

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

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WRIT PETITION No.11588 of 2015

BETWEEN

V. Narayana.

... PETITIONER

AND

State of Telangana, Rep. by its Principal Secretary, Revenue Department, Secretariat,
Hyderabad and others.

...RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 30.11.2015

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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

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ORDER:

I have heard Mr. N. Sreedhar Reddy, learned counsel for the petitioner and learned Advocate General appearing for the respondents. Though the vacate stay petitions were listed for hearing, learned counsel on either side have argued the writ petition itself. Hence, the same is being disposed of by this order.

2. Petitioner seeks a Mandamus against the action of the respondents in seeking to dispossess him from an extent of Ac.5.00 guntas forming part of Sy.No.129/101 correlating to T.S.Nos.24(P), 5(P) and 4(P) situated at Shaikpet Village and Mandal, Hyderabad District.

3. The averments in the affidavit of the petitioner state that the subject property was allotted to one Smt. Afzalunnisa Begum by the then Sarfekhas and a patta also was issued to her by recording her name in the pahanies. Subsequently, under a letter dated 12 ABAN 1340 Fasli, the Sarfekhas intimated the Tahsildar (West) with regard to sanction of patta and directed to deliver possession to her by recording her name in the Jamabandi. Accordingly, the Tahsildar (West) directed the Shaikpet Patwari to record the phodi (division of survey number) and the same was stated to have been delivered to Smt. Afzalunnisa Begum. Petitioner, further, states that after town survey the land was assigned T.S.Nos.24(P), 5(P) and 4(P).

The said Smt. Afzalunnisa Begum was stated to be paying taxes and was in possession as recorded in Khasra Pahani and Seesala Pahani and thereafter, she had executed a sale deed on 20th Farwardi 1357 Fasli in favour of one B.V. Ramaiah and the said purchaser's name was also recorded in the pahani.

4. Petitioner, being legal heir of B.V. Ramaiah, is stated to have succeeded to the said property. It is stated that under G.O.Ms.No.942 dated 26.03.1983 the then Government of Andhra Pradesh cancelled several sale deeds executed by the Sarfekhas including the allotment to Smt. Afzalunnisa Begum. Several writ petitions were filed challenging the same in WP.No.15548 of 1987 and batch, which were allowed on 31.08.1990, against which the Government of Andhra Pradesh preferred writ appeals in WA.No.859 of 1991 and batch whereunder the Division Bench by order dated 13.02.2001 set aside the order of the learned single Judge by directing the Government to consider regularization of the said land. Accordingly, several persons approached the Government seeking regularization. Since petitioner's vendor also sought similar relief but was not a party to the writ petitions and writ appeals, the petitioner herein filed WP.No.29755 of 2010, which was disposed of on 02.12.2010 directing consideration of application of the petitioner for regularization. Petitioner claims that the balance land in the same survey number having been allotted to third respondent - police department, petitioner is in possession of the remaining three acres of land along with 23 dwelling huts in the said land and is also paying electricity consumption charges vide receipt produced along with the writ petition. While petitioner's application for regularization is stated to be pending, alleging that there are attempts made to dispossess him, the present writ petition is filed.

5. On 21.04.2015, this Court had passed the following order:

"The petitioner was hopeful that a favourable order would be passed in his favour on account of the order dated 31.08.1990, passed by this Court in WP.No.15548 of 1987 and batch and in W.A.No.859 of 1991 and batch by a judgment dated 13.02.2011. The petitioner asserts that he is in possession of the land over an extent of Ac.5.00 cents in Sy.No.129/101, which is correlating to the land situated in T.S.No.24(P), 5(P) and 4(P), Shaikpet Village and Mandal, Hyderabad District. Petitioner places reliance on the photographs of huts as well as the Electricity Bills of Service Connection No.A9028871 dated 06.04.2015, issued by the Electricity Department.

A perusal of the earlier orders in W.P.No.15548 of 1987 and batch and W.A.No.859 of 1991 and batch and subsequent developments which have taken place, leave no manner of doubt that the petitioner claims with regard to his legal right and title on account of his purchase came to be negative. However, liberty was given to the petitioner to approach the Government for seeking regularization of his occupation on payment of market value and the same was under consideration by the Government as evidenced by a Memo No.34404/Assn.III(1)/2012 dated 15.02.2014. In that view of

the matter, *prima facie*, petitioner or his men are in possession at least over an extent of Ac.2-00 cents, as on today.

As it is submitted by the petitioner some part of the land has already been taken possession by the Police Department, the respondents-authorities are using force to evict the petitioner.

Under the circumstances, without expressing any opinion with respect to the right of the petitioner and his pending application, the respondent-authorities are at liberty to initiate appropriate proceedings, in accordance with law, and evict the persons, who are in occupation of the land over an extent of Ac.5-00 cents situated in Sy.No.129/101, which is correlating to the land situated in T.S.No.24(P), 5(P), and 4(P), Shaikpet Village and Mandal, Hyderabad District.

Post on 23.04.2015.”

6. However, while there was no positive direction, as would be evident from above, basing on the observation in the order that,

prima facie, the petitioner or his men are in possession at least over an extent of Ac.2.00 cents, as on today, on behalf of the revenue authorities, learned Government Pleader for Revenue has filed vacate petition, being WVMP.No.2801 of 2015 and the Home Department also filed vacate petition, being WVMP.No.2150 of 2015.

7. Counter affidavit of the revenue authorities denies the petitioner's claim asserting that there is no such Sy.No.129/101 in existence and while TS.No.4 is classified as 'G-Canal' (Nala), T.S.Nos.5 and 24 are classified as Government Land in Town Survey Land Records. The unregistered sale deed in favour of the father of the petitioner executed by Smt. Afzalunnisa Begum, on the basis of which the petitioner claims title and possession, is strongly disputed in the counter affidavit and also by the learned Advocate General appearing for respondents. While denying the allegations of the petitioner, it is asserted that the possession and enjoyment of the land continues to vest with the Government and the same is already allotted to Police Department. It is also stated that one Ghousia Begum and others claiming the very same land filed WP.No.29269 of 2010, which came to be disposed of by order dated 02.12.2010. Similarly, petitioner also filed WP.No.29755 of 2010 complaining of inaction of his application for regularization dated 11.10.2010, which also came to be disposed of by this Court by order dated 02.12.2010 and relevant portion thereof

is as follows:

“Today, I have disposed of W.P.No.29269 of 2010. Though the nature of grievance in this writ petition is similar to that in W.P.No.29269 of 2010, the learned Special Government Pleader submitted that the land, which the petitioner is claiming, squarely falls in T.S.No.24, which was allegedly allotted to the Police Department in the years 1981 and 1982 and therefore, the Police Department cannot be restrained from constructing barracks. The learned Special Government Pleader, however, assured that the petitioner’s application for regularisation of the land will also be considered along with the

application of the petitioners in W.P.No.29269 of 2010.

Having regard to this submission, the writ petition is disposed of by placing on record the above-noted statements of the learned Special Government Pleader.

As a sequel to disposal of the writ petition, W.P.M.P.Nos.37919 and 37920 of 2010 filed by the petitioner for interim relief are disposed of as infructuous.”

It is further stated in the counter affidavit that while there are further more legal proceedings initiated by the petitioner including CC.Nos.38 and 628 of 2011 alleging violation of the earlier orders of this Court, the present writ petition is also filed seeking a Mandamus against interference by the respondents.

8. Counter affidavit of the home department is not very relevant inasmuch they only claim to be allottees from the Government.

9. Mr. N. Sridhar Reddy, learned counsel for the petitioner, has filed a reply affidavit and has also submitted that the judgment in the writ appeals and the order in WP.No.29755 of 2010 extracted above clearly accepts the possession of the petitioner and thereby, even if petitioner’s title is disputed, the respondents cannot physically interfere and try and dispossess the petitioner without following due process of law. Learned counsel also places strong reliance upon payment of electricity bill, copy of which is produced along with the writ petition dated 06.04.2015 to substantiate that the petitioner has service connection on the subject land and along with the reply affidavit the petitioner has filed a plan, which is stated to have been produced by the Tahsildar, Shaikpet Mandal in one of the contempt cases, referred to above, showing the police barracks and the portion of the

petitioner described as Pancha Murthy Society Claim. Learned counsel would submit on the basis of these documents and the order directing regularization that it clearly supports the contention of the petitioner that he is in possession.

10. Learned Advocate General, on the other hand, submits that the very document of sale, allegedly, made in favour of the father of the petitioner is an unregistered document, which has no legal validity and further submits that no such survey number exists in the revenue record of Shaikpet village and that the application of the petitioner for regularization was made only on 11.10.2010 and the same was rejected on 05.06.2015 and the said rejection is not questioned by the petitioner. Learned Advocate General also submits that there is no finding in any of orders in the earlier writ petitions and writ appeals accepting the claim of the petitioner or other persons claiming the land and merely with a direction to consider their request for regularization, the writ appeals were disposed of. Even in the subsequent order in WP.No.29755 of 2010 except directing consideration of the regularization application of the petitioner, no further direction was given. Learned Advocate General, therefore, submits that there being no evidence of possession of the petitioner, the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India cannot be invoked by the petitioner merely for the purpose of seeking a Mandamus, as he could as well approach the common law Courts for appropriate relief.

11. I have considered the rival contentions and in my view, the relief sought for in the writ petition is merely a relief in the nature of perpetual injunction without any declaratory relief. The writ petition, therefore, appears to be merely a suit for perpetual injunction filed by converting it into a proceeding under Article 226 of the Constitution of India, which is clearly impermissible. Secondly, it is significant to note that in the writ petitions and writ appeals filed by various persons in occupation, the orders therein merely permit the writ petitioners therein to make appropriate application for regularization.

Though neither the petitioner nor his vendor was a party thereto, he availed similar direction in WP.No.29755 of 2010 dated 02.12.2010 as per the order extracted above. Thus, there is no order of this Court even accepting, *prima facie*, title of the petitioner.

Further, an application made by a person seeking regularization by itself presupposes that the person accepts the title of the Government. Petitioner also made an application for

regularization on 11.10.2010, which is stated to have been rejected only recently on 05.06.2015.

In addition to that, a claim for title having been based upon an unregistered sale deed said to have been executed by

Smt. Afzalunnisa Begum in favour of B.V. Ramaiah, no transfer of title can be claimed either by the said purchaser or by the petitioner,

who claims to be his legal heir. It is perhaps in these circumstances that no relief based on title is claimed by the petitioner.

12. To the extent of claim for possession, I hardly find any document in support thereof except payment of one electricity bill dated 06.04.2015 and plan said to have been produced by the Tahsildar in one of the contempt cases, which by itself cannot be taken as any proof of possession. Most significantly, if the petitioner claims to be owner and possessor of Ac.3.00 guntas land in Banjara Hills, neither there is evidence of filing any declaration under Urban Land (Ceiling and Regulation) Act, 1976 nor there is evidence of entries in the Town Survey records. Further, the town survey numbers claimed by the petitioner are stated to correlate to TS.No.4 classified as 'G-Canal' (Nala), T.S.Nos.5 and 24 classified as Government Land in Town Survey Land Records.

13. Thus, if the petitioner and his predecessors are claiming possession since 1357 Fasli, for the last about 50 years several documents could establish their possession. However, except a single electricity bill, no document is produced by the petitioner.

I am, therefore, unable to see either any, *prima facie*, case or balance of convenience in favour of the petitioner.

Hence, the writ petition is liable to be dismissed and is accordingly dismissed. As a sequel, the miscellaneous applications,

if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

November 30, 2015

DSK

