

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 6110 of 2011

ORDER:

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The present writ petition is filed seeking issuance of a writ of mandamus declaring the action of the respondents in relocating the boundaries of Sy.No.115 under the guise of conducting survey of the land in Sy.No.116 of Kukatpally Village, Ranga Reddy District, as illegal and arbitrary and consequently direct the respondents not to disturb the boundary stones of Sy.No.115, which were fixed vide panchanama in File No.G8/780/96 dated 05.07.1996.

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

The lands in Sy.Nos.106 and 115 of Kukatpally Village belong to one R.H.Sunder Rao, Peter Jai Sheel Rao and Albert Karunakar, who have filed declarations before the Special Officer and Competent Authority as required under Urban Land (Ceiling and Regulation) Act, 1976 (for short "the Act"). After processing the declarations made, the competent authority vide his proceedings in G1/11718/76, 11721/76 and 11722/76 dated 20.09.1990 declared that the said individuals are in possession of the land in excess of the limit. Challenging the said order, the above said individuals preferred an appeal before the Commissioner, Appells. By an order dated 09.12.1999 the Commissioner, Appeals, set aside the order and remanded the matter back to the authority. Pursuant to remand, the Special Officer and Competent Authority, Urban Land Ceiling, by his order

dated 17.01.2003 once again held that the above mentioned individuals, who are the vendors of the petitioners herein are surplus land holders. The first petitioner purchased land to an extent of 961.4 square meters (Plot No.7) in Sy.No.115/P vide Agreement of Sale-cum-G.P.A., registered as document No.1668/97 dated 13.05.1997, the second petitioner purchased land to an extent of 735.68 square meters (plot No.9) in Sy.No.115/P vide Agreement of Sale-cum-G.P.A., registered as document No.1269/97 dated 24.04.1997 and likewise, the third petitioner purchased an extent of 548.18 square meters (plot No.17) in Sy.No.115/P vide Agreement of Sale-cum-G.P.A., registered as document No.22/98 dated 03.01.1998.

It is the case of the petitioners that they have purchased the plots without knowing the pendency of Urban Land Ceiling proceedings. As things stood thus, with a view of regularize the excess land which is in possession of the third parties, the Government issued G.O.Ms.No.455 dated 29.07.2002. On coming to know about the pendency of the proceedings, the petitioners applied for regularization/allotment of the plots purchased by them. The competent authority processed the said applications and issued G.O.Ms.No.1328 dated 17.12.2003 allotting the plots in favour of the petitioners and 13 others, under Section 23 (4) of the Act.

It is stated that since then the petitioners are in possession and enjoyment of the plots. While things stood thus, the fourth respondent along with three others filed declarations under the Act in respect of land in Sy.No.116/A wherein they were declared as surplus holders to an extent of 12289.36 square meters. Vide proceedings No. F1/15/97 dated 26.11.1998, the Competent

Authority directed the fourth respondent and three others to deliver the possession of the excess land. As they failed to deliver the excess vacant land, the competent authority took possession of the same on 31.08.2011 under a cover of panchanama. Thereafter, the fourth respondent and his family members applied for regularization under G.O.Ms.No.456 dated 29.07.2002, which was said to have rejected on 11.10.2006. When the fourth respondents and others tried to interfere with the possession and enjoyment of the land in Sy.No.115, the vendors of the petitioners filed a civil suit before the competent civil Court for perpetual injunction. Though the suit was decreed, fourth respondent disobeyed the order of injunction which led to filing of E.P.No.83 of 2002 under Order 22 Rule 32 C.P.C. seeking arrest of the fourth respondent. By an order dated 07.01.2006 the said E.P. was allowed. It is stated that pursuant to the order in I.A.No.1006 of 1995 in O.S.No.57 of 1994, the competent authority surveyed the land with tipans and fixed boundary stones. No objection was raised by the fourth respondent about the said survey though he was present on the spot. On 14.04.2011 the fourth respondent is said to have made an application before respondent Nos.2 and 3 seeking demarcation of land in Sy.No.116. A notice came to be issued to the vendors of the writ petitioners asking them to be present on the spot for demarcation of land in Sy.No.116. It is stated that the said action, as contemplated by the third respondent, is only with a view to relocate the boundaries of Sy.No.115. It is stated that as per the orders of the competent authority, the retainable area of the fourth respondent is only 1000 square meters in which he has raised constructions. The remaining land in Sy.No.116 vests with the Government, as such the fourth respondent is not entitled to

seek any survey of the said area. Since the retainable area of 1000 square meters is far away from Sy.No.115, issuing notice to the writ petitioners or their vendors does not arise. What emerges from the above is that the petitioners are apprehending that under the guise of conducting survey in Sy.No.116, there is every possibility of respondents relocating the boundary stones in Sy.No.115.

A counter came to be filed by the fourth respondent denying the averments made in the writ petition. In the first counter affidavit filed along with the vacate stay petition, the fourth respondent states that since the petitioners are encroaching into the land in Sy.No.116 of Kukatpally Village, they made an application for resurvey and relocate the boundary stones. It is further stated that the fourth respondent along with his family members made an application for regularization of excess land in Sy.No.116 in terms of G.O.Ms.No.456 dated 27.07.2002. The Government issued G.O.Ms.No.1438 dated 03.10.2006 granting exemption under Section 20 (1) (a) of the Act to an extent of 6436 square meters apart from 4000 square meters of retainable area. He categorically denied the averments made in the writ petition with regard to rejection of his application by the competent authority. Fourth respondent further states that the writ petitioners suppressed the said fact and filed E.P.No.83 of 2002 for his arrest and sent him to civil imprisonment for disobedience of the judgment and decree, which according to him was stayed by the Apex Court in Special Leave to Appeal (Civil) No.17974 of 2006, dated 20.11.2006. According to him, the authorities acted on a representation made by him for conducting survey in Sy.No.116, but the same could not be completed in view of the orders passed by this Court. He submits that though

there was an earlier survey in the year 1986, but the same does not in any way prevent the fourth respondent from making a request for resurvey of the land as the petitioners have been encroaching into his land.

An additional counter came to be filed stating that taking advantage of the interim orders passed by this Court, the petitioners are constructing multi stored buildings by encroaching the land of the fourth respondent. It is submitted that if no further action is initiated, the fourth respondent would be put to irreparable loss as the constructions are made in the land belonging to him.

No counter is filed by respondent Nos.1 to 3.

A perusal of the averments in the writ petition and also the contents of the counter affidavits would show that the petitioners and fourth respondent are blaming each other with regard to the encroachments made. On one hand the writ petitioners contended that the retainable area insofar as the fourth respondent is only 1000 square meters and when the same is far away from the land in Sy.No.115, resurvey of land in Sy.No.115 does not arise. The record reveals that a survey was conducted in the year 1986 and boundaries were also fixed therein. At that point of time the vendors of the writ petitioners were in possession of the property. It is now stated that the petitioners, who purchased the property from their vendors have started encroaching into the land belonging to the fourth respondent, constructions are made and some apartments are said to have been sold.

From the above, it is clear that there are number of factual

aspects involved in the matter which cannot be decided in the writ petition, more particularly as to whether the petitioners have trespassed into the land of the fourth respondent or whether the fourth respondent was justified in asking for resurvey in view of the alleged trespass made by the petitioners. The prayer as sought for in the writ petition is to direct the respondents not to conduct the survey in respect of land in Sy.No.116 of Kukatpally Village, Ranga Reddy District. As stated earlier, the first survey was conducted in the year 1986 when the vendors of the writ petitioners were in possession of the land. Thirty years later an application was made by the fourth respondent for survey in view of the alleged trespass.

A division Bench of this Court in Writ Appeal No.1003 of 2013 observed that once a request is made by any individual/owner of the land for conduct of survey by paying requisite fee, in view of the Circulars in Rc.No.N1/6543/99, dated 25.07.2001, Rc.No.N2/1741/2010, dated 18.05.2010 and instructions vide D.O.Rc.No.N1/4296/2012, dated 22.08.2012, the revenue officials are bound to conduct survey. Similar view was taken by another Division Bench of this Court in Writ Appeal No.110 of 2013 relying upon the said circulars and accordingly set aside the order of the learned Single Judge.

From the above two judgments referred to above, it is clear that on an application made by an individual or owner along with requisite fee, the revenue authorities are bound to conduct survey, but at the same time, it is to be noted that the said survey has to be done in accordance with the circulars and orders issued by the Board from time to time. As stated in the counter the survey was in fact commenced, but due to the stay orders

passed by this Court the same was stopped. In view of the allegations made in the counter that the application for conducting resurvey came to be filed as the petitioners, who are subsequent purchasers, started encroaching into the land, the request for resurvey cannot be rejected. Having regard to the nature of dispute raised by the parties and in view of the orders passed by this Court in the two writ appeals referred to above, respondent Nos.1 to 3 shall proceed ahead with the survey of land in Sy.No.115 in the presence of the writ petitioners and also the fourth respondent. It is needless to mention that the original boundary stones which are fixed in the year 1986, if they are still lying at the site, shall not be disturbed.

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**

31.07.2015
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