

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.21906 of 2011

ORDER:

Entries made in Town Survey of Land Records describing the property in dispute as Government property is subject matter of dispute in the present writ petition.

The facts in issue are as under :

The petitioner claims himself to be the absolute owner and possessor of properties bearing Municipal Nos. 5-7-232/A and No.5-7-233 admeasuring 558.5 sq. yards and 870 sq. yards respectively situated at Aghapura, Nampally Mandal, Hyderabad.

Initially the property bearing Municipal No.5-7-232 admeasuring 2010 sq. yards belongs to one Abdul Rehman Siddique, who purchased it from one Sri Amzad Ali under a sale deed dated 27-1-1348 Fasli. Abdul Rehman inturn sold the same to Smt. Fatimunnisa Begum W/o. Moinuddin Siddique under a registered sale deed dated 03.02.1955. Later Smt. Fathimunnisa Begum sold 1900 sq. yards to one Shankarlal under a registered sale deed dated 12.12.1973 bearing Doc.No.3319/1973. Subsequently, Shankarlal executed a gift settlement deed dated 31.03.2006 registered as Doc.No.1392/2006 to an extent of 558.5 sq. yards in favour of the petitioner herein

who is none other than his son. Insofar as the property bearing Municipal No.5-7-233 admeasuring 870 sq. yards is concerned, the same belongs to one Smt Sayeedunnisa Begum who sold it to one Banwarilal S/o. Mathura Prasad vide registered document No.3318/1973 dated 12.12.1973. Since the said Banwarilal had no children he adopted his nephew, Sri Surender Agarwal, and under a Will deed dated 08.11.1999 bequeathed all his properties to his adopted son. The said Banwarilal died on 10.08.2000 and his wife pre-deceased him. Later Sri Surender Agarwal who was declared as an absolute owner and possessor of the property by O.S. No.311 of 2004 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad, executed two gift settlement deeds dated 31.03.2006 in favour of the petitioner. Thus, the petitioner claims to be in possession of 1428.5 sq. yards (558.5 + 870). While things stood thus, on 15.11.2010 the respondents issued a notice under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905 (for short 'the Act') demanding the petitioner to vacate the land by removing all the material from the site within three days from the date of receipt of notice as he is in unauthorized occupation of land to the extent of 1194.36 sq. meters. Challenging the same, the petitioner herein filed W.P. No.29010 of 2010. Pending the said Writ Petition, the 4th respondent served a notice under Section 6 of the Act and as such the Writ Petition was dismissed as infructuous giving liberty to the

petitioner to challenge the subsequent notice. On filing of W.P. No.29591 of 2010, challenging the issuance of notice under Section 6 of the Act, this Hon'ble Court by an order dated 26.11.2010, quashed the impugned order directing the 4th respondent herein to pass a speaking order afresh after considering the explanation of the petitioner. On 04.03.2011 the 4th respondent passed the order rejecting the request of the petitioner. Challenging the same the petitioner preferred an appeal under Section 10(i)(a) of the Act before the 3rd respondent vide Appeal No.B/434/2011. The said appeal was dismissed on 27.07.2011, which is challenged in the present Writ Petition.

The respondents filed counter disputing the averments made in the affidavit. According to them, the property in question is a Government land that falls in T.S.No.17, Block-G, Ward No.41 of Nampally village and Mandal and classified as 'Nil Area'. It has been stated that 'Nil area' lands will not hold any survey number and they would be recognized as a Government land. It is further stated that after conducting survey in the years 1963-76, the land in question was recorded as Government land by issuing a notification under Section 13(1) of the Andhra Pradesh Survey and Boundaries Act, 1923, which was published in the official Gazette. Since the notification under Section 13(1) is not challenged within the period stipulated, it is said that the petitioner is prohibited from

challenging the same at this point of time. It is further stated that in TSLR, the property in dispute is recorded as 'Nil Area' in column 10 and in column 20 as 'G'. It is further stated that instead of preferring a Revision against the impugned order under Section 10(i) of the Land Encroachment Act, the petitioner has straight away filed the Writ Petition with false allegations and hence the same is liable to be rejected. Insofar as the allegation with regard to non-application of mind is concerned, it has been categorically stated in the counter that the entire record was placed before the Authorities and having considered the same, the impugned order came to be passed. In view of the above, it is said that the order under challenge warrants no interference.

The learned counsel for the petitioner mainly submits that the orders under challenge came to be passed without application of mind. According to him, the finding of the third respondent that the petitioner has not challenged the entries made in the Town Survey of Land Records and as such he has no title over the land in question is absolutely absurd and incorrect. He submits that the entries in Town Survey records do not confer any title on the Government and having regard to the documentary evidence placed before the Authorities, the respondents cannot say that the land in dispute belongs to Government. He further submits that Section 6 of the Act

cannot be made applicable to the case, since it can be applied only to those persons, who have unauthorizedly occupied any land, for which he is liable to pay assessment under Section 3. Relying upon various judgments of this Court, the learned counsel submits that the order under challenge does not stand to the test of legal scrutiny and the same is liable to be set-aside. With regard to the plea of not availing the remedy of Revision, he submits that having entertained the Writ Petition in the year 2011, it may not be proper for this Court to direct the petitioner to approach the Authorities by way of filing a Revision at this stage. In any event he submits that alternative remedy is not a bar to invoke Article 226 of the Constitution of India when the impugned order is ex-facie illegal and incorrect.

The learned Government Pleader for Revenue reiterated the contents of the counter-affidavit, urging the Court to reject the writ petition on the ground that the subject matter in dispute is a Government land and that the petitioner without availing the remedy under law ought not to have invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

Dealing with the issue of maintainability of the Writ Petition without availing the alternate remedy available under Law, a three Judge bench of the Apex Court in **State of H.P. and others v. Gujarat Ambuja Cement Ltd.,**

and another ^[1], observed as under:

“19. We shall first deal with the plea regarding alternative remedy as raised by the appellant-State. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extra-ordinary jurisdiction.”

In **Harbans Lal Sahnia v. Indian Oil Corporation Ltd.** ^[2], the Apex Court held as follows :

“The rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.”

In **L.Hirday Narain v. Income Tax Officer, Bareilly** ^[3], the Apex Court observed as under :

“If the High Court had entertained a petition despite availability of alternative remedy and heard the parties on merits it would be ordinarily unjustifiable for the High Court to dismiss the same on the ground of non exhaustion of statutory remedies; unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a writ petition.”

In **Estate Officer and Manager (Recoveries), A.P. Industrial Infrastructure Corporation Ltd. And another v. Recovery Officer, Debts Recovery Tribunal, Bangalore and others**^[4], a Division Bench of the Apex Court held as under :

“There are at least two well recognized exceptions to the doctrine with regard to the exhaustion of statutory remedies. In the first place, it is well settled that where proceedings are taken before a Tribunal under a provision of law, which is ultra vires, it is open to a party aggrieved thereby to move the High Court under Art.226 for issuing appropriate writs. In the second place, the doctrine has no application in a case where the impugned order has been made in violation of the principles of natural justice. Moreover, in a case where the Court having admitted the writ petition and having put the parties to trial normally cannot refuse to exercise its jurisdiction and dismiss the writ petition on the ground of availability of an alternative remedy.

When an order complained of is illegal and ultra vires, this Court in appropriate cases can entertain the writ petition and adjudicate the same on merits. That on the facts and in the circumstances, we are not inclined to dismiss the writ petitions on the ground of availability of alternative remedy at this stage after a period of more than 5 years of their admission by this Court for its consideration and disposal on merits. ”

In view of the judgments referred to above, it is clear that the doctrine of availing an alternative remedy has no application in a case where impugned order is ex facie illegal and violative of principles of natural justice. Further, the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law as held by the Apex Court in **Ram and Shyam Co. v. State of Haryana**^[5]. In the circumstances

of the case, non-availing of an alternative remedy of Revision, cannot be a ground to reject the writ petition, moreso when the Writ Petition which is filed in the year 2011 was entertained by this Court by issuing notices to the respondents.

The next point that arises for consideration is *“Whether the entries in TSLR conclusively establish that the land is a Government land?”*

As seen from the record, the Tahasildar, Nampally, Hyderabad, rejected the request of the petitioner for issuance of “No Objection Certificate” for the following reasons:-

“As per T.S.L. Records T.S.No.17 admeasuring 3900 sq. mtrs and in Col.No.10 recorded as ‘Nil Area’ and in Col.No.20 recorded as ‘G’ and in Col.No.23 as (Nil). Thus, as per the T.S.L.R. the State Government of A.P., is the absolute owner and possessor of the above property and no point of time either the objection petitioner or their predecessor were having title or possession or right over the above said land. Further, any transactions on Government land is null and void and the same is not valid under law.

Further Sri Kamal Kishore Agarwal S/o. Sri Shankerlal Agarwal has also filed a petition on 07.06.2010 before the Collector, Hyderabad for issue of NOC in respect of the above property. The Collector, Hyderabad District after examined the case with reference to the report of the Tahasildar, Nampally Mandal vide No.C/1623/2010, dated 23.09.2010 and the Committee constituted by the State Government of A.P., have rejected the same on 05.10.2010 on the plea that the above land is a ‘Government’ land and issued endorsement vide No.E2/N1/4767/2010 on 19.10.2010.”

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On appeal, the Revenue Divisional Officer-cum-Sub

Divisional Magistrate, Hyderabad, confirmed the order holding as under :

“Further as seen from the T.S.L.R. and also the report of the Deputy Director, Survey and land Records, Hyderabad it is clearly established that the subject land in question is a Government land. In this connection it is pertinent to mention here that the Town Survey was conducted under the provisions of the A.P. Survey & Boundaries Act, 1923 in twin cities of Hyderabad during year 1964-65. A notification under section 6 (1) of the said Act was issued inviting all interested persons to participate in the inquiry for determining the boundaries. After completion of the survey a notification was published under section 13 of the said Act in the Gazette. Neither the appellants nor any one have ever raised any objection regarding the entries made in Town Survey records in respect of the land in question. That is how the entries made in Town Survey records have become final and conclusive. It is evident that neither the appellant nor any one has challenged the entries in Town Survey records in the civil courts within the stipulated time and hence as such they have no title over the land in question.”

From the above, it is clear that the request of the petitioner for issuance of the no objection certificate came to be rejected in view of the endorsement ‘Nil Area’ made in the T.S.L.R. as against Column No.’10’ and as ‘G’ against column No.20.

In Hyderabad Potteries Pvt. Ltd. v. Collector, Hyderabad District and another^[6], this Court while considering the said aspect and after referring to various provisions under the A.P. Survey and Boundaries Act, held that “there is no presumption that every entry made in

T.S.L.R. shall be presumed to be true until contrary is proved as in the case of entries made in the record of rights under the provisions of A.P. Rights in Land and Pattadar Pass Books Act, 1971, and the permission cannot be refused on the mere ground that the land is a Government land basing on T.S.L.R. entries alone. “

In order to address the issue, it would be necessary to refer to few authorities on the subject. In **State of Andhra Pradesh v. Prameela Modi and others**^[7], a Bench of this Court while dealing with A.P. Survey and Boundaries Act, 1923 held that “entries in Town Survey and Land Register is not a record of right, though they are relevant but are not conclusive. Dealing with the said aspect the Court held as under :

“28. The Boundaries Act is an Act to amend the law relating to survey of lands and settlement of boundary disputes. The Act confers power upon the State Government to order a survey of any Government land or of any boundary of such land or of the boundary forming the common limit of Government land and land that is not a Government land and fixation of boundaries. There is no provision under the Act intending to make any detailed enquiries with regard to right, title and interest of the persons in the land. It is neither the object nor the scheme of the Act. It is not a record of right. There is no presumption that every entry made in the TSLR shall be presumed to be true until contrary is proved as in the case of entries made in the record of rights under the provisions of the A. P. Rights in Land and Pattadar Pass Books Act, 1971.

The question as to the nature and scope of the entries in

TSLR had fallen for consideration in W.A. Nos. 115 and 160 of 2000 before a Division Bench of this Court in which it is observed that "the entries in TSLR are no doubt relevant. But they are not conclusive. It is common knowledge that there may be many instances where the owner of land in urban areas will not be in a position to correlate the house numbers or wards numbers to the survey numbers or the entries may not be upto date and that may introduce some practical difficulties in obtaining TSLR extracts The TSLR cannot be regarded as a sole guiding factor."

Speaking for the Division Bench Justice P. Venkatrama Reddi (as His Lordship then was) observed:

"Assuming that the TSLR extract is not available in respect of a particular property or TSLR entries do not go to substantiate the writ petitioner's case, the question then is whether the building permission should be refused automatically. The answer in our view should be in the negative... TSLR may be one such document.....Entries in TSLR are no doubt relevant. But they are not conclusive.....TSLR cannot be regarded as a sole guiding factor.TSLR entries have to be considered in conjunction with other documents which the applicants would like to place reliance upon."

It was further observed:

"The question of title and lawful possession of the applicants cannot be solely decided on the basis of TSLR entries."

Similar view was taken by this Court in W.P. No.25840 of 2011 dated 20.06.2012 between **Savitha Avasthi v. Greater Hyderabad Municipal Corporation (GHMC) Lower Tank Bund, Hyderabad rep.by its Commissioner and others.**

In **G.Satyanarayana v. Government of Andhra Pradesh**^[8], a learned Single Judge of this Court after referring to various authorities on the subject reiterated the view by holding as under:

“Entries in Town Survey Land Register (TSLR):Detailed Town Survey was carried out in some municipalities and Panchayats in Andhra Area. In Telangana region detailed Town Survey of the twin cities was carried out in 1966 -70. The object of undertaking detailed surveys is not only to survey the boundary between the streets and private properties, but also the boundaries of all private properties whether built up or vacant, Government lands and Municipality lands (See : Handbook of Land Records by Mr. P. Kasturi Reddy - 1st Edition). The system of survey held is quite different from the system followed in respect of villages containing open lands. The nature and scope of entries in TSLR fell for consideration of a Division Bench of this Court in W.A.Nos.115 and 160 of 2000. P.Venkatramam Reddy.,J (as his Lordship then was) while speaking for the Division Bench held that entries in TSLR are no doubt relevant, but they are not conclusive; that TSLR cannot be regarded as the sole guiding factor while dealing with applications for building permissions; and that TSLRs have to be considered in conjunction with other documents which the applicant would like to place reliance upon. B. Sudershan Reddy.,J (as his Lordship then was), considered the scheme of the A.P. Survey and Boundaries Act, 1923 in Hyderabad Potteries Pvt. Ltd. (2 -supra) and held that the survey made under the said Act is mainly intended for the purposes of identification of lands and fixation of boundaries and that there is no provision thereunder to make any detailed enquiries with regard to the right, title and interest of persons in the lands. It is apposite to quote the relevant passage in the said Judgment (para -21): "A bare reading of scheme of the A.P. Survey and Boundaries

Act, 1923 would make it clear that the survey made under the said Act is mainly intended for the purposes of identification of the lands and fixation of boundaries. There is no provision under the Act intending to make any detailed enquiries with regard to the right, title and interest of the persons in the lands. It is neither the object nor the scheme of the said Act. There is no presumption that every entry made in the TSLR shall be presumed to be true until contrary is proved as in the case of entries made in the record of rights under the provisions of A.P. Record of Rights in Land and Pattadar Passbooks Act, 1971. It is not a record of right. There is no such provision in the Andhra Pradesh Survey and Boundaries Act, 1923. " (Emphasis added)

The dispute raised in Hyderabad Potteries Pvt. Ltd. again arose, albeit, in a different context in State of A.P. Vs. Hyderabad Potteries Pvt. Ltd (2010) 5 SCC 382). Interestingly, in respect of the same land which was the subject matter before this Court in the said case, proceedings under the A.P. Land Grabbing (Prohibition) Act, 1982 were initiated for eviction of Hyderabad Potteries Pvt. Ltd. in respect of 17,786.56 sq. mts of land in T.S.No.4/2, Block -D Ward No.66 of Bakaram village, Musheerabad Mandal, Hyderabad District, after declaring that they are land grabbers and for award of compensation to the State. The only basis for institution of the said proceedings was that in the Town Survey conducted in respect of Bakaram and Gaganmahal villages for the years 1355 and 1357 Faslies (1945 and 1947 respectively) and further in the year 1965 and 1971, it was found that certain extent of area existing between the said two villages was left unsurveyed and that the same was not accounted for and consequently it remained as a gap area; that gap area means unsurveyed land and would be deemed to be Government land. In the Gazette notification dated 17 -7 -1996 published under the A.P. Survey and Boundaries Act, 1923, in column No.20 of the TSLR, the schedule property admeasuring 19,214 sq. mts. was recorded as Government land. The State has pleaded

that as the survey has attained finality, Hyderabad Potteries Pvt. Ltd. should be declared as land grabbers. On consideration of the evidence, the Special Court, by majority, dismissed the application filed by the State, but one of its Revenue Members, gave dissenting Judgment upholding the claim of the State only on the basis of the entries available in the TSLR. The State filed W.P.No.4432/2005 in this Court. The Division Bench upheld the majority view of the Special Court and dismissed the Writ Petition. The State filed Civil Appeal with the leave of the Supreme Court. While dismissing the Civil Appeal, the Supreme Court held at para -26 as under:

"The sole basis of the appellant to claim the land was on the strength of entries made in survey records showing that the schedule property was surveyed as TS No.4/2, Ward No.66 of Bakaram village having an area of 19,214 sq. m. showing it as a gap area i.e., unsurveyed area as per the old survey records and as such it could only be declared to be government land as has been recorded in Column 20 of TSLR. Apart from the said revenue record and issuance of gazette notification as mentioned hereinabove, no other material document was filed by the appellant to show that the said land belonged only to the Government. It is trite that entry in the revenue record alone may not be sufficient as conclusive proof of title nor can be relied on for proof of establishing the title as such. " (Emphasis supplied) Conclusion on Point No.3 - II: The above judicial pronouncements thus placed the controversy beyond any pale of doubt that the entry in the TSLR does not constitute conclusive proof of one's title."

From the judgments referred to above, it is clear that the entry made in T.S.L.R. does not by itself confer any title unless the same is supported by other material. Since the

impugned order came to be passed basing on the entries made in T.S.L. Register alone, which is exfacie illegal, the impugned orders are un-sustainable in Law.

Accordingly, Writ Petition is allowed and the orders under challenge are set-aside, leaving it open to the respondents to avail the remedies, if any, available under law, to prove their case. No costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

**JUSTICE C. PRAVEEN
KUMAR**

Dt: 01-12-2015
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- [\[1\]](#) AIR 2005 supreme Court 3936
 - [\[2\]](#) 2003(2) SCC 107
 - [\[3\]](#) AIR 1971 SC 33
 - [\[4\]](#) AIR 2004 Andhra Pradesh 198
 - [\[5\]](#) AIR 1985 SC 1147
 - [\[6\]](#) 2001(3) ALD 600
 - [\[7\]](#) 2005(3) ALT 379 (D.B.)
 - [\[8\]](#) Laws (APH) 2014(4) 33