

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.34210 OF 2012

ORDER :

This writ petition is filed seeking writ of *mandamus* declaring the action of the 2nd respondent in issuing impugned letter No.E1/4062/2012, dated 11.10.2012 as illegal and arbitrary and to declare the endorsement No.E1/N2/7750/2010, dated 20.10.2010 as valid and binding and consequently to direct the respondents 4 to 6 not to interfere with the physical possession of the petitioner over the house property bearing Municipal Nos.8-3-539, 8-3-542 and 8-3-542/1 to an extent of 285 sq.meters, situated at Yellareddyguda, Hyderabad.

2. It is the case of the petitioner that he is the absolute owner and possessor of property bearing Municipal Nos.8-3-539, 542 & 542/1, admeasuring 285 sq.mtrs situated at Yellareddyguda, Hyderabad. He succeeded the said property in partition from his father late Sri Chennakeshavulu and his younger brother Sri Lakshminarayana in the year 1962. By virtue of Registered Release Deed No.3386/1995, dated 13.04.1995 executed in his favour by his father Sri Chennakeshavulu and his mother Smt. Mahalakshmi along with family members. That he submitted an application to the municipal corporation for mutation of his name in the municipal records on the basis of the Release Deed dated 13.04.1995. The name of the petitioner was entered in municipal records and property tax was also assessed in his name by the Municipal Corporation of Hyderabad-5th respondent. Since the subject property is in dilapidated condition, he approached the

5th respondent for grant of building permission for construction of new building. The 5th respondent informed the petitioner that unless NOC is obtained from the District Collector, no permission for building construction be granted. Thereafter, the petitioner approached the 2nd respondent for grant of NOC and the 2nd respondent, vide endorsement in file No.E1/N2/7750/2010, dated 20.10.2010 granted NOC in respect of the subject property in favour of the petitioner in terms of G.O.Ms.No.2111, dated 05.12.2005 and G.O.Ms.No.93, dated 28.01.2006. Accordingly, the 2nd respondent endorsed and addressed communication to the 5th respondent for grant of building permission, marking a copy to the petitioner. Thereafter, one Mohd. Yousuf, submitted a petition to the 1st respondent for protection of property in house bearing No.8-3-540 & 541, situated at Yellareddyguda on the ground that the land to an extent of 32 sq.mtrs known as 'Ashoor Khana' which is recorded as 'Sarkari' in TSLR Column No.10, and included in the NOC granted to the petitioner, but the said application was rejected on 31.12.2010 by issuing Memo in File No.E1/N2/6883/2009, dated 31.12.2010 by the 1st respondent. Again the 2nd respondent vide endorsement No.E/4062/2012, dated 23.05.2012, kept the NOC granted to the petitioner in abeyance on the basis of letters from the public representatives. The 2nd respondent has called for explanation from the petitioner, who submitted a detailed explanation along with documents. The 2nd respondent, being the Member Convener of the Committee, has unilaterally taken the decision on the basis of the representations submitted by the public representatives and

revoked the NOC granted in Endorsement No.E1/N2/7750/2010, dated 20.10.2010 by his Endorsement No.E1/4062/2012, dated 11.10.2012. Aggrieved by the same, present writ petition is filed.

3. Counter affidavit is filed by the respondents 1 to 3 denying the averments in the affidavit filed in support of the writ petition stating that as per the report of the Deputy Director, S & L.R, Hyderabad, the subject land falls in village site and the Word 'Sarkari' recorded in Co.No.10 of TSLR could be a mistake as Column No.10 entry should be obtained from Pahani/Sethwar of Yellareddyguda village. That on verification of ground, there is an old house existing with appurtenant land and that the Column No.20 of TSLR is recorded in the name of private individual and that the entire property is in the possession of the applicant. That one Mohd.Yousuf Mutavalli of Imam-E-Qasim-Imam-E-Hussain, Yellareddyguda, Hyderabad has filed a petition through Sri Asaduddin Owaisi, MP, stating that some land grabbers are trying to encroach Ashoor Khana land and to save the same. The Tahsildar has reported that the matter has been enquired on ground and found that the site in H.No.5-3-540, 541, Yellareddyguda, Hyderabad recorded as Ashoor Khana, falling in T.S.No.4, Block-O, Ward No.6 of Yellareddyguda for an extent of 32.50 sq.mtrs. It is recorded as Sarkari in Col.No.10 of TSLR and 'G place of Peerlu' is recorded in Col.No.20 of TSLR, which is quite different and distinct by boundaries from that of the site covered in the NOC application filed by Sri C.Koteswar Rao, which is in respect of Pre.No.8-3-539, 542, 542/1, Yellareddyguda village, Hyderabad, which falls in T.S.No.5,

Block-O, Ward No.6 of Yellareddyguda village and it is recorded as private land in Col.No.20 of TSLR and 'Sarkari' is recorded in Col.No.10. That basing on the report of the Tahsildar, Khairatabad and remarks of DD, S & LR, Hyderabad, the NOC Endorsement was issued to Sri C.Koteshwar Rao vide proceedings dated 20.10.2010 and no NOC was issued on Ashoor Khana land claimed by Mohd.Yousuf, who has been informed vide Memo dated 31.12.2010. Subsequently, Mohd. Yousuf again filed petition before the Collector, Hyderabad. It is stated that the Ashoor Khana is existing abutting to road, behind that old residential structure is demolished and debris are found on ground for which NOC was given. It is stated that regarding Pre.No.8-3-540, Wakf Notification was notified with an extent of 155.2 sq.yds but actually such premises number is not recorded in TSLR. Under the guise of this notification, they are claiming the NOC for given land, which was previously occupied by a residential structure, which is dismantled. It is stated that with regard to the subject property, the orders of this Court in W.P.No.24682 of 1998 are binding on them. There is a categorical observation of this Court that the Wakf Board is claiming premises No.8-4-540 and not house bearing Municipal No.8-3-539, 542 & 542/1 for which NOC has been issued. That in the TSLR only an extent of 32.50 sq.mtrs is recorded as 'Peerla Chavdi'. The boundaries of 32.50 sq.mtrs (T.S.No.4) have become final as they have been finally notified under Section 13 of the A.P.Survey and Boundaries Act, which cannot be altered by any means except by order of Civil Court issued within three years

from the date of said Notification. No such suit has been filed seeking correction of boundaries from 32.50 sq.mts, to 155 sq.yds as notified by the CEO, Wakf Board in the year 1982. Therefore, the claim of Wakf Board for 155 sq.yds is legally not tenable in view of the aforesaid Notification of Survey Department under A.P.Survey and Boundaries Act and cannot be tallied even on ground. It is stated that the NOC can be put on hold provided if they intend to hold an enquiry as to how Sri C.Koteshwara Rao and his predecessors who obtained NOC are tracing their rights over the said property from the Government, whose name is recorded in Col.No.10 (Pattedar) of TSLR, but not to consider the claim of the Wakf Board as alleged by the petitioner and sought for dismissal of the writ petition.

4. Heard learned counsel for the petitioner, learned Assistant Government Pleader for Revenue appearing for respondents 1 to 3.

4. Learned counsel for the petitioner submits that when the 4th respondent has issued proceedings dated 01.08.1998 in purported exercise of the power conferred on it under Section 54 of the Wakf Act, 1995, one A.Satyanarayana filed WP No.24682 of 1998 against the petitioner and 4th respondent herein, which was allowed by setting aside the impugned proceedings dated 01.08.1998 passed by the 4th respondent-A.P Wakf Board, by holding that the property claimed by the Wakf Board falls in Municipal house bearing No.8-4-540 and the land claimed by the petitioner therein i.e., A.Satyanarayana, from whom the land is re-conveyed to the petitioner herein is falls in municipal house

bearing Nos.8-3-539 and 8-3-542 and that the said land is nothing to do with the property bearing No.8-3-540, which is claimed by the 4th respondent herein. But, however, the 4th respondent-Wakf Board herein, which is 1st respondent in W.P.No.24682 of 1998 was given liberty to issue proper notice and pass appropriate orders in accordance with law. But as on today no proceedings were initiated. He submits that NOC was granted to the petitioner on 20.10.2010 vide proceedings in File No.E1/N2/7750/2010, after calling report from the Mandal Revenue Officer. The Mandal Revenue Officer, in his report vide Lr.No.C/1760/09, dated 18.01.2010 clearly held that the 'Ashoor Khana' claimed by the 4th respondent is falling in TS No.4, Block-O, Ward-6 of Yellareddyguda for an extent of 32.50 sq.mtrs recorded in Col.No.10 as 'Sarkari' and in Col.No.20 of TSLR recorded as 'G.Place of Peerlu' which is quite different and distinct by boundaries from that of the site covered in the NOC application filed by the petitioner for grant of NOC. He also submits that when once Mohd.Yousuf gave representation dated 14.12.2009 regarding overlapping of the lands, the 1st respondent enquired into the matter and rejected the application of Mr.Mohd.Yousuf vide proceedings No.E1/N2/6883/2009, dated 31.12.2010. He submits that having rejected the application of Mohd. Yousuf, the District Collector cannot reopen the matter again on the representation filed by Mohd. Yousuf and others. He also submits that the Tahsildar, Khairatabad Mandal filed report along with sketch and TSLR extract in respect of TS No.4, 5 Block-O, Ward-6 of Yellareddyguda. He also submits that in

the Town Survey Register, the name of the petitioner and his father and brother is recorded in respect of the subject land. He also submits that the so called notification dated 30.07.1998 goes to show that the 4th respondent is claiming property house bearing No.8-3-540 with an extent of 155.2 sq.yds.

5. On the other hand, learned Assistant Government Pleader for Revenue submits that since there are disputes between the 4th respondent and petitioner, the authorities have withdrawn the NOC granted in favour of the petitioner and they have to approach the Civil Court. In view of the same, no interference is called for.

6. In this case, it is to be seen that admittedly petitioner was granted NOC vide endorsement No.E1/N2/7750/2010, dated 20.10.2010 by the Committee, which was constituted under G.O.Ms.No.2111, dated 05.12.2005 and G.O.Ms.No.93, dated 28.01.2006. One Mohd.Yousuf, has submitted an application before the District Collector stating that there is overlapping between T.S.Nos.4 & 5, in which petitioner was granted NOC on the land of Ashoor Khana. The District Collector, after calling for report from the Tahsildar, Khairatabad Mandal, rejected the application of Mohd. Yousuf stating that there is no overlapping between T.S.Nos.4 & 5. Mohd. Yousuf along with others again made application before the District Collector, stating that NOC was granted in favour of the petitioner in respect of land belongs to Ashoor Khana. Basing on the same, though the petitioner filed explanation along with relevant document, without considering the same, the NOC granted in favour of the petitioner on

20.10.2010 in File No.E1/N2/7750/2010 was kept in abeyance by the 2nd respondent vide Endorsement No.E1/4062/2012, dated 23.05.2012. The Division Bench of Court in W.P.No.24682 of 1998 passed orders dated 16.10.2003, wherein it is held that the property claimed by the 4th respondent falls in Municipal bearing No.8-3-540 and petitioner's property falls in premises bearing Municipal Nos.8-3-539 and 8-3-542 and same has become final, without considering the said aspect, the 2nd respondent passed impugned order dated 11.10.2012 and withdrawn the NOC granted in favour of the petitioner. When the 1st respondent vide Memo No.E1/N2/6883/2009, dated 31.12.2010 has confirmed that there is no overlapping in between T.S.Nos.4 & 5, basing on the report of Tahsildar, Khairatabad, on the very same grounds, the impugned proceedings have been issued, which is not permissible. It is pertinent to note that the Memo Dated 31.12.2010 has also been marked to Mohd.Yousuf, who gave representation against the petitioner, in respect of the subject property. More so, the 1st respondent ought not to have passed the impugned proceedings unilaterally when the NOC was granted after approval of the committee as per G.O.Ms.No.2111, dated 05.12.2005. Even in the counter affidavit also, it is clearly stated that the orders passed in W.P.No.24682 of 1998 are binding on the parties. Though the order passed in the above writ petition on 16.10.2003 has become final, the 2nd respondent could not have passed orders without considering the same. This Court, by order dated 29.01.2014 has permitted the petitioner to obtain permission for

construction of compound wall from the 5th respondent. Now, it is stated that the petitioner has obtained permission for construction of building.

In view of above facts and circumstances, viewed from any angle, withdrawal of NOC granted on 20.10.2010 by the impugned letter No.E1/4062/202, dated 11.10.2012 is not justified and same is liable to be set aside and accordingly set aside.

Accordingly, the writ petition is allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, shall stands closed.

01.12.2016
kvs



A.RAJASHEKER REDDY, J

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.34210 OF 2012



Date: 01 .12.2016

kvs

