

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.25934 of 2010

ORDER.

The petitioners' father purchased an extent of 3,764 square yards situated at Daira Jamisthanpur, Musheerabad, Hyderabad and sale deed was executed in favour of the petitioners, since their father died in the meanwhile, on 09.12.1966. According to the petitioners, they resided in the said property after constructing a house bearing Municipal No.1-6-261/A/4 and had also erected a compound wall around the said property.

They also filed declarations under Section-6 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act') before the Special Officer and Competent authority, Urban Land Ceiling (ULC), Hyderabad, vide declaration Nos.CCH/7341, 7344, 7345, 7346 and 7347 of 1976, showing the above property. On 28.4.1993, the Special Officer and Competent authority, Urban Land Ceiling, after an enquiry got conducted by him through the Enquiry Officer, passed order declaring that the said land as non-surplus land and held that the petitioners are entitled to hold it. This order attained finality and was not challenged.

Petitioners then submitted proposals to the Greater Hyderabad Municipal Corporation (for short 'GHMC') for construction of residential building complex and it was sanctioned, vide Permit No.6/76, dated 01.01.2010. Subsequently, revised building plan proposal was also submitted by the petitioners to the GHMC and the same was also approved on 14.9.2010.

Contention of petitioners:

Petitioners allege that when they were making preparations for excavating foundations in the said premises, the third respondent-Tahsildar, Musheerabad Mandal came to the said land, asked them to stop construction and also to produce the documents of their title. Petitioners submitted the same on 18.8.2010.

Without disclosing any reason and without any notice to the petitioners, on 13.10.2010, the petitioners allege that the third respondent came to the spot, demolished part of the compound wall and two rooms attached thereto and located inside the compound wall using a JCB machine; and also demolished a board erected long back stating that the said property belongs to the petitioners. Petitioners allege that this action of the respondents is arbitrary, illegal and violative of Articles-14 and 300-A of the Constitution of India.

They further allege that the said land was part of Survey No.180 and was declared by this Court in City Civil Court Appeal No.36 of 1959, vide judgment, dated 01.9.1965, to be not Government land.

The Interim Order in WPMP.No.33119 of 2010:

On 20.10.2010, the Writ Petition was admitted and in WPMP.No.33119 of 2010, this Court directed the respondents not to interfere with the petitioners' possession of the said property and also restrained the petitioners from alienating the said land or raising any construction therein.

The counter-affidavit filed by respondent No.3:

Counter-affidavit is filed by respondent No.3, on behalf of respondent Nos.1 and 2, stating that the petitioners cannot seek declaration of their title in Writ proceedings and they need to approach competent civil Court having jurisdiction. He contended that the land claimed by the petitioners falls in T.S.No.17, Block-B, Ward No.152 correlated to Survey No.180 of Zamistanpur Village, Gangaputra Colony, Musheerabad Mandal, admeasuring 2,976 square meters and as per the revenue records, it was classified as 'G', meaning that it is Government land.

He stated that the said land was vacant on ground and the possession is with the Government and on inspection made by

him, it was found that there was a dilapidated room in the said land, a hoarding was erected and nobody was residing there. He claimed that since he had a duty to protect the Government land, on 13.10.2010, he removed the hoarding. He denied that the land was covered by compound wall and also the title of the petitioners. He claimed that the Urban Land Ceiling authority made a mistake in holding that the said land is a private land and also non-surplus land and the Special Officer and Competent Authority, Urban Land Ceiling has passed order without verifying the revenue records. He claimed that he had addressed a letter to the Special Officer and Competent Authority, Urban Land Ceiling to cancel the proceedings dt. 28.4.1993 issued by him declaring the said land to be non-surplus land since it is a Government land. He also claimed that the Government was not a party to CCCA.No.36 of 1959 and the judgment dt. 01.9.1965 therein rendered by this Court did not bind the Government.

The point for consideration:

From the above contentions, the question that arises for consideration is “whether the respondents have any authority to interfere with the said land claimed by the petitioners?”

The consideration by the Court:

The petitioners have relied upon the sale deed dt. 09.12.1966, obtained by them, the GHMC Permit No.6/76, dt. 01.10.2010, the revised building plan, dt. 14.9.2010, apart from the proceedings, dt. 28.4.1993, of the Special Officer and Competent Authority, Urban Land Ceiling, in support of their plea that the said land is a private land.

The order, dt. 28.4.1993, of the Special Officer and Competent Authority, Urban Land Ceiling was passed after considering the enquiry report, dt. 28.11.1992, of the Enquiry Officer under the Act stating that the said land is a private land. Once the Special Officer and Competent Authority, Urban Land Ceiling declared the land to be private land and non-surplus land, merely on the basis of the entry in the Town Survey Land Record or revenue record classifying the said land as "G", the respondents cannot claim that it is Government land.

The Supreme Court of India has held that entries in the revenue records are not proof of title and such entries cannot be relied upon for establishing the title. (*State of Andhra Pradesh Vs. Hyderabad Potteries Private Limited*-(2010) 5 SCC 382).

The Supreme Court in the said judgment observed as under:

“The sole basis of the Appellant to claim the land was on the strength of entries made in survey records showing that the schedule property was surveyed as

T.S. No. 4/2, Ward No. 66 of Bakaram village having an area of 19214 sq. meters showing it as a gap area i.e. un-surveyed area as per the old survey records and as such it could only be declared to be Government land as has been recorded in Column No. 20 of the T.S.L.R. Apart from the said revenue record and issuance of gazette notification as mentioned hereinabove, no other material document was filed by the Appellant to show that the said land belonged only to Government. It is trite that entry in the revenue record alone may not be sufficient as conclusive proof of title nor can be relied on for proof of establishing the title as such.”

This legal position is not disputed by the learned Government Pleader for Revenue (Telangana) appearing for the respondents.

Thus, the respondents have no jurisdiction to remove the compound wall or rooms or hoarding erected by the petitioners in the said land, that too, without following any due process of law on the pretext that it is Government land. Such action is high handed, arbitrary and cannot be countenanced.

For the aforesaid reasons, the Writ Petition is allowed and the action of the respondents in interfering with the possession and enjoyment of the petitioners over the said land admeasuring 3,764 square yards situated at Daira Jamisthanpur, Musheerabad, Hyderabad is arbitrary, illegal and violative of Articles-14 and 300-A of the Constitution of India and the respondents are restrained from interfering with the petitioners' use of the said land in any manner. The third respondent shall

also pay costs of Rs.10,000/- (Rupees Ten thousand only) to the petitioners.

As a sequel to disposal of the Writ Petition, the Miscellaneous Petitions pending, if any, shall stand disposed of as infructuous.

JUSTICE M.S.RAMACHANDRA RAO

18th April 2017

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