

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

WRIT PETITION No.1824 of 2004

ORDER:

This Writ Petition has been filed by petitioners challenging the Memo No.A4/21375/2002 dt.01-01-2003 issued by the 3rd respondent and seeking a direction to respondents to make necessary corrections in the Revenue Records as well as in the Town Survey Records incorporating the names of petitioners in the land admeasuring 4971 sq. yds in Sy.No.299/2 of Shaikpet Village pursuant to the compromise dt.08-11-1996 in E.P.No.1/1980 in O.S.No.17175/1970 recorded by the V Additional Judge, City Civil Court at Hyderabad.

2. One S.V.Srinivasulu Naidu purchased under two registered sale deeds being Doc.Nos.952/59 and 953/59 dt.12-12-1959 land in Sy.No.299/2 of Shaikpet village. Out of the said land purchased by him, V.Krishna Murthy, Y.Savitri and the 3rd petitioner purchased 4971 sq. yds under registered sale deed dt.28-03-1964 being Doc.No.630/64.

3. V.Krishna Murthy, Y.Savitri and the 3rd petitioner filed O.S.No.72/1965 before the City Civil Court, Hyderabad, which was then renumbered as O.S.No.175/1970 on the file of the VI Additional Judge, City Civil Court, Hyderabad against the Union of India (1st respondent herein), the State of A.P. (2nd respondent herein) and S.V.Srinivasulu Naidu, their vendor, for declaration of

their title to the extent of 4971 sq. yds in Sy.No.299/2 by evicting respondent Nos.1 and 2 herein or in the alternative for recovery of some money from 3rd defendant- S.V.Srinivasulu Naidu.

4. This suit was contested by the Union of India (1st respondent) on the ground that the land had been delivered to it by 2nd respondent and was being enjoyed by the Defence Ministry.

5. The 2nd respondent herein filed a written statement saying that Shaikpet is a Sarfekhas village; that there were 353 survey numbers in the Shetwar of 1330 Fasli; new survey numbers were added in 1346 Fasli; there was a revised settlement in 1346 Fasli, which was not implemented; that the land in question was known as 'miniature rifle range' and belonged to the former Hyderabad army; and after integration of the Hyderabad State Forces into the Indian Army, this land was taken control by the Collector, Hyderabad District in 1951 and was handed over to the Military authorities in 1958. It also disputed the title of the predecessor-in-title of S.V.Srinivasulu Naidu.

6. However, the suit was decreed against respondent Nos.1 and 2 by judgment and decree dt.13-07-1970. The trial Court held that the plaintiffs had established that they were *bona fide* purchasers and their vendor, the 3rd defendant, had satisfactorily proved by adducing oral as well as documentary evidence that he and his predecessor-in-title Shaik Ahmed were in possession of the suit land. It held that respondent Nos.1 and 2 herein had failed to prove the contention set

up by them in their defence. It also noted that there was a building constructed by the 1st respondent in existence and an office was functioning in that building and the only recourse left for respondent Nos.1 and 2 is to start the proceedings for acquisition of the suit land in accordance with law and to pay compensation.

7. This judgment was questioned by the 1st respondent in this Court in C.C.C.A.No.30 of 1972.

8. By judgment and decree dt.31-03-1975, the said appeal was also dismissed. The Division Bench also held that 1st respondent cannot place reliance on Military Lands Register dt.13-06-1966 and that the land described therein cannot be correlated to the suit land. After appreciating the evidence on record, it held that Shaik Ahmed was the pattedar of the land and this was also admitted by the Tahsildar, Hyderabad Urban Taluk, who was examined as D.W.5 in the suit and that all the documents on record establish the title of plaintiffs.

9. The decree-holders then filed E.P.No.1 of 1980 seeking execution of the decree in O.S.No.175 of 1970.

10. Under an assignment deed dt.18-03-1992, 1/3 share belonging to SriV.Krishna Murthy was assigned in favour of petitioner Nos.1 and 2. On the basis of the said assignment deed, petitioner Nos.1 and 2 were also impleaded in E.P.No.1 of 1980.

11. There was a compromise in the E.P., which was recorded on 17-10-1995 in I.A.No.220 of 1995 in E.P.No.1 of 1980. As per the terms of the compromise, since there was a Pension Payment Office run by 1st respondent in the E.P. schedule land, and since 1st respondent desired to avoid demolition of this building, it was agreed that the parties would take equal extent of area covered by the decree by way of shifting equal extent of site belonging to 1st respondent instead of demolishing the building housing the Pension Payment Office.

12. It is not in dispute that possession of alternative land was thereafter delivered to petitioners by 1st respondent and the Executing Court recorded satisfaction of the decree.

13. Subsequently application was filed by petitioners on 05-09-1992 before the 3rd respondent for including their names in the Revenue records i.e. Town Survey Land Record.

14. By order dt.01-01-2003, the 3rd respondent issued the impugned memo rejecting petitioners' request. He stated that the land in question is Sarkari land and Sy.No.299/2 of Shaikpet village is correlated to T.S.No.42, Block 'O' Ward No.12 and that the Revision Survey of Shaikpet village conducted for 1352 Fasli was not implemented in the Revenue Records and old Survey numbers are in force. He therefore stated that the Revision Survey numbers cannot be used for the purpose of any transaction as they had not come into force.

15. Challenging the same, this Writ Petition has been filed.

16. Petitioners contended that once respondent Nos.1 and 2 have suffered a decree in Civil Court, which had been confirmed on 31-03-1975 in C.C.C.A.No.30 of 1972 and they had compromised the matter during execution proceedings in I.A.No.220 of 1995 in E.P.No.1 of 1980 on 17-10-1995, it is not open to respondents to now set up a new plea; and that 3rd respondent, who is part of the State Government, which was a party in the suit O.S.No.175 of 1970 before the VI Additional Judge, City Civil Court, Hyderabad, against which the 1st respondent had filed C.C.C.A.No.30 of 1972 before this Court, cannot refuse to honour the judgment in the suit and in the C.C.C.A. He also contended that once alternative land in lieu of land which the petitioners had purchased was handed over by 1st respondent to petitioners, the land ceased to be Sarkari land and the 3rd respondent cannot therefore reject petitioners' request for mutation in the T.S.L.R. on that count. He also contended that the State Government had never claimed any right in the land in question, and the District Collector had signed the compromise recorded in the Execution proceedings on 17-10-1995, and the 3rd respondent, who is subordinate to the District Collector, cannot now refuse to implement the decision of the Civil Court as recorded in the compromise.

17. The 3rd respondent filed counter affidavit stating that he is not vested with the power for correction of validated Town Survey

records since the entries in the T.S.L.Register had become final under Section 13 of the Andhra Pradesh Survey and Boundaries Act, 1933 (for short “the Act”). He contended that petitioners had no right in Sy.No.299/2 of Shaikpet village since the said survey number pertains to a revised Survey and it is not implemented in the revenue records.

18. It is pertinent to note that though this plea was taken in the written statement by the 2nd respondent herein, who was 2nd defendant in the suit, the said point was not argued in O.S.No.175 of 1970 by 2nd respondent and the decree in O.S.No.175 of 1970 was also not questioned by 2nd respondent before this Court. Only the 1st respondent had questioned the findings on different grounds in C.C.C.A.No.30 of 1972, which was dismissed on 31-03-1975.

19. Having failed to prove by leading evidence in O.S.No.175 of 1970 that petitioners had no right in Sy.No.299/2 of Shaikpet village, that the said survey number pertains to revised survey, which was not implemented in the revenue records, respondent Nos.2 and 3 are barred by principles of *res judicata* from re-agitating the issue again in this Writ Petition.

20. The contention of 3rd respondent that entries in the validated Town Survey records cannot be amended unless there is a decree of Civil Court for such correction as stipulated under Section 14 of the Act is equally untenable since there is already a decree in favour of

petitioners/petitioners' predecessor-in-title in O.S.No.175 of 1970, which has also been confirmed in C.C.C.A.No.30 of 1972. There is no necessity for the petitioners again to file a fresh suit in a Civil Court for correction of the entry in the T.S.L.Register.

21. The 1st respondent curiously set up a plea that it was compelled to hand over the land pursuant to the decree dt.13-08-1975 in O.S.No.175 of 1970 in order to safeguard its Pension Payment office building and that it had approved the exchange of Defence land with that of decretal land, which contained the Pension Payment Office. The plea of compulsion is meaningless since having lost the suit and C.C.C.A., if the 1st respondent had not complied with the decree, the Court would have directed demolition of the building of Pension Payment office or acquisition of the land of petitioners' vendors as the only recourse, to retain the land with it.

22. A further plea is raised in the counter affidavit filed by 1st respondent that Sy.No.299/2 was not in existence and that land in Sy.No.403 (old Sy.No.299) was recorded as Sarkari. This plea was never taken by 1st respondent in O.S.No.175 of 1970 or in C.C.C.A.No.30 of 1972. Therefore, it is barred by principle of constructive *res judicata*.

23. Therefore, the Writ Petition is allowed; the impugned memo No.A4/1375/2002 dt.01-01-2003 issued by the 3rd respondent is set aside and respondent Nos.2 to 4 are directed to make appropriate

correction in the Revenue records as well as Town Survey Land Register by recording the names of petitioners in respect of the land which was delivered possession to petitioner under the compromise deed dt.17-10-1995 in I.A.No.220 of 1995 in E.P.No.1 of 1980 of the V Additional Judge, City Civil Court, Hyderabad within six (06) weeks from the date of receipt of a copy of this order. Respondent Nos.1 and 2 shall also pay costs of Rs.2,000/- (Rupees Two Thousand only) each to petitioners.

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

Date: 06-04-2017
Vsv/*

JUSTICE M.S.RAMACHANDRA RAO

