

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.32648 of 2012

ORDER:

Heard the learned counsel for the petitioners and the learned Government Pleader for Revenue appearing for respondent

Nos.3 and 4.

2. In this Writ Petition, Petitioners have challenged the action of the respondent Nos.3 and 4 in neglecting their legal and constitutional duties and for a direction to respondent Nos.3 and 4 to immediately design and expeditiously implement a suitable housing scheme for constructing a clean and green colony for members of the petitioners-society at Laxman Nagar, Syamalakunta, B.K.Guda, S.R.Nagar, Hyderabad.

3. The petitioners-society consists of hut dwellers who claimed to have purchased 90 small huts for residential purposes in northern part of the Sy. No.122 situated at Syamalakunta, B.K.Guda, S.R.Nagar, Hyderabad. They claimed that the President of the 1st petitioner-association late Laxmaiah purchased a piece of land in the northern part of land in Sy. No.122 admeasuring Ac.1.20 gts from one P.Balaiah for Rs.15,000/-; that the said Balaiah executed the agreement of sale with an intention to establish a colony for the members of the petitioner-society; after purchase of

the property, the members of the petitioner-association constructed houses and started living therein; but subsequently respondent Nos.1 and 2, who claimed to have purchased this land, tried to forcibly evict them. They also plead that the State Government also started contending that the land is public property, that it was originally recorded as tank bed land, but was later fraudulently converted into patta land. Petitioners contend that there were recurring threats and attempts to forcibly evict them by respondent Nos.1 to 4. Petitioners contend that the members of the 1st petitioner-society are in exclusive possession and enjoyment of the subject property for the previous 30 to 40 years and they have right to hold and to enjoy the property as if they were owners of the land. They also stated that they have filed O.S.No.4581 of 2007 before the City Civil Court, Hyderabad (II Junior Civil Judge, City Civil Courts, Hyderabad) and that the said suit is pending. They admit that the suit O.S.No.4581 of 2007 was dismissed for default on 04-11-2011 and application to restore it is pending.

4. They contend that the ideals of social and economic justice and freedom adumbrated in the Constitution of India direct the Government authorities to aid of the weak and oppressed and ensure basic necessities and minimum fair living opportunities against the greedy rich who always exploit and suppress them

and deprive them of basic rights of existence and nourishment.

5. They contend that 'possession is 90% of the title', S.C., S.T. Development and Welfare fund is provided by the State and the petitioners are entitled, in view of Articles 38, 39 and 46 of the Constitution of India, to protection from eviction and this Court therefore ought to restrain respondents from taking steps for forcibly eviction of the petitioners and frame a housing scheme for their benefit in the subject land.

6. Counter affidavit is filed by on behalf of respondent Nos.3 and 4 stating that the land in Sy. No.122 belongs to the Government and such land cannot be alienated or sold and P.Balaish had no entitlement to alienate the land to anybody including the Writ Petitioners or respondent Nos.1 and 2. It is however admitted that the members of the petitioners-society occupied the land, constructed the cement pucca houses on the northern part of the land in Sy. No.122. They contend that they are purely encroachers without any lawful entitlement whatsoever over the land in question.

7. It is stated that the 1st respondent filed L.G.C.No.2 of 1992 against the encroachers, initially without making the State Government as party to the proceedings that thereafter, the District Collector, Hyderabad was impleaded as respondent No.49, and

ultimately the said L.G.C. was disposed of on 15-02-1993 without granting any relief to the hut dwellers. It is stated that the said Court also directed 1st respondent herein to get his title adjudicated separately since both the petitioners-society as well as respondent Nos.1 and 2 were tracing title through P.Balaiah.

8. It is stated that the Government has sympathy for the plight of hut dwellers but on account of claim of respondent Nos.1 and 2 and because the lands are classified as Shikham patta, the respondent Nos.3 and 4 cannot stepforward and grant house site pattas or take up weaker sections housing scheme in the land in question.

9. It is also stated that applications for regularizations of structures in the land were made by the hut dwellers under G.O.Ms.No.58 dt.30-12-2014, but said regularization cannot be done as the subject land is *kunta/shikam* land in view of orders passed by the Supreme Court which had held that it is the duty of the State to protect the environment and water bodies like canals, rivers etc. It is also stated that in O.S.No.2302 of 2013 filed by the members of the 1st petitioner-society, no orders had been granted in their favour restraining the respondents from entering or evicting petitioners from the subject property.

10. Since the dispute between the petitioners and

respondent Nos.1 and 2 is a purely civil nature and cannot be adjudicated in this Writ Petition, granting liberty to the petitioners to proceed against respondent Nos.1 and 2 in the Civil Court, this Court had dismissed the Writ Petition against respondent Nos.1 and 2 by way of separate orders passed today.

11. As regards the claim of the petitioners against respondent Nos.3 and 4 are concerned, in view of the stand taken in the counter affidavit by respondent Nos.3 and 4 that the land is Shikham land and cannot be assigned or regularized in favour of the members of the 1st petitioner-association, and that it is not possible to take up any weaker sections housing scheme in the land allegedly in the occupation of the members of the 1st petitioner-association, it is not possible for this Court to grant any relief to the petitioners in this Writ Petition. However, this does not preclude respondent Nos.3 and 4 if they are so advised to consider the claims of the members of the 1st petitioner-Society subject to any claims which respondent Nos.1 and 2 may have against both the members of the 1st petitioner-society and respondent Nos.3 and 4.

12. The Writ Petition is dismissed with the above observations. No costs.

13. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 21-06-2016

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