

HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.29359 OF 1995

ORDER:

The petitioners pray for appropriate writ order or direction declaring notifications issued under Section 3(1) and (2) of the Andhra Pradesh Sum Improvement (Acquisition of Land) Act, 1956 (for short 'the Act') published in A.P. Gazette, dated 17.02.1983 and 19.01.1986 respectively declaring 2500 square yards bearing Municipal No.8-1-229 to 234, Imam Bowli Masjid, Shivaji Nagar, Secunderabad (Ward No.8, Block No.1) as sum development area, as null and void and opposed to the Act. The petitioners seek consequential directions to respondents to remove unauthorised and illegal constructions made by respondents on the said premises.

On 26.12.1995, the instant writ petition was filed for the relief referred to above.

The case of the petitioners is that 1st respondent issued G.O.Ms.No.1630 Revenue (wakf) Department dated 13.12.1977 according sanction for sale of wakf land measuring 2500 square yards situated near Imam Bowli, Rastrapathi Road, Secunderabad to petitioners herein at the rate of Rs.45/- per square yard (for short 'the subject land'). The Secretary, A.P. Wakf Board through Memo No.C4/16/8/73/2513 dated 27.08.1977 called upon the petitioner to deposit a sum of Rs.10,000/- towards earnest money for sale of the subject land and the petitioners claim to have complied with the demand of depositing Rs.10,000/- in favour of Wakf Board.

The petitioners filed O.S. No.303 of 1982 on the file of Additional Judge, City Civil Court, Hyderabad against the Andhra Pradesh Wakf Board and others for specific performance of agreement of sale in force for the subject matter. On 30.09.1994, O.S. No.303 of 1982 (renumbered as O.S. No.54/92) was decreed. The 9th respondent herein filed CCA No.127/1995 and obtained the stay of specific performance granted vide decree dated 30.09.1994 in O.S. No.303 of 1982 (renumbered as O.S.No.54/92). It is further alleged that the members of respondent No.8 association who are tenants of subject land demolished the compound wall, removed structures and dug pits for raising fresh and pucca constructions on the subject land. The petitioners, it is averred, have tried to resist the alleged illegal attempts by the occupants from changing the physical features. On further enquiries, it is stated it has come to the notice of petitioners that the impugned notifications have been issued under the Act. Later on, petitioners filed O.S. No.227 of 1995 against the defendants therein and also the 8th respondent association for perpetual injunction restraining association and the members from changing the physical features of land. The petitioners admit the steps taken to prevent encroachers/occupants from changing the physical features were not successful. It is further stated that the petitioners have accepted to purchase the subject land on the highest bid offered by one Dr. K.Vijaya Lakshmi at Rs.45/- who has backed out and the petitioners for willing to purchase the property at Rs.45/- per square yard, however insisted upon prior permission from 1st respondent.

Accordingly, G.O.Ms.No.1630 dated 13.12.1977 has been issued according permission to Wakf Board to sell the property. Unfortunately, the Wakf Board and Mutawalli have dodged to execute the sale deed. Hence, the suit for specific performance was filed. The petitioners refer to W.P. No.9501 of 1986 and the W.A. No.1373 of 1988 filed challenging notifications impugned in the writ petition. It is relevant to state that on 16.08.1988 W.P.No.9501 of 1986 was dismissed and was confirmed in W.A.No.1373 of 1988.

Mr.Sinivas Rao appearing for petitioners confined the challenge in writ petition to violation of principles of natural justice and that by virtue of G.O.Ms.No.1630 dated 13.12.1977, deposit of Rs.10,000/- by the petitioners with Wakf Board and specific performance decree dated 30.09.1994, notifications issued without affording opportunity to petitioners ex-facie is illegal, arbitrary and liable to be set aside.

On the other hand, Mr.Ali Farooqui contends that structures have been in existence since long time and the change of physical features referred in writ affidavit are only construction of new buildings at the same place. He further submits that the petitioners as on today do not have a sale deed for subject land. He contends that the property for which G.O.Ms.No.1630 was issued, O.S No.303 of 1982 filed and the property in possession of the members is completely different. He draws the attention of the Court to the counter affidavits dated 21.01.1999 of respondents 3 and 5 and counter affidavit dated 07.02.1996 of respondent No.8 and prays for dismissing the writ petition. For complete

understanding of the stand of other respondents, the gist of the counter affidavits is excerpted hereunder:

Counter affidavit of respondents 3 to 5:

The notification under Section 3(1) of the Act published on 17.02.1983 by the respondents to submit the objections if any to respondent No.5. The notification to be treated that notice was served on several persons known or believed to be interested in the land so acquired and in the manner laid down by Section 11 of the Act. In addition to the publication, intimation was also published on 05.11.1983 in daily newspaper for the information of general public that any person claiming as owners or interested in such land proposed to be acquired, to submit their objections to respondent No.5.

Except objection from Riazul Bari, GPA of Asadul Bari, no other persons objected to the acquisition. Though Riazul Bari made objection, neither Riazul Bari, GPA of Asadul Bari nor Asadul Bari appeared for hearing in spite of giving opportunities and written intimation. Therefore, notification under Section 3(2) was published in gazette No.2 dated 09.01.1986.

The Act as amended is a special enactment for expeditious acquisition of land covered by the Sums for the purpose of improvement. The squatting pattern or the manner of location of these huts was found injurious to the health of the people living not only in the slum areas, but also in the neighbourhood. The subject slum has been in existence for over 50 years and it was included in the list of Sums in the year 1979. The slum dwellers have been

residing to the knowledge of all the interest parties including Wakf Board. It is submitted that all the legal formalities as prescribed under the Act were fully and properly followed.

Counter affidavit of respondent No.8:

The petitioners entered into agreement of sale with the Mutawalli of the wakf of the property without complying with the mandatory provisions of Section 36-A of the Wakf Act. The alleged permission under G.O.Ms.No.1630 Revenue (Wakf) Department dated 13.12.1977 does not come to the rescue of the petitioners as subsequent to the said G.O., the Government directed the Wakf Board to sell the land to any other prospective purchaser and thereby G.O.Ms. No.1630 was withdrawn by the Government.

The slum dwellers have been in physical possession, living in their respective huts in the said property. The petitioners deliberately avoided to make respondent No.8 as party in O.S No.54 of 1992 filed for specific performance of agreement.

The Government to improve the slum issued Section 3(1) notification on 17.02.1983 and gave notice to Wakf Board. The Wakf Board made its appearance and thereafter Section 3(2) notification was issued on 09.01.1986.

After issuance of Section 3(2) notification, the District Collector, Hyderabad prepared a layout and issued 54 patta certificates to the dwellers of Shivajinagar. The petitioners filed O.S. No.227 of 1995 and obtained *ex parte* status quo order. Subsequently, status quo was vacated. The petitioners preferred C.M.A. No.1016 of 1995 before this Court and obtained *ex parte*

injunction and the said *ex parte* injunction was also vacated. The petitioners cannot challenge the notifications after the lapse of 10 years. The earnest amount of Rs.10,000/- alleged to have been paid under the agreement to Mutawalli is contrary to the provisions of Section 36-A of the A.P. Wakf Act. G. O. Ms.No.1630 was issued subsequent to the agreement entered by the petitioners with Mutawalli.

Mr.Ali Farooqui further contends that the writ petition suffers from laches. The petitioners who are not even agreement holders but have an executable decree for specific performance of property covered by decree in O.S No.303 of 1982 cannot challenge notifications issued in the year 1983. Further, this Court has upheld the notifications impugned in the writ petition in W.P.No.9501 of 1986. Therefore, prays for dismissing the writ petition.

I have heard the learned counsel and perused the material available on record. The question falls for considerations in this writ petition is whether the challenge to impugned notifications is tenable, whether the petitioners are entitled to challenge the same and is the writ petition vitiated by laches?

The circumstances for and against the above question are already adverted to. For brevity, I am not referring to these circumstances once again. The question referred to above can be considered from the following perspectives.

The petitioners claim to be agreement holders and have paid Rs.10,000/- towards earnest money to Wakf Board for purchase of subject land and having waited for six years from the date of

deposit, when the Wakf Board did not execute the sale deed the petitioners filed O.S. No.303 of 1982. The suit is decreed on 30.09.1994. However, it is not brought on record that a sale deed is executed in terms of the decree dated 30.09.1994 and further the subject matter of the suit can be correlated as the subject matter covered by the notifications impugned in the writ petition. In other words, the case of 8th respondent is that the notifications issued under the Act covers an extent of 6000 square yards with definite boundaries and G.O.Ms.No.1630 dated 13.12.1977 does not identify the property with definiteness. Now the ground of challenge is that the notifications impugned in the writ petition are issued without notice to petitioners. This Court is of the view that the challenge to impugned notifications on the ground of violation of principles of natural justice firstly at the instance of agreement holders is misconceived and untenable and secondly, unless and until the identity of the property covered by notifications and G.O.Ms.No.1630 dated 13.12.1977 is concluded as matter of fact by a competent Court or authority, the challenge should fail and hence rejected. There is yet another difficulty for the petitioners in challenging the impugned notifications. Assuming for the sake of discussion that the property in the impugned notifications and G.O.Ms.No.1630 is one and the same i.e. 9th respondent challenged the impugned notifications in W.P. No.9501 of 1986. The prayer reads thus:

“Petition under Article 226 of the Constitution of
India praying that in the circumstances stated in the

affidavit filed herein the High Court will be pleased to issue an appropriate writ order or direction declaring the notifications issued under Section 3(1) and Sec.3(2) of the A.P. Slum Improvement (Acquisition of Land) Act, 1956 and published in A.P. Gazette dt.17.2.83 and 9.1.86 respectively declaring 2,500 sq.yards bearing Municipal No.8-1-234, Imambowli Masjid, Shivaji Nagar, Secunderabad (Ward No.8, Block No.1) as slum area and decided to acquire the said land as null and void as the same is opposed to the provisions of the A.P. Slum Improvement (Acquisition of land) Act 1956 and also issue consequential directions to the respondents to remove the unauthorised and illegal constructions made by the trespassers on the said premises.”

On 16.08.1988, this Court while dismissing writ petition No.9501 of 1986 recorded the following findings:

“It is next submitted that notification was not for the purpose contemplated under the Act. Section 3(1) says that where the authority is satisfied that any area is dangerous to the public health, it may be notified as slum area. Sub. Sec.(2) empowers Government to acquire any slum area. Sub-Sec. (3) says that from the date on which the notification is published the land vests free from all encumbrances. Section 5 provides for compensation to be paid. Section 6 of the Act enunciates the principles on which compensation should be determined. The impugned notifications recite that the land is declared as a slum area, as the authorities are satisfied that Sivajinagar in which the land in question is situate is a source of danger to public health, safety and convenience of its neighbours. The notification under Section 3(2) also recites that after considering the objections, the authority had decided to acquire the land is acquired for a purpose contemplated under the Act, and when once the land vests in the Government, it is open to the Government to deal with it as the owner of the property. In the counter affidavit it is clearly stated that the respondents are intending to grant pattas to the

slum dwellers after improving the land. So, even on facts it is not correct to say that the land is used for a purpose other than what is contemplated under the Act. Lastly, the learned counsel submitted that the declaration as slum area is not warranted. I am afraid, I cannot go into this question. The competent authority, after getting reports from the concerned authorities and considering the objections was satisfied that the area is low lying and insanitary. There is no material to the contra excepting a bald assertion on the part of the petitioner.

For the foregoing reasons, I do not find any merit in this writ petition. It is accordingly dismissed, but in the circumstances no costs."

These findings are confirmed by the Division Bench. Thus the challenge to impugned notifications at the instance of 9th respondent was unsuccessful.

Mr. Sinivas Rao has fairly accepted that the challenge to notifications at the instance of 9th respondent was unsuccessful, however, it is contended that since petitioners herein are not parties to that writ petition, the decision cannot be treated as a binding precedent.

This Court is of the view that the challenge to notifications impugned in the writ petition at the instance of petitioners is unsustainable, for the petitioners claim to be agreement holders and decree holders in O.S. No.303 of 1982. Neither of these circumstances creates a right vis-à-vis the property covered by the notifications or the property in possession of members of respondent No.8. Further from the earliest point of time, it was recorded that several families are residing in the 6000 square yards declared as slum area through notifications impugned in the writ petitions. This

Court is not persuaded by circumstances referred in writ petition or legal grounds to further examine the challenge to notifications impugned in this writ petition. The writ petition fails and accordingly dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT,J

Date:25.04.2017
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