

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.No.22265 of 2016

ORDER:

This writ petition is filed seeking writ of certiorari and quash the Memo No.22213/Assn.III/1/2007, dated 20.06.2016 issued by the 1st respondent in rejecting the application of the petitioners dated 30.04.2007 for regularization of their land admeasuring Acs.5.00 in Sy.No.129/103 (new 403), correlated to town Survey No.4 (part), 5(part) and 24 (part) Block-H, ward 9 & 10, Shaikpet Mandal, situated at Road No.12, Banjara Hills, Hyderabad, as arbitrary, illegal and consequently to direct the 1st respondent to regularize the said land in favour of the petitioners 1 to 16 in strict adherence to the judgment in W.A.No.859 of 1991 & batch dated 13.02.2001 and order in W.P.No.3367 of 2009 by collecting the compensation/regularization amount after negotiating with the petitioners 1 to 16.

2. Facts which are necessary for disposal of the writ petition are as follows:

The petitioners 1 to 16 claims to be the legal heirs of Mrs.Ghousia Begum and petitioner No.17 claims to be the General Power of Attorney Holder of petitioners 1 to 16. According to the petitioners, Mrs. Ghousia Begum was the owner and possessor of Acs.5.00 in Sy.No.129/103 (new 403), situated at Road No.12, Banjara Hills, Shaikpet Village, Hyderabad. The 1st respondent issued notification No.84,

dated 09.09.1981 to 34 assignees of Surfekhas (Private Estate of Nizam) to submit documents in support of their claim for identification of private and Government lands in Shaikpet and Hafizpet areas and Ghousia Begum was shown as assignee to the extent of Acs.5.00 of land in Sy.No.129/103 in Sl.No.18 of the list. During the pendency of the said enquiry, the 3rd respondent has assigned various extents of lands to third parties vide proceedings No.Rc.No.F4/3049/82, dated 15.12.1982, which was questioned by some of the successors in interest of the original assignees by filing W.P.Nos.9414 of 1982 and 9420 of 1982. During pendency of the said writ petitions, the 1st respondent issued G.O.Ms.No.942, dated 23.06.1983 by directing the 3rd respondent to treat the 16 assignees including Mrs.Ghousia Begum out of 35 assignees as encroachers and resume land as per the Rules. Being aggrieved by the said G.O, some of the successors in interest of the assignees filed W.P.No.15548/1987 questioning the said G.O. The Hon'ble High Court was pleased to pass common order dated 31.08.1990 by setting aside the illegal assignments made by the 3rd respondent and also quashed G.O.Ms.No.942 and further restrained the 1st respondent from interfering with the possession of the lands. Aggrieved by the orders dated 31.08.1990 in the said Writ Petitions, the 1st respondent carried the matter in W.A.No.859 of 1991 and batch and the said W.As were dismissed by order dated 13.02.2001 directing the parties to maintain status quo and further

directed the 1st respondent to reconsider the applications for regularization of lands and to consider the feasibility of fixing reasonable market value if necessary by inviting the parties and to put quietus to long standing litigation.

3. Though the history of the litigation is traced out in the writ affidavit, but it is not necessary to refer to all the facts since the Hon'ble Division Bench of this Court has considered the same elaborately in W.A.No.859 of 1991 & batch and directed the 1st respondent-Government to reconsider the issue and consider the feasibility of regularizing the lands in question to the respondents at the reasonable market rate. Basing on which, the petitioners filed application dated 30.04.2007 for regularization of the subject land. As the same is rejected by way of impugned proceedings, the present writ petition is filed.

4 . Sri Vedula Venkata Ramana, learned Senior Counsel submits that when the Hon'ble Division Bench of this Court in W.A.No.859 of 1991 & batch, had clearly directed the respondents to regularize the subject land in favour of the petitioners by collecting reasonable market value, it is not open for the respondents to reject the case of the petitioners for regularization of the subject land on untenable grounds and that the grounds on which the application was rejected are non existing grounds. He submits that the respondent Government never put up such pleas in the earlier litigation. He would further contend that the 1st respondent has not applied its mind while considering the application of the

petitioners for regularization and the same is not in consonance with the orders passed by the Division Bench of this Court in W.A.No.859 of 1991. Basing on the concession of the respondents in the counter affidavit in W.P.No.3367 of 2009, the said writ petition filed by the petitioners was disposed of and that now the respondents cannot go back and reject the application of the petitioners. He would further contend that the petitioners are in possession of the subject land and name of Mrs. Ghousia Begum is clearly reflected in the earlier proceedings in G.O.Ms.No.942, dated 23.06.1983 and also Notification issued by the 3rd respondent. He also submits that the respondents have also violated *status quo* orders granted by the Hon'ble Division Bench of this Court in W.A.No.859 of 1991.

5. On the other hand, learned Advocate General for the State of Telangana submits that the Division Bench of this Court in W.A.No.859 of 1991 only directed for reconsideration of the issue and to consider the feasibility of regularization of subject land and no mandamus was issued for regularization of the subject lands in favour of the petitioners. He also contends that writ petitioners are not parties to W.A.No.859 of 1991. He further submits that the subject land is allotted to the Police department and it is being utilized for public purpose. He would further contend that these are all disputed questions of fact which cannot be gone into in the writ petition by exercising the power of extraordinary jurisdiction under Article 226 of the Constitution of India. He would further

contend that when once the petitioners filed application for regularization of the subject land, it implies that the petitioners are not having any title over the subject land and same is Government land. It is the discretion of the Government to grant regularization or not and no *mandamus* can be issued for regularizing the subject lands. He further submits that the Government found that that it is not feasible to regularize the subject land since the same is allotted to Police Department for public purpose and that no exception can be taken to the same. In support of his contention, he relied on the judgments reported in **Mahalaxmi Motors Ltd., v. Mandal Revenue Officer**^[1] and **District Collector, Mahabubnagar v. R.Venkataswamy Goud**^[2].

7. The Hon'ble Division Bench, by order dated 13.02.2001 in W.A.No.859 of 1991 and batch, after reconstitution, held as follows:

“Coming to the plea of the respondents seeking a direction from the Government to regularize the suit schedule properties to them at a reasonable market rate through the Government rejected their application in pursuance of the order, dated 29.07.2000, we still feel that as the dispute is pending for several years in the Courts without finality and there is further possibility of dragging on the proceedings for some more decades in the event of either of the parties approaching the Court of law to establish their rights, to put a quietus to the issue more so in the light of the orders passed by the Government from time to time in favour of various persons whether under illegal occupants were regularized, we direct the Government to reconsider the issue and consider the feasibility of regularizing the lands in question to the respondents at the reasonable market rate, if necessary by inviting the representatives of the respondent society for negotiations to arrive at the reasonable market value.”

It is to be seen that after the judgment in W.A.No.859 of 1991 & batch, some more writ petitions were filed by the parties, but it is not necessary to refer the same because ultimately the

petitioners filed application for regularization of subject land on 30.04.2007 basing on the judgment in W.A.No.859 of 1991 dated 13.02.2001. The application of the petitioners dated 30.04.2007 culminated in the impugned proceedings, which is being challenged in the writ petition. In the W.A.No.859 of 1991, the learned Judges referred the issue whether this Court can exercise extraordinary jurisdiction under Article 226 of the Constitution of India and adjudicate the disputed questions of fact, more so, with regard to title of the property. But ultimately, the counsel appearing for the respondents in the said Writ Appeals conceded to the fact that a writ Court cannot enquire into the disputes questions of title. Basing on the said concession, Writ Appeals were allowed by order dated 13.02.2001 by directing the appellant-Government to reconsider the issue and consider the feasibility of regularizing subject land in favour of the respondents therein, but in writ affidavit it is wrongly mentioned as dismissed. The Hon'ble Division Bench directed to consider the feasibility of regularizing the subject land and no mandamus was issued to regularize the land. The 1st respondent considered the feasibility and passed impugned order in the writ petition. This Court cannot sit in appeal over the same and issue mandamus for regularization of subject land. The Hon'ble Apex Court in **Kalinga**

Mining Corporation v. Union of India ^[3], held as follows:

“62... The Court does not exercise the powers of an appellate Court in exercise of its powers of judicial review. It is only in cases where either findings recorded by the administrative/quasi-judicial authority are based on no evidence or are so perverse that no reasonable person would have reached such a conclusion on the basis of the material available that the court would be justified to interfere with the decision. The scope of judicial review is limited to the decision making process and not to the decision itself even if the same appears to be erroneous.”

8. Learned Senior Counsel Sri Vedula Venkata Ramana and

learned Advocate General for the State of Telangana has taken me to various other aspects, which are not required to be noted as these are all disputed questions of fact, which cannot be decided in this writ petition.

9. A perusal of the impugned order goes to show that there are rival claims in respect of the subject land and also in respect of the identity of the subject land. There is also dispute with regard to passing of a Nala (canal) through the subject land, which cannot also be considered for regularization. This Court cannot go into the rival claims of the parties in this writ petition by exercising extraordinary jurisdiction under Article 226 of the Constitution of India and no provision of law is cited under which the petitioners are claiming regularization as a matter of right.

The Hon'ble Supreme Court in **Mahalaxmi Motors Ltd., v. Mandal Revenue Officer (supra)**, it is held as follows:

“The application filed by the appellant before the State Government for regularization of the land although may not be determinative of the issue as to whether it is a land grabber or not could be taken into consideration for a limited purpose, namely, admission or acknowledgement on its part in regard to the title of the State. Once it had taken a specific stand knowing fully well that it had no right, title and interest in or over the land in question, it cannot in law turn round and contend that the same was not binding on it. Doctrine of estoppel in a situation of this nature would squarely apply.”

The said principle was also followed by the Hon'ble Division Bench of this Court in **District Collector, Mahabubnagar v. R.Venkataswamy Goud (supra)**.

In view of above facts and circumstances, this writ petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous, petitions, if any, pending shall stands dismissed.

A.RAJASHEKER REDDY, J

23.08.2016
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THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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[\[1\]](#) (2007) 11 Supreme Court Cases 714
[\[2\]](#) 2012 (1) ALT 212 (D.B)
[\[3\]](#) (2013) 5 Supreme Court Cases 252