

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

WRIT PETITION No.8050 of 2012

ORDER:

This Writ Petition is filed by petitioners challenging the letter No.E6/I1/2541/2011 dt.02-08-2011 of the 2nd respondent District Collector, Hyderabad in directing the 3rd respondent to plant Government sign boards in the land claimed by petitioners of extent Ac.30.00 in Sy.No.327/P of Shaikpet village.

2. Petitioners contend that an extent of Ac.30.00 in Sy.No.327/Paiki of Shaikpet village, Hyderabad was owned by Smt.Afzal Bee @ Afzal Begum, w/o.Mir Ahmed Ali @ Miya Jaani; that revenue records from 1349 Fasli establish it; that after the revision survey, the Wasool Baki Register of 1349 Fasli shows that Smt.Afzal Bee is the khatadar of the said land; that the Classer Register of 1349 Fasli also shows her name as Khatadar of R.S.Nos.602 and 605; that Shethwar of 1357 Fasli also recorded her name as Khatadar; that she applied for permission under Section 47 and 48 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 to the Deputy Collector, Western Division, Hyderabad District to alienate this land; such permission was granted vide proceedings No.27/934/936 dt.06-04-1953; and she executed registered sale deed dt.02-07-1953 conveying this entire extent to Smt.Vikarunnissa Begum.

3. It is further contended by petitioners that Smt.Vikarunnissa Begum again obtained permission from the Deputy Collector, Western Division, Hyderabad District under Sections 47 and 48 of the Hyderabad Tenancy and Agricultural Lands, 1950 vide proceedings No.T/77/54 dt.11-10-1954 to alienate this land in favour of the mother of petitioner Nos.1 and 2 by name Smt.Sakku Bai, W/o.Dr.Rama Koteswara Rao and a registered sale deed dt.21-10-1954 was executed in favour of Sakku Bai.

4. Petitioners contend that Khasra Pahani of 1954-55 and the Sesala Pahani for 1955-58 show that Smt.Sakku Bai was pattedar of this land and the Sesala Pahani shows the balance extent of Ac.52.10 gts in Sy.No.327 as 'Sarkari' land.

5. According to petitioners, Smt.Sakku Bai died in 1966 leaving behind the petitioner Nos.1 and 2, who are her daughters; a Town survey was conducted and the land of petitioners was correlated to T.S.Nos.1 to 4 in Block-C with Ward 13 and the name of their mother Smt.Sakku Bai was shown as registered holder in respect of T.S.Nos.2, 4 and 10; that declarations were filed under Section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short "the Act") by both of them showing that they owned Ac.15.00 each in Sy.No.327/Paiki, and the Special Officer and Competent Authority clubbed both declarations and passed order under Section 8(4) of the Act on 26-09-2005 showing them as surplus holders of land to the extent of 46900.13 and 47,240.14 sq. m. They allege that possession

of the said land was not taken before adoption of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 w.e.f. 27-03-2008 by the Special Officer and Competent Authority and this fact was also informed to the Joint Sub-Registrar, Hyderabad in letter No.E/2299/10 dt.02-07-2010 issued by his Office and therefore this land is their private property.

6. Petitioners contend that they entered into an agreement of sale in the year 1981 with Sakku Bai Nagar Mutually Aided Housing Cooperative Society for development of the land, that the said Society had some litigation with third parties and had to file O.S.No.1145 of 2003 on the file of the VIII Junior Civil Judge, City Civil Court, Hyderabad for perpetual injunction, that the said suit was dismissed on 09-05-2008, which was also confirmed in A.S.No.335 of 2008 by the XI Additional Chief Judge, City Civil Court, Hyderabad on 11-03-2011, that S.A.No.596 of 2011 filed against the same is pending before this Court, and on the basis of a stray observation in the orders passed in that litigation that the subject land could be the land belonging to State Government, the impugned proceedings dt.02-08-2011 was issued by the 2nd respondent directing the 3rd respondent not only to file application to implead in the Second Appeal but also to erect Government sign boards on the land in question, and that this action on the part of respondent Nos.1 to 3 is illegal, arbitrary and violates Article 300-A of the Constitution of India.

7. Learned counsel for petitioners contends that respondents cannot be allowed to go behind the order dt.26-09-2005 passed by the Special Officer and Competent Authority under Section 8(4) of the Act accepting that the lands belong to petitioner Nos.1 and 2, and without taking any possession before the Repeal of the said Act on 27-03-2008, contend that the said land is Government land or doubt the Khasra Pahani of 1954-55 and the Sesala Pahani for 1955-58 or the T.S.L.R. Record showing that this land is private land. He further contended that in case respondent Nos.1 to 3 believe that this land is Government land, they have to follow due process of law in order to recover possession thereof and cannot straight away enter the land and plant a board therein like an unsocial element and grab petitioners' land.

8. Learned Special Government Pleader attached to the office of the learned Advocate General appearing for respondents and Sri P.Keshava Rao, learned Standing Counsel for Greater Hyderabad Municipal Corporation contend that the sale deeds, on the basis of which petitioner Nos.1 and 2 claim that their mother purchased the property i.e. Ac.27.53 and Ac.10.54, do not contain the boundaries of the lands sold thereunder and therefore the title of the petitioners is doubtful. He also contended that out of the total extent of Ac.82.10 gts in Sy.No.327, Ac.52.00 belong to 1st respondent and petitioners cannot be allowed to grab the land belonging to the Government by stating that it is private land on the basis of the above two documents.

9. It is not in dispute that the point now being urged by the learned Special Government Pleader on behalf of respondent Nos.1 to 3 was never urged before the Special Officer and Competent Authority when he passed the order under Section 8(4) of the Act on 26-09-2005 while dealing with the declarations filed by petitioner Nos.1 and 2.

10. A perusal of the said order shows that the title of petitioners to the extent of Ac.30.00 in Sy.No.327/P was accepted by the Special Officer and Competent Authority on the basis of the Verification Report dt.27-04-2005 submitted by the Enquiry Officer appointed under the said Act. Without raising any doubt about the title of petitioners in the said proceedings before the ULC authorities, it is not open to respondent Nos.1 to 3 to doubt the title of petitioners over Ac.30.00 of land purchased by their mother on 21-10-1954 from Smt.Vikarunnissa Begum. The said order dt.26-09-2005 of the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad operates as *res judicata* and bars respondent Nos.1 to 3 from challenging the title of petitioner Nos.1 and 2 to the subject property.

11. It is also not in dispute that the State Government was not a party in O.S.No.1145 of 2003 filed by 3rd petitioner against certain third parties or in A.S.No.335 of 2008. Therefore, on the basis of some observations in the said orders, that too, stating that 3rd petitioner is not in possession of the property, and recording that petitioner Nos.1 and 2 are in possession of the property, it is not open

to the 2nd respondent to direct the 3rd respondent to plant a board in the land and assert that it is Government land. It is not the case of respondent Nos.2 and 3 that any survey was conducted by respondent Nos.1 to 3 demarcating the land of petitioners and the land belonging to the Government before planting the board in the land of petitioners.

12. This action of respondent Nos.1 to 3 is clearly illegal, arbitrary and violates Article 300-A of the Constitution of India. The State cannot act like an unsocial element and grab a private citizen's land in this manner. If the State feels that it has a claim over the property, it is obligated to follow due process of law to recover possession of the land, but such a procedure has not been followed by 2nd respondent in the present case.

13. It is not in dispute that an interim order was granted on 27-04-2012 by this Court in W.P.M.P.Nos.10202 and 10203 of 2012 directing respondent Nos.2 and 3 to remove Government sign boards from petitioners' land and also respondent Nos.4 and 5 to take steps to construct a compound wall around the land in which graves exist. It is now stated by counsel on both sides that Government sign boards have been removed pursuant to the said directions.

14. In this view of the matter, the Writ Petition is allowed; the letter No.E6/I1/2541/2011 dt.02-08-2011 of the 2nd respondent addressed to the 3rd respondent insofar as it directed the 3rd respondent to erect Government sign boards in the subject land is declared as illegal and arbitrary, and respondents are directed not to interfere with

the possession and enjoyment of the petitioners over the subject land without following due process of law. The 1st respondent shall also pay costs of Rs.2,000/- (Rupees Two Thousand only) to the petitioners.

15. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 03-04-2017

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