

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

WRIT PETITION No.34570 OF 2012

ORDER:

This writ petition is filed by the petitioner to declare the action of the respondents in demolishing the gate and wall and installing a board in the land admeasuring 915 sq. yards in premises i.e., H.No.16-11-117/A, Moosaram Bagh, Saidabad Mandal, Hyderabad as illegal, arbitrary and violative of Article 300-A of the Constitution of India, and direct the respondents to remove the board displayed in the subject land.

2. The petitioner claims to be owner and possessor of above property bearing H.No.16-11-117 situated at Mossaram Bagh, Saidabada Mandal, Hyderabad.

3. According to the petitioner, adjacent to his house there is open land with two rooms constructed with tin shed admeasuring 915 sq. yards with Municipal No.16-11-117/A.

4. He contended that his father, who was the absolute owner, conveyed this property to his paternal aunt under Registered Sale Deed dt. 19.12.1961, and that she again sold it back to his father on 12.12.1984 under a Registered Sale Deed. He stated that his father expired on 4.1.1985 and he, being the only son, inherited the property.

5. He also stated that he was paying property tax to the GHMC authorities, Tax receipts in that regard have also been filed.

6. He alleged that the officials attached to the office of 4th respondent removed the gate and part of the wall to the said property and erected the board stating that the land belongs to the Government in spite of resistance by the petitioner. He contended that in spite of representation

made on 29.10.2012 to the respondents 2 and 4, no action was taken. He contended that without any prior notice and intimation, respondents 2 and 4 demolished gate and wall even though they have no right, title or interest in the subject land.

7. Counter-affidavit has been filed by the 4th respondent alleging that it was the petitioner who encroached the land of 915 sq. yards which falls in TS No.38, Block-C, Ward-168 of Moosarambagh Village, Saidabad Mandal. According to them, it was recorded in the Town Survey Land Records in Column No.10 that the land as 'Village' and in Column No.20 as "G-Abadi" and that his office has erected a Board to protect the land from encroachment in the interest of the Government. It is stated that in 1964-70 Town Survey was conducted in twin cities of Hyderabad and Secunderabad by following the procedure under A.P. Survey and Boundaries Act, 1923 (for short, 'the Act'), that general notification under Sections 5 and 6 was published in Gazette and that individual notices were also given under Section 9 (2) of the Act with regard to fixation of boundaries. Thereafter, final notification was issued under Section 13-A of the Act, which was also published in Hyderabad Gazette on 6.8.1977. It is stated that the notification under the Act is conclusive proof of title of the State since it was not questioned within three years from the date of publication of the said notification. It is also stated that the State Government issued a clarification that the vacant lands in village site area (Abadi) not claimed by any individual with valid documents to be recorded as Government Abadi lands and that subject land is one of such lands. It is however denied that any demolition was done by the respondents and it is stated that the petitioner himself got the gate removed and filed the writ petition. It is however, admitted that the board was erected in the subject land.

8. Counsel for the petitioner contended that an entry in Town Survey and Land Records cannot be evidence of title and relied upon the decisions in ***Hyderabad Potteries Pvt. Ltd. v. Collector, Hyderabad Dist.***¹, ***State of Andhra Pradesh v. Prameela Modi***², ***State of Andhra Pradesh v. Hyderabad Potteries (P) Ltd.***³. He further contended that the 4th respondent, having admitted the possession of the petitioner in paragraph-2 of the counter-affidavit and having submitted that steps will be taken in accordance with law to establish title of the 4th respondent to the property, cannot straightaway demolish the compound wall and gate erected by the petitioner and plant a board in the land stating that it belongs to the Government.

9. Learned Government Pleader for Revenue does not dispute the proposition of law laid down in the above decisions, that under the said Act survey is made for the purpose of identification of lands and fixation of boundaries, that there is no provision under the Act to make a detailed enquiry regarding title, right, and interest of the persons in the land and that it was neither object nor scheme of the said Act. It was held in the said decisions that there is no presumption that every entry made in the Town Survey Land Records shall be presumed to be true until contrary is proved as in case of entries made in the record of rights under the provisions of A.P. Rights in Land and Pattadar Pass Books Act, 1971. Therefore, it cannot be said that on the basis of entry in the Town Survey Land Records, the respondents can forcibly dispossess the petitioner and plant a board in the land indicating that the land belongs to Government. That apart, if the respondents wants to dispossess the petitioner, who is admittedly in possession of the land, they have to follow due process of

¹ 2001 (3) ALT 200

² 2005 (3) ALT 379 (D.B.)

³ 2010) 5 SCC 382

law and cannot highhandedly take the law into their own hands and interfere with possession and enjoyment of the petitioner over the land.

10. Therefore, the Writ Petition is allowed and the action of the respondents in installing board in the subject land is declared as illegal, arbitrary and violative of principles of natural justice and the respondents are directed to forthwith remove the said board in the subject land. No costs.

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

Dt. 08.02.2017
gbs

M.S. RAMACHANDRA RAO,J

