

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.10055 of 2008

ORDER:

The present writ petition came to be filed seeking issuance of writ of mandamus to declare G.O.Ms.No.471 Revenue (UC.III-1) Department dated 26.03.2008 issued by the first respondent as illegal, arbitrary and violative of principles of natural justice; and consequently to set-aside the same.

The facts which lead to filing of the writ petition are as under:

The first petitioner is an association, which was formed to serve the needs and to improve the living condition of the plot owners of the lay out plan in Sy.Nos.66 and 67 of Madhapur Village, Serilingampally Mandal, Ranga Reddy District. The second petitioner is the Secretary of the first petitioner association and also owner of plot No.35. Originally land in Sy.Nos.66 and 67 admeasuring Ac.22.00 situated at Madhapur Village was owned by Smt. Rameeza Bee and nine others. The said individuals ie. Rameeza Bee and others executed a General Power of Attorney in favour of D.Venkat Reddy, empowering him to alienate the said land. Along with other neighbouring land owners, the owners of the land in question developed a lay out in an extent of Ac.22.20 gts., duly dividing the land into house plots. The Hyderabad Urban Development Authority issued tentative approval to the lay out and in accordance with the same, roads and open spaces were handed over to the local authority. Thereafter the original owners sold the developed plots to various persons and individuals who purchased the property claimed to be in possession of the same. While the matter stood thus, Government issued G.O.Ms.No.455, dated 29.07.2002 under the provisions of the Urban Land Ceiling Act, 1976, whereby they have decided to allot the excess land in favour of the individuals who are in possession of the same and accordingly the plots were said to have been regularized in favour of persons holding the plots. .

It is stated that during the year 1982, respondent Nos.4 and 5 purchased land from Shaik Moinuddin through an un-registered sale deed. Thereafter, they made an application for regularization of un-registered sale deed under Section

5-A of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short "the Act"). After conducting an enquiry and collecting the necessary fees, the M.R.O. issued regularization orders under Section 13-B of the Act. Thereafter the names of respondent Nos.4 and 5 were said to have been mutated in the revenue records. Later respondent Nos.4 and 5 filed an application under G.O.Ms.No.455 seeking regularization of land to an extent of 1796.29 square meters each, claiming to be in possession of the land by virtue of their purchase. Respondent Nos.4 and 5 claimed to have been in possession of land in Sy.Nos. 65, 66 and 67 to an extent of 3592.50 square meters. After verifying the documents filed along with the application and after collecting the requisite fees, the second respondent submitted a proposal to the Government, who in turn issued the impugned G.O., allotting the land in favour of respondent Nos.4 and 5. Challenging the action of the Government in regularizing the land in favour of respondent Nos.4 and 5, the present writ petition is filed.

Second respondent filed counter disputing the averments made in the affidavit filed in support of the writ petition except those which are specifically admitted. In reply to para No.3 of the affidavit, it is stated that Smt. Ramiza Bee, who is the legal heir of Jahangir Miya, along with others filed a declaration under Section 6 (1) of the Urban Land Ceiling Act for the lands held by them in the limits of Hyderabad Urban Agglomeration. Draft statement under Section 8 (1) of the Act and notice under Section 8 (3) of the Act were issued on 03.02.2004 calling for objections if any to the draft statement. In response to the draft statement, the declarants filed objections and after giving reasonable opportunity final orders came to be passed on 03.05.2005, confirming the draft statement. Subsequently, a notification under Section 10 (1) of the Act was issued, which was published in A.P.Gazette No.85, dated 04.05.2004, calling for objections from the interested persons to file their objections on or before 29.05.2004. As no objections were received, the declaration under Section 10 (3) of the Act was issued and published in Gazette No.184, dated 22.08.2005. A notice under Section 10 (5) of the Act was passed on 15.11.2005 but when the declarant failed to surrender the surplus land, an order under Section 10 (6) of the Act was issued on 27.09.2006 and possession of surplus land was taken over by the Enquiry Officer on 13.10.2006. It is stated that respondent Nos.4 and 5, who, after getting their names mutated in the revenue records made an

application in terms of G.O.Ms.No.455, Revenue (UC.I) Department, dated 29.07.2002, for regularization of 1796.29 square meters each out of 3592.29 square meters un-divided share. After conducting enquiry and verifying the documents filed by respondent Nos.4 and 5, regularization proceedings were issued vide G.O.Ms.No.471, Revenue (UC.III-1), dated 26.03.2008.

To a specific averment that the respondent Nos.4 and 5 are not in possession of the land as on the date prescribed under the G.O., it is stated that respondent Nos.4 and 5 were having valid title in respect of land to an extent of 1796.29 square meters each. It is also stated that there is no illegality or impropriety in granting G.O.Ms.No.471 and that there are no merits in the writ petition.

Respondent Nos.4 and 5 filed their counter denying the existence of petitioner association itself, in the absence of any registration of the same. It is their specific case that in view of the order passed by this Court in W.P.No.27134 of 2008 nothing survives in this writ petition and the same is liable to be dismissed as infructuous. According to them, as the gift deed, which forms the basis, was cancelled by the Sub-Registrar vide document No.2/2012, SRO No.1015/2012, dated 16.02.2012, the entire cause in the writ petition falls to ground. It is their case that they have purchased land to an extent of Ac.15.00 in Sy.No.67 of Madhapur Village from one Shaik Moinuddin and others by way of un-registered sale deed for valid consideration. Subsequent to the purchase, they got their names mutated in the revenue records through M.R.O., Sherilingampally. Respondent Nos.4 and 5 denied the allegation that the land purchased by them forms part of common area in the alleged lay out. Since there was no valid lay out and as the lay out is not in existence as on today, it is stated that the question of respondents' land overlapping with the land of the members of the first petitioner association is totally ill founded. In view of the above, it is stated that the writ petition is liable to be rejected.

An additional affidavit came to be filed by the writ petitioners stating that no documents are filed by respondent Nos.4 and 5 to show as to who their vendor is and also proof of purchase of property. It is further contended that as respondent Nos.4 and 5 failed to fulfil the eligibility criteria prescribed in G.O.Ms.No.455, they are not entitled for regularization under G.O.Ms.No.455.

The facts in substance show that one Ramiza Bee and others have excess land in Sy.Nos. 64, 66 and 67 of Madhapur Village. The persons who are in possession of the land made an application for allotment and regularization of land in terms of G.O.Ms.No.455, through which the Government decided to allot excess land in favour of the individuals who are in possession. After collecting necessary fees, land was allotted, boundaries were fixed and possession was delivered. Respondent Nos.4 and 5, who also claim to have purchased the land in the said survey number made an application for allotment and regularization of the land in terms of G.O.Ms.No.455. The Government after enquiring into the matter regularized their land by issuing the impugned G.O.

The G.P.A. issued in favour of D.Venkat Reddy, who sold the land in favour of respondent Nos.4 and 5 was revoked by Ramiza Bee in the year 1998 itself and as such it stands established that respondent Nos.4 and 5 were not in possession of the land as on the date of issuance of G.O.Ms.No.455, which prescribes the cut off date as 31.03.2003. The other argument which was actively canvassed by the learned counsel for the petitioners is that in the absence of any endorsement issued by the Special Officer in favour of respondent Nos.4 and 5, there was no compliance of the guidelines issued in G.O.Ms.No.455. Hence, it is urged that as respondent Nos.4 and 5 failed to satisfy any of the eligibility criteria prescribed in G.O.Ms.No.455, they are not entitled for any relief under the G.O.

It is thus contended that the above circumstances clearly indicate that respondent Nos.1 and 2 processed the applications of respondent Nos.4 and 5 without conducting proper enquiry and without verifying the ground possession. It is further contended that respondent Nos.4 and 5 have failed to show the exact location of their plots on the ground with boundaries.

The learned counsel representing the learned Advocate General (TG) would submit that the argument of the learned counsel for the petitioners that respondent Nos.4 and 5 were not in possession of the land warranting regularization is incorrect. According to him, G.O.Ms.No.455 is being extended from time to time by issuing various memos. Hence, he submits that since respondent Nos.4 and 5 are shown as owners of the said land in the revenue

records, regularization orders came to be issued after making an enquiry. It is stated that immediately after issuance of the impugned G.O. the petitioners approached this Court and in view of the stay granted by this Court, no endorsements were issued by the Government. Hence, he submits that the allegations made in the affidavit filed are all incorrect.

In reply to the same, the learned counsel for the petitioners would submit that even accepting all the arguments advanced to be true, still a doubt arises as to compliance of G.O., since no lay out has been filed and also no documents and boundaries to the plots of respondent Nos.4 and 5 are mentioned either in the counter affidavit or in the material filed along with the counter.

One fact which should be taken note of is the order passed by this Court in W.P.No.27134 of 2008. One of the respondents herein filed the above writ petition, before this Court, to declare the proceedings dated 28.03.2006 issued by respondent Nos.1 to 3 therein on an application of respondent Nos.4 to 6 therein as illegal and consequently sought for fresh enquiry before framing a lay out with regard to Sy.Nos. 65, 66 and 67 of Madhapur Village. By an order dated 04.03.2013, a learned Single Judge of this Court, after hearing all the parties, set-aside the lay out. It may be useful to refer to the relevant portion of the order, which is as under:

“ Thus, it is clear that by whatever name the approved layout is called either as tentative or as final, such original approval of the layout in respect of survey Nos.66 and 67 was on the premise that the land gifted by the ostensible owners was their land and the approval of the layout was obviously without reference to and without any knowledge of the proceedings under the Urban Land Ceiling law. The proceedings under Urban Land Ceiling law, which have become final including in respect of regularization orders in respect of some plot owners, obviously make all the difference to the continued existence and enforcement of the layout as it stands now and as suggested by the report of the Planning department of the 3rd respondent and as stated in the letter of the 3rd respondent itself, the layout obviously requires a revision to be in tune with the declared surplus land status of the land in question and also to be in tune with the exemptions and approvals given by the Government from time to time in pursuance of such situation. If

so, the relief sought for by the petitioners to declare the original layout to be susceptible to a fresh enquiry and finalization of fresh layout has to be accepted and there is absolutely no reason to believe in advance that respondents 1 and 3 will deviate from any provisions or principles of natural justice in so finalizing the revised layout.

Therefore, the petitioners and any other similarly situated persons are at liberty to approach respondents 1 and 3 with any appropriate applications required as per the prescribed procedure for revising the existing layout or for forming a fresh layout as may be required and respondents 1 and 3, on receipt of such applications from the petitioners and any other similarly situated persons, shall take expeditious steps for finalizing the revised layout in accordance with the prescribed procedure in tune with the proceedings under the Urban Land (Ceiling and Regulation) Act and the Government orders issued thereunder in favour of the named individuals in that regard. The exercise shall be completed within four months from the date of receipt of the applications from the respective individuals, including the petitioners. The writ petition is ordered accordingly without costs.”

From a reading of the order passed by this Court, it is clear that the layout which is subject matter of dispute in the present writ petition was set-aside and the petitioners therein or any other similarly situated persons were given liberty to approach respondent Nos.1 to 3 with an appropriate applications for revising the existing layout or forming a fresh lay out as may be required and on receipt of such application respondent Nos.1 to 3 were directed to take expeditious steps for finalizing the revised layout in accordance with the procedure. It was further directed that the exercise should be completed within three months from the date of application of the individuals. The said order has become final as the same is not challenged either by the writ petitioners herein or by any other party. Therefore, as on today there is no lay out in existence in respect of the land which is subject matter of dispute in this writ petition.

Insofar as the argument of the learned counsel for the petitioners with regard to applicability of G.O.Ms.No.455 to respondent Nos.4 and 5, it is to be noted that the Government was issuing memos from time to time extending the period for submitting the application forms seeking regularization. The learned counsel representing the learned Advocate General (TG) placed on record the orders showing extension of time from 2003 to 2005 and then from 2005 to

2006. Therefore, it cannot be said that respondent Nos.4 and 5 are not entitled to the benefit of G.O.Ms.No.455. If really, the petitioners suspect the issuance of said Memos and if they are of the view that there was never an application within the time fixed in the memos, it being a factual aspect has to be decided by a common law remedy and not in writ jurisdiction.

The other ground which was canvassed by the learned counsel for the petitioners is with regard to possession of land by respondent Nos.4 and 5, as on the cut off date. As seen from the record, G.O.Ms.No.455 came to be issued on 29.07.2002 and the time fixed for making the application claiming benefit was being extended from time to time. Respondent Nos.4 and 5 filed their applications before the authorities on 28.03.2006 along with a D.D. The sale deed which was executed on 31.10.1998 was released by the office of the Sub-Registrar on 17.05.2005. From the above, it is clear that the document was pending registration before the Sub-Registrar from 1998 till 2005 and it was released on 17.05.2005. *Prima facie*, it cannot be said that the document was presented for registration after cancellation of G.P.A. Therefore, it cannot be said that respondent Nos.4 and 5 were not in possession of the property by the date of issuance of G.O.Ms.No.455. These dates are not challenged even in the additional affidavit filed by the petitioners. If, really, there is any dispute with regard to these dates the petitioners have to avail the remedy available under law.

Though the learned counsel for the petitioners contended that the plots which were allotted to respondent Nos.4 and 5 herein are overlapping with the plots of some of the members of the first petitioner association, the learned counsel for respondent Nos.4 and 5 tried to demonstrate before the Court that there is no overlapping and that the plots of members of the first petitioner association are nowhere near the plots of respondent Nos.4 and 5. These being disputed questions of fact, cannot be decided in a writ petition filed under Article 226 of the Constitution of India. Therefore, the grievance of the writ petitioners that the regularization has to be rejected in view of the overlapping of plots cannot be decided in the present application, moreso, when the layout itself was set-aside by this Court.

Though the learned counsel for the petitioners would submit that there cannot be two regularizations in respect of the same piece of land, as held

earlier the issue as to whether two regularizations are with regard to same extent of land or as to whether there is any overlapping of the plots in view of two regularizations, are issues, which have to be gone into by the civil Court but definitely not by this Court under Article 226 of the Constitution of India. Since the layout itself was already set-aside in W.P.No.27134 of 2008, the petitioners as well as the respondents herein shall avail all the remedies available under law, including the one suggested in W.P.No.27134 of 2008, and in the event of approaching them the authorities, they shall decide the same in accordance with law, at the earliest, after giving notice to all the parties concerned.

With the above direction, the writ petition is disposed of. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

13.10.2015

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