

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

WRIT PETITION No.13827 of 2005

ORDER:

The petitioners served in Indian Army and retired from service on 31.03.1990 and 30.06.1990 respectively. They claimed that they were allotted Acs.5.00 cents of land each in Survey Nos.185 and 182 respectively at Jawaharnagar Village, Shamirpet Mandal, Ranga Reddy District by the Jawaharnagar Cooperative Land Colonization Society (for short 'the Society').

The petitioners filed W.P.No.962 of 2003 before this Court alleging that they were not being allotted pattas by the State Government though they were eligible as per the letter dated 30.08.1982 of the Tahsildar and that the respondent authorities attempted to dispossess them of their land by resorting to coercive methods.

The said writ petition was heard along with other writ petitions of similar nature and the following order was passed therein:

"In the result, in all the writ petitions, except in W.P.Nos.17041 of 2002, 24015 of 2002, 24819 of 2002, 25681 of 2002, 962 of 2003, 2369 of 2003, 13312 of 2003, 14580 of 2003, 18491 of 2003 and 18703 of 2003, the following order is passed:

- "i) Whenever the Ex-serviceman has actually in possession of the land and has brought the land under cultivation within a period of three years from the date of allotment to JCLCS, the Mandal Revenue Officer shall consider the case and regularize the possession by issuing D-form patta in favour of Ex-serviceman or his legal heir wherever necessary;
- ii) It shall be open to all the Ex-servicemen who are petitioners before this Court to appear before the Mandal Revenue Officer, Shamirpet Mandal on 15.04.2004 with a representation and necessary material with regard to the status as Ex-serviceman,

and with regard to possession and other particulars when the Mandal Revenue Officer may fix a date for proper enquiry and complete the enquiry within a period of two months thereafter;

iii) The Mandal Revenue Officer shall submit a detailed report containing case-wise details to the Joint Collector, Ranga Reddy District who shall sanction/issue patta to eligible Ex-servicemen. Till this enquiry is completed, there shall be status quo as on today with regard to possession.

iv) Insofar as writ petitions in the third group mentioned hereinabove i.e., W.P.Nos.17041 of 2002, 24015 of 2002, 24819 of 2002, 25681 of 2002, 962 of 2003, 2369 of 2003, 13312 of 2003, 14580 of 2003, 18491 of 2003 and 18703 of 2003, the matters are disposed of giving liberty to all the petitioners to seek appropriate relief from the Mandal Revenue Officer for assignment of land. As the allegation that they are in possession of the land is denied, no orders as to possession can be passed in their favour, and the interim orders passed by this Court stand vacated;

v) It shall be made clear that in no case Ex-serviceman or any other shall be allotted more than Acs.5.00 of agricultural dry land or Acs.2.50 of wet land;

vi) As it is reported that in W.P.Nos.23914 of 2002, 20427 of 2003 and 21470 of 2003 the petitioners purchased land admeasuring less than 400 Sq.yards from Ex-servicemen for the purpose of construction of house, if they are eligible under relevant Government orders, on payment of market value, their cases may be considered;

All the Writ petitions stand disposed of in terms of the above orders.”

Since the petitioners felt aggrieved by being placed in category (iv) mentioned above by the learned Single Judge, they filed Writ Appeal No.2180 of 2004 before a Division Bench of this Court, along with others. The Division Bench gave a finding that the petitioners are Ex-servicemen candidates and they will be governed by directions (ii) and (iii) but will not be governed by direction No.(iv) of the directions contained in the common order dated 25.03.2004.

The petitioners contend that as per the order of the Division Bench, they approached the Mandal Revenue Officer, Shamirpet Mandal, Ranga Reddy District (2nd respondent herein) by giving a representation on 24.01.2005 with supporting documentation.

The Mandal Revenue Officer addressed a letter to the Joint Collector, Ranga Reddy District, to consider the case of the petitioners as per G.O.Ms.No.743, Revenue Department, dated 30.04.1963 stating that they are in possession of the property and that they were cultivating the land.

Subsequently, the District Collector, Ranga Reddy District (1st respondent) also addressed a letter *vide* No.E5/824/2011, dated 02.01.2014 to the Principal Secretary to Government, Revenue Department certifying that the petitioners were in possession of the said land and suggesting that the matter is required to be placed before the High Power Committee. He also stated that their antecedents have been verified with the original documents by the Welfare Officer, Zilla Saink Board, Ranga Reddy District.

The petitioners relied on the judgment of the Hon'ble Supreme Court in Civil Appeal Nos.5887-5890 of 2002. It appears that the said Civil Appeals arose out of another litigation to which the petitioners were not initially parties but were subsequently impleaded. The Supreme Court disposed of the said Civil Appeals on 10.11.2009 by passing the following order:

“Heard learned counsel for the parties.

These Appeals have been filed against the impugned judgment of the Andhra Pradesh High Court dated 16.06.2000.

The facts in detail have been set out in the impugned judgment and hence we are not repeating the same here.

Admittedly, the respondents are illegal encroachers on the government land. Hence, ordinarily, they have no right to remain on the said land unless there is a scheme by the government or some law made for regularisation. It is not for this Court to make such a scheme or law for regularisation. It is only the concerned authorities or the concerned Legislature which can make such a scheme or law.

On the facts of the case, we substitute the impugned judgment of the High Court by this order which we are passing today.

We permit the respondents to make a representation within four weeks from today to the State Government praying for regularisation and it is up to the State Government to accept the representation or not. If they accept the representation, the Government can fix the terms on which regularisation will be done. If such a representation is moved within the aforesaid time of four weeks, the State Government shall decide the said representation within three months from the date of filing the said representation in accordance with law.

Till the disposal of the representation by the State Government, respondents shall not be dispossessed from the land on which they are in possession.

The Appeals are disposed of accordingly. No costs.”

The petitioners contend that subsequent thereto they had made a representation on 02.12.2009 to the 2nd respondent and that the matter was forwarded to the State Government and is pending there.

They contended that in view of the fact that the respondents have not disputed that the petitioners are Ex-servicemen and their possession is also supported by pattadar passbook entries in Pahanies from 1978-79 till 1992, cist receipts, proceedings of the Revenue Divisional Officer, Hyderabad, East Division to the Collector, Ranga Reddy District *vide* letter No.B1/1125/1989, dated 04.08.1993, the orders of the Division Bench dated 29.12.2004 in W.A.No.2180 of 2004 and proceedings No.B/528/40/04, dated 03.02.2005 of the 2nd respondent, the

proceedings Lr.No.E5/824/2011, dated 02.01.2014 addressed by the 1st respondent to the Principal Secretary to Government, Revenue Department, A.P. Secretariat, Hyderabad as well as the order of the Supreme Court dated 10.11.2009 in Civil Appeal Nos.5887-5890 of 2002, the respondents cannot be allowed to interfere with their possession and enjoyment of the subject land.

It is pertinent to note that this Court while admitting this writ petition on 28.06.2005 passed an interim order in W.P.M.P.No.17539 of 2005 directing the 2nd respondent not to dispossess the petitioners from their lands and the petitioners were directed not to change the nature of the land or alter the same or create third party interest till final disposal of the writ petition.

No petition is filed to vacate the said interim order and the stay order is subsisting till date.

In the counter-affidavit filed on behalf of respondents 1 and 2, it is contended that the Society was formed for rehabilitation of Ex-Army men specially those who were demobilised from British Troop/Hyderabad Army after the Second World War and after the police action; that the petitioners were not eligible for the assignment; that 149 Ex-serviceman had been allotted land by the Society; but the petitioners' names were not found in the list submitted by the said Society to the respondents; that the said Society was superseded and is now defunct; that there was an enquiry done pursuant to G.O.Ms.No.17 dated 05.01.1976 and that as per the directions of the Government, the then Tahsildar, Medchal Taluk, conducted a detailed enquiry by giving advertisement in daily news papers and 102 members were found eligible of whom 40 members were given pattas. However, no

details as to when this enquiry was done are mentioned in the counter-affidavit.

It is further stated that the Mandal Revenue Officer is not an authority to assign land to Ex-servicemen; that the Revenue Divisional Officer had submitted proposals for assignment of the land to Ex-servicemen *vide* Lr.No.B1/1125/1989 dated 04.08.1993 and in turn, the Collector, the Ranga Reddy District addressed a letter to the Revenue Divisional Officer to take action to issue pattas to eligible original members of the Society and that the writ petitioners are not original members of the Society. Though it is admitted that the petitioners are Ex-servicemen, it is contended that since they have been discharged from their service in the year 1990, they could not have been allotted land on the ground of being Ex-servicemen, as per the allotment letter dated 07.04.1974 issued by the Society. The petitioners claim for possession of the land is also denied. A further plea is taken that the Joint Collector had rejected the petitioners request for assignment of the land *vide* proceedings No.E5/1388/03, dated 16.02.2006. Not a single scrap of paper is filed along with the counter in support of the contentions raised therein.

On 06.02.2017, this Court directed the Government Pleader to produce the copy of the proceedings dated 16.02.2006 allegedly issued by the then Joint Collector, Ranga Reddy District, which is referred to in the counter-affidavit filed by the respondents and the matter was directed to be posted after two weeks. Thereafter, matter was listed on 20.02.2017 and again at the request of learned Government Pleader, as a last chance, two weeks time was granted. Thereafter, the matter is listed today. The Government

Pleader again sought time stating that the Districts in the State of Telangana have been reorganised and that search for the said order is being undertaken.

The reorganisation of the Districts in the State of Telangana was done in October, 2016 i.e., more than four months back. The Court had already granted four weeks time from 06.02.2017 to the respondents to produce the said order. The Court felt that the writ petition was of the year 2005 and already 12 years had elapsed since its filing and also reasonable time was granted to the respondents to produce the said order, the matter should be proceeded with and decided by the Court without granting any further time to the respondents.

Learned Government Pleader for Revenue relied upon the stand taken by the respondent in the counter-affidavit and sought to contend that the petitioners were ineligible for the assignment by the Society since they are not Ex-servicemen at the time when they allegedly allotted lands in the year 1974 and they were still in the service of the Army. He also contended that the petitioners were not in possession of the property as of date.

It is not disputed that the petitioners are Ex-servicemen having retired in 1990 from the Indian army. I have already referred to the proceedings of the Revenue Divisional Officer, Hyderabad, East Division addressed to the District Collector, Ranga Reddy District *vide* Lr.No.B1/1125/1989 dated 04.08.1993, proceedings of the 2nd respondent *vide* letter No.B/582/40/04, dated 03.02.2005 and proceedings of the Collector, Ranga Reddy District addressed to the Principal Secretary to Government *vide* Lr.No.E5/824/2011, dated 02.01.2014 stating that the petitioners

are in possession of the property and they have cultivated the land and that their antecedents have been verified with the original documents by the Welfare Officer, Zilla Synic Board, Ranga Reddy District for assignment. In the last proceeding, the District Collector has mentioned that sanction of a High Power Committee is required for taking necessary action. Thus, the matter appears to be pending adjudication with the State Government.

It is also not in dispute that the Hon'ble Supreme Court of India by order dated 10.11.2009 in Civil Appeal Nos.5887-5890 of 2002 has directed the petitioners to give a representation to the State Government and till their representation is disposed of by the State Government, the State is restrained from dispossessing the petitioners from the land which is in their possession.

It is not denied by the respondents that the representations made by the petitioners for assignment of the land in their occupation is pending with the Principal Secretary, Revenue Department, State of Telangana. It is indeed sad that these representations had been made more than seven years back and are languishing before the said officer till date without any disposal. According to the order of the Hon'ble Supreme Court, it is for the State Government to consider the issue of assignment. Till the said issue is decided by the State Government, the respondent cannot be allowed to interfere with the possession and enjoyment of the petitioners in respect of the lands in their occupation.

As regards the plea of the learned Government Pleader that the petitioners are not in possession of the land claimed by them is concerned, the said contention is without any merit.

Firstly, the proceedings of the Revenue Divisional Officer, Hyderabad, East Division addressed to the Collector, Ranga Reddy District *vide* Lr.No.B1/1125/1989, dated 04.08.1993 show that the petitioners are in occupation. Secondly, the proceedings of the 2nd respondent *vide* letter No.B/582/40/04, dated 03.02.2005 also show that the petitioners have cultivated the said land and they are in possession of the same. Thirdly, the proceedings of the 1st respondent addressed to the Principal Secretary to Government, Revenue Department *vide* Lr.No.E5/824/2011, dated 02.01.2014 also show that the petitioners are in possession of the land. Further, before the Supreme Court, no plea about the lack of possession of the petitioners appears to have been raised and that is why the Hon'ble Supreme Court had held that pending disposal of the representations by the State Government, the petitioners shall not be dispossessed from the land of which they are in possession.

It is indeed strange that the stand taken by the Mandal Revenue Officer in the counter-affidavit runs contrary to the stand taken by his superior officer i.e., the Revenue Divisional Officer, Hyderabad, East Division, who addressed to the District Collector in Lr.No.B1/1125/1989 dated 04.08.1993 and his predecessor in proceedings No.B/582/40/04, dated 03.02.2005.

When the District Collector, Ranga Reddy District in Letter No.E5/824/2011, dated 02.01.2014 also stated that the petitioners are in possession of the land, it is not understandable as to how the 2nd respondent, who is the subordinate in the rank to the 1st respondent can take a contrary plea. Therefore, I reject the contention of the learned Government Pleader that the

petitioners are not in possession of the extent of Acs.5.00 in Survey No.185 and Acs.5.00 in Survey No.182 of Jawaharnagar, Shamirpet, Ranga Reddy District, more particularly, when there is not even an application filed to vacate the interim order granted on 28.06.2005 directing the 2nd respondent not to dispossess them.

In the facts and circumstances of the case and in the light of the order dated 10.11.2009 of the Hon'ble Supreme Court of India in Civil Appeal Nos.5887-5890 of 2002, this Writ Petition is allowed with a direction to the Principal Secretary, Revenue Department, State of Telangana to dispose of the representations submitted by the petitioners for assignment/regularisation within three months from the date of receipt of a copy of this order and till such representation is disposed of, the possession of the petitioners shall not be interfered with by the respondents in any manner. No costs.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

M.S.RAMACHANDRA RAO, J

March 6th, 2017.
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