

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Appeal No.682 of 2016

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.19295 of 2016 dated 22.06.2016 wherein the proceedings of the 2nd respondent dated 05.06.2016, in allotting land in Survey No.135 to the 5th respondent, and the consequential memo dated 08.06.2016 issued by the 5th respondent for taking possession of the land, were questioned as being illegal and arbitrary. For the sake of convenience, the parties herein shall, hereinafter, be referred to as they are arrayed in W.P.No.19295 of 2016.

In the order under appeal, the Learned Single Judge noted the submission of the learned Government Pleader for Revenue that an extent of Ac.2.11 guntas in Survey No.135 of Kothapet Village, Uppal Mandal, Ranga Reddy District was vacant land; and, out of the said land, an extent of Ac.1.27 guntas was handed over to the 5th respondent on 09.06.2016 conducting a panchanama. While directing *status quo*, in respect of the lands in occupation of the petitioners to be maintained, the Learned Single Judge directed the petitioners not to encroach into the land handed over to the 5th respondent by the Revenue Department, making it clear that it was open to the 5th respondent to utilise the said land for the purpose for which it was handed over. The Learned Judge observed that the order passed by him did not preclude the authorities from taking appropriate action by following due process of law.

Sri P.V.A.Padmanabham, learned counsel for the petitioners, would draw our attention to the earlier orders passed by this Court in W.P.Nos.10800 and 18065 of 2002 dated 03.08.2006, and in W.P.No.33646 of 2013 dated 24.12.2013, to contend that this Court had directed the respondents to grant the petitioners pattas; both the aforesaid orders have attained finality; and the Tahsildar, Uppal had informed the Collector, Ranga Reddy District, by proceedings dated 11.12.2008, that the claim of eight persons (including the petitioners) was over an extent of 12161 square yards at Kothapet Village, Uppal Mandal; and the matter was forwarded in terms of G.O.Ms.No.166 dated 16.02.2008 for approval, and onward transmission to the Government. According to the learned counsel, the petitioners are entitled for grant of pattas for the entire extent of 12161 square yards of land in Survey No.135; and the action of the respondents, in handing over an extent of Ac.1.27 guntas in Survey No.135 to the 5th respondent, is arbitrary and illegal.

On the other hand, the learned Government Pleader for Revenue, while drawing our attention to the counter affidavit filed in the Writ Appeal, would submit that, subsequent to the aforesaid orders passed by this Court, all the petitioners herein, along with two others, had filed W.P.No.33602 of 2015 wherein this Court had left it open to them to make a request to the State Government to treat their pending applications under G.O.Ms.No.166 as one under G.O.Ms.No.58 or 59, whichever was applicable, and to undertake to pay in terms of the said G.O; and, if such an applications were made, the 1st respondent was directed to consider the said request and pass appropriate orders in

accordance with law. He would also draw our attention to the interim order dated 11.02.2016, passed in W.P.No.4360 of 2016 filed by the 5th appellant herein, to submit that, in terms of the orders passed by the respondents, all the petitioners, except the 7th petitioner, are required to pay the regularisation fee in terms of G.O.Ms.No.59; and it is only on payment are they entitled for regularisation in terms of the said G.O.

As reliance is placed on the two earlier orders of this Court by Sri P.V.A.Padmanabham, learned counsel for the petitioners, to contend that the respondents herein were required to grant pattas to the petitioners, it is necessary to note the contents of the aforesaid orders. In W.P.Nos.10800 and 18065 of 2002 six out of seven petitioners herein sought a mandamus to the respondents to consider their case for assignment of land in Survey No.135 of Kothapet Village on the ground that they were in possession thereof for more than four decades. In his order dated 03.08.2006, the Learned Single Judge noted the contentions urged on behalf of the petitioners that they were in possession of the plots; though in 1993 there was a move to evict them under the Land Encroachment Act, an enquiry was conduct by the Revenue Divisional Officer, and it was found that they were entitled to grant of pattas; and the petitioners and others had made representations on 21.11.1998 to the Government for grant of pattas/regularization of their occupation, but the same was not considered.

After also noting the contentions urged on behalf of the Government, the Learned Single Judge observed that there was, no doubt, a ban for assignment of land as per G.O.Ms.No.1409 dated

19.08.1978; though there was a ban, still the Government had permitted assignment of house site pattas to eligible beneficiaries duly relaxing the conditions imposed in G.O.Ms.No.1409 dated 19.08.1978; the Government, which had issued ban orders, had inherent powers to relax the conditions imposed in G.O.Ms.No.1409 dated 19.08.1978; and for this reason also he was inclined to believe that the Government should consider the request of the petitioners for assignment/regularization of the lands in their possession. This sentence in the order of the Learned Single Judge, according to the learned counsel for the petitioners, meant that the Government was required to consider the petitioners' application and regularize their possession over the subject land by granting an assignment in their favour.

We must express our inability to agree as the Learned Single Judge had, thereafter, noted that, though a copy of the representation was made in May, 2002, it would not be possible to consider the said representation. Liberty was granted by the Learned Single Judge to the petitioners to make a fresh representation to the Government within two weeks from the date of receipt of the order and, as and when such representation was made, the Government was directed to consider relaxing the ban imposed in G.O.Ms.No.1409 dated 19.08.1978. This exercise was directed to be completed within a period of three months from the date of making such representation and, as the petitioners were admittedly in possession and as pending consideration of their representation, if they were evicted, it would cause them hardship, *status quo*, as on the date of the order, was directed to be maintained.

All that the Learned Single Judge had directed the petitioners to do was to submit a representation seeking regularization of the lands in their possession, and for grant of assignment. It is for this reason that the petitioners were permitted to submit representations to the Government. No mandamus was issued to the Government to grant pattas to the petitioners. All that the Government was required to do was to consider their representation, for grant of assignment, in accordance with law.

The petitioners, thereafter, filed W.P.No.33646 of 2013 and, by order dated 24.12.2013, the Learned Single Judge disposed of the writ petition directing the respondents to complete the process of regularization, and communicate the decision to the petitioners within a period of three months from the date of receipt of the order; and, pending disposal of the petitioners application for regularization, their possession of plots was directed not to be disturbed. Even this order merely required the respondent-officials to complete the process of regularization of plots in the occupation of the petitioners in terms of G.O.Ms.No.166 dated 16.02.2008. This order cannot be understood as requiring the Government to automatically grant pattas to the petitioners.

The petitioners, thereafter, filed W.P.No.33602 of 2015 and the Learned Single Judge, in his order dated 12.10.2015, noted that the petitioners had approached this Court by way of W.P.No.3364 of 2013, which was disposed of on 24.12.2013; G.O.Ms.No.166 was suspended in a Public Interest Litigation by a Division Bench of this Court; and the Government had represented before the Division Bench that the said G.O. was not in operation

and a fresh policy decision, under G.O.Ms.Nos.58 and 59, was issued. While making it clear that, in case the petitioners sought regularization of their possession over the respective plots, they had to apply in terms of the new G.O, the Learned Single Judge left it open to the petitioners to make a request to the State Government to treat their pending applications, under G.O.Ms.No.166, as applications under G.O.Ms.No.58 or 59, whichever was applicable, and to undertake to pay regularization fee in terms of the said G.O. The Learned Single Judge held that, if such applications were made, the State Government should consider the said request, and pass appropriate orders in accordance with law.

One of the petitioners herein, thereafter, filed W.P.No.4360 of 2016 seeking to declare the action of the respondents, in disturbing his possession over his house property in Survey No.135 of Kothapet Village, as arbitrary and illegal. By the interim order dated 11.02.2016, the Learned Single Judge, having noted the earlier orders in W.P.Nos.10800 and 18065 of 2002 dated 03.08.2006, and in W.P.No.33646 of 2013 dated 12.10.2016, directed *status quo* as on the date of the order to be maintained.

While the order of the Learned Single Judge in W.P.No.4360 of 2016 makes no reference to the order passed in W.P.No.33602 of 2015 dated 12.10.2015, it is not clear whether the fact that the petitioners had filed W.P.No.33602 of 2015 was referred to in the affidavit filed in support of W.P.No.4360 of 2016. Be that as it may, while the earlier two orders of this Court dated 03.08.2006 and 24.12.2013 required the respondents to consider the petitioners' claim for grant of pattas, the subsequent order in

W.P.No.33602 of 2015 dated 12.10.2015 required the petitioners to file an application in terms of G.O.Ms.No.58 or 59, as the case may be, and to give an undertaking to pay the prescribed fee.

In the counter affidavit, filed before us, the 4th respondent states that the total extent of land in Survey No.135 is Ac.13.38 guntas of which the area covered by structures and road is Ac.11.15 guntas; and the open area free from encroachments is Ac.2.11 guntas, out of which Ac.1.27 guntas was allotted to the 5th respondent by the 2nd respondent District Collector, for construction of 2.5 M.L. capacity Elevated Level Storage Reservoir (ELSR) and a 2 M.L. capacity ELSR for public purpose. It is further stated that, before allotting the land, a survey was conducted and it is only Ac.2.11 guntas which was found to be free from encroachment; an extent of Ac.1.27 guntas, from out of Ac.2.11 guntas, was allotted to the 5th respondent; and, thereafter, the petitioners' entitlement for regularization, in terms of G.O.Ms.Nos.58 and 59, was dealt with.

It is stated in the counter-affidavit that none of the petitioners are entitled for regularization under G.O.Ms.No.58, as they are not BPL families. With regards their entitlement, in terms of G.O.Ms.No.59, the counter affidavit records that, except for the 7th petitioner who had paid the regularization fee and in whose favour land was regularized to the extent of 600 square yards, none of the other petitioners had paid the prescribed fee; and, as such, their request for regularization, in terms of G.O.Ms.No.59, could not be ordered.

While the letter addressed by the Tahsildar, Uppal to the District Collector on 11.12.2008, no doubt, refers to the land in

possession of eight persons, (which possibly includes all the seven petitioners herein), to be of an extent of 12161 square yards, the said extent, translated into acres, would be less than two and half acres. In their counter affidavit, the respondents have stated that an extent of Ac.11.15 guntas of land is covered by structures and roads, and only an extent of Ac.2.17 guntas was free from encroachment, of which Ac.1.27 was allotted to the 5th respondent. Sri T.Sudhakar Reddy, learned Standing Counsel for the 5th respondent, would submit that construction of one of the two storage tanks has already been completed; and the construction of the second storage tank is in progress.

As has been rightly held by the Learned Single Judge, in his order in W.P.No.33602 of 2015 dated 12.10.2015, the petitioners' entitlement for regularization is only in accordance with G.O.Ms.No.59. In the order under appeal, the Learned Single Judge has directed that *status quo*, in respect of the lands in occupation of the petitioners, be maintained. At the same time, the petitioners were also directed not to encroach into the lands handed over to the 5th respondent by the Revenue Department. We find no error in the order passed by the Learned Single Judge necessitating interference in an intra-Court appeal under Clause 15 of the Letters Patent. However, since the Learned Single Judge has also observed that the respondent-authorities are not precluded from taking appropriate action by following due process of law, we consider it appropriate to permit the appellant-petitioners to pay the amounts due and payable by them, in terms of G.O.Ms.No.59 as referred to in the counter affidavit, within three months from today. On such payment, the respondents shall pass

orders, in terms of G.O.Ms.No.59, within two months thereafter. Till orders are passed, as directed hereinabove, *status quo*, as directed by the Learned Single Judge, shall be maintained regarding the petitioners' possession over the subject lands. It is made clear that, in case the petitioners fail to make payment in terms of G.O.Ms.No.59 as directed hereinabove, it is open to the respondents to take appropriate action in accordance with law, as directed by the Learned Single Judge in the order under appeal.

The Writ Appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

25th January, 2017
JSU

