

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

WRIT PETITION No.17154 of 2011

ORDER :

The petitioner has filed this Writ Petition assailing the notification No.688/LA/UCD/GHMC/2011 dt.28-05-2011 published in A.P. Gazette extraordinary No.20 dt.28-05-2011 declaring the land admeasuring 2678 sq. mts with constructed buildings located in Sy.No.216 corresponding to T.S.No.1 Block-L, Ward No.109, Circle-18 referred to as Neelam Blaiah Doddi at Bansilalpet, Musheerabad Mandal, Bakaram Village as a slum and consequently direct the respondents to forbear from interfering with his rights over the said property.

2. Petitioner alleges that the said property is his ancestral property and that he is one of the co-owners of the said property. He states that there are 42 tenants in the constructed portions in the subject property, that he had initiated eviction proceedings against them under the provisions of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 and also obtained orders of eviction. He states that out of 42 tenants, 4 tenants were evicted by process of law and 16 others had voluntarily vacated. According to him, the other 21 tenants filed W.P.No.18951 of 2010 before this Court praying that the State Government acquire this property under the A.P. Slum Improvement (Acquisition of land) Act, 1956 (for short "the Act") for the purpose of allotting the same to them; that the petitioner had also impleaded

therein; that the said Writ Petition was disposed of on 18-04-2011 directing the District Collector, Hyderabad (2nd respondent herein) and the Greater Hyderabad Municipal Corporation (4th respondent herein) to decide whether or not to acquire the said land owned by the petitioner for the benefit of the Writ petitioners in that Writ Petition. He contends that thereafter the 2nd respondent published the impugned notification on 06-06-2011 in the news papers and then he came to know that the subject property had been declared as a “slum”; that he approached the 1st respondent and obtained copy of the said notification dt.28-05-2011; and filed the present Writ Petition.

3. Petitioner contends that the order dt.18-04-2011 passed by this Court in W.P.No.18951 of 2010 merely directed consideration of the request of the Writ petitioners therein and it should not in any way result in a compulsion on the part of the 2nd respondent to acquire the property, that the subject property is equipped with all civic amenities such as electricity, protected water supply, drainage, connecting roads etc. and it cannot be construed as a slum. He contends that the unsuccessful tenants want the property to be acquired only for their personal benefit and for the said purpose, the Act cannot be invoked. He contends that before issuance of the notification under Section 3(1) of the Act, there ought to be an objective application of mind by the concerned authority; that in the present case, there is no such application of mind by the 2nd respondent; and therefore the act of issuance of the impugned notification by 2nd respondent amounts to

colourable exercise of power. He also contended that he ought to have been issued a prior notice before issuance of the impugned notification dt.28-05-2011 since the declaration of his property as a “slum” under Section 3(1) of the Act has serious civil consequences and would deprive him of obtaining construction permission or alienating the property; and principles of natural justice have been read into the said provision particularly when there is nothing in it which suggests exclusion of applicability of the said principles.

4. Initially, this Court granted on 22-06-2011 in W.P.M.P.No.20607 of 2011 in W.P.No.17154 of 2011 interim stay as prayed for.

5. Subsequently, the petitioners in W.P.No.18951 of 2010 filed W.P.M.P.No.25058 of 2011 to implead them as respondents in the present Writ Petition stating that are necessary parties, that the impugned notification under Section 3(1) of the Act was issued for their benefit and without impleading them, the Writ Petition is filed. On 22-09-2011, the said W.P.M.P. was allowed and they were impleaded as respondent Nos.5 to 26 in the Writ Petition.

6. W.V.M.P.No.3719 of 2011 was filed by respondent Nos.1 to 3 in the Writ Petition to vacate the order in W.P.M.P.No.20607 of 2011. On 18-10-2011, the said W.V.M.P. was allowed as there was no representation on behalf of the Writ petitioner.

7. Subsequently, the matter was listed before this Court and was heard on 07-08-2017, 29-08-2017, 04-09-2017, 03-10-2017,

04-102-2017, 09-10-2017, 10-10-2017 and today. On 29-08-2017, this Court directed the learned Government Pleader for Revenue to produce the material on the basis of which the District Collector had issued the impugned notification.

8. On 10-10-2017, learned Government Pleader for Revenue has filed a set of documents after perusing the file available in the office of the Tahsildar, Musheerabad Mandal and the Revenue Divisional Officer, Secunderabad apart from the file available with the District Collector, Hyderabad.

9. Sri V.Venkata Ramana, learned Senior Counsel appearing for petitioner contended that a Division Bench of this Court in **Shyam Sunder Prasad Vs. Commissioner, M.C.H**¹ held that satisfaction of the State Government or the delegate of the State Government mentioned in Section 3(1) of the Act is not subjective satisfaction but connotes objective satisfaction, and there must be material to form an opinion to declare an area as a “slum area”. He also contended that the Supreme Court of India in **the Government of Mysore and Others Vs. J.V.Bhat, etc**² considered the provisions of Karnataka Slum Areas (Improvement and Clearance) Act, 1959, whose provisions were akin to the Act, and held that though the statute itself does not provide any prior notice to the land owner before declaring his property as a “slum area”, since the consequences of such declaration under sub-section (1) of Section 3 of the Act are far-

¹ (2001) 6 ALT 209

² AIR 1975 SC 596

reaching, and the land owner would be deprived of erecting any new building or making any addition to the said building or improving the same, they are entitled to a hearing by the Government or by its delegate before declaration of an area to be a “slum area” under sub-section (1) of Section 3 of the Act.

10. In the counter-affidavit filed by 3rd respondent, the Tahsildar, Musheerabad has stated that the land which is notified under the impugned notification has thatched houses where people who are economically poor are living in pathetic condition; that they are also disputing the claim of the petitioner that he is the owner of such land and requested the authorities to acquire the land and to develop it by constructing pucca houses and allow them to lead a hygienic life; that the locality people have made a representation to Sri M.Sasidhar Reddy, Member of Legislative Assembly to acquire the subject land and to develop it; they also approached the 2nd respondent on 03-11-2008 and made a request for such acquisition; that earlier in 1996, the State Government initiated proceedings under the Land Acquisition Act, 1894, but the acquisition process could not be completed; that there are no civic amenities and proper water and drainage amenities in the subject area and in every rainy season, water is getting contaminated and the residents of the area are suffering from diarrhea and other diseases; and that therefore the Government intended to acquire the same and initiated proceedings under the Act. He denied the contention of the petitioner that the notified area was equipped with civic amenities and contended that there were small

passages and no proper connecting roads, drainage and protected water supply and this situation required to be changed by the State. He stated that on the representations made by the locality people as well as the above Member of Legislative Assembly, the 2nd respondent called for a report, that such a report was submitted to him and thereupon the impugned notification was issued. He denied that there were no circumstances to invoke the provisions of the Act. According to him, the Socio Economic Survey report conducted by him in respect of 23 families residing in the area was the basis for the 2nd respondent to pass the impugned notification.

11. Learned Government Pleader for Revenue reiterated the said contentions. He relied upon the judgment of this Court reported in **Telaga Maha Jana Sangham, Vijayawada Vs. State of A.P.**³ to contend that there is no necessity to give any notice prior to the publication of notification under Section 3(1) of the Act. He also contended that the affected persons were not made parties in the Writ Petition and therefore the Writ Petition should be rejected on the said ground, and that once a notification is published under the Act and certain persons are made beneficiaries of the said notification, they acquire right to defend it in view of the decision of a Division Bench of this Court in **J.V.Sarma and others Vs. Special Court under A.P. Land Grabbing (Prohibition) Act and others**⁴. He also referred to judgment of a Division Bench of this Court in **New Bhoiguda**

³ 1986(1) APLJ 79 (SN)

⁴ 1997(3) ALT 666 (D.B.)

Mosque and Graveyard Committee Vs. District Collector, Hyderabad and others⁵, which considered the question as to whether any prior notice was required before issuing notification under sub-section (2) of Section 3 of the Act.

12. The Greater Hyderabad Municipal Corporation, Hyderabad, which is the 4th respondent herein, filed another counter-affidavit stating that the impugned notification was issued by 2nd respondent in accordance with law by considering the order passed by this Court in W.P.No.18951 of 2010.

13. I have considered the submissions of the respective parties.

14. The Act was enacted by the State Government recognising that there were a number of slum areas in the then State of Andhra Pradesh, which were a source of danger to public health and sanitation and it was not possible to provide basic needs of sewerage, water-supply and road and side-drains therein without causing excessive financial strain on the owners of the lands affected. To obviate this difficulty, the State legislature felt that it is expedient to acquire such lands and then undertake the execution of work designed to improve those areas.

15. Section 3 of the Act insofar as its relevant states:

“3. Power to acquire land :- (1) Where the Government are satisfied that any area is or may be a source of danger to the public health, safety or convenience of its neighbourhood by the reason of the area being low lying, in-sanitary, squalid or

⁵ 2001(6) ALT 794 (D.B.)

otherwise, they may, by notification in the Andhra Pradesh Gazette declare such area to be a slum area.

(2) Where the Government are satisfied that it is necessary to acquire any land in a slum area for the purpose of clearing or improving the area they may acquire the land by publishing in the Andhra Pradesh Gazette a notice to the effect that they have decided to acquire it in pursuance of this Section.

Provided that, before publishing such notice the Government shall call upon the owner of, or any other person who, in the opinion of the Government, is interested in such land to show cause why it should not be acquired, and after considering the cause if any shown by any person interested in the land, the Government may pass such orders as they deem fit....”

16. Similar provisions existed in the Mysore Slum Areas (Improvement and Clearance Act, 1958. Section 3 of the said Act provided for declaration of slum areas and is akin to Section 3 of the Act referred to above. It states:

“(1) Where the competent authority upon report from any of its officers or other information in its possession is satisfied that-

(a) any area is or may become a source of danger to the public health, safety or convenience of residents in that area or in its neighbourhood, by reason of the area being low-lying, insanitary, squalid or otherwise, or

(b) the buildings in any area, used or intended to be used for human habitation-

(i) are in any respect unfit for human habitation; or

(ii) are, by reason of dilapidation, overcrowding, faulty arrangement or design, narrowness or faulty arrangement of streets, lack of ventilation, light, or sanitation facilities, or any combination of these factors, detrimental to safety, health or morals;

it may, by notification in the official Gazette, declare such area to be a slum area-

(2) In determining whether a building is unfit for human habitation for the purposes of this Act, regard shall be had to its condition in respect of the following matters, that is to any-

(a) repair;

(b) stability;

(c) freedom from damp;

(d) natural light and air;

(e) water supply;

(f) drainage and sanitary conveniences;

(g) facilities for storage, preparation and cooking of food and for the disposal of waste water;

and the building shall be deemed to be unfit as aforesaid if and only if it is so far defective in one or more of the said matters that it is not reasonably suitable for occupation in that conditions."

17. Section 12 of the said Mysore Slum Areas (Improvement and Clearance Act, 1958 is akin to sub-section (3) of Section 3 of the Act.

It states :

"(1) Where on any representation from the competent authority it appears to the State Government that, in order to enable the authority to execute any work of improvement in relation to any building in a slum area or to form or widen lanes and roads therein or to re-develop any clearance area, or to rehabilitate slum dwellers it is necessary to acquire-

(a) any land within, adjoining or surrounded, by any such slum area or clearance area; or

(b) any other land in any locality;

the State Government may acquire the land by publishing in the official Gazette a notice to the effect that the State Government has decided to acquire the land in pursuance of this section:

Provided that before publishing such notice the State Government may call upon the owner, or any other person who, in the opinion of the State Government may be interested in, such land to show cause why it should not be acquired, and after considering the cause, if any, shown by the owner or any other person interested in the land, the State Government may pass such order as it may deem fit.

(2) When a notice as aforesaid is published in the official Gazette, the land shall on and from the date on which the notice is so published, vest absolutely in the State Government free from all encumbrances.”

18. Thus, Section 3 (1) of the A.P. Act is akin to Section 3(1) of the Mysore Act and Section 3(2) of the A.P. Act is akin to Section 12 of the Mysore Act.

19. The Supreme Court in **J.V.Bhat** (2 supra) considered the said provisions of the Mysore Act and opined that declaration under Section 3 of the Act has far-reaching consequences and there is possibility of arbitrary decisions being taken. It noted that most of the owners of properties in slum areas are likely to be poor persons with slender means, while persons living in the slums may not be owners of the property; though a slum area may be owned by a rich person, the residents of slums themselves might be interested in the area being declared as slum; and once an area is declared as a “slum area”, the owners of every building therein have to apply for registration of their buildings, no owner of a property in the area can erect any new building or make any addition to, or alteration in any existing building without previous permission which may be subject to such restrictions or conditions as may be imposed by the competent authority, and the

authority concerned may also call upon the owners to carry out works of improvement and if such a direction is not complied with, the authority may itself execute the works of improvement and recover the cost from him. Apart from this, under Section 10, the owners of the buildings may be asked to vacate and demolish them and on failure to do so, the buildings may be demolished and the cost of demolition recovered from the owners and in view of such serious repercussions, the affected owners are required to be heard before declaration of an area to be a slum area under Section 3 of the Act.

20. So even into Section 3(1) of the A.P. Act, principles of natural justice have to be read and petitioner was entitled to a notice before the impugned notification is issued. So, the contrary view taken by a learned Single Judge of this Court in **Telaga Maha Jana Sangham** (1 supra) therefore cannot be accepted.

21. Though learned Government Pleader for Revenue sought to distinguish the judgment by saying that the provisions are not identical and therefore it will not apply, I am not able to accede to the said contention. The powers to declare an area as a slum area and acquire the same to the prejudice of the land owners in both Statutes are akin and so the ratio of the decision of the Supreme Court would clearly be applicable to the present case.

22. It is not in dispute that the petitioner was not given any prior notice before issuance of the impugned notification declaring the said area to be a slum area under sub-section (1) of Section 3 of the Act.

23. Therefore, the impugned notification dt.28-05-2011 deserves to be set aside on the ground that no prior notice was given to the petitioner before it is issued.

24. Coming to the contention of the learned Government Pleader for Revenue regarding impleadment of affected parties is concerned, since respondent Nos.5 to 26, at whose instance the impugned notification was issued and who were parties in W.P.No.18951 of 2010, have impleaded themselves in the Writ Petition and their counsel Sri Sivalanka Ramachandra Prasad also made submissions supporting the contention of the learned Government Pleader for Revenue, the objection raised about non-impleadment of affected parties by the learned Government Pleader, is rejected.

25. A Division Bench of this Court in **Shyam Sunder Prasad** (1 supra) has also held that the State or its delegate is required to be satisfied that any area is a source of danger to public health, safety or convenience of its neighbourhood by the reason of the area being low-lying, in-sanitary, squalid or otherwise; the Government may, by notification in the Andhra Pradesh Gazette, before it declared to be a slum area satisfy itself of the existence of these conditions; that such satisfaction ought to be objective satisfaction on the basis of material and not mere subjective satisfaction; that it also cannot import an arbitrary or irrational state of being satisfied; and such a finding must be based on adequate material which is considered by the State Government or its delegate.

26. Though in the material filed by the learned Government Pleader on 10-10-2017, there is a reference to Socio Economic Survey said to have been conducted by the Tahsildar, Musheerabad Mandal, the proceedings letter No.E7/9734/2010 dated 24-05-2011 issued by the 2nd respondent addressed to the Special Dy.Collector, Land Acquisition (GHMC), Hyderabad does not refer to the contents of the said Socio Economic Survey though it refers to the existence of such a survey by the Tahsildar. It also refers to the letter of Sri M.Sasidhar Reddy, Member of Legislative Assembly and the fact that he was constantly pursuing for issuance of notification under the Act.

27. It appears that the 2nd respondent was clearly influenced by the request of the said Member of Legislative Assembly and not on the basis of any other material, and this vitiates the decision of the 2nd respondent that the area in question is required to be declared as a “slum area” under the Act. Therefore on this ground also, the impugned notification cannot be sustained and it is accordingly set aside.

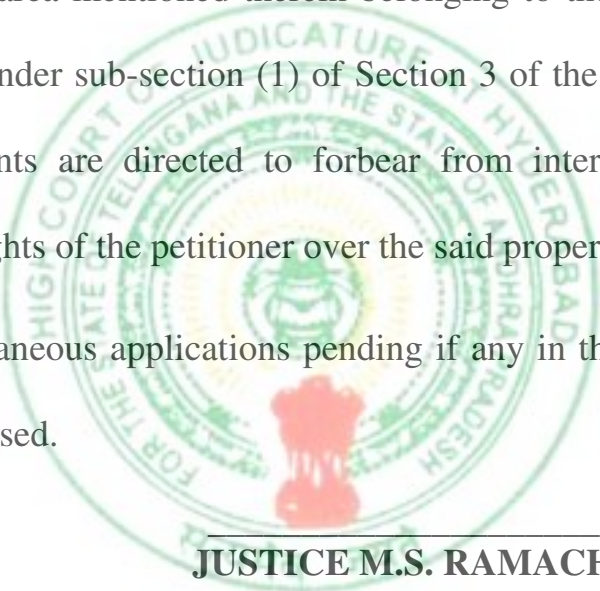
28. It is pointed out before this Court that there was a subsequent notification under sub-section (2) of Section 3 of the Act issued on 16-11-2011, that the same was challenged in W.P.No.29896 of 2016 by the petitioner, that it was disposed of on 02-06-2016 directing the 2nd respondent to consider the objections dt.02-11-2011 of the petitioner, and such objections were also rejected on 31-10-2016. It is

contended that once notification under sub-section (2) of Section 3 of the Act is issued, the present Writ Petition becomes infructuous.

29. I am unable to agree with the said contention. In fact position is otherwise, if the present Writ Petition is allowed, the notification under sub-section (2) of Section 3 of the Act automatically goes and any proceedings taken pursuant to the same would also go.

30. For the aforesaid reasons, this Writ Petition is allowed, the impugned notification No.688/LA/UCD/GHMC/2011 dt.28-05-2011 declaring the area mentioned therein belonging to the petitioner as a “slum area” under sub-section (1) of Section 3 of the Act is set aside and respondents are directed to forbear from interfering with the proprietary rights of the petitioner over the said property. No costs.

31. Miscellaneous applications pending if any in this Writ Petition shall stand closed.



JUSTICE M.S. RAMACHANDRA RAO

Date: 16-10-2017

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