

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos. 24163 of 2002 and 11066 & 26251 of 2011

COMMON ORDER:

These three writ petitions are being disposed of by this common order as they are inter-connected and filed by the same petitioner.

These matters were listed today before this Court after acceding to the request of the learned counsel for the petitioner on 06.06.2014 seeking adjournment and today, when the matters are taken up for hearing, learned counsel for the petitioner seeks further time and the same is declined as the earlier writ petition pertains to the year 2002, and these writ petitions are being disposed of in his presence, but on the basis of the record.

In W.P.No.24163 of 2002, the case of the petitioner is that originally the land admeasuring Acs.13.00 in Survey No.29, situated at Zamisthanpur, Hyderabad Urban Taluq, Hyderabad District belongs to one S.Babaiah and his family members. They sold the said land in favour of Madhuranagar Cooperative Housing Society Limited, Madhuranagar Colony, Padmaraonagar, Secunderabad (for short, 'the Society') after obtaining exemption under the provisions of the Urban Land (Ceiling and Regulation) Act and the Andhra Pradesh Vacant Lands in Urban Areas (Prohibition of Alienation) Act, 1972. The Society purchased an extent of Acs.6.12 guntas from out of the total extent of Acs.13.00 under registered sale deeds,

dated 09.11.1992 and 12.11.1992. The petitioner claims to be a member of the Society and he was allotted plot No.138 admeasuring 200 square yards. He purchased the said plot under a registered sale deed, dated 15.05.1993. He also purchased small piece of land in Plot Nos.137P and 138P admeasuring 40 square yards under another registered sale deed, dated 21.06.1995. He applied to the Municipal Corporation of Hyderabad (for short 'the Corporation') for construction of house in plot No.138. He was permitted to construct ground + first floor, but he constructed only compound wall and ground floor and he has been paying municipal taxes since 1996. He further states that he obtained power connection to the house situated in Plot No.138. When there was a vacant land in the layout adjacent to the eastern side of the plots allotted to the petitioner, in which there was a Well and the said Well was closed by the Society, it was handed over to the Government for the purpose of Park and plot Nos.135 and 134 are existing towards eastern side of the vacant land meant for Park. A dispute was pending between the owners of plot Nos.134 and 135 and their purchasers. When the members of the Society made a complaint and on receipt of the same, the District Collector, Hyderabad came to the spot and informed the local people that the said plots are part and parcel of the Government land in Survey No.28 of Zamisthanpur, Musheerabad Mandal.

Later on, the petitioner filed W.P.No.11066 of 2011 claiming to be the absolute owner, title holder and possessor of plot No.138. He further stated that he succeeded to plot No.137 which was

purchased by his father under a registered sale deed and after his demise, himself and his mother succeeded to the said plot. Thus, he claims to be the owner of plot Nos.137 and 138, wherein houses bearing No.11-3-267/137 and 11-3-267/138 were existing. The said houses were demolished, which resulted in filing W.P.No.24163 of 2002.

The petitioner further stated that after demolishing the houses in 2002, when he made an application before the authorities of the Corporation for construction, they insisted for obtaining "No Objection Certificate" from the Office of the Collector. He submitted an application for grant of NOC and the same was rejected. Thereafter, he made further application pointing out that the subject plot does not form part and parcel of the Government land in survey No.28 and on receipt of the same, a detailed report was called for. The Tahsildar, Musheerabad Mandal addressed a letter, dated 28.01.2010, to the District Collector, Hyderabad stating that the land purchased by the petitioner was a patta land, and enclosed copies of extracts of TSLR Phodi ROM Sketch etc. He also stated that in O.S.No.7243 of 2002 filed by the owner of plot No.135 before X Junior Civil Judge, City Civil Court, Hyderabad, the learned Judge while holding that the suit schedule property is not situated in Survey No.28 which belongs to the Government and the said survey number is situated elsewhere, decreed the suit *vide* judgment, dated 25.08.2009. The Government issued G.O.Ms.No.852, dated 18.08.1992, granting exemption for purchase of excess vacant land held by Sri S.Babaiah in Survey No.29, admeasuring Acs.13.00. In

the said G.O., the names of plot holders were mentioned and the names of the petitioner and his father figured at serial Nos.40 and 8 respectively. He also stated that the Town Survey Register is not meant to establish proof of title nor the NOC from the District Collector is required for processing the application of the petitioner by the Corporation. In those circumstances, when he received Memo bearing No.E1/974/2011, dated 08.02.2011, informing the petitioner to approach the competent authority for rectifying the correlation of survey number from 28 to 29 of Zamisthanpur Village in respect of the land applied for NOC and to submit corrected copy for taking further action in the matter, W.P.No.11066 of 2011 was filed.

Pursuant to the request made by the petitioner for reconsideration of his case, the Committee, constituted under G.O.Ms.No.2111, Revenue (Assn.III) Department, dated 05.12.2005 and G.O.Ms.No.93, Revenue (Assn.III), Department, dated 28.01.2006, in its meeting held on 09.06.2011, made a similar endorsement on 23.06.2011 rejecting his case on the ground that he has not approached the authority for correction of the record, and thereby, directed the Corporation not to accord building permission in his favour. Aggrieved by the same, he filed W.P.No.26251 of 2011. The said endorsement also states that the petitioner was issued Office Memo on 09.05.2011 informing him to approach the competent authority for rectifying the correlation of survey number from 28 to 29 of Zamisthanpur Village and even after lapse of more than three months from the date of issuance of first memo on

08.02.2011, there was no reply from the petitioner for correction of the record.

In view of challenge to the subsequent memo, dated 23.06.2011, W.P.No.11066 of 2011 does not survive for consideration.

When these matters are taken up for consideration, learned Government Pleader for Revenue submitted that he is not having the bundle relating to W.P.No.26251 of 2011 and in those circumstances, he is not in a position to inform this Court whether a counter-affidavit was filed in the said case or not. Be that as it may, in view of availability of the counter-affidavit filed in W.P.No.11066 of 2011, the averments made therein are taken into consideration.

It is stated in the counter-affidavit that the petitioner submitted an application before the District Collector, Hyderabad on 16.11.2010 for issuance of NOC in respect of the premises bearing No.11-3-267/137 and 11-3-267/138 to an extent of 367.84 square meters of land. On such application, the matter was referred to the Tahsildar, Musheerabad Mandal for enquiry. During the spot verification, it was noticed that the applied land falls in old Survey No.28 correlated to T.S.No.3, Block-C, Ward-144 of Zamisthanpur Village, Musheerabad Mandal. Accordingly, the facts were reported to the District Collector, Hyderabad by the Tahsildar on 06.12.2010. Accordingly, NOC was rejected by endorsement, dated 27.12.2010, but the petitioner filed another application on 11.01.2011 seeking reconsideration of his case and on receipt of such application, the

District Collector, Hyderabad again referred the matter for re-enquiry to the Tahsildar and sent report to SDC (KRC). After re-enquiry, the Tahsildar, Musheerabad Mandal and the Special Deputy Collector (KRC) Hyderabad reported that Survey No.28 correlated to T.S.No.3, Block-C, Ward-144 of Zamisthanpur Village is classified as “Khariz Khata” land as in Column No.10 of TSLR and in Column No.20 recorded as “Well G” and in column No.23 as Poramboke “G” case No.7. It was also reported that there was no Well on the ground and almost all the area is covered with structures. It is further stated that the report of the Deputy Director (CSO) & Commissioner in LGC No.67/97 states that T.S.No.3, Block-C, Ward-144 is not covered by Survey No.28 of Zamisthanpur Village and hence, the land applied for NOC was found not falling within old survey No.28, but it actually falls within old Survey Nos.29 and 18 of Zamisthanpur Village and hence, it requires correction of record regarding correlation of the survey number. Accordingly, endorsements were made on 08.02.2011 and 26.03.2011 to approach the competent authority for rectifying the correlation of survey number from 28 to 29 of Zamisthanpur Village in respect of the land applied by the petitioner. It is also stated that the petitioner earlier encroached/grabbed an extent of 367.84 square meters out of TS No.3, Block-C, Ward-144 which is classified as Government Well in Column No.20 of TSLR. Hence, the said encroachment was removed by the Tahsildar in order to protect the valuable Government land. Challenging the said action, the petitioner filed W.P.No.24163 of 2002.

It is further stated in the counter-affidavit that town survey was conducted during 1964-69 under the Andhra Pradesh Survey & Boundaries Act, 1923 (for short 'the Act') and a notification under Section 6 (1) of the Act was issued inviting all the concerned to participate in the survey. According to the town survey, Survey No.28 was correlated to T.S.No.3, Block-C, Ward-144 of Zamisthanpur Village. A Gazette Notification was issued on 12.07.1977 pursuant to the town survey as required under Section 13 of the Act. Thus, the entries made in TSLR have become final, as no suit was filed within the period of three years as provided for under Section 14 of the Act.

Now, the petitioner claims to be the owner of plot No. 138 and claims to have succeeded to the plot owned by his father i.e. plot No.137. The said plots are situated in the layout formed by the Society. The claim of the Government is that a town survey was conducted during 1964-69 under the provisions of the Act and a notification was issued and the same has become final. The Government further stated that the land in survey No.28 was correlated to T.S.No.3, Block-C, Ward-144 of Zamisthanpur Village and it was classified as "Khariz Katha" land as in Column No.10 as "Khariz Katha Sarkari" and in column No.20 as "Well G" and the total extent was shown as 1571 square meters. The claim of the Government is that the petitioner encroached/grabbed to an extent of 367.84 square meters out of 1571 square meters. Though the application of the petitioner for grant of NOC pertains to the said land, it appears that the land that was sold to the Society fell within

Survey Nos.29 and 18 of Zamisthanpur Village, as could be seen from the sale deed executed in favour of the Society.

The petitioner claims to have purchased the land from the Society and naturally, the plot of land claimed by the petitioner falls within Survey No.29. There appears a conflict with regard to the extent of land owned by the petitioner, its location and claim of the Government. As rightly pointed out by the petitioner in the affidavits filed in support of the writ petitions that TSLR does not create any title and it has shown prima facie evidence of situation of the plot. But the District Collector, Hyderabad had not totally negated the claim of the petitioner, but enabled the petitioner to apply for rectifying the correlation of Survey number from 28 to 29 of Zamisthanpur Village. A Committee constituted under the Governmental Orders, dated 05.12.2005 and 28.01.2006, examined the issue and endorsements were made by the District Collector, Hyderabad pursuant to the decision taken by the Committee on 03.05.2011. In view of the same, this Court cannot decide the location of the plots in relation to the survey number and hold that the endorsements are bad.

In those circumstances, this Court sees no ground to interfere with the endorsements made by the District Collector, Hyderabad, but with regard to the possession of the petitioner, in view of the interim order passed by this Court on 04.12.2002 *status quo* shall prevail for a period of three months in order to enable the petitioner

to take further steps in accordance with law and as advised in the endorsements.

The writ petitions are accordingly dismissed.

Miscellaneous petitions, if any, pending in these writ petitions shall stand closed. There shall be no order as to costs.

A.RAMALINGESWARA RAO, J

Dt:19.06.2017

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