

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.2960 of 2003

Date: 21.01.2015

Between:

The Indian Institute of Economics, 11-6-841,
P.B.No.14, Red Hills, Hyderabad, rep.by its
Secretary.

.. Petitioner

AND

The Government of Andhra Pradesh, rep.by its
Principal Secretary, Revenue Department,
Secretariat, Hyderabad and two others.

.. Respondents

The Court made the following:

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ORDER:

Petitioner with intent to establish permanent building for the petitioner-institution in Hyderabad, requested the Government for allocation of Government land on lease basis. Petitioner identified three plots for establishment of such institution. As per the choice of the petitioner, land to an extent of 2000 square yards in Masab Tank was identified and granted on lease to the petitioner for a period of 99 years on free of cost. Order to this extent was issued in G.O.Ms.No.1043 Revenue Department dated 17.07.1965. The decision to grant lease was subject to certain conditions incorporated in the order. Two conditions relevant for the case are, (a) petitioner should complete the construction work within a period of three years; and (b) should pay land revenue. As a consequence to the above decision, lease deed was executed between the State and the petitioner. The lease was for a period of 30 years commencing from 18.10.1965 on payment of annual rent of Rs.1/-. Possession of the said property was handed over to the petitioner on 30.03.1966 under the cover of pancahnama vide Letter dated 17.03.1966.

2. Alleging that the conditions imposed in G.O.Ms.No.1043 are not complied with and other unauthorized occupants have constructed houses and living there for more than 30 years and as Government was inclined to consider the request for regularization of the unauthorized constructions made by them, orders were issued in G.O.Ms.No.1149 Revenue (Assn.III) Department, dated 28.12.2002 cancelling the orders issued in G.O.Ms.No.1043 dated 17.07.1965. Assailing the same, this writ petition is instituted.

3. Heard Sri C.Gunaranjan, counsel for the petitioner and learned Government Pleader for Revenue (Telangana) for respondents.

4. Learned counsel for the petitioner contends that petitioner could not construct building in the said premises given to him and start the institute since there were illegal occupants on the premises and they have not allowed the petitioner to enter into the premises and to undertake construction work. Encroachers instituted O.S.No.109 of 1968 claiming that the land belongs to them. It was initially decreed in favour of the plaintiffs in the year 1975. Aggrieved thereby, petitioner filed C.C.C.A.No.120 of 1975 before this Court. The Appeal was allowed and the matter was remanded to the lower Court for fresh consideration. On fresh consideration of the suit, suit was dismissed by judgment dated 29.07.1982. Aggrieved thereby, encroachers filed C.C.C.A.No.42 of 1982 which was also dismissed. The encroachers formed into association in the name of Indrapatnam Welfare Association. The Association filed O.S.No.2526 of 1982 claiming perpetual injunction against the petitioner institution and the same was dismissed on 25.03.1992. Appeal Suit No.71 of 1992 filed against the judgment was also dismissed.

5. Petitioner instituted Land Grabbing Case No.108 of 1989 alleging that illegal occupation and encroachment by Indrapatnam Welfare Association and the same was

allowed by judgment dated 11.08.1994. Aggrieved thereby, encroachers filed W.P.No.17024 of 1994. The same was dismissed by judgment dated 12.12.2000 by this Court. Indrapatnam Welfare Association also filed W.P.No.20368 of 2000 before this Court. Initially there was an order of *status quo*. The writ petition was dismissed as withdrawn by order dated 12.07.2013.

6. Referring to the above legal proceedings, learned counsel for the petitioner submits that petitioner was compelled to fight litigation since the year 1968 and by fighting the litigation, petitioner was protecting the property of the State. In view of the long pending litigation, petitioner could not take steps to undertake construction of the building and in the peculiar circumstances, the conditions imposed in G.O.Ms.No.1043 are not complied with. Learned counsel, therefore, submits that non-compliance of the conditions in G.O.Ms.No.1043 was not deliberate and wilful. Petitioner was helpless on account of the litigation pursued by the unauthorized occupants. The State was not coming to the aid of the petitioner in complying with the earlier understanding.

7. Learned counsel further contends that order issued in G.O.1149, impugned in this writ petition was not preceded by notice and opportunity of hearing. If only State afforded an opportunity to the petitioner before terminating earlier allocation of land, petitioner would have explain the reasons for not undertaking construction of building in the premises assigned to the petitioner. On this ground also, order is liable to be set aside. It is also contended that one of the conditions of the lease was the lease can be cancelled only if the land is required for public purpose, whereas in the instant case, cancellation is not for public purpose, but it was intended for regularisation of unauthorized occupations.

8. Learned Assistant Government Pleader submits that one of the conditions of the allocation of the land to the petitioner was that petitioner should undertake construction of building within a period of three years. The land was given free of cost with fond hope that petitioner would establish institute, which would be useful to the general public at that time as good academic facilities in the field of Economics were not available at that time, as they are now. Thus, the very purpose of allotting prime land to the petitioner free of cost on a long lease was not achieved as petitioner has not taken immediate steps to undertake construction. Though the possession of the land was handed over to the petitioner on 30.03.1966, till 1968, at least, no effort was made by the petitioner to undertake construction of the building. Petitioner allowed unauthorized occupations and was fighting proxy litigation. Since conditions imposed in G.O.Ms.No.1043 are not complied with, validly decision was taken to cancel earlier permission granted and there is no illegality or irregularity in taking such course.

9. Learned Assistant Government Pleader further contends that the clause-1 in

G.O.No.1043 clearly mandates completion of construction work within a period of three years, whereas petitioner has not even commenced the construction work and cancellation of orders of allotment of the land on such violation was automatic. Thus, there was no requirement of issuance of further notice. He further contends that at no point of time petitioner applied to the Government for seeking extension of time to comply with the conditions nor to sought for allocation of alternate land.

10. Learned Assistant Government Pleader further contends that as encroachers were allowed and those persons were in occupation for a long time, the issue was considered by the revenue authorities and having found that constructions have already come up and people are in occupation for a long time, the request made by them to regularize dwelling houses constructed by them was favourably considered and report to this extent was submitted by the Mandal Revenue Officer in accordance with the scheme of regularization notified in G.O.Ms.No.508 Revenue Department dated 20.10.1995. In view of the said report, the District Collector recommended to the Government for cancellation of the assignment of land to the petitioner and for consideration of the prayer for regularization of illegal occupations.

11. As seen from the order in G.O.Ms.No.1043, while acceding to the request of the petitioner to allocate suitable land for the purpose of establishment of institute of economics, four conditions were imposed. Two of the conditions were, completion of construction of buildings within a period of three years and petitioner should pay land revenue on the land allotted to the petitioner. As noted in the order impugned in this writ petition, these two conditions are not complied with.

12. The chronology of events disclose that possession of the land was handed over to the petitioner on 30.03.1966 and the suit was instituted by the encroachers in the year 1968. Till that date no action was taken by the petitioner to commence construction of the work. Petitioner does not deny the factum of handing over of possession of the land. It is also appropriate to notice that this piece of land was identified by the petitioner. Thus, it was the petitioner's choice and possession was given to the petitioner free of encumbrances after conducting panchanama. The factum of handing over the possession by conducting panchanama is not denied by the petitioner. It would thus appear that there were no illegal occupants when possession was handed over as sought to be contended later.

13. In spite of the fact that possession was given on the land chosen by the petitioner, for almost two years, no steps were taken by the petitioner to commence construction. No satisfactory explanation is coming forth as to why no steps were taken to commence construction of building till the suit was instituted. It appears that there was no injunction granted by the trial Court in O.S.No.109 of 1968. When Court specifically asked as to

whether any injunction was granted, learned counsel stated that there is no material available with the learned counsel to show that injunction was granted.

14. As seen from the order in G.O.Ms.No.1043, grant of lease in favour of the petitioner is subject to fulfilment of four conditions mentioned therein and the fact that condition nos.1 and 4 are not complied with is not in dispute. Therefore, it cannot be said that the Government has exceeded its power and authority in taking steps to cancel the earlier orders issued in favour of the petitioner. Admittedly, no construction is made.

15. As learned Assistant Government Pleader contends that once two conditions imposed in G.O.Ms.No.1403 are not complied with and Government cancels lease granted in favour of the petitioner, how the Government would utilize the land thereafter cannot be the concern of petitioner. Admittedly, there were encroachers and people were living after constructing houses and such encroachments even according to the admission of the petitioner are made prior to the year 1968. Thus, for more than 45 years people are in occupation. Furthermore, as recorded in para-3 of the G.O.No.1149, dated 28.12.2002 simultaneously request was made by the Indrapatnam Welfare Association for regularization of the unauthorized structures made by them and having regard to the fact that they are in occupation for more than 30 years, proposals have been submitted to the Government to regularize the possession. Therefore, Government has taken note of such proposals while cancelling the earlier order issued in favour of the petitioner. In the peculiar facts of this case, Government has no other option but to cancel the lease as it is impossible for the petitioner to construct buildings to establish the institute as originally proposed.

16. The reliefs sought in the writ petition are two fold; firstly to set aside G.O.Ms.No.1149 and secondly to execute lease deed in favour of the petitioner institution. As a consequence to the setting aside of G.O.No.1149, if the lease is renewed in favour of the petitioner, it would mean that petitioner would have to be put in possession of the land in issue, whereas the land is not free from encumbrance.

Houses have come up and several people are in occupation of the said land for more than 40 years. Therefore, it would be futile exercise to set aside the G.O., without giving direction to evict the unauthorized occupants and remove existing structures before handing over the possession of the land. No such relief, therefore, can be granted without hearing parties who are likely to be effected. Petitioner is aware of the persons who are likely to be effected. Petitioner has been fighting litigation all through with those persons. Even assuming that petitioner is entitled to relief sought in the writ petition, no such relief can be granted in the absence of the persons who are likely to be effected.

17. In the facts of this case, it cannot be said that the order impugned is vitiated on the ground that petitioner was not put on notice before cancelling the orders passed in his

favour. As already noticed, four conditions were imposed in G.O.Ms.No.1043, out of which two conditions are not complied with. As noted in the impugned G.O., the order pre-supposes continuation of lease of premises subject to fulfilment of those conditions and once those conditions are not fulfilled, it would be automatic cancellation of the lease.

18. The Court cannot be oblivious to the fact that undue favour was conferred on the petitioner in the year 1965 by granting prime land to the petitioner to establish an institution for its own benefit on a long lease by charging rent of Rs.1/- per year on the premises. Admittedly, the institution has not come in to existence. Granting the relief as sought by the petitioner would amount to reviving the lease granted to the petitioner in the year 1965 for a period of 90 years on a nominal rent of Rs.1/- per year. The land which petitioner is claiming is located at the prime place. It is a private organization intending to establish the institute for gain. No such relief can be granted which would amount to offering the land free to a private person at this distance of time. The very object of establishing institute in the Economics field in the year 1965 has not served its purpose. To a great extent petitioner is to be blamed. Court cannot exercise equitable jurisdiction to grant relief prayed by petitioner.

19. Having regard to the same, the writ petition is liable to be dismissed. Accordingly, writ petition is dismissed. No costs. Miscellaneous petitions if any pending in this writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

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