

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.35922 of 2013

O R D E R:

This Writ Petition is filed by the petitioner to declare the action of the respondents in demolishing the compound wall and removing the gate constructed by the petitioner in plot Nos.20, 21 and 22/part in survey No.701 in an extent of 679.16 sq. yards situated in Kishan Nagar Colony, Azampura locality, Medak Town and District, as illegal, arbitrary and violative of principles of natural justice and also Article 300A of the Constitution of India, to direct the respondents not to dispossess the petitioner from the subject land and also to direct the respondents to compensate the monetary loss sustained by the petitioner.

2. Petitioner has purchased the said extent of land under registered sale deed document No.2680/2011 dt.22.12.2011 and document No.1197/2010 dt.17.04.2010. According to the petitioner, the land consisting of the above plots is part and parcel of the layout granted by the Country and Town Planning Department vide L.P.No.142/88 C.No.10559/88.

3. Petitioner contends that the Medak Municipality assigned house numbers and collected property tax from the year 2003, apart from granting permission to the petitioner to dig a bore well. He contended that building permission was also granted to him on 11.05.2010 in one plot bearing

No.22/part. Petitioner contends that he intended to construct an apartment block in the said three plots and initially constructed only a compound wall around them.

4. Petitioner alleged that at the instance of his rivals, who colluded with the local leaders, the Government Polytechnic College for Women (4th respondent) tried to grab the land of the petitioner and when the petitioners resisted, the 4th respondent-college lodged a complaint with the 3rd respondent alleging that the petitioner had unauthorizedly erected a compound wall and on the basis of the said complaint and certain newspaper reports, 3rd respondent without issuing any prior notice, without following due process of law and without conducting any enquiry, straightaway demolished the petitioner's compound wall. Petitioner contends that this action on the part of the 3rd respondent is highhanded, illegal and violative of principles of natural justice apart from Article 300A of the Constitution of India. He contends that the demolition of compound wall and the gate had caused loss of Rs.4,00,000/- to him and since the demolition took place under the oral instructions of the 2nd respondent as well, they are all liable to compensate him for the same.

5. 3rd respondent filed counter affidavit stating that though land in survey No.701, where the petitioner has purchased the plots, is a patta land, petitioner has not produced the

registered sale deeds in his favour for verification of boundaries of each of the plot and that the purchase by the petitioner is not implemented in the revenue records.

6. It is not the case of the 3rd respondent that any notice was issued to the petitioner either to produce the documents of title, on which the petitioner is placing reliance or any survey was done after notice to him to determine whether petitioner's lands are located in survey No.701. Therefore, without determining whether the petitioner is in occupation of the government land or not (after a survey in which the petitioner is given an opportunity to participate and produce the record available with him), it is not open to the 3rd respondent to straightaway demolish the structures such as compound wall erected by the petitioner highhandedly and arbitrarily.

7. The 3rd respondent stated that the petitioner has not obtained conversion permission for conversion of agricultural land into non-agricultural purpose and he can not use agricultural land for non-agricultural purpose.

8. Even if this is so, that does not empower the 3rd respondent to straightaway demolish the structures erected by the petitioner without even giving a prior notice.

9. No provision of any statute is quoted by the 3rd respondent in his counter affidavit which empowers him to

straightaway demolish the structures erected by the petitioner on the pretext that he put the land for non-agricultural use. In any event, the 3rd respondent did not deny that the petitioner has construction permission, but states that survey number was not mentioned in the proceeding issued by the Municipality to the petitioner granting permission to make construction.

10. Merely because survey number 700, abutting to survey No.701, is government land, it cannot be presumed that the petitioner is in occupation of the land in survey No.700 without any survey being done to determine that the petitioner's plots are located in survey No.700 and not in survey No.701.

11. The further justification sought to be given in the counter affidavit that as part of the government policy, the Collector of Medak District instructed the Tahsildar to protect the government land from encroachments, also does not empower the 3rd respondent to straightaway demolish the structures erected in the petitioner's land without following the procedure under A.P. Land Encroachment Act, 1905.

12. Though reference is made to some survey allegedly conducted on 02.12.2013 at the instance of the 4th respondent, it is not stated that petitioner was given any notice before such survey was conducted and it is admitted

that 635 sq. yards of land claimed by the petitioner is reclaimed by demolishing the compound wall and the room therein.

13. Any survey being done behind the petitioner's back does not bind the petitioner and does not absolve the 3rd respondent of his statutory duty to take action under the provisions of A.P. Land Encroachment Act, 1905.

14. The plea in para 6 of the counter filed by 3rd respondent that respondents 2 and 3 have powers to deal with cases of illegal encroachment of government land under A.P. Land Encroachment Act, 1905 itself shows that in spite of being aware that they have power under the said Act to remove illegal encroachments of Government land, they have deliberately not chosen to do so, on the pretext that the petitioner had constructed a compound wall in government land and not in his own land, without determining, after a survey, whether the view entertained by the 3rd respondent is correct or not.

15. In this view of the matter, this Writ Petition is allowed; the 3rd respondent is directed to rebuild the compound wall and erect the gate which the 3rd respondent has demolished, at his own expenditure and cost within a period of four (04) weeks from the date of receipt of a copy of this order. Thereafter the 3rd respondent, if it is deemed necessary, shall

cause a survey, to be made after issuance of notice to the petitioner of the said survey and receiving the petitioner's response and material which the petitioner submits in support of his right, title and interest in the above land, and furnish the copy of the survey report to the petitioner. If it is found in the said survey that the petitioner was in occupation of government land, 3rd respondent shall then initiate proceedings under A.P. Land Encroachment Act, 1905 for eviction of the petitioner from the said land. The 3rd respondent shall also pay costs of Rs.10,000/- to the petitioner.

16. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

21st April, 2017.
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