

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 34180 of 2011

ORDER:

Heard the learned counsel appearing for the petitioners and learned Government Pleader for respondents. With the consent of both the parties, this Writ Petition is disposed of at the admission stage.

The present Writ Petition came to be filed seeking issuance of a writ of mandamus declaring the action of the respondents in interfering with the premises of the petitioners bearing No.5-3-825 admeasuring 1513.66 sq. yards situated at Shankerbagh, Goshamahahal, Hyderabad, without following the procedure contemplated under law, as illegal and arbitrary.

The averments in the affidavit filed in support of the writ petition are as under :

The property, which is subject matter of dispute in the present case viz., land admeasuring 1513.66 sq. yards at Shankerbagh, Goshamahahal, Hyderabad belongs to the Royal family of Prince Aga Khan. The same was said to have been purchased by one Smt. Godavari Bai who is great grandmother of petitioner No.1 and grand mother-in-law of petitioner No.2 from Prince Aga Khan under a registered sale deed dated 30.11.1953

bearing document No.1796 of 1953. Smt. Godavari Bai is said to have submitted a statement under Section 6(1) of the Urban Land (Ceiling & Regulation) Act, 1976. Pursuant thereto, the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad vide proceedings No.H2/8648/76, dated 04.06.1994, held that the total extent of land at 1,342.00 sq. meters and out of which the protected area was held to be 548.04 sq. meters. It was further held that besides the protected area, the declarant was entitled to hold an extent of 1,000.00 sq. mts., u/s.4(1)(b) of the Act. Since the vacant land was only 793.96 sq. mts., which is below the ceiling limit, the declarant was treated as non-surplus holder. It is stated that the above said premises was leased out to different tenants for number of years apart from making certain constructions after obtaining necessary permissions from Municipal Corporation of Hyderabad. On 26.12.2003, Smt. Godavari Bai died. During her life time she is said to have executed a Will bequeathing the said property in favour of the petitioners and as such they became the owners and possessors of the said premises. The petitioners wanted to construct a building in the said premises for which they applied before for permission with G.H.M.C. While the petitioners were digging the land for laying the foundation, the officials of the Corporation demanded the petitioner to obtain no-objection from the Collector. The petitioner made an

application before the Collector for issuance of 'no objection certificate' by enclosing copies of the title deeds and other proceedings. It is stated that till date the petitioners have not received any reply or order from the first respondent/Collector. The averments in the Writ Petition further show that on 24.12.2011 at about 2.00 p.m., some persons said to be from the office of M.R.O. came along with a board and tried to prevent the labourers, to do the work and want to put the board stating it to be a Government land. It is contended that the property, which is subject matter of the dispute, is a private property belonging to the petitioners and that the respondent/authorities are interfering with the possession of the petitioners even though the proceedings dated 04.06.1994 show that the petitioners' great grandmother is owner of the property. Hence, the present writ petition is filed questioning the interference of the respondents with the property which is in the custody of the petitioners.

By an order dated 26.12.2011 this Court, after hearing the learned Government Pleader, issued notice before admission and further directed the respondents not to physically interfere with the petitioners' enjoyment and possession of the property except by issuing any notice in accordance with law. It was categorically held that the petitioners have no permission for construction and as such they shall maintain *status quo* for a period of 10 days

till the matter is heard on the next date of hearing. Thereafter the matter underwent number of adjournments. Later the respondents filed a counter denying the averments in the Writ Petition. One of the main objections raised by the learned Government Pleader is that the petitioner has violated the order of this Court by carrying on with the construction work without any valid permission. It is stated that since the petitioners were carrying on with the construction work without any permission the field staff of the respondent No.2 stopped the work at the said site. It is contended that the allegation of the petitioners that the respondents are interfering with the land is incorrect. Paragraph 4 of the counter shows that the Town Survey of Nampally village was conducted during the years 1963-76 under the provisions of Andhra Pradesh Survey & Boundaries Act, 1923. The final check operation was conducted by the Special Deputy Collector after issuing notices and inviting objections. After completion of the said town survey, the land in question was recorded as Government land in the Town survey and land register by issuing a notification under Section 13(1) of Andhra Pradesh Survey & Boundaries Act, 1923. It is stated that the said notification was published in Hyderabad District Gazette. The entries recorded in the Town Survey and Land Register have become final and conclusive proof after publication of the notification under Section 13(1) of the said Act unless they

are modified by a decree of the civil suit within (3) years from the date of publication of notification in the District Gazette as stipulated under Section 14 of the A.P. Survey & Boundaries Act. Paragraph 5 of the counter further states that on verification of the record it was noticed that as per revenue records particularly, town survey and land register, the said premises falls in T.S.No.30, Block.C, Ward No.49 of Nampally village. In Town Survey and Land Register Col.No.10 it was recorded as "Abadi" and in Col.No.20 as "G.Abadi". In view of the above, the second respondent rejected the proposals for issuance of no objection certificate as the land belongs to the Government. In view of the above, the learned Government Pleader for respondent seeks dismissal of the Writ Petition.

The writ petitioners filed a reply to the counter stating that not only the petitioners are paying property taxes since more than 50 years but their predecessors in title were also paying the property taxes. It is stated that the property which is in possession of the petitioners is being used for running a Dall Mill and a portion of the property was leased out to third parties since about more than 85 years. It is further alleged that the word "Aabadi" is a Urdu word, which means Basti (locality). It is contended that Aabadi never means land and on the other hand, it equally denotes a residential area. In view

of the above, he submits that the rejection proposal submitted by the second respondent is illegal, malafide and ill-motivated. It is the argument of the learned counsel for the petitioners that Col.23 of the Survey papers filed by the respondent shows existence of Dall Mandi in the said site which clearly establishes that the land occupied by the Dall Mandi owner, but not recorded the name of the Dall Mill owner in Cl.No.20 i.e., “present enjoyer”.

Relying upon the judgment of this Court in B.N.Manga Devi v. State of Andhra Pradesh, rep.by its Principal Secretary, Revenue Department, Hyderabad^[1], the learned counsel for the petitioners submits that the entry in TSLR itself cannot be a conclusive proof of title or lack of it, and the decision either to grant or refuse permission cannot be taken solely on the basis of an entry made in the TSLR. The Court further held that it may be one of the factors that may have to be taken into consideration along with the other material available on record. In the said case, the court categorically held that the entry made in TSLR *per se* could not create any doubt or cloud on the right, title and interest of a person in respect of any land.

In view of the judgment of this Court referred to above, the learned counsel for the petitioners submits that the authorities shall follow due process of law before taking possession of the property. He submits that atleast

a notice should have been given to them with all the documents showing as to how the said property is a Government property.

Since the petitioners are found to be in possession of the property even as per the interim order passed by this Court on 26.12.2011 and in view of the representation made that the petitioners are still in possession of the said property, the respondents are directed not to dispossess the petitioners, if they are in possession of the property, without following the due process of law. It is made clear that no further constructions shall be made in the property till the ownership of the property is decided by an appropriate authority.

With the above direction, the Writ Petition is disposed of. No order as to costs. As a sequel to it, miscellaneous petitions pending if any in this Writ Petition shall stand closed.

C. PRAVEEN KUMAR, J

Date:24.07.2015

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^[1] (2011)6 ALD 283