

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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WRIT PETITION No.20569 of 2007

Between:

Smt.B.Deepa

....Petitioner

and

Government of Andhra Pradesh,
Represented by its Principal Secretary,
Revenue (U.L-IV) Department,
Secretariat, Hyderabad,
and others.

....Respondents

JUDGMENT PRONOUNCED ON : 21.07.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : No

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.20569 of 2007

ORDER:

Heard the learned Counsel for the petitioner, learned Government Pleader for respondent Nos.1 and 2 and the learned Counsel for respondent No.3.

The petitioner, when she was unmarried and was under the care and custody of her uncle, purchased an extent of 288 square yards of land in Plot No.281 situated in Survey Nos.180, 197 and 200 of Kukatpally Village, Balanagar Mandal in Ranga Reddy District, under a registered sale deed dated 04.04.1987 from M/s.Bhagyanagar Cooperative Housing Society Limited, Kukatpally. When the Government issued G.O.Ms.No.455, Revenue (UC.I) Department, dated 29.07.2002, issuing guidelines for allotment of excess lands under Section 23 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, the Act), which are under occupation of third parties, the petitioner applied for regularization, as the land was declared as excess land of the said Cooperative Housing Society under the provisions of the Act. The Government considered the application, issued G.O.Ms.No.1875, dated 08.11.2005, and thus the purchase of the petitioner was regularized.

While so, the first respondent issued a show cause notice on 13.04.2007 stating that the second respondent reported that the third respondent filed an application in terms of the same

G.O.Ms.No.455 seeking regularization of the same plot and asking the petitioner to show cause as to why her earlier allotment should not be cancelled. The petitioner appeared through her General Power of Attorney holder and submitted a detailed explanation on 27.04.2007. When the first respondent, without properly considering her explanation, issued G.O.Ms.No.1122, dated 21.08.2007, cancelling the allotment made in her favour under G.O.Ms.No.1875, dated 08.11.2005, and allotting the land in favour of the third respondent, the present Writ Petition was filed.

This Court while admitting the Writ Petition on 01.10.2007 granted interim suspension, which has been in operation till today. The Government as well as the third respondent filed counter affidavits along with petitions to vacate the said order.

The Government filed a counter affidavit admitting the regularization of the plot held by the petitioner. It is further stated that the second respondent reported that the petitioner was not in possession of the land and the third respondent was in possession of the land supported by an electricity bill of 2006 and he applied for regularization of the same plot and requested for withdrawing the earlier order issued in favour of the petitioner. It was also admitted that pursuant to the show cause notice issued to the petitioner, one Sri K.Sivakanth Reddy, General Power of Attorney holder of the petitioner, submitted an explanation on 26.04.2007. A personal hearing was given on 28.05.2007 and the Counsel, who appeared on that day, sought two weeks time for filing written arguments. Again another personal hearing was conducted on 19.06.2007 at 3:00 pm and the Counsel submitted a copy of

O.S.No.1414 of 2005 filed by the third respondent seeking specific performance of the agreement of sale and pending before the Principal Senior Civil Judge, Ranga Reddy District. It is also stated that the third respondent submitted that he was in possession of the property since 2001, also paid development charges to the Society along with electricity consumption charges since 2004 and 2006 and the original documents of the property were in his custody from 2001. The Secretary, Bhagyanagar Phase-III Residents' Welfare Association, Kukatpally, also certified that Plot No.281 belongs to the third respondent and he paid all development charges promptly pertaining to the Society since 2001 to 2007. In those circumstances, G.O.Ms.No.1122, dated 21.08.2007, was issued canceling allotment in favour of the petitioner under G.O.Ms.No.1875, dated 08.11.2005, as she was not in possession of the land and allotted the said land to the third respondent who was reported to be in possession of the plot supported by primary document of electricity service connection No.1201203088-2012, dated 10.09.2004 and 10.06.2006.

The counter affidavit of the third respondent states that after purchase of the property by the petitioner, she created equitable mortgage of the property with the State Bank of India, Amberpet Branch, Hyderabad, and since she could not repay the amount in respect of equitable mortgage created by her, the State Bank of India initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act before the Debts Recovery Tribunal at Karnataka and Andhra Pradesh at Bangalore by filing O.A.No.263 of 1996. In those circumstances, she executed Special Power of Attorney in

favour of one Sri B.Ramachandra Reddy, S/o.B.Somi Reddy, and she empowered the attorney to alienate the property. Based on the representation made by the said attorney, the third respondent cleared the entire loan amount payable under the mortgage and the attorney entered into an agreement of sale with him on 10.06.2001. He further stated that a reading of the agreement makes it clear that the entire sale consideration was paid and the third respondent was put in possession by delivering the custody of the original sale deed dated 04.04.1987. Since there was a ban on registrations in the area, the petitioner could not execute registered sale deed in his favour, and thus, he continued to be in possession of the property. After entering into agreement, the Society asked him to pay the development charges and accordingly he paid the same. A certificate was issued by the Society. Since the Government issued G.O.Ms.No.455, Revenue (UC.I) Department, dated 29.07.2002, to regularize the lands prescribing certain conditions, including the condition of possession and electricity connection, in view of the possession and electricity connection possessed by him, he made an application to the authorities in pursuance of the said Government Order. After receiving his application, the competent authority noticed that the petitioner also submitted the application after alienating the property to him way back in the year 2001 and her application was processed resulting in issuance of G.O.Ms.No.1875, dated 08.11.2005. He further stated that after complying with principles of natural justice, G.O.Ms.No.1122, dated 21.08.2007, was issued by canceling the earlier regularization made in favour of the petitioner. He further stated that he filed a civil suit in

O.S.No.1414 of 2005 on the file of the learned Principal Senior Civil Judge, Ranga Reddy District at L.B.Nagar, for specific performance of agreement of sale dated 10.06.2001 and in view of the same, the Writ Petition is misconceived. Along with the counter, he filed copies of the agreement of sale, certificate given by the Bhagyanagar Phase-III Residents' Welfare Association Kukatpally and copy of the application for allotment of excess land filed by him enclosing the Demand Draft for Rs.18,075/-.

The petitioner filed a reply affidavit stating that she created equitable mortgage of her plot as security for the loan advanced to her uncle Sri P.Rami Reddy and submitted that the execution of Special Power of Attorney in favour of Sri B.Rama Chandra Reddy was not true. It is stated that taking advantage of the signature of the petitioner on blank papers, her uncle Sri P.Rami Reddy, created Special Power of Attorney in favour of Sri B.Rama Chandra Reddy, who executed an agreement of sale in favour of the third respondent, and on the basis of those documents, the third respondent filed O.S.No1414 of 2005 for specific performance of agreement and the petitioner has been contesting the same. The allegation that the third respondent cleared the loan payable to State Bank of India, Amberpet, was not within the knowledge of the petitioner. The handing over of possession pursuant to the agreement of sale dated 10.06.2001 was also denied. However, it is stated that the third respondent highhandedly constructed a room taking advantage of the absence of the petitioner in India without obtaining permission from the Municipal Corporation of Hyderabad. The electricity connection obtained by the third respondent in the year 2004 is fake and in fact he obtained the

electricity connection only in the year 2006. The petitioner entered into an agreement of sale with one Sri Krishna Murthy on 29.03.1995 and in pursuance of the same the said Krishna Murthy filed a civil suit. The petitioner also filed O.S.No.961 of 2007 on the file of the learned I Senior Civil Judge, Ranga Reddy, to declare the agreement of sale dated 10.06.2001 executed by Sri B.Rama Chandra Reddy in favour of the third respondent as null and void and for return of the original sale deed. In the said suit her uncle was arrayed as the first defendant and Sri B.Rama Chandra Reddy was arrayed as the second defendant. The third respondent herein was shown as the third defendant. The said Krishna Murthy, with whom the petitioner was stated to have entered into the agreement on 29.03.1995, was arrayed as the fourth defendant.

In the circumstances, this Court called for the original record from the first respondent and it revealed that the second respondent sent the proposal of the third respondent on 02.04.2007 for passing orders by the first respondent, wherein he stated that in respect of Plot No.281 the vendor of the third respondent already obtained orders from the Government. But, strangely, within two days thereafter, a telegram was received by the first respondent from Ms.K.Madhavi Latha, Advocate on behalf of the petitioner, with regard to the execution of agreement by the petitioner in favour of Sri L.Krishna Murthy. Accordingly, a show cause notice was issued to the petitioner on 13.04.2007. The said show cause notice was served on the General Power of Attorney holder K.Sivakanth Reddy on 19.04.2007. He submitted a reply on 26.04.2007 enclosing the complaints in O.S.No.1414 of 2005, O.S.No.2008 of 2005 and O.S.No.961 of 2007 along with his

General Power of Attorney dated 13.04.2007. An opportunity of personal hearing was given on 28.05.2007 and on that day one Sri M.Ramesh Reddy, Advocate, appeared seeking adjournment by two weeks in order to enable him to file the written arguments. Accordingly, another opportunity was given by holding an enquiry on 19.06.2007. The third respondent also filed his representation on 25.06.2007 before the first respondent, even though no notice was issued to him. After hearing the Counsel for the petitioner on 19.06.2007, the first respondent directed to examine the case and put up the file. After preparing the note, the first respondent endorsed to "discuss" and further stated that the various points raised by the petitioner were not satisfactorily answered by the third respondent and how did the second respondent recommend regularization to the petitioner without documents, possession and proof from Society etc. It was replied stating that, by mistake the second respondent recommended the case of the petitioner in the initial stage and accordingly Government Order was issued and now it has to be withdrawn before granting regularization to the correct person. Accordingly, the proposal for cancellation of the regularization issued in favour of the petitioner and issuing allotment in favour of the third respondent was approved.

It is clear from the above facts and the reply filed to the show cause notice issued by the Government as available from the record produced before this Court that the petitioner prosecuted her studies in her maternal uncle Sri P.Rami Reddy's house at Bagh Amberpet, Hyderabad. She stayed there till her marriage. Her father used to live in Nagarkurnool and he used to bear the expenditure for her studies. During that time, the petitioner's

father purchased open Plot No.281 admeasuring 288 square yards in Survey No.200 situated at Kukatpally Village and Municipality, Balanagar Mandal in Ranga Reddy District vide registered sale deed dated 04.04.1987 in her name. Her uncle established M/s.Sri Lakshmi Maruthi PVC Pipes Limited at his residence to carry on the business of manufacturing of rigid PVC pipes of different sizes and established its factory at Annojiguda Village, Ghatkesar Mandal in Ranga Reddy District. He applied for a bank loan to the State Bank of India, Amberpet Branch, and it sanctioned an amount of Rs.30,00,000/- and as security for the same, an equitable mortgage was created on 20.07.1993 on the schedule property. Her uncle promised to release the said property before the marriage of the petitioner and hence her father did not object to the same. When the petitioner and her father were in need of money, they wanted to sell the property and offered the same to Sri Krishna Murthy, who agreed to purchase the same. Accordingly, an agreement was entered on 29.03.1995, and the entire sale consideration was received. He was informed that after clearing the ULC problem, the document would be registered in his favour and promised to handover the original document. The same was informed to the uncle of the petitioner and he was requested to release the document from the bank. When the loan amount was not cleared, the bank initiated legal steps to recover the money before the Debts Recovery Tribunal, Karnataka and Andhra Pradesh at Bangalore, in O.A.No.263 of 1996 and the petitioner is a party respondent to the said proceedings. The petitioner's uncle used to look after the case and in the mean while, the petitioner got married in December, 1996. At the time of the petitioner

leaving for USA to join her husband, her uncle took the signatures on stamp papers stating that the signatures were required to release the original document from the bank and to contest the case filed by the bank. She, accordingly, signed the documents before leaving to the Airport and they were in the custody of her uncle. The vendee, Sri Krishna Murthy, informed the petitioner that the Government issued an order enabling the regularization of plots situated in surplus land and informed her to take necessary steps. Accordingly, the petitioner executed the General Power of Attorney in favour of her father and her father, in cooperation with the said Krishna Murthy, applied for regularization. The father of the petitioner went to USA and the vendee – Krishna Murthy, informed him in November, 2005, that the Government cleared the property from the Urban Land Ceiling restrictions and requested to execute the sale deed. The petitioner and her father informed one Sri K.Sivakanth Reddy, the brother-in-law of the petitioner, to collect the original documents from the petitioner's uncle. But, her uncle did not handover the documents. When the petitioner and her father became serious, they came to know that the third respondent herein filed a suit against the petitioner. On verification, it came to light that the petitioner executed the Special Power of Attorney in favour of Sri B.Ramachandra Reddy in the year 1996 and based on the said Special Power of Attorney, he entered into an agreement with the third respondent on 10.06.2001 and handed over the original registered sale deed to him. Based on the same, the third respondent filed O.S.No.1414 of 2005 on the file of the learned II Senior Civil Judge, Ranga Reddy at L.B.Nagar, and the same is pending. In the absence of the

original document, the petitioner could not execute the registered sale deed in favour of her vendee – Krishna Murthy. It resulted in some misunderstanding and the vendee filed O.S.No.2008 of 2005 on the file of the learned I Senior Civil Judge, Ranga Reddy District at L.B.Nagar, which is pending. Thus, it is the case of the petitioner that her uncle - Sri P.Rami Reddy, in collusion with Sri Ramachandra Reddy, played fraud on the petitioner and she never executed any Special Power of Attorney in favour of the said Ramachandra Reddy and he has no right to sell the property. Accordingly, she filed O.S.No.961 of 2007 on the file of the learned I Senior Civil Judge, Ranga Reddy, to return the original sale deed and to cancel the agreement of sale executed in favour of the third respondent. The same is also pending.

As could be seen from the above averments of the third respondent, he purchased the property and applied for regularization on the basis of his “possession” and “electricity connection”. After hearing the petitioner, the Government passed an order canceling the allotment made in favour of the petitioner and G.O.Ms.No.1122, dated 21.08.2007, was issued in favour of the third respondent.

The rival allegations of the petitioner and the third respondent have to be decided in the pending civil proceedings. This Court is concerned only with the validity of the impugned G.O.Ms.No.1122, dated 21.08.2007.

In the light of the above facts, in the normal circumstances in view of the pendency of the civil cases, the first respondent should have advised the parties to settle their title before the

competent Court and come back to the first respondent for passing appropriate orders. It was not done. The orders issued in favour of the petitioner earlier were withdrawn and based on the electricity connection and possession as evidenced by the certificate of the Society produced by the third respondent, orders of allotment were passed in his favour. No one can have any doubt with regard to the initial allotment in favour of the petitioner by the Society and purchase by her and payment of development charges has nothing to do with regard to the allotment and purchase. Within two days of sending proposal by the second respondent, the Advocate of the petitioner sent a telegram indicating that an agreement was entered by the petitioner with Sri L.Krishna Murthy and no notice was issued to the said Krishna Murthy. The alleged evidence of electricity connection in 2004 submitted by the third respondent was found to be fake as could be seen from the certificate issued by the electricity authorities and filed along with the Writ Petition showing that the third respondent obtained electricity connection only in the year 2006. So, the possession of the third respondent is a disputed possession and the electricity connection was a fake one. But the title and possession of the petitioner cannot be disputed. The agreements of sale cannot confer any title. The Government passed the impugned order based on an alleged agreement of sale which is disputed.

The third respondent produced before this Court a copy of the application alleged to have been filed before the second respondent, which did not tally with the application available in the record of the first respondent when compared. When the third respondent was present before this Court, he was asked to attest

the copy of the application filed along with the counter and he attested the same. When he certified it to be the true copy of the original application sent to the second respondent seeking regularization and when it is not tallying with the application available in the record, for filing such false document as the true copy of the original document, appropriate proceedings could be initiated by this Court. But, this Court, in view of the pending civil litigation and in view of the relief granted in the present Writ Petition, did not intend to take any further proceedings with regard to the said illegality.

The Government should have laid off its hands and should not have acted on the basis of the recommendation of second respondent for considering the case of the third respondent. The third respondent and his wife were already in possession of Plot Nos.282 and 283 for which regularization proceedings were recommended by the second respondent. The second respondent passed several arbitrary orders and issued proceedings under the Act during that time and it has come to the notice of this Court in several cases arising under the Act. The impugned proceedings issued without issuing notice to the agreement holder Sri Krishna Murthy and without assigning proper reasons is bad in law and is, accordingly, set aside.

The Writ Petition is, accordingly, allowed only to the extent of setting aside the impugned order in G.O.Ms.No.1122, dated 21.08.2007. However, with regard to the right, title and interest of the parties, the parties have to work out their remedies in the competent civil Court where the civil suits are pending. The

miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

JUSTICE A.RAMALINGESWARA RAO

21.07.2017
vs

