

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.22893 of 2010

&

WRIT PETITION No.13607 of 2011

COMMON ORDER:

Since the issue involved in both the writ petitions is one and the same, both the writ petitions are being disposed of by this common order.

2) Sri Tulasinagar Weaker Section Welfare Association, Kukatpally, Hyderabad, filed Writ Petition No.22893 of 2010, seeking issuance of writ of mandamus declaring the action of the respondents in alienating the Government land admeasuring 468 sq. yards situated in Sy.No.336 of Kukatpally village, Balanagar Mandal, Ranga Reddy District in favour of 6th respondent/School ignoring the claims of the petitioner/society, as illegal and arbitrary.

3) For the sake of convenience, the parties hereinafter will be referred to as arrayed in the W.P.No.22893 of 2010.

4) The averments in the affidavit filed in support of the Writ Petition No.22893 of 2010 show that in the middle of a residential colony there is a vacant Government Sikkam land admeasuring 468 sq. yards situated in Sy.No.336 of Kukatpally village, Balanagar Mandal, Ranga Reddy District. It is alleged that there

exists a small temple of Ganesha in the said land. The petitioner/Society made several representations dated 08.04.2008 and 22.10.2008 to the officials requesting to alienate the said land in favour of Greater Hyderabad Municipal Corporation so as to enable it to construct a community hall, Mahila Samajam and children park for public use. The 6th respondent/High School also claimed to have made a representation for alienation of the said land in their favour for market value. In view of the said representations, the Government issued G.O.Ms.No.852 dated 18.08.2009 alienating the land in favour of 6th respondent, ignoring the claims of the petitioner/society. Challenging the same, the present Writ Petition came to be filed.

5) By an order dated 14.09.2010, this Court restrained the respondents 1 to 4 from handing over the possession of the subject land to R-6. It was further directed that even if possession was handedover to R-6, the said respondent is restrained from using the said land. Respondents 3 and 4 were directed to take all necessary measures to prevent such usage of land by R-6 pending further orders.

6) Seeking to vacate the said interim order, learned Government Pleader for Assignments filed W.V.M.P.No.78 of 2012 and R-6 also filed W.V.M.P.No.4673 of 2010 along with the respective counter affidavits. After considering the rival submissions made, this

Court vacating the interim order passed by this Court on 14.9.2010 on two grounds viz., i) no challenge was made to G.O.Ms.No.852 by the writ petitioner and ii) R-6 has been in possession of the subject land right from the year 1996. Aggrieved by the same, the petitioner is alleged to have preferred Writ Appeal No. 1600 of 2013 raising the same grounds as urged in the writ petition, which was sent back to the learned Single Judge for hearing the same on merits.

7) While things stood thus, the school authorities filed Writ Petition No.13607 of 2011 alleging that under the guise of interim order passed by this Court in W.P.No.22893 of 2010, the Society is highhandedly trying to make in roads into the land, which was alienated to the school by the Government. Though a report was made to the first respondent, there was no action on their part. Alleging inaction on the part of the official respondents in preventing the members of the society from making construction in the said land, the said Writ Petition came to be filed. On 30.04.2011, while admitting the said Writ Petition, this Court directed respondents 1 to 3 therein to ensure that no constructions are made either by the school or the society.

8) Seeking to vacate the interim order, the society filed W.V.M.P.No.3306 of 2011 along with a counter affidavit.

9) Learned counsel for the petitioner submits that the Government ought not to have alienated the land in favour of 6th respondent/school, which is a private commercial institution. It is further urged that alienating the said land in favour of the 6th respondent at a low price, without conducting any public auction, caused heavy loss to the state revenue. It is further urged that since the land is situated in the midst of the residential area, it would have been proper for the authorities to alienate the same in favour of the residents of the petitioner/colony.

10) Sri O.Manohar Reddy, learned counsel for R-6 would submit that the 6th respondent has been using the said land right from the year 1996 and it has been making a representation for purchasing the land in their favour since 2001. He also submits that neither the G.O., which has been issued by the Government nor the consideration for which the said land has been alienated in favour of the 6th respondent/School was questioned in the Writ Petition.

11) Respondents 1 and 2 filed their counter denying the averments made in the writ petition. It has been urged in the counter that the alienation proposals were submitted by the District Collector, Ranga Reddy District to the Chief Commissioner of Land Administration vide reference No.LC1/5846/2008 dated 03.02.2009 and their recommendation was forwarded to the Government vide

C.C.L.A's reference No.BB1/313/2009 dated 10.02.2009 for consideration. After considering all aspects, the Government issued G.O.Ms.No.852 Revenue (Assn.V) Department dated 18.08.2009 alienating the land in favour of 6th respondent/School on payment of market value of Rs.8,500/- sq. yard. The said amount of Rs.39.78 lakhs was remitted vide challan bearing No.53992 and 045369 dated 25.09.2009 and 10.08.2010 respectively. Subsequent thereto, the District Collector, Ranga Reddy District issued proceedings alienating the land in favour of R-6 for the purpose of playground subject to the conditions laid down under Rule 6 of A.P. (T.A.) Alienation of State Land Revenue Rules 1975. Accordingly, the possession of the land was handedover to R-6 on 03.09.2010 under a cover of panchanama. Since the land is situated on the northern side of R-6/School, the Correspondent claims to have been protecting the land and that the allegation of existence of the temple is strongly denied. In view of the above, it is urged that there are no merits in the writ petition and the same is liable to be dismissed.

12) The 6th respondent also filed a counter stating that it has purchased an extent of 1050 sq. yards in Sy.No.332 of Kukatpally village and Mandal, Ranga Reddy District in the year 1995 and a further extent of 360 sq. yards in Sy.Nos.328 to 332 of Kukatpally village and Mandal, Ranga Reddy District in the year 1996. The school building was said to have constructed in 1050 sq. yards and adjacent

land admeasuring 480 sq. yards inclusive of 360 sq yards was being used as a play ground, for the benefit of the children studying in the school. In fact the said land was said to have been sold as if it is a private property. However, after the survey, conducted by the Government in the year 2001, it was found that out of the extent of 480 sq. yards only an extent of 30 sq. yards belongs to the vendor of the 6th respondent and the rest is a Government land. Till that time, the 6th respondent was under the impression that the said land belongs to their vendor and that they have been using the same as a play ground. On coming to know about the said fact, they made a representation to the Government for regularization of the land in their favour. It is said that the said land, which has been alienated in favour of 6th respondent is being used for public purpose and 1st respondent after considering the request of the 6th respondent pleased to issue the impugned G.O. It is said that the members of the petitioner/society with a view to grab the land have filed the present writ petition. In fact none of the colony members or any residents have come forward for alienation of the said land in favour of any of the society. In fact it is stated that 6th respondent/school is providing free education to nearly 200 students out of the 744 students it has and that the said land is being used as play-ground for the school children. It is further stated in the counter that as there is already a Mahila mandali constructed by the Government, by

spending Rs.20 lakhs, in the area, the question of using the land which was alienated in favour of the 6th respondent again, for the same purpose may not arise. Having regard to the above, it is urged that there are no merits in the writ petition and the same deserves to be dismissed.

13) From the above averments, it is clear that, firstly, the writ petitioner has not challenged the very issuance of G.O.Ms.No.852, alienating the land in favour of the 6th respondent. Secondly, even the value, for which the land has been alienated in favour of the 6th respondent has not been challenged. The prayer in the writ petition is, to declare the alienation of the land infavour of the school, ignoring the claim of the petitioner/society, which is for public utility, is arbitrary and illegal.

14) Now, the question that falls for consideration is "Whether the claim of the writ petitioner is to be preferred to the one made by the 6th respondent?"

15) The material on record discloses that the 6th respondent purchased various extents of land in the said area for establishment of school. About 1050 sq. yards was said to have been used for raising the building and the rest of the land was being used as a play ground. The averments in the counter, which are not specifically denied by way of reply, show that the 6th respondent was using the said land as a

play ground on a premise that the said land belong to their vendor. However, in the year 2001 a survey came to be conducted, wherein it was found that, out of 480 sq. yards only 30 sq. yards was belonging to the 6th respondent and the remaining land is a Government land. Immediately, thereafter R-6 made a representation to the Government for alienation of the said land in its favour on payment of market value. The Government called for a report from the Collector who inturn called for a report from the Tahasildar and after following due process, G.O.Ms.No.852 came to be issued alienating the said land in favour of the 6th respondent at the basic value prevailing then. Further, the petitioner in W.P.No.22893 of 2010 has neither challenged the G.O.Ms.No.852 nor has it challenged the rate at which the land was alienated to R-6. It only wants alienation of land in its favour by canceling the alienation done in favour of R-6. It is to be noted that the petitioner never offered to purchase the land by paying more than which was offered by R-6. Though the petitioner also claimed the said land for the purpose of using it as a community centre or for a Mahaila Mandali, the record discloses existence of Mahila Mandali in the said area. Hence, alienating the said land to the society for the said purpose would not arise. Even otherwise, it is to be noted that the school is said to have been providing free education to about 200 students.

16) In view of the above circumstances, this Court is of the view that there are no merits in the writ petition No.22893 of 2010 and the same is liable to be dismissed.

17) Accordingly, the Writ Petition No.22893 of 2010 is dismissed. In view of the order passed in W.P.No.22893 of 2010, no orders need be passed in W.P.No.13607 of 2011. No costs. Miscellaneous petitions, pending if any, in both the Writ Petitions, shall stand closed.

Dt:21.03.2017
GM

JUSTICE C. PRAVEEN KUMAR

