

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.101 of 2016

ORDER:

Heard counsel for the petitioner, the Government Pleader for Municipal Administration appearing for respondents 1 & 2, and Smt P.Laxmi, Standing counsel GWMC appearing for 3rd respondent.

2. This Writ Petition is filed by the petitioner for a direction to the 3rd respondent to regularize an extent of 300 sq.yards in survey No.1066 of Balasamudram, Hanamkonda, Warangal District, which is abutting to the petitioner's house bearing No.1-8-239/1.

3. On 31.05.2003 the Standing Counsel of the then Municipal Council, Warangal passed a resolution unanimously that any house owner if found to be an encroacher of municipal land, it would be regularized by collecting money at rates prescribed therein. It reads as under:

- “i) Rs.4,000/- per Square Yard for the Encroachments abutting to the 80 Feet Road.
- ii) Rs.2,000/- per Square Yard for the Additional Land under the House Plot abutting to other Roads.
- iii) Rs.1,200/- per Square Yard for the Additional land abutting to Service Lane.”

4. Petitioner contends that he purchased an extent of 355.55 sq. yards under registered sale deed dt.01.07.1999

from one Sampath Rao and constructed a house bearing No.1-8-239/1 therein. According to the petitioner adjacent to the plot purchased by him, an extent of 300 sq. yards with basement abutting to a 15 feet road on the western side was in the possession of the vendor of the petitioner, and that after purchase of the plot No.C3/19/1 from his vendor under the sale deed dt.01.07.1999, the petitioner was in continuous possession and enjoyment of the excess 300 sq.yards.

5. Petitioner contends that persons similarly placed like the petitioner ,who were in occupation of the land belonging to the municipality adjacent to their house plots, were allowed to purchase the same as per the Government Memo No.16309/D2/2000-1 M.A., dt.15.11.2000 and sale deeds have been executed in the year 2014 by the 3rd respondent to such persons. Petitioner alleges that when the petitioner applied for a similar relief to the 3rd respondent on 20.04.2015, the 3rd respondent is not taking any action thereon. Therefore, the petitioner has filed this Writ Petition seeking a direction to the 3rd respondent to regularize the excess land alleging also that there is a threat of dispossession.

6. The 3rd respondent-Corporation has filed a counter affidavit stating that the land in survey No.1066 of Balasamudram, Hanamkonda, Warangal District was allotted to 3rd respondent and permission was accorded by the

Government to the 3rd respondent to convert the said land into house plots and alienate the same by conducting public auction. It stated that the 3rd respondent had obtained lay out vide L.P.No.11/75 known as 'Balasamudram layout' and in 1990, plot No.C3/19 in the said lay out was sub-divided into plot No.C3/19/1 of an extent of 355.55 sq. yards and plot bearing No.C3/19/2 of an extent of 311.11 sq.yards through D.P.No.13/90 in ROC No3/1037/1990 issued by the Kakatiya Urban Development Authority, Warangal.

7. The 3rd respondent admitted that Plot No.C3/19/1 of extent of 355.55 sq. yards created vide D.P.No.13/90 was sold out to petitioner's vendor under registered sale deed dt.24.03.1999 and that the petitioner purchased the said plot from his vendor. It is denied that the petitioner is in continuous possession and enjoyment of the adjacent land of extent of 300 sq.yards which is on the back side of the plot No.C3/19/1. It is stated that the 3rd respondent is in possession of the property.

8. The 3rd respondent admits that the Government issued Memo No. 16309/D2/2000-1 M.A., dt.15.11.2000 for regularization of excess lands at Balasamudram LIGH Quarters subject to certain conditions. It would contend that the said memo neither pertains to regularization of lands other than the LIGH quarters abutting land nor to regularization of lay out approval of individual plots. It is

contended that the subject plot is not excess land and that the subject plot is a plot adjacent to the plot purchased by the petitioner.

9. It is admitted by the 3rd respondent that it had executed certain sale deeds in respect of excess lands in the year 2014 but it seeks to defend the same stating that the land in that case is an excess land which is triangular in shape and a narrow plot. It is stated that the subject land is valuable property adjacent to the existing Rythu Bazar and 3rd respondent intends to expand the existing Rythu Bazar by including the land in Plot No.C3/19/2 for the convenience of the public. Reliance is also placed by the 3rd respondent on the judgment of the Supreme Court in **Jagpal Singh and Others v. State of Punjab and Others**¹. It is contended that communal land encroachments cannot be allowed and encroachment of such communal land or common land cannot be regularized.

10. Counsel for both parties reiterated their respective pleadings.

11. On 31.05.2003 the following resolution was passed by the then Standing Committee of the Municipal Council of the then Warangal Municipality as under:

“Item No.14: Collection of an amount of Rs.2,000/- per Square Yard in respect of Additional Municipal Land

¹ 2011(1) CCC 144 (SC)

which was under encroachment admeasuring 332 Square Yards, situated at Balasamudram, Hanamkonda, bearing H.No.1-8-321 for Regularization.

Resolution: It is unanimously resolved to regularize the Additional Municipal Land which was under encroachment admeasuring 332 Square Yards situated at Balasamudram, Hanamkonda, belonging to Smt P.Susheela W/o Venkateswara Rao, bearing H.No.1-8-321 for Regularization by collecting an amount of Rs.2,000/- per Square Yard.

It is further unanimously resolved that any House Owner if found to be encroacher of Municipal Land, the same may be regularized by collecting the money as mentioned below:-

- i) Rs.4,000/- per Square Yard for the Encroachments abutting to the 80 Feet Road.
- ii) Rs.2,000/- per Square Yard for the Additional Land under the House Plot abutting to other Roads.
- iii) Rs.1,200/- per Square Yard for the Additional land abutting to Service Lane.

It is unanimously resolved that the Commissioner is hereby empowered to collect the requisite amounts and take necessary steps for regularizing the encroached land.

Meeting is hereby concluded.”

12. The 3rd respondent is a successor to the then Warangal Municipality and decisions of the predecessor of the 3rd respondent such as the Warangal Municipality are binding on the 3rd respondent. Unless any decision has been taken by the 3rd respondent-Council to the contra, the said decision of the then Municipal Council is in tune with the Government

policy contained in Memo No. 16309/D2/2000-1 M.A.,
dt.15.11.2000 which reads as under:

“Memo No. 16309/D2/2000-1 M.A dt.15.11.2000

Sub: Town Planning – Warangal Municipal Corporation –
Regularization of Encroachments at Balasamudram
LIGH quarters on collection of land value at Market
rate – Regarding.

Ref: 1) From the Commissioner, Warangal Municipal
Corporation Lr.Roc.No.G1/16757/99, dt.26.05.2000.

.....

With reference to the letter cited, the proposal of the
Commissioner, Warangal Municipal Corporation for
regularization of the land value at prevailing market rate @
Rs.1200/- per square yard is accepted, subject to the
following conditions.

- i) While regularizing the encroachments, it must be
ensured that minimum open space as required for
any layout is kept as open space. Any
encroachments on this open space must be removed.
- ii) The people who are not willing to pay the market
value, for the encroachments should also be
removed.

LINGARAJ PANIGRAHI,
SECRETARY TO GOVERNMENT.”

13. Copy of the lay out L.P.No.11/75 has been placed before
me by the counsel for the petitioner which does not indicate
that the subject plot has been earmarked for any communal
purpose/open space/park, etc. The judgment of the Supreme
Court in **Jagpal Singh's case** (1 supra) would apply only in
respect of lands earmarked as communal lands which the
Supreme Court held cannot be allotted to private persons who
are encroachers thereof. Therefore the said decision has no
application to the present case.

14. Without the layout being altered showing the subject plot as a land earmarked for communal purpose or open space or park, it is not open to the 3rd respondent to show discrimination against the petitioner and refuse to alienate the area in his occupation on 'market value basis' as per the resolution passed by the Warangal Municipal Council on 31.05.2003.

15. When the 3rd respondent had executed registered sale deeds in July 2014 in favour of third parties in respect of excess lands occupied by them within the same lay out and who are similarly placed like the petitioner, the action of the 3rd respondent in denying the same benefit to the petitioner is clearly arbitrary. The distinction sought to be made by the 3rd respondent between the other persons, in whose favour it had regularized and executed sale deeds in July, 2014, and the petitioner cannot be accepted, since the shape or size of the plot is not a relevant factor for consideration for regularization.

16. The contention of the 3rd respondent that the petitioner is not in possession is belied by the letter Rc.No.B/285/2009 dt.18.02.2009 addressed by Tahsildar, Hanamkonda to the District Collector, Warangal. Therefore the said contention is also rejected.

17. Therefore, this Writ Petition is allowed; the 3rd respondent is directed to regularize the excess land in petitioner's occupation by executing a registered sale deed by collecting the existing market value pursuant to the resolution dt.31.05.2003 of the Warangal Municipal Council on par with other transferees of such land in respect of whom, admittedly registered sale deed documents No.3688 and 5740 of 2014 were executed by the 3rd respondent. There shall be no order as to costs.

18. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.



M.S.RAMACHANDRA RAO, J

01st September, 2016
gra