

THE HON'BLE SRI JUSTICE P.KESHA RAO

WRIT PETITION NO.4300 OF 2007

ORDER:

Heard the learned counsel for the petitioners and Smt. Mani Deepika, Additional Standing Counsel for the respondents.

This writ petition is filed seeking a direction to the respondents not to dispossess the petitioners from their land in question i.e., vacant house site plots bearing Plot Nos.D-6, D-5, D-9, D-10, D111, D-13, D-12 and D-14, each admeasuring 300 sq.yards situated in Sy.No.96/2 and 96/3 at Postal Colony, Bandlaguda Jagir village and Gram Panchayat, Rajendranagar Revenue Mandal, Ranga Reddy district, without following due process of law.

The facts of the case are that the petitioners are members of Postal Employees Co-operative House Construction Society Limited and purchased the vacant sites bearing Plot Nos.D-6, D-5, D-9, D-10, D111, D-13, D-12 and D-14 under registered sale deed Nos.12082/1989 dated 7.10.1989 and 12088/1989 dated 7.10.1989 in their favour for valuable consideration. When some private individuals attempted to interfere with their possession and enjoyment, they have filed suit in O.S.No.3731 of 2006 on the file of Principal Junior Civil

Judge, Rangareddy and obtained interim directions to protect their possession and the said suit is still pending. The defendants in the above said suit filed another suit in OS.No.2567 of 2006 on the file of the Court of 1st Additional Senior Civil Judge, Ranga Reddy district against the petitioners herein and obtained interim injunction. The said suit in OS.No.2567 of 2006 is also pending consideration.

While so, on 27.1.2007, at the instance of the 2nd respondent i.e., the Defense Estate Officer (Cantonment), the defense authorities fenced the subject land and also erected a notice board inside the fence to the effect that "Actual Ownership being ascertained. No further activity permitted till issues resolved." Questioning the unilateral action of the 2nd respondent in placing the notice board in the subject lands, the present writ petition is filed.

Learned counsel for the petitioners would contend that without issuing any notice and without resorting to due process of law, the 2nd respondent cannot take any action unilaterally at his end and the petitioners cannot be dispossessed from their respective plots.

On behalf of the respondents 1 and 2, a counter affidavit is placed before the Court today. Apart from denying the averments made in the affidavit filed by the petitioners, in

Para-5, the respondents have stated that, “Although if the dispute is still unsolved, a Joint Survey along with the affected parties, Representatives of Army and representatives of State Revenue should be done and sub-division sketch of survey number 96 of Bandlaguda village along with tippons be used in survey for resolving the issues, are required to be provided.”

From a perusal of the affidavit filed in support of the writ petition as well as the counter affidavit filed on behalf of respondents 1 and 2, it appears that there is a dispute with regard to the identify of the suit schedule property. In the counter affidavit, it is stated that after survey was conducted on 5.6.2003, the pillars have been shifted. It is also stated in the counter affidavit that against shifting of the said pillars, various objections have been filed from different parties when the boundary pillars were shifted without intimating them.

Looking into the averments mentioned in the counter affidavit, this Court feels that there should be a Joint Survey in the presence of the representatives of Army, representatives of State Revenue and the affected parties by virtue of shifting of the said pillars.

Hence, a prima facie case is made out by the petitioners, more so, when they have purchased the said property under

registered sale deeds, for restraining the respondents from interfering with their peaceful possession and enjoyment.

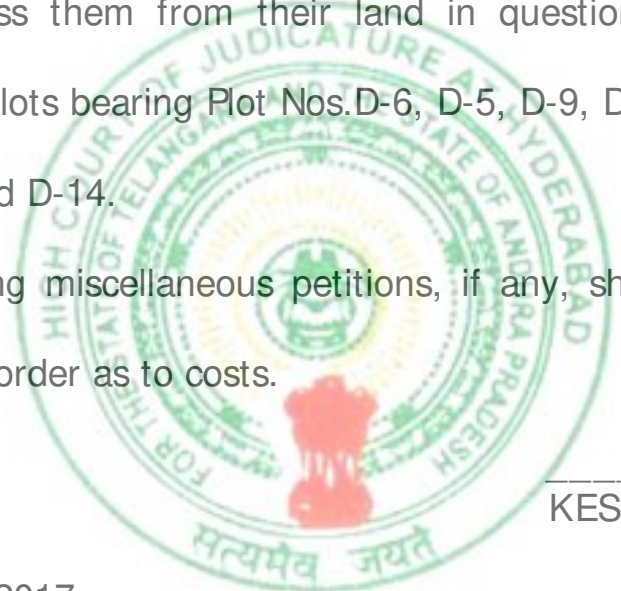
Since there is specific averment in the counter affidavit filed by the respondents that objections have been raised by the affected parties for shifting of the boundary pillars, there is any amount of doubt with regard to the survey conducted and shifting of pillars without intimating to the affected parties.

Be that as it may, even if the respondents wanted to take any action, the minimum that is needed is that the petitioners should be put on notice and an opportunity of being heard should be given to them before fencing the subject plots and erecting notice board to the effect that, "Actual Ownership being ascertained. No further activity permitted till issues resolved." This fact itself shows that the respondents are also not sure about the ownership over which the said notice board is erected. Therefore, the procedure followed by the respondents in placing the notice board and fencing the subject land, without issuing any notice to the petitioners, would amount to violation of principles of natural justice. The 2nd respondent being a public authority, representing the 1st respondent, is expected to act in a manner known to law. The 2nd respondent cannot take law into his hands and unilaterally,

he cannot take a decision to fence the subject land. As such, the said action of the 2nd respondent is not permissible in law.

Accordingly, the writ petition is allowed directing the respondents to conduct a joint survey in the presence of the affected parties, which include the petitioners herein, the representatives of Army and State Revenue and take action thereafter. Till such time, the respondents are directed not to interfere with the peaceful possession of the petitioners and not to dispossess them from their land in question i.e., vacant house site plots bearing Plot Nos.D-6, D-5, D-9, D-10, D111, D-13, D-12 and D-14.

Pending miscellaneous petitions, if any, shall also stand closed. No order as to costs.



KESHAVA RAO,J

Date:15.12.2017

KPM