 and 08-11-2006 to the Hon'ble Minister for Revenue also. The petitioner relied upon G.O.Ms.No.1843 Revenue (Assn.II) Department dt.26-10-2005 wherein the land falling in the same survey number as that of petitioner was regularized on an application made by a Member of Legislative Assembly and others.

9. However she paid Rs.91,62,500/- by challan on 23-11-2006.

10. In the meantime, proceedings under A.P.Land Encroachment Act, 1905 (for short 'the Act') were initiated against Smt. Fazeelath Jahan Begum and an order dt.6.11.2006 was passed under Section 6 of the said Act to dispossess Smt. Fazeelath Jahan Begum from an extent of 613 sq.yds on the ground that a sum of Rs.91,62,500/- was directed to be paid by Smt. Fazeelath Jahan Begum in the proceedings dt.19-02-2006, but the payment was made not within time, and therefore the Mandal Revenue Inspector, Shaikpet Mandal shall evict her.

11. It is alleged by the respondents that

pursuant thereto, under a panchnama dt.9.11.2006, the Govt. took possession of the land from Smt. Fazeelath Jahan Begum by erecting a notice board.

12. The petitioner questioned the same by way of appeal Case No.B/5469/2006 before the Revenue Divisional Officer, Secunderabad Division but the said appeal was rejected on 16.12.2006 the ground that the petitioner had not been issued any notice under Section 6 of the Act by the Mandal Revenue Officer, Shaikpet, that only Smt.Fazeelath Jahan Begum was issued the said notice but the petitioner, that she had no *locus standi* to file the appeal and the appeal was not maintainable.

13. The petitioner questioned the same in W.P.No.26551 of 2006.

14. In the meantime, 4th respondent issued proceedings dt.07-12-2006 stating that on 09-11-2006 possession of the land had been taken over by respondents under a panchanama; that a sign board was displayed saying that the land belongs to Government; that the petitioner is a stranger to the property and she had purchased it knowing fully well that Smt.Fazeelath Jahan Begum had no right over it and could not have transferred the property; that the petitioner has no *locus standi* to make any application for regularization of Government land; and she had paid an amount of Rs.91,62,500/- on her own

accord and the amount paid by her cannot be accepted and her application to reduce compensation is therefore returned. This was questioned by petitioner in this court by filing W.P.No.26598 of 2006.

15. In the meantime, G.O.Ms.No.166 Revenue (Assn.Pot) Department dt.16-02-2008 was issued by the Government introducing a scheme for regularization of land occupied by persons like the petitioner. The petitioner had also applied on 16-02-2008 under the said G.O. stating that she was willing to get transfer of rights to possession by paying the rate as fixed under the said G.O. After report of the Tahsildar dt.12-08-2008 and that of the District Collector, the District Level Committee forwarded the same to the Chief Commissioner of Land Administration, Hyderabad. The Chief Commissioner, by proceedings dt.12-01-2009, placed it before the Regularization Committee in its meeting held on 20-12-2008 and the said Committee also accepted the proposal for regularization of the property for a total amount of Rs.1,63,36,406/-. Thereafter G.O.Ms.No.690 Revenue (Assignments-III) dt.28-06-2011 was issued to petitioner asking the petitioner to remit a sum of Rs.71,73,906/- after giving credit to Rs.91,62,500/- already paid by her subject to condition that the petitioner shall withdraw all pending cases. A memo No.12/9680/08 dt.30-08-2011 was also issued reiterating the same.

16. In view of these proceedings, the petitioner withdrew W.P.Nos.26551 of 2006 and 26598 of 2006 on 06-09-2011.

17. Petitioner then approached respondent Nos.4 and 6 by representations dt.20-03-2012, 21-03-2012 and 24-03-2012 for issuing payment memo so that she can pay the balance amount, but the representations were not being disposed of.

18. So, the petitioner filed W.P.No.38449 of 2013 for a direction for implementation of G.O.Ms.No.690 dt.28-06-2011 stating that she and Smt.Fazeelath Jahan begum, the petitioners therein, were prepared to comply with all the conditions in the said G.O.

19. The said Writ Petition was disposed on 27-12-2013 directing the respondents to implement G.O.Ms.No.690 dt.28-06-2011 in all respects subject to petitioners complying with conditions prescribed therein and holding that if the District Collector did not want to implement the said G.O. within one month, he shall pass an order in writing and communicate the same to the petitioners.

20. Petitioner contends that in spite of the said order to District Collector, (who is R-4 herein) is refusing to implement the G.O. in view of interim orders passed by this Court in P.I.L.M.P.No.795 of 2013 in P.I.L. No.517 of

2013 wherein this Court had directed that no further steps shall be taken in the matter. However no written orders were communicated by the 4th respondent to the petitioner in this regard.

21. In the said P.I.L.M.P., petitioners therein prayed that the State of Andhra Pradesh represented by its Principal Secretary, Revenue Department, Secretariat, Hyderabad, the Chief Commissioner of Land Administration, Nampally, Hyderabad, the District Collector, Hyderabad and the District Collector, Ranga Reddy District should be restrained from taking any final decision in respect of *pending new applications* under G.O.Ms.No.166 dt.16-02-2008. The petitioner had sought impleadment therein and the said P.I.L. is still pending.

22. The petitioner alleged that on 05-10-2014 at about 10 a.m., the subordinates of respondents came to the property and started digging pits on the southern side of the property and when she questioned, they stated that they are going to construct a wall.

23. The petitioner, therefore, sought a direction to declare the said action of respondents as illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India and for direction not to interfere with her possession. She also filed W.P.M.P.No.37414 of 2014 for a direction to respondents not to interfere with the possession of petitioner in any manner and by directing

them to maintain *status quo ante* pending disposal of the Writ Petition.

THE INTERIM ORDER PASSED BY THIS COURT

24. On 07-10-2014, this Court passed the following order:

“Admittedly, the petitioner is in possession of the subject land. Petitioner’s application for regularization of their occupation is pending consideration with 1st respondent and there is an order dt.27-12-2013 passed by this Court in W.P.No.38449 of 2013 directing 2nd respondent to consider the petitioner’s application for regularization.

In this view of the matter, it is not open to the respondents to interfere with the petitioner’s possession and enjoyment of the subject land when their application for regularization of the said land is pending consideration. Therefore, there shall be interim direction as prayed for.”

THE COUNTER OF THE RESPONDENTS

25. The respondent Nos.2, 4 and 6 filed W.V.M.P.No.3348 of 2014 to vacate the said order along with a counter affidavit.

26. In the said counter affidavit, it is contended that the subject land in T.S.No.1/1/A/A part, Block-A, Ward No.9 co-relating to Sy.No.403 part of Shaikpet Village, is a Government land but Smt. Fazalath Jahan Begum had encroached 500 sq.yds therein alleging that she has purchased the land under the sale deed No.5185/1978

allegedly executed by Chunnu Singh in her favor. After discovering this fact, she applied on 24.8.1995 for regularization in respect of 1000 sq.yds including adjacent Govt.land ; that the Regularization Committee erroneously considered her case for regularization of 733 sq. yds and issued notice No.14/5577/1995 dt.01-03-1997 to her asking her to pay Rs.36,65,000/- within 15 days; that this was questioned by Smt. Fazalath Jahan Begum and petitioner in W.P.No.29721 of 1998; that during pendency of that W.P, G.O.Ms.No.1601, Revenue (ASN.I) Department dt.29-08-2005 came into force wherein certain guidelines for regularization of land were declared superseding the earlier G.Os. which dealt with regularization such as G.O.Ms.No.508 dt.20-10-1995 and G.O.Ms.No.515 dt.04-12-2003; that the said Writ Petition was allowed on 10-11-2005 setting aside notice No.14/5577/1995 dt.01-03-1997 and the Government was directed to consider the matter afresh; and thereafter vide proceedings dt.19-12-2006, Smt.Fazeelath Jahan Begum was asked to pay Rs.91,62,500/- within 15 days from the date of receipt of notice. It is contended that during the stipulated time, Smt.Fazeelath Jahan Begum failed to deposit the amount fixed.

27. Therefore, the orders were passed by 4th Respondent on 13-10-2006 to resume the land; thereafter proceedings under Section 7 of the Act were initiated by

letter dt.23-10-2006 addressed to Smt.Fazeelath Jahan Begum, but as she did not file any reply, order under Section 6 of the Act was passed and the land was taken into Govt. custody on 09-11-2006 under a panchanama. It is contended that a Government sign board was erected in the land and the said board is existing in the site. It is further contended that the petitioner questioned the proceedings dt.06-11-2006 of the Mandal Revenue Officer, Shaikpet Mandal, Hyderabad District resuming the land under Section 6 of the Act in W.P.No.23532 of 2006, which was dismissed on 22-12-2006.

28. It is stated that G.O.Ms.No.166 Revenue (Assn.Pot) Department dt.16-02-2008 was issued for transfer of rights on certain occupations/encroachments of specified categories of Unassigned Government lands ; that the petitioner in this W.P. had applied on 05-06-2008 for Transfer Of Rights of 733 sq. yds in Municipal No.8-2-293/82/A/A of road No.2 Banjara Hills, Hyderabad under said G.O.; that she and Smt.Fazeelath Jahan Begum also filed another joint application in respect of the same land; that enquiry was conducted by 6th respondent, who submitted a report dt.12-08-2008 to the District Collector, Hyderabad stating that out of 733 sq. yds, 175 sq. yds is built up area of RCC+ACC and the remaining 588 sq. yds is a vacant area; that this report was placed before the District Level Committee on 20-10-2008 and the

Committee recommended the case and proposals were submitted to the Chief Commissioner, Land Administration, Andhra Pradesh to place before the State Level Committee; and the State Level Committee also accepted the case and proposals were sent to the Government. It is admitted that G.O.Ms.No.690 dt.28-06-2011 was then issued by the Government for transfer of rights in the extent of 733 sq. yds in favour of petitioner on payment of Rs.1,63,36,406/- subject to conditions specified therein including to the condition as to withdrawal of cases filed by her.

29. It is submitted by respondents that in pursuance of the said guidelines the documents filed by the applicant have been scrutinized and it was noticed that Smt.Fazeelath Jahan Begum, the vendor of the petitioner, had purchased 500 Sq. yds from Sri Chunnu Singh and sold out an extent of 211.11 sq. yds. to Sri Irshad Hussain Parvez vide registered sale deed bearing Doc.No.2914/1985; that he in turn again disposed of this land to Sri Mohd. Khalid Shareef vide Doc.No.4428/1995 and the said Sri Mohd. Khalid Shareef executed a declaration of oral gift dt.23-02-2004 to his wife Smt.Wajida Khatoon, petitioner herein. It was also contended that Smt.Fazlath Jahan Begum had illegally executed an unregistered agreement of sale-cum-General Power of Attorney on 24-05-2000 in favour of Smt.Wajida Khatoon for 211. sq. yds. though she has no right or title

over the entire land of 500 sq. yds. and that she also executed another irrevocable General Power of Attorney in respect of entire 733 sq. yds in favour of Smt.Wajida Khatoon vide Doc.No.91/2000 dt.24-05-2000. Subsequently on 25-05-2000 Smt.Fazilath Jahan Begum executed two sale deeds bearing Doc.Nos.1625/2000 dt.25-05-2000 and 1629/2000 dt.25-05-2000 to an extent of 250 sq. yds each in favour of Smt.Wajida Khatoon. It is contended that the petitioner is putting forth a claim over the government land of 233 sq. yds which is not covered by any sale deeds with a malafide intention to knock away valuable government land for meager price under the guise of regularization.

30. It is contended that Sri Mohd. Khalid Shareef, husband of petitioner, who purchased 211 sq. yds from Smt.Wajida Khatoon himself filed a complaint petition dt.19-12-1995 before the District Collector, Hyderabad that Smt.Fazeelath Zahan Begum had purchased only 500 sq. yds and out of that she sold 211 sq. yds to his vendor, as such she has only 289 sq. yds in possession and not 733 sq. yds as she claimed.

31. It is contended that as per the guidelines in G.O.Ms.No.166, Smt.Wajida Khatoon is having documents prior to 2003 only in respect of 500 sq. yds and she has no valid documents for remaining extent 233 sq. yds; and moreover the same has been in physical

possession of the Government with a Government sign board erected thereon from the date of taking over possession by the then Tahsildar, Shaikpet Mandal on 09-11-2006. It is contended that in view of the said facts and in the interest of the State, the Collector, Hyderabad District vide Lr.No.12/9660/2006 dt.29-03-2012 submitted a factual report to the Chief Commissioner of Land Administration to revise the orders issued in G.O.Ms.No.690 Rev. (Assn.III) Dept., dt.28-06-2011, since the vacant land to extent 233 sq. yds which is illegally claimed by the applicant is in the elevated position and quite adjacent to main Road No.2, Banjara Hills with government sign board and it may be retained for public purpose.

32. The respondents admit that there is an order in favor of the petitioner in W.P.38449 of 2013 and also refer to the order in the PIL MP.NO.795/2013 in PIL No.517/2013. They further allege that in October,2014, taking advantage of continuous public holidays the petitioner allegedly trespassed into the land again and removed the Govt.sign board and tried to erect a board showing that the land belongs to her, that this was prevented and a new govt. sign board was erected in the land. It was denied that there was any interference with possession of petitioner and it is stated that Govt.land of 233 sq.yds to which petitioner does not have any valid documents is in possession of the Govt. only. The

respondents therefore denied the possession of the petitioner over the land of extent of 233 sq.yds and contend that the petitioner has misrepresented that she is in possession of 733 sq.yds.

REJOINDER OF PETITIONER

33. The petitioner filed a rejoinder and denied that she misrepresented any facts as alleged by respondents.

34. She contended that her vendor's vendor Mr.Chunnu Singh's legal heirs had filed O.P.No.794 of 1991 on the file of the Special Tribunal for Land Grabbing-cum-Chief Judge, City Civil Court, Hyderabad seeking perpetual injunction restraining the defendants, their agents etc. i.e. the then MRO and District Collector, from interfering with their possession in respect of land admeasuring Ac.1.20 gts in Sy.No. 129 (old) New Sy.No.403 situated at Shaikpet village, Banjara Hills, Hyderabad; that the said extent of land includes the subject land; and the said Court by its judgment held that Chunnu Singh is not a land grabber, that he has been officially assigned the land, and that he is in peaceful and legal possession since long time, but however, directed to regularize the title and possession. It is contended that the said judgment has become final and binding on every one concerned.

35. Petitioner reiterated that her vendor Smt.Fazeelath Jahan Begum purchased the land from Mr.Chunnu Singh admeasuring 1000 sq. yds and that the allegation that her vendor has encroached into the land is false. It was denied that since Smt.Fazeelath Jahan Begum noticed the fact that the land under her possession is a Government land, she applied for regularization on 24-08-1995 in respect of 1000 sq. yds claiming the adjacent government land. She stated that the allegation of respondents that the Regularization committee erroneously considered for regularization of 733 sq. yds at Rs.5,000/- per sq. yard in favour of Smt.Fazeelath Jahan Begum is false and that the said Committee considered her case in tune with the judgment of the Special Court.

36. The petitioner submitted that to give a quietus to the *lis*, when the Government issued G.O.Ms.No.166 dt.16-06-2008 for transfer of rights on certain occupation/encroachments of specified categories of unassigned Government lands, petitioner had filed application under the said G.O. She contended that the report of the Tahsildar stating that out of 773 sq. yds, 175 sq. yds is built up area and 558 sq. yds is vacant area is false and that actually, even as on date, 500 sq. yds of land is the constructed area and 233 sq. yds is left open for parking purpose.

37. She contended that the Government after considering the issue in detail, issued G.O.Ms.No.690 dt.28-06-2011 and petitioner had fulfilled the conditions stipulated therein together with G.O.Ms.No.166 in all respects.

38. Petitioner also contended that her vendor Smt.Fazeelath Jahan Begum had purchased 500 sq. yds under registered sale deed and another 500 sq. yds by agreement of sale from original owner Chunnu Singh. From out of 1000 sq. yds, she sold away 211 sq. yds to one Syed Irshad Hussain Parvez under registered document bearing No.2914/1985, who in turn sold the said land to petitioner's husband vide registered document bearing No.4428/1995 and her husband executed declaration of oral gift dt.23-02-2004 in petitioner's favour. From out of the remaining 789 sq. yds, petitioner contended that Smt.Fazeelath Jahan Begum had executed two registered sale deeds bearing Nos.1629/2000 and 1625/2000 in respect of 500 sq. yds in her favour and thus, petitioner had become the absolute owner of 711 sq. yds by virtue of registered documents. However, she stated that she had been in possession and enjoyment of 733 sq. yds after the road widening out of 1000 sq. yds. She stated that the Municipal Corporation had assessed the property tax for the entire 733 sq. yds and she had been paying the

property tax accordingly till date.

39. She denied that during October, 2014 taking advantage of continuous public holidays the petitioner trespassed into the land, removed the Government signboard and tried to erect her board. She stated that she is unaware of the panchanama dt.9.11.2006 and contended that no board was erected in the land as alleged. She contended that even assuming without admitting that the panchanama is true, still the respondents would not have considered petitioner's application for regularization since only the persons who are in occupation of the land are eligible for regularization; and that this is evident from definition of term "Occupation" in G.O.Ms.No.166 dt.16-02-2008, which states that the term "occupation" shall mean "*occupation on or before 31-12-2003 by way of structure or otherwise*". Therefore, she contended that she had been in possession of the land even prior to 31-12-2003 and thereafter and since the respondents tried to interfere with her possession over the subject property, she filed the present Writ Petition.

THE POINT FOR CONSIDERATION

40. Thus from the above pleadings the point for consideration is "whether the petitioner's plea for protection of her alleged possession of subject property can be granted or not?"

THE CONSIDERATION BY THIS COURT

41. The learned Counsel for the petitioner and the learned Govt. Pleader for Revenue (Telangana) reiterated the stand of their respective clients in their oral submissions.

42. Firstly the subject land being originally Govt.land is admitted by both sides. According to petitioner, Chunnu Singh was assigned this land and in O.P.794 of 1991 filed by him before the Special Tribunal for Land Grabbing –cum- Chief Judge, City Civil Court, Hyderabad for injunction, a judgment dt.20.2.2003 was rendered by the said Court wherein it was held that Chunnu Singh and his legal heirs were not land grabbers in respect of Ac.1.20 gts in Sy.No.129 corresponding to new Sy.No.403 at Shaikpet Village, Banjara Hills and the said Court directed the Govt. to regularize the title and possession of his legal heirs as per existing rules after collecting the market value of the property. There is no specific denial by the respondents of this fact in the counter affidavit filed by them. So this fact is deemed to be admitted. Also this fact is admitted by the learned Asst.Govt Pleader who appeared for the State in W.P.29721 of 1998 and is apparent from the order passed therein. This judgment of the Special Tribunal was admittedly not challenged by the State and has become final. There is no dispute that an adjudication by the

Special tribunal under the A.P.Land Grabbing Prohibition Act,1982 has the force of a *judgment in rem* as per Sec.7-A (4) of the said Act and is binding on all persons having interest in the land. Therefore Thus the respondents cannot act contrary to it and claim that the State is entitled to the land.

43. It is the case of the respondents that the claim of Smt. Fazeelath Jahan Begum for regularization of 733 sq.yds was erroneously considered by the State. But the fact remains that it was the District Collector, Hyderabad (4th respondent herein) who had recommended her case for regularization in the proceedings no.14/5577/1995 dt.1.3.1997 and asked her to pay Rs.36,65,000 in 15 days. This was no doubt set aside by order dt.10.11.2005 in W.P.29721 of 1998 at the instance of Smt. Fazeelath Jahan Begum and the petitioner (who had been impleaded therein by order dt.1.3.2005 in WPMP No.16278/2004 as 2nd petitioner), and the respondents were directed to reconsider and refix the value of the site. No plea was taken by respondents in that case and no argument was also advanced by them therein that the claim of Smt. Fazeelath Jahan Begum for regularization of 733 sq.yds was erroneously considered. Thus they are estopped by principles of constructive *res judicata* from raising such a plea here.

44. Admittedly the District Collector, Hyderabad

had again passed orders in I2/5577/1995 dt.19.2.2006 by fixing market value of the land as Rs.91,62,500/- . Even at that time no stand was taken by respondents that the claim of Smt. Fazeelath Jahan Begum for regularization of 733 sq.yds was erroneously considered.

45. According to the respondents on the ground that the said amount was not paid by Smt. Fazeelath Jahan Begum , the District Collector issued proceedings dt.13.10.2006 to resume the land; pursuant thereto, notice dt.23.10.2006 u/sec.7 of the A.P.Land Encroachment Act, 1905 (for short the 'Act') was issued by the Mandal Revenue Officer; and as she did not reply to it , an order dt.6.11.2006 u/Sec.6 of the Act was passed to evict her from 613 sq.yds of land. Respondents contend that a panchnama was allegedly conducted by the Mandal Revenue Officer on 9.11.2006 taking possession of the land. Thereafter proceedings dt.7.12.2006 were issued by the District Collector, Hyderabad proposing to return the sum of Rs.91,62,500/- paid by petitioner.

46. There is no dispute that petitioner had filed an appeal to the Revenue Divisional Officer, Secunderabad questioning the order dt.6.11.2006 of the Mandal Revenue Officer, Shaikpet against Smt. Fazeelath Jahan Begum. It was rejected on 6.12.2006 on ground that petitioner had no *locus standi* as notice under the Act

was issued to Smt. Fazeelath Jahan Begum only and not to petitioner. Admittedly petitioner had filed W.P.26551 of 2006 against the order dt.6.12.2006 of the Revenue Divisional Officer rejecting her appeal under the Act and W.P.26598 of 2006 questioning the order dt.7.12.2006 of the District Collector.

47. But after this, the State had issued G.O.Ms.No.166 Revenue (Assn.Pot) Department dt.16.2.2008; petitioner again applied for regularization of the land under this G.O. on 2.6.2008; her case was recommended by the Tahsildar , Shaikpet (Respondent no.6 herein) on 12.8.2008; through the District Collector, this was forwarded to District level Committee, which forwarded it to the Chief Commissioner for Land Administration; the latter also recommended to the State Government for regularizing the 733 sq.yds in petitioner's possession for Rs.1,63,36,406/-; and the State Government issued G.O.Ms.No.690 dt.28.6.2011 for transfer of rights in respect of the said land to petitioner. She was asked to pay Rs.71,73,906/- balance, since Rs.91,62,500/- was already paid by her subject to condition that she withdrew all pending cases. These facts are admitted by respondents. It is only because of this that petitioner withdrew both W.P.26551 of 2006 and W.P.26598 of 2006 on 6.9.2011.

48. It is pertinent to note that the Govt. had

issued G.O.Ms. No.166 Revenue (Assn.Pot) Department dt.16.2.2008 framing the Andhra Pradesh Transfer of Rights of certain specified categories of occupants of Unassigned Government Lands Policy, 2008. It provided for comprehensive guidelines for Transfer of Rights to certain specified categories of occupants of unassigned Government Lands in the context of longstanding occupation of smaller extents by members of the weaker sections, slum dwellers, low and middle income group people etc. by way of structures or otherwise. Under the said policy , *the occupation requisite for making an application for regularization is occupation on or before 31-12-2003 by way of a structure or otherwise.* The petitioner clearly fulfilled this requirement since she was in possession on or before 31-12-2003 in respect of this land. It is because of this reason that her application for regularization was favourably considered by the then Government and G.O.Ms.No.690 Revenue dt.28-06-2011 was issued in her favour.

49. Having regard to the said G.O., the stand of respondent Nos.4 and 6 that petitioner had played fraud and made a claim for the entire 733 sq. yds cannot be accepted. Since the office of 6th respondent itself had recommended the case of petitioner for regularization of 733 sq. yds, the 6th respondent is estopped from stating as she did in para-9 of counter affidavit/vacate stay

petition that petitioner could not have made a claim for 233 sq. yds out of 733 sq. yds, more so when upto the level of the State Government, the petitioner's claim was recommended and approved.

50. Even at the time of consideration of case of petitioner under G.O.Ms.No.166 dt.16.2.2008, and while passing G.O.Ms.No.690 dt.28.6.2011, no dispute was raised about the entitlement of petitioner to the land of 733 sq.yds by respondents basing on the panchnama dt.9.11.2006. Also in W.P.38449 of 2013, when petitioner sought implementation of the said G.O.Ms.690, no plea on these lines was raised by respondents. Admittedly that W.P. was disposed off on 27.12.2013 in petitioner's favor. Thus the plea raised herein by respondents about the entitlement of petitioner to the land of 733 sq.yds, basing on the panchnama dt.9.11.2006, is barred by constructive *res judicata*, is not bonafide; and their conduct in urging this plea now, and not raising it in proceedings leading to issuance of G.O.Ms.690 dt.28.6.2011, is strongly deprecated.

51. It may be that petitioner filed W.P.23532 of 2006 against the proceedings dt.6.11.2006 of the Mandal Revenue Officer allegedly resuming property from Smt.Fazeelath Jahan Begum and the said Writ was dismissed as infructuos. But a reading of the order in W.P.No.23532 of 2006 indicates that the said Writ Petition

was dismissed as infructuos on 22.12.2006 in view of the subsequent events. i.e the order dt.06-11-2006 being questioned by the petitioner before the Revenue Divisional Officer by way of appeal, it's dismissal on 16-12-2006, the petitioner questioning the same in W.P.No.26551 of 2006. It was on account of these subsequent events that W.P.No.23532 of 2006 was dismissed by this Court . Therefore, the dismissal of the said Writ Petition does not bar the petitioner from filing the present Writ Petition.

52. In the counter affidavit/vacate stay petition, a plea is also filed referring to the order of Division Bench dt.30-12-2013 in PILMP No.795 of 2013 in PIL No.517 of 2013 wherein this Court had stated that "*no further steps should be taken in the matter*", as a restraint on the respondents from doing anything further pursuant to G.O.Ms.No.690 dt.28-06-2011 granted in favour of petitioner. This stand is equally untenable for the reason that in the said PILMP the prayer was to direct the State of Andhra Pradesh represented by its Principal Secretary, Revenue Administration, Secretariat, Hyderabad, the Chief Commissioner of Land Administration, Nampally, Hyderabad, the District Collector, Hyderabad and the District Collector, Ranga Reddy District from taking any final decision in respect of *pending new applications* under G.O.Ms.No.166 dt.16-02-2008. Admittedly, 2½ prior to that date, G.O.Ms.No.690 dt.28-06-2011

had been issued and a final decision had already been taken to regularize the land of 733 sq. yds in petitioner's occupation subject to complying with certain conditions by petitioner.

53. The petitioner was prevented from making the payment under the said G.O. by respondents deliberately and that was why the petitioner had filed W.P.No.38449 of 2013 and sought a direction to 4th respondent herein to take the amount of Rs.71,73,906/-. The said Writ Petition was allowed on 27-12-2003 directing the 4th respondent to receive the said amount within one month and in case he refuses to do so, to pass a reasoned order.

54. The order in W.P.No.38449 of 2013 has not been questioned by respondents and it is prior in point of time to the order dt.30-12-2013 in PILMP No.795 of 2013 in PIL No.517 of 2013.

55. In my considered opinion, the order dt.30-12-2013 in PILMP No.795 of 2013 in PIL No.517 of 2013 would not in any way come in the way of respondents taking the money offered by petitioner because a final decision had already been taken as far as the petitioner is concerned in G.O.Ms.No.690 and the order in PILMP must be understood in the light of the prayer in PILMP i.e. that if already a final decision has been taken, the order in

PILMP would not apply.

56. In the vacate stay petition/counter affidavit, it is also contended that petitioner had trespassed into the land and removed the Government signboard and tried to erect her board displaying that the land belonged to her. This allegation is denied by petitioner in the reply affidavit filed by her. Moreover, it is contended in the counter affidavit that the Special Revenue Inspector of the Shaikpet Mandal prevented the same and re-erected a Government signboard in the vacant land and a photograph of the signboard erected after taking possession of land on 09-11-2006 was filed in the material papers at page No.201 of the material papers. The said photograph indicates that the words "Government of Telangana State" are mentioned in the notice board. Admittedly, the State of Telangana came into existence only on 02-06-2014 and there was no State of Telangana on 09-11-2006. So this allegation of 6th respondent is clearly a false allegation and it cannot be believed that possession of the land was taken on 9.11.2006 under the said panchnama.

57. It is the case of 6th respondent as set out in para-5 of the counter affidavit, that the panchnama dt.9.11.2006 was prepared after issuance of notice under Section 7 of the A.P. Land Encroachment Act,1905 to Smt.Fazeelath Jahan Begum. It is not the case of

respondents that they had issued any notice to petitioner under the said Act or passed any orders against the petitioner. The possession of petitioner in respect of land on 23-10-2006 when proceedings under Section 7 of the Act were initiated against Smt.Fazeelath Jahan Begum, cannot be disputed by respondents because on the ground that the petitioner was in possession of the land on or before 31-12-2003 itself (as required by G.O.Ms.No.166 dt.16-02-2008), G.O.Ms.No.690 dt.28-06-2011 had been issued accepting the request of petitioner for regularization of land in her occupation. There is nothing to show that petitioner was dispossessed by respondents from the land in accordance with law. Therefore, on the date of said panchanama, it was the petitioner who was in possession and not Smt.Fazeelath Jahan Begum. Since the entire proceedings under the Act were not against petitioner, panchanama dt.09-11-2006 allegedly prepared pursuant to order u/s.6 of the Act against Smt.Fazeelath Jahan Begum has to be held to be not binding on petitioner and it is liable to be ignored.

58. Also, the petitioner admittedly had questioned the order dt.06-11-2006 under the said Act in the appeal filed by her to the Revenue Divisional Officer, who also rejected it on 16-12-2006 on the ground that the proceedings were issued against Smt.Fazeelath Jahan Begum and not against the petitioner. Even though the petitioner questioned this order in W.P.No.26551 of 2006,

because of the condition in G.O.Ms.No.690 that the petitioner should withdraw all litigation, which was reiterated in the Memo No.12/9680/2008 dt.30-08-2011, the petitioner had withdrawn the said Writ Petition. Having made the petitioner to withdraw the said Writ Petition, the respondents are estopped from now contending that the dismissal of the said Writ Petition would operate as a bar to grant any relief to petitioner. The respondents cannot be allowed to blow hot and cold in this manner. Therefore, for all intents and purposes it has to be presumed that the petitioner was in possession of the land and not the respondents, notwithstanding the panchanama dt.09-11-2006 relied upon by 6th respondent.

59. No doubt it was contended that the Collector, Hyderabad District vide Lr.No.12/9660/2006 dt.29-03-2012 submitted a factual report to the Chief Commissioner of Land Administration to revise the orders issued in G.O.Ms.No.690 Rev. (Assn.III) Dept., dt.28-06-2011, since the vacant land to extent 233 sq. yds which is illegally claimed by the applicant is in the elevated position and quite adjacent to main Road No.2, Banjara Hills with government sign board and it may be retained for public purpose. Till date the said G.O. is not cancelled and no orders have been passed by the Chief Commissioner of Land Administration revising the decision to regularize the

extent of 733 sq.yds and W.P.38449 of 2013 filed by petitioner was allowed asking respondents to implement the said G.O and the said order also was not challenged.

60. The learned Government Pleader appearing for respondents had fairly conceded that respondents have no objection for considering the case of petitioner for regularization of the land in question, but for the order dt.30-12-2013 in PILMP No.795 of 2013 in PIL No.517 of 2013. But as explained above, the said order does not come in the way of respondents in acting upon G.O.Ms.No.690

dt.28-06-2011 particularly in the light of the Writ of Mandamus issued by this Court on 27-12-2013 in W.P.No.38449 of 2013 at the instance of petitioner and Smt.Fazeelath Jahan Begum to implement G.O.Ms.No.690 dt.28-06-2013, which order has not been challenged by respondents.

61. In this view of the matter, the Writ Petition is allowed, and respondents are restrained from interfering with the possession and enjoyment of petitioner over the subject property in any manner. The respondents are further directed to remove the signboard erected by them as indicated in photograph filed by them at page No.201 of the papers filed along with Vacate Stay application forthwith. The respondent no.s 2,4 and 6 shall also pay costs of

Rs.15,000/- (Rupees Fifteen Thousand only) to petitioner.

62. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-03-2015

Vsv/*