

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FIFTEEN
PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.19401 of 2015

BETWEEN

T. Purushotham Rao and others.

... PETITIONERS

AND

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

...RESPONDENTS

**Counsel for the Petitioners: MR. D. PRAKASH REDDY
for MR. AVINASH DESAI**

**Counsel for the Respondents: ADVOCATE GENERAL (TG)
GP FOR REVENUE (TG)
MR. B.NARAYANA REDDY
(ASST. SOLICITOR GENERAL)**

The Court made the following:

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ORDER:

Heard Mr. D. Prakash Reddy, learned senior counsel for the petitioner; learned Advocate General appearing for respondents 1 to 4; learned Assistant Solicitor General appearing for Union of India and learned standing counsel for the Secunderabad Cantonment Board/respondent No.11.

2. The writ petition questions the letter of the Collector/respondent No.2 addressed to the Chief Executive Officer, Cantonment Board, Secunderabad dated 20.06.2015 and the consequential action of the cantonment board in convening a meeting on 29.06.2015 to consider the said letter and apprehending cancellation of the building plan of the petitioners.

3. Petitioners claim to be owners of Sy.No.196 (old) Lothkunta, H/o. Alwal village, Trimulgherry Mandal, Secunderabad Cantonment, which is stated to correspond to GLR No.243. It is stated that the cantonment board sanctioned layout in favour of the petitioners as early as on 07.11.2008. The said sanction layout was also approved by the Principal Director, Defence Estate, Southern Command, Pune on 22.01.2009 and thereafter, was released to the petitioner on 17.03.2009. Based on that, a Memorandum of Understanding (MOU) is stated to have been executed on 10.07.2009 between the Government of India and petitioner No.2 accepting the petitioners as absolute owners of an extent of 17,292.69 sq. yards in GLR No.243 old R.S.No.196 at Lothkunta village, Secunderabad Cantonment.

The MOU also recites that the Government of India agreed to issue No Objection Certificate for development wherein both parties agreed to various conditions as set out in the said MOU. Consequently, therefore, based on the said NOC of the revenue authority, as above, HQ Andhra Sub Area, Colonel Quarter, Master General also issued NOC dated 14.07.2009 for development of layout for residential purpose.

4. While the land was, accordingly under development by the petitioners,

alleging that the revenue authorities are interfering, petitioners filed WP.No.22575 of 2010 wherein this Court initially granted interim order not to demolish any structure and later on filing of counter, by further order dated 24.04.2012, direction was given to the revenue authorities not to interfere with the possession of the petitioners without following due process of law. However, the revenue authorities communicated three separate letters to the General Officer Commanding and the CEO of the Cantonment Board and the

Sub-Registrar, Bowenpally, relying upon the judgment of the A.P. Wakf Tribunal in O.S.No.121 of 1998, claiming that the said property is a State Government's land. Aggrieved thereby, the petitioners filed WP.No.23607 of 2012 and after admitting the writ petition, this Court passed interim order dated 24.08.2012 suspending all the three letters of the revenue and military authorities. Thereafter, since the development activity was obstructed by the revenue authorities, the petitioners filed other writ petitions viz. WP.No.14286 of 2013, WP.No.385 of 2014, WP.No.3991 of 2014 and WP.No.12842 of 2015 wherein also this Court passed various interim orders, copies of which are produced along with the writ petition, thereby restraining the military authorities from interfering with the development activity taken up by the petitioners. Alleging that those orders were violated and not complied with, petitioners filed contempt cases viz. CC.No.321 of 2014, CC.No.768 of 2015 and CC.No.1001 of 2015, which are stated to be pending against the cantonment board and the defence authorities.

5. While all the aforesaid orders are in force and the writ petitions, referred to above, are pending, the petitioners applied for sanction of the building permission, which was approved by the cantonment board on 04.06.2014, but the President of the Board kept the resolution under suspension by exercising powers under Section 56(1) of the Cantonments Act and referred the matter to the GOC-In-Chief, Southern Command, Pune. With the result, though the plan was sanctioned, the same was not released.

Hence, petitioners filed WP.No.17146 of 2014 and by orders of this Court dated 25.08.2014, the cantonment board was directed to release the building sanction plan, as no orders were passed by GOC-In-Chief even after two months of referring the matter to him. Petitioners state they have taken up development on the site and while so, on the self-same ground on which earlier letters were issued, which were subject matters of writ petitions, as above, the impugned letter was issued by the Collector addressed to the CEO of the cantonment board asserting that the State Government is the owner of the said land in GLR No.243 by referring to various proceedings and events and ultimately, requested the CEO not to give credence to the report of the Tahsildar, Trimulgherry dated 21.06.2014 and any building plan sanctioned in pursuance of the said report may be revoked. Based on the said letter, petitioners state that a cantonment board's meeting was proposed to be held on 29.06.2015 to consider the aforesaid impugned letter of the Collector.

6. Mr. D. Prakash Reddy, learned senior counsel for the petitioner, questions the impugned letter of the Collector on various grounds with reference to similar stand taken by the revenue authorities, which were subject matter of challenge of various writ petitions, referred to above and by placing strong reliance upon the interim orders passed in the respective writ petitions; learned senior counsel would urge that identical stand of the revenue authorities was, *prima facie*, not accepted by this Court and interim orders were passed from time to time, thereby, enabling the petitioners to develop the said land without obstructions. However, notwithstanding the said various orders, the military authorities continued to defy the said orders in spite of pendency of the contempt cases and all the revenue authorities continued to reiterate the same stand over and over again.

Learned senior counsel would, therefore, submit that the stand taken by the Collector in the impugned letter is contemptuous and is in the teeth of various

orders of this Court, as referred to above.

7. So far as the factual position regarding title is concerned, learned senior counsel referred to various documents, which are part of the writ petition to substantiate that the revenue authorities themselves had accepted that old Sy.No.196 as correlated to GLR.No.243 and had accepted title of one Kishan Rao as patta holder of old Sy.No.196. Learned senior counsel submits that the petitioners, therefore, being claimants through the said pattadar, were recognized as such in the revenue record and based on that, the revenue authorities had issued NOC and similar NOC was also issued by the defence authorities. Hence, it is not open for the revenue as well as the military authorities to take contrary stand at this distance of time, as stated in the impugned letter and seek revocation of permissions granted to the petitioners long back. Learned senior counsel would submit that in one of the writ petitions i.e. WP.No.14286 of 2013, vacate petition, being WVMP.No.2724 of 2013, was filed and after hearing both sides, this Court made the interim order absolute thereby the very same contention sought to be raised earlier on behalf of the revenue authorities was not accepted by this Court.

8. Learned Advocate General, on the other hand, objects to the maintainability of the writ petition on the ground that the impugned letter of the Collector does not decide any civil rights and it merely communicates the stand of the Government claiming title over the said land. Learned Advocate General, therefore, states that there is no cause of action for the petitioners to seek the relief, as sought for, in this writ petition, as the Collector, Hyderabad had merely conveyed his claim of title to the CEO of the cantonment board and requested him to revoke the sanctions issued to the petitioners. Learned Advocate General would, therefore, submit that the said impugned letter is merely as assertion of title on the part of the Collector that the land belongs to the State Government and the then Tahsildar, who gave NOC, is already subjected to disciplinary proceedings as on account of his

acts the valuable Government land is certified by him as belonging to that of private parties. Learned Advocate General would also make reference to various documents to substantiate that in earlier litigation with the A.P. Wakf Board, the wakf tribunal gave findings in favour of the State Government on the tile and would also relies upon other documents to substantiate that the title of the State Government on GLR No.243 is in conformity with the records maintained by the defence authorities and even the subsequent surveys substantiate the same.

9. Learned Assistant Solicitor General supports the contentions of the learned Advocate General and opposes the maintainability of the writ petition.

10. Though I have heard writ petition for a considerable time, I am not able to accept the contention of the learned senior counsel for the petitioners that the said impugned letter is illegal, arbitrary or unconstitutional, as claimed by the petitioners. A reading of the impugned letter would show that the Collector had set out in detail the claim of the State Government asserting title to the said GLR No.243 and in the process had relied upon certain documents and findings including that of the findings of the Wakf Tribunal. The Collector also has informed the CEO of the cantonment board that the then Tahsildar issued NOC for grant of layout to the detriment of the State Government on a false and erroneous ground, which do not correlate to the facts borne out by the record and the survey reports relied upon by him were not conclusive and were misleading. The Collector, therefore, set out actual facts as appearing from the record in support of his claim that GLR No.243 belong to the State Government and that private parties are trying to knock away the valuable Government land, hence, requested the CEO not to give any credence to the said report of the Tahsildar, Trimulgherry dated 21.06.2014 and further, requested that any building plan sanctioned pursuance to the said report may be revoked.

11. It is evident from the said letter that it is only an assertion of title by a

person interested in claiming title, which in this case, is State Government and has to be treated only as a claim on behalf of the State Government. Undoubtedly, the petitioners dispute the said claim and assert their own title. Obviously, the said issue of title cannot be adjudicated in proceeding under Article 226 of the Constitution of India.

12. Learned senior counsel for the petitioners fairly stated that to the extent of claiming and asserting title made by the Collector in the said letter is concerned, the Collector of the State is entitled to contest the writ petitions on those grounds but he seriously objects to the request made by the Collector seeking revocation of sanction plan in favour of the petitioners. Learned senior counsel contends that such request in the teeth of various directions of this Court is contemptuous and uncalled for and if the cantonment board acts on such request, the petitioners would be seriously prejudiced.

13. Evidently, the Collector has merely requested the CEO to revoke the building sanction plan. So far as the Cantonment Act is concerned, the District Collector is not the authority to give any direction to the cantonment board. The said impugned letter, therefore, in my view, is only advisory in nature and as rightly pointed out by the learned Advocate General, does not decide upon or adjudicate the rights of the parties in any manner. It may be that the petitioners are stiffly contesting the said claim of the Collector in various pending writ petitions, but it cannot be said that in the teeth of the orders passed therein, the Collector cannot even assert his claim for title.

14 To the extent of request of revocation in the impugned letter is concerned, the same is, undoubtedly, a matter for the cantonment board to consider and take an independent decision in the matter. If really the cantonment board decides to re-examine and take any action with regard to the permissions and sanctions granted by them, the said action cannot be unilaterally taken but has to be in conformity with the due

process of law. As on today, no action has been taken by the cantonment board, hence, in my view, there is no subsisting cause of action to entertain the writ petition.

The writ petition is, therefore, dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

July 13, 2015
DSK