

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition Nos. 7821 of 2003 and 21437 of 2010

Common Order:

These two Writ Petitions are being disposed of by this common order, as they are inter connected.

Heard learned Senior Counsel Sri A. Sudershan Reddy for the petitioner, learned Government Pleader for the respondents 1 to 4 and learned counsel for the fifth respondent in W.P.No.7821 of 2003.

W.P.No.7821 of 2003 was filed by Veera Shaiva Samaj, Tandur challenging G.O.Ms.No.204, Revenue (Assn.V) Department, dated 18.02.2003, alienating the Government land in an extent of Ac.0-20 gts., situated in Survey No.128/1 of Tandur village and Mandal, Ranga Reddy district to the fifth respondent for establishment of Petrol Pump on payment of market value at Rs.1200/- per sq. yard.

W.P.No.21437 of 2010 was filed by the same petitioner challenging the order passed by the Joint Collector, Ranga Reddy district in Case No.E2/6378/2000 dated 17.07.2010 as arbitrary and illegal.

The facts of the case are that an extent of Ac.11.14 gts., is situated in Survey No.128 of Tandur village and Mandal, Ranga Reddy district. The said land belonged to the Government. The same was reflected in the Kasra Pahani of 1954-55. The petitioner herein was a body constituted for the welfare of 'Lingayats'. It was registered as a society in the year 1987. They claimed an extent of Ac.6-29 gts., in Survey No.128/1 of Tandur village and Mandal, Ranga Reddy district and stated that they constructed a compound wall after obtaining permission from Tandur Municipality on 03.05.1950 and was protecting the land from the encroachments by utilising it as burial ground for their community people.

It also stated that a part of the said land was leased out to one K. Veerappa under a lease deed dated 19.12.1952 for a period of 50 years in order to enable him to establish a petrol bunk in the leased premises. It also obtained permission from Tandur Municipality on 04.11.1999 for construction of a shopping complex in a part of the said land. Accordingly, it constructed a shopping complex and the income derived from the said shopping complex was being utilized for the maintenance of grave yard and community benefit. They claimed that they are in possession of the entire land of Ac.6-29 gts., for more than 90 years. When Tandur Municipality tried to interfere with their possession, they filed O.S.No.94 of 1983 on the file of the District Munsif, Tandur and the said suit was decreed in their favour. Though one Meer Mohmood Ali Khan, claiming as heir of Ex.Jagirdar of Tandur, filed a suit in O.S.No.23 of 1984, upon filing the report by the Advocate-Commissioner appointed by the Court in the said suit, the suit was withdrawn on 02.07.1987. The Society filed O.S.No.122 of 1985 on the file of the District Munsif, Tandur against the lessee of Petrol Bunk and the said suit was dismissed. The appeal also failed. The Society filed S.A.No.484 of 2003 which was also dismissed. When the matter went before the Supreme Court in SLP (Civil) No.22658 of 2003, though the appeal was admitted on 12.12.2003, it was ultimately dismissed on the ground that the Society was not registered. After dismissal of the SLP it appears that the Society filed O.S.No.64 of 2010 against the fifth respondent in W.P.No.7821 of 2003 in respect of 0.20 gts., of land earlier given to the fifth respondent on lease. Thereafter, the Government issued G.O.Ms.No.204, Revenue (Assn.V) Department, dated 18.02.2003, alienating the said land of 0.20 gts., in favour of the fifth respondent and the same was challenged in

W.P.No.7821 of 2003. This Court granted interim order of *status quo* in WPMP No.10191 of 2003 and the said order is in operation, as a result of which the fifth respondent is continuing the petrol bunk.

While so, the Joint Collector, Ranga Reddy district issued a show cause notice dated 10.11.2000 under the provisions of the Andhra Pradesh Land Encroachment Act, 1905 in respect of Ac.6-29 gts., of land situated in Survey No.128/1 of Tandur village and challenging the same the petitioner filed W.P.No.14363 of 2003. The said Writ Petition was dismissed giving liberty to the petitioner to submit its explanation and challenging the said order dated 03.08.2006 of the learned single Judge the petitioner filed W.A.No.1294 of 2006 and a Division Bench of this Court disposed of the appeal giving liberty to the petitioner to file objections within two weeks and the authority was directed to hear the parties and pass appropriate orders in accordance with law within next six weeks. Accordingly, the Joint Collector, Ranga Reddy district passed an order on 17.07.2010 declaring the land of an extent of Ac.6-29 gts., situated in Survey No.128/1 of Tandur Village and Mandal, including Ac.0-20 gts., which is in continuous possession of the fifth respondent, as Government land and the petitioner has no title over the land. Challenging the same, W.P.No.21437 of 2010 was filed.

Learned counsel for the petitioner submits that the land of an extent of Ac.6-29 gts., is in possession of the petitioner for more than 90 years and the proceedings taken under the Land Encroachment Act are invalid in law. If at all the Government is claiming the said land, the Government should have filed a civil suit before the competent Civil Court

as held by the Hon'ble Supreme Court in Government of Andhra Pradesh v. Thummala Krishna Rao¹.

Learned Government Pleader as well as learned counsel for the fifth respondent, on the other hand, submitted that the land is Government land and the same is reflected in the revenue records, more particularly in the Kasra Pahani for the year 1954-55 and continued to be so in the revenue records, hence they submitted that the proceedings taken under the Land Encroachment Act are valid in law.

There is no dispute that the total extent of land in Survey No.128 of Tandur village is Ac.11.14 gts. It was classified as Karij Katha Sarkari as per Kasra Pahani for the year 1954-55 and Seshala Pahanis for the years 1955 to 1958. The Faisal Patty for the year 1958 shows that the land of an extent of Ac.6-29 gts., as Government land and the balance extent of Ac.4-25 gts., was shown in the name of one Jan Mohd. Veerji as pattadar and the same was reflected up to 1960-61. The existence of Petrol Bunk was reflected in the revenue records for the year 1954-55. However, the Pahani for the year 1980-81 shows the possession of one D. Rachappa in respect of 0.25 gts., T. Basavappa in respect of 0.10 gts., and C. Siddanna in an extent of Ac.3.00. The balance extent of Ac.6-29 gts., was surveyed on 04.10.2003 and the survey reflected the following:

1. Shopping Complex built by Veera Shaiva Samaj	Ac.0.22 gts.
2. Petrol Bunk	Ac.0.20 gts.
3. Power House	Ac.1.30 gts.
4. Arya Vaishya Samaj Burial Ground	Ac.0.08 gts.
5. Rudra Bhoomi	Ac.3.03 gts.
6. Road	Ac.0.26 gts.

Total:	Ac.6.29 gts.

In those circumstances only, a notice was issued to the petitioner under the provisions of the Andhra Pradesh Land Encroachment Act. Though

¹ AIR 1982 SC 1081

the notice indicated the land of an extent of Ac.6.29 gts., the total extent of the land in occupation of different people are as above. Though the learned counsel for the petitioner sought to take advantage of the indication of Ac.6.29 gts., in the notice issued under the Land Encroachment Act, the same cannot be taken advantage in order to buttress the contention that the said land was in possession of the petitioner. The petitioner cannot claim to be owning the Burial Ground, Roads and Power House, which are public properties. Even today also there is no title in favour of the petitioner for the shopping complex constructed by the petitioner in respect of 0.22 gts., of land. When the revenue records reflected that the entire extent of land was recorded as Government land, the alienation of part of the land, 0.20 gts., in favour of the fifth respondent on payment of market value cannot be found fault with. The petitioner assumed that the entire land belongs to it and at no point of time made an application for assignment of the land or allotment of the land on market value. Merely because the petitioner obtained permission from Tandur Municipality for construction of shopping complex and the construction of compound wall, those actions cannot rope the petitioner with title. In those circumstances, the ratio laid down by the Hon'ble Supreme Court in Thummala Krishna Rao's case (supra) is not applicable to the facts of the present case. If at all the petitioner is aggrieved, it is open to the petitioner to take appropriate civil proceedings against the Government. Now, the alleged suit filed in O.S.No.64 of 2010 pending before the Junior Civil Judge, Tandur is also in respect of 0.20 gts., of land given to the fifth respondent. Since this Court is of the opinion that the entire land of Ac.6.29 gts., belonged to the Government

supported by the revenue records, the action of the Government in allotting Ac.0.20 gts., of land to the fifth respondent is valid in law.

Consequently, both the Writ Petitions are dismissed. However, if the petitioner has any grievance or claim against any part of the property, it is always open to the petitioner to establish the same in a competent Civil Court, since the proceedings under the Land Encroachment Act are summary in nature. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions pending in these Writ Petitions, if any, shall stand closed.

Date: 18.07.2017
Nsr

A. RAMALINGESWARA RAO, J

