

HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.20912 OF 2017

ORDER:

Heard Mr.B.Venkat Rama Rao for petitioner and the Assistant Government Pleader (Revenue) for respondents.

The petitioner prays for Mandamus declaring the highhanded action of respondents in demolishing a portion of existing compound wall in Survey Nos.23 and 25/2 of Pet Basheerbad Village, Qutubullapur Mandal, Medchal, Malkajgiri District without notice or following the procedure prescribed by law, as illegal, arbitrary and unconstitutional. The petitioner prays for consequential direction restraining respondents from interfering with the land allotted and in occupation of writ petitioner in Survey Nos. 23 and 25/2 of Pet Basheerbad in terms of G.O.Ms.No.1217 (ASN.V) Department, dated 23.08.2006.

The circumstances relevant for disposal of writ petition are as follows:

The petitioner is one of the units of congregation of Sisters of St. Anns of province/central province (an organisation of Nuns in the Roman Catholic Church). An extent of Ac.1-00 in Survey No.23 and Ac.19.00 in Survey No.25/2 totally measuring Ac.20.00 of pet Basheerbad Village vide G.O.Ms.No.1217 dated 23.08.2006 was alienated in favour of the petitioner. The petitioner paid the total consideration of Rs.30,00,000/- and is in possession of Ac.20.00 of

land alienated in its favour in Survey Nos.23 and 25/2. The petitioner school about 10 years ago claims to have constructed compound wall around the land alienated and possession delivered under panchanama. According to petitioner, the petitioner is in possession of only Ac.20.00 of land. While matters stood thus, respondent No.3 issued notice No.B/254/2006 dated 05.05.2017 proposing to conduct survey and demarcation of land covered by G.O.Ms. No.1217 dated 23.08.2006 on 12.05.2017. On 10.05.2017, petitioner expressing a few difficulties to attend Survey on 12.05.2017 requested postponement of survey beyond 27.05.2017. The Mandal Surveyor handed over notice dated 19.05.2017 under acknowledgement dated 24.05.2017 to petitioner proposing to conduct survey on 26.05.2017. According to petitioner, the survey was not conducted on 26.05.2017 or petitioner received further information from respondent No.3. The subordinate officers of respondent No.3 on 24.06.2017 forcibly entered the school premises with men, JCB Poclainer and demolished the western side compound wall in Survey Nos.23 and 25/2. The action of respondents in demolishing the compound wall is illegal, arbitrary and unconstitutional.

The definite case of petitioner is that the entire process of demolition is without notice to petitioner and without conducting survey. The further demolition was stopped with great difficulty. On the method and manner of demolition a few objections are raised by the petitioner and this Court considers that those allegations

need not be adverted to, for the challenge in the instant writ petition is restricted to the delineation of land or demolition of compound wall is without notice. Hence the writ petition.

The petitioner relies upon G.O.Ms.No.1217 dated 23.08.2006.

The operative portion reads thus:

“In his letter 3rd read above, the Chief Commissioner of Land Administration has forwarded the proposals to Government, for alienation of Govt. land to an extent of Acres 20.00 (i.e. 1.00 acre in Sy.No.23 and 19.00 acres in Sy.No.25/2) situated at Pet Bashirabad Village of Quthubullapur Mandal in favour of St. Anns High School, at the lowest Government rate, for construction of Educational Institutions.

In the reference 4th read above, Government have issued orders for handing over advance possession of the Govt. land to an extent of Acres 20.00 (i.e. Acre 1.00 in Sy.No.23 and Acres 19.00 in Sy.No.25/2 situated at Pet Basheerabad Village of Qutubullapur Mandal, Ranga Reddy District in favour of St. Ann's High School, Secunderabad for construction of Educational Institutions under intimation to Government, subject to realization of basic value of Rs.3,000/- per square yard and also subject to outcome of the Court case.

In the reference 5th read above, the Correspondent, St. Ann's High School, Secunderabad has represented the Government that their school is losing land and school buildings due to road widening and they are serving poor and the underprivileged and requested to fix the land price at Government concessional/nominal rate.

Government after carefully examination of the matter, hereby direct that Government land to an extent of Acres 20.00 (i.e. 1.00 in Sy.No.23 and 19.00 acres in Sy.No.25/2) situated at Pet Bashirbad Village of

Qutubullapur Mandal be alienated in favour of St. Ann's High School, Secunderabad, for construction of Education Institutions on payment of nominal market value of Rs.1.50 lakhs (Rupees one lakh and fifty thousand only) per acre subject to the outcome of the pending Court case and subject to the terms and conditions, as laid down in the BSO-214."

The writ petition is filed on the premise that the petitioner school was allotted and alienated land in an extent of Ac.20.00 in Survey Nos.23 and 25/2 and the petitioner constructed compound wall on all the sides of the alienated property. The writ affidavit does not refer to encroachment of Government land by petitioner or utilizing or encompassing more land than what is allotted to petitioner. The grounds of challenge are that the alleged demarcation, demolition of compound wall or dispossession of petitioner from a portion of occupied land, etc. are without notice and therefore, arbitrary, illegal and unconstitutional.

Mr.Venkat Rama Rao in addition to contending what is stated in the affidavit has further contended that a few of the water channels are passing through Ac.20.00, cannot be treated as land alienated in favour of petitioner school and the extent covered by channels will have to be excluded from determining the area in possession and occupation of petitioner. He vehemently contends that the dispute between the parties is whether the petitioner is in possession of excess land or not, and this can be resolved firstly by conducting survey in the presence of petitioner, demarcating the land and thereafter issue notice for eviction. As the petitioner does

not comply with the notice, the respondents can interfere and demolish a portion of compound wall enclosing the land of Government.

The petitioner also filed reply which is slightly inconsistent with the assertions in the affidavit. I prefer to refer the stand in the reply affidavit after referring to counter affidavit.

The 3rd respondent filed counter affidavit and admits the allotment and alienation of land through G.O.Ms.No.1217 dated 23.08.2006. The 3rd respondent denies the construction of compound wall in the year 2006-07. The 3rd respondent averting to the facts of the case states that notice No.B/254/2006 dated 05.05.2017 was issued proposing to survey and demarcate land in Survey Nos.23 and 25/2 of Pet Basheerbad Village. On 10.05.2017, the petitioner requested for postponement of survey. On 19.05.2017, it was informed that the survey will be conducted on 26.05.2017. The 3rd respondent categorically asserts that the subsequent date of survey was intimated under acknowledgement to petitioner. On 26.05.2017, due to technical reasons, the survey could not be conducted, but postponed to 29.05.2017. It is the case of 3rd respondent that on 29.05.2017 in the presence of staff of petitioner, the land was surveyed, excess land in possession of petitioner demarcated and that the entire effort was photographed. According to 3rd respondent, the petitioner is in possession of Ac.1-30 gts. over and above what is allotted to petitioner. The neighbouring land along with the land under encroachment was

handed over to HUDA long ago and HUDA is in management of the neighbouring land. The reply in short is that notice for survey was issued, at request of petitioner, survey was postponed and on postponed day, the survey was conducted. The 3rd respondent places before the Court Exs.R3 and R4 i.e. location, sketch of land allotted to petitioner and encroached portion and photographs showing the presence of survey staff etc.

The petitioner filed reply, disputes the contents of the notice by contending that the notice dated 05.05.2017 or 19.05.2017 does not indicate that the survey is for demarcation or sub division or re-determination of Ac.20.00 of land allotted to petitioner school, and further as an alternative stand, has stated thus:

“The Writ Petitioner has no objection if the Respondents are directed to dispute Assistant Director, Survey and Land Records of the District to make sub-division of Sy.No.23 and 25/2 for re-demarcation/re-determination of 20 Acres of land allotted as per the Sketch (Ex.P.4) annexed to the Panchanama specifying the clear measurements of sub-divided area (allotted land) according to principles of survey and demarcation in the presence of authorized representative of the Writ Petitioner school. Such survey report shall be made part of alienation proceedings of the State.”

Now the petitioner alternatively contends that even if petitioner is in possession of excess land, the petitioner is entitled for notice from 3rd respondent. Therefore, now the stand in the reply is that the notice does not satisfy the requirement of law and hence the survey is illegal and defective. The petitioner relies upon the

decisions in *Bishan Das & others v. State of Punjab & others*¹ and *State of U.P. and others v. Maharaja Dharmander Prasad Singh and others*² for the proposition that the petitioner is entitled for notice before survey, demarcation or demolition and power of re-entry is not automatic.

The Assistant Government Pleader (Revenue) contends that the petitioner, admittedly, was allotted and alienated an extent of Ac.20.00 in Survey Nos.23 and 25/2. The Panchanama under which possession of alienated land was given broadly states the topography, sketch of land alienated in favour of petitioner. The petitioner ought to enjoy the land allotted and alienated to it. The petitioner now is in possession of Ac.1.30gts of valuable Government land worth crores of rupees without any right and entitlement. On the contention of excluding Nalas for determining the total extent actually held by petitioner, he contends that the channels, if any passing through the alienated land cannot be excluded, for the channels are part of possession and enjoyment of the petitioner school and therefore, the exclusion of land covered by channels is an after-thought, having accepted the alienation proposal with the locations, sketch etc. as a block. The contention now raised that channel should be excluded is illegal and unavailable in fact and law. He further contends that to the extent of Ac.1-.30 gts. of land the petitioner has to be treated as

¹ AIR 1961 SC 1570

² (1989) 2 SCC 505

trespasser, changed the boundary to suit its convenience and constructed a compound wall. The basis for the writ prayer is that without notice to petitioner, demolition is ordered and the survey cannot be conducted behind the back of petitioner. He relies upon notice dated 19.05.2017 and report which read as follows:

“Government of Telangana
Revenue Department
Office of the Deputy Collector & Tahsildar
Quthubullapur Mandal

No.B/254/2006

Date:19.05.2017

NOTICE

Sub: Patta Land Demarcation –Ranga Reddy District-
Quthubullapur Mandal, Pet Basheerabad Village-
Sy.No.25/2 date of Demarcation Initiated-Reg.

Ref A/o. 1. Memo No.B/254/2006
2. Instruction of the Joint Collector, Medchal, Dist.
3. Government Revenue (Asst.II) Department Memo
51548/2012

It is to inform that the demarcation of land bearing Sy.No.25/2 of Pet Basheerabad Village will be conducted on 26.05.2017 at 10.30 A.M. there for the concerned are requested to present on the spot without fail.

Sd/-
19.05.2017
Mandal Surveyor
Quthubullapur Mandal.

Copy to:
1.St. Ann's High School
2.V.R.O. Pet Basheerabad.”

“REPORT OF THE MANDAL SURVEUYOR, QUTHUBULLAPUR MANDAL

To

The Tahsildar
Quthubullapur Mandal,

Sub: Conducting the Survey no.25/2- Pet Baseerbad Village &
Quthbullapur Mandal Reg.

Ref: 1. Instruction of the Joint Collector, Medchal Dist.
2. Issued the Memo no.b/254/2006 of the Tahsildar
Quthubullapur

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In pursuance of the Reference 2nd cited I had been proceeded to the spot for demarcate the land of allotted to St. Ann's School in survey no.25/2 of Pet Basheerabad Village, duly serving the notices to St. Ann's School.

Further, it is submitted that the boundaries of the above schedule land had been shown to the St. Ann's School in charge person and also Ri and VRO of Pet Basheerabad, and also the St. Ann's School Administration encroaching land of HUDA. In this regard a Location Sketch prepared showing the land bearing Sy.Nos.25/2 of Pet Basheerabad Village is prepared and herewith submitted for favour of kind information.

Yours faithfully,
Sd/-
29.05.2017
Mandal Surveyor
Qutubullapur Tahsil"

On the question of participation of staff of petitioner school, he relies upon Ex.R4 photograph.

I have taken note of submissions and perused the material on record.

From the documents referred to above, it is very clear that the 3rd respondent in fact issued a notice for survey and demarcation of allotted/alienated land in Survey Nos.23 and 25/2 in favour of petitioner. The petitioner has not disclosed true and correct facts in the affidavit. Further the report together with sketch shows that the petitioner is in possession of an extent of Ac.1.30 gts. Having received the notice, it is not correct on the part of petitioner in flatly denying everything and filing the writ petition. Therefore, on any given date, the entitlement or right of petitioner to enjoy is in terms of G.O.Ms.No.1217 dated 23.08.2006 and is confined to Ac.20.00. The petitioner, if in possession of more extent, is under obligation to vacate and deliver vacant possession to Government. The complaint that survey is conducted without notice to petitioner

or demarcation of land done behind the back of petitioner prima facie is untenable and rejected.

The petitioner through reply has agreed to participate, if survey is conducted in their presence and demarcation is undertaken. To ensure fairness in action, this Court gives liberty to petitioner to represent 3rd respondent for demarcation of alienated land on ground and if such request is made, it is open to 3rd respondent to consider and demarcate the area physically on ground. The petitioner school at the same time is under obligation to vacate the encroached portion without further loss of time.

The decisions relied upon by the learned counsel for the petitioner are distinguishable to the circumstances in the case on hand and the preliminary objections taken against the actions of respondents are found to be untenable and incorrect. Further, the petitioner while seeking enforcement of a legal right is also under legal duty not to encroach into Government land. In other words, the petitioner on the other hand cannot claim right, enforce the right by filing a writ petition and call upon the respondents to follow the procedure at the same time for even removing the unauthorised possession of petitioner. In such cases, this Court will be considering only the alleged breach of right complained by petitioner but not taking note of corresponding duty fastened on petitioner. It is in these cases that the dispute is resolved by survey and demarcation and possession restricted to one's entitlement. The petitioner if so advised, can request once again for

demarcation on ground and thereafter remove the encroachment to set an example and it will not only enforce right but adhere to duty as well.

There is no merit in the writ petition and the writ petition fails and is dismissed with observations. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT,J

Date:03.07.2017

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