

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION Nos.21914 of 2008, 19512 of 2008
and 15224 of 2011

COMMON ORDER:

1) W.P.No.21914 of 2008 and W.P.No.19512 of 2008 came to be filed seeking issuance of writ of certiorari calling for the records relating to the appeal in Urban Land Ceiling Appeal No.HYD/ 98/ 2001, dated 20.07.2002 passed by the second respondent and consequently to *set aside* the same as arbitrary, illegal and violative of Articles 14 and 300-A of the Constitution of India. The petitioner in W.P.No.21914 of 2008 is respondent No.7 in W.P.No.19512 of 2008 and the petitioner in W.P.No.19512 of 2008 is respondent No.7 in W.P.No.21914 of 2008.

2) W.P.No.15224 of 2011 came to be filed by the petitioner in W.P.No.19512 of 2008 seeking issuance of writ of mandamus declaring the action of the respondents in not protecting the land admeasuring Ac.9.34 gts., in Sy.No.157 and Ac.0.06 gts., in Sy.No.158, situated at Narsingi Village, Rajendra Nagar Mandal, Ranga Reddy District from unauthorized encroachments, by the un-authorised persons in collusion with the un-social elements in compliance with the orders in W.P.M.P.No.25444 of 2008 in W.P.No.19512 of 2008

dated 09.09.2008 as arbitrary, illegal and violative of Articles 14 and 300-A of the Constitution of India.

3) Since the issues in all the writ petitions are interconnected, the same are being disposed of by this common order.

4) The facts in issue are as under:

Originally one Mr. Shahabuddin was the pattadar and possessor of agriculture lands admeasuring Ac.9.34 gts. and Ac.0.06 gts., in Sy.Nos.157 and 158 respectively, situated at Narsingi Village, Rajendra Nagar Mandal, Ranga Reddy District. In the year 1965, the said Shahabuddin sold away the above said land to Mr. Haji Syed Ahmed Abdullah through a registered sale deed, who in turn sold the said lands to the petitioner in W.P.No.21914 of 2008 and his brother Mr. Sawalram Shroff under a registered sale deed dated 22.06.1965. In the year 1976, the petitioner filed a declaration before the Special Officer and Competent Authority under Section 6 (1) of the Urban Land Ceiling Act (for short "the Act"). On 22.11.1980 the petitioner and his brother entered into an agreement of sale with the sons of original pattadar as they continued to be in possession of the lands in question. Thereafter, the sons of the original pattadar, based on the continuous occupation and the

agreement of sale with the petitioner, intun entered into an agreement of sale dated 24.03.1983, with the petitioner in W.P.No.19512 of 2008, who is respondent No.7 in W.P.No.21914 of 2008 and put her in possession of the said land. The possession of petitioner in W.P.No.21914 of 2008 is evidenced in the pahanies and other revenue records from the year 1980-81.

It is stated that since the land in question was declared as excess land under the provisions of the Act and since they are in possession of the same, there was an imminent threat of dispossession from their lands, as hectic efforts were going to assign the same in favour of third parties. Hence the petitioner in W.P.No.19512 of 2008 and W.P.No.15224 of 2011 filed W.P.No.24398 of 1995 and 30981 of 1995 seeking a direction to the respondents therein not to interfere with her possession and enjoyment over the land in question. Accordingly, both the writ petitions were dismissed by way of common order dated 09.08.1999, on the ground that she has no locus to challenge the proceedings of respondent No.3. Aggrieved by the said common order, she filed W.A.Nos.1785 and 1987 of 1999. By an order dated 23.12.1999, this Court granted *status quo*. Subsequently, both the appeals were dismissed on 16.08.2001. Thereafter, she filed an appeal before the second respondent, as she was in possession and

enjoyment of the lands in question. By an order dated 01.11.2001, the second respondent granted status quo. The said status quo order came to be vacated at the instance of respondent Nos.4 and 5, on the ground that the possession was delivered vide proceedings dated 22.06.2001. It is said that the proceedings dated 22.06.2001 were issued during pendency of interim orders passed in W.A.Nos.1785 and 1987 of 1999. The said appeals were dismissed on 16.08.2001. Aggrieved by the orders dated 13.02.2002, in vacating the interim directions, W.P.No.3064 of 2002 came to be filed. The said writ petition was dismissed on 18.02.2002. Aggrieved by the same, she filed W.A.No.750 of 2002. After hearing all the concerned, this Court granted stay of all further proceedings including the constructions. While things stood thus, the second respondent disposed of the main appeal vide order dated 20.07.2002. Aggrieved by the same, the petitioner filed W.P.No.14128 of 2002, wherein this Court granted status quo. Subsequently, the legal heirs of the original pattadar also filed W.P.No.2488 of 2003 challenging the orders of the appellate authority dated 20.07.2002. In the said writ petition also this Court granted interim orders.

While things stood thus, the Government issued G.O.Ms.No.455, dated 29.07.2002, issuing guidelines for regularization of land, assessed as excess lands under the

provisions of the Act and fixed certain quantum of amounts to be paid for such regularization. Pursuant to the said G.O., the petitioner in W.P.Nos.19512 of 2008 and W.P.No.15224 of 2011 submitted a representation dated 05.11.2005 before the Special Chief Secretary to the Government, ULC-II. After examining the said representation, the Principal Secretary advised her to pay the required amount. Hence, she paid a sum of Rs.8,26,930/- through a pay order No.725360 dated 10.11.2005 and accordingly the file was forwarded to the third respondent, to enquire into the matter and report. As per the advice of the Special Officer, the writ petitions were withdrawn. Subsequently, she came to know that the respondents are taking steps to assign the land in favour of third parties, at the behest of local politicians. Hence, she filed W.P.No.10550 of 2006, wherein this Court directed the respondents not to allot, assign or create any rights over the subject land. The said writ petition was disposed on 25.07.2006, directing the first respondent to consider the representation within a period of six weeks. In spite of the orders of this Court, the respondents have not passed any orders till date. However, her enquiries revealed that respondent No.1 rejected the application for regularization of the land in question. Hence, W.P.No.21914 of 2008 and

19512 of 2008 came to be filed challenging the proceedings of the appellate authority.

By an order dated 09.09.2008, this Court granted *status quo*. Since some local persons along with anti-social elements are hatching a plan to encroach into the subject land, on north-east portion, by raising some structures, more particularly of religious nature, she filed W.P.No.15224 of 2011 seeking a direction to the respondents to protect the subject land.

5) Respondent No.3-The Special Officer, filed counter contending that the petitioner has no locus standi to challenge the proceedings of the third respondent, since the petitioner is neither a declarant nor the legal heir of the declarant, as such she cannot maintain the writ petition. The petitioner is only an un-registered agreement holder, which was executed after the commencement of the Act, which is void under Sections 5 (3) and 10 (4) of the Act.

6) It is stated in the counter that after completing the formalities, notice under Section 10 (1) of the Act came to be issued on 13.02.1989 and got the same published in A.P.Gazette No.44. Subsequently, declaration under Section 10 (3) of the Act was issued on 29.03.1989 and notice under Section 10 (5) of the Act was issued on 08.12.1993 asking the

declarant to surrender the possession of the surplus land within 30 days. As the declarant is residing in Kolkatta, the said notice was affixed on the land of the declarant. Since the declarant failed to surrender the land within the stipulated period, proceedings under Section 10 (6) of the Act was issued on 27.07.1995, authorising the Enquiry Officer to take over the possession of the surplus land and hand over the same to the M.R.O. concerned. On 28.08.1995 the Enquiry Officer claims to have taken possession of the surplus land and inturn handed over the same to Mandal Revenue Officer, Rajendra Nagar. A notice under Section 11 (8) of the Act was issued on 05.09.1995. According to the respondents, the land is in possession of the Government and the same was allotted to the Tourism Department. The petitioner after being made unsuccessful in the writ petitions and writ appeals filed, filed the present writ petition 13 years after the conclusion of proceedings on 28.08.1995, on which date, the possession of the subject surplus land was taken by the Government.

7) Learned counsel for the petitioners would submit that the as per the pahani fileld by the petitioner in W.P.No.19512 of 2008, the subject land is dry agricultural land and also shows the name of the pattadar and the person in possession of the land upto 22.07.2008. The enquiry report dated

31.07.1979, shows that the land is an agricultural land as per the revenue and settlement records and it is used for agricultural purposes. Hence, the land does not fall within the limits of Urban Agglomeration but falls only in the peripheral area of Urban Agglomeration. Under Section 2 (o) of the Act, the land which is mainly used for agriculture does not come under the category of vacant land. He further submits that the notices under various provisions of the Act have not been served on the land owner/ person in possession of the property. The counsel further submits that the actual possession of the subject land has not been taken, as per the provisions of Section 10 (5) and 10 (6) of the Act. Further, there is no record to show that the Government has taken actual physical possession on 28.08.1995. Pahanies from the years 1983-84 to 2008-2009 clearly show the name of Mrs. Sujatha Reddy as person in possession of the property, but only for one year ie. 2003-2004, the name of tourism department was referred to as person in possession, pursuant to a letter of the Collector dated 22.06.2001.

8) The Government Pleader for Revenue would submit that the notice under Section 10 (5) of the Act was issued on 08.12.1993. The said notice was affixed on the land of the declarant as he is residing in Kolkatta. After following the procedure, the Enquiry Officer took possession of the surplus

land on 28.08.1995 and the same was allotted to Tourism Department. He further submits that in view of the order passed by this Court and as possession of the land is taken the writ petitioners have no right over the said land.

9) The question that arises for consideration is whether actual possession of the subject land was taken, as per the provisions of Sections 10 (5) and 10 (6) of the Act, whether the mandatory requirement of Section 8 of the Act has been complied with and whether the petitioner was in possession of the land as on the cut off date.

10) It is mainly urged that a notice under Section 8 (3) of the Act was not served on the declarant. Rule-5 of the Rules states that person in possession is entitled for issuance of a notice. It is pleaded that as the declarant did not receive any notice under Section 8 (3) of the Act, he could not file any objections. No material has been placed by the respondents to show the service of such notice on the declarant. A counter came to be filed stating that the declarant has filed his written statement on 28.07.1983 to the effect that he has no objection for the draft statement made under Section 8 (1) of the Act. But a perusal of the original record does not anywhere show existence of such a written statement. When once a notice under Section 8 (3)

of the Act is not served, the order under Section 8 (4) of the Act becomes illegal and the entire fabric of the case collapses. That apart the order passed by the competent authority under Section 8 (4) of the Act, suffers from non-application of mind in ascertaining whether the land falls under the definition of vacant or urban land as defined under Section 2 (o) (q) of the Act.

11) It is to be noted that the competent authority has totally ignored the report of the Enquiry Officer dated 31.07.1979 and treated the land in question as the land not used for agriculture purpose. Without referring to the enquiry report and without any basis, the competent authority passed the impugned order. Once the Enquiry Officer has submitted a report stating that the land in question is entered in the revenue records as an agricultural land and the said land is used for agriculture purpose, it is mandatory on the part of the competent authority to consider the enquiry report before passing orders under Sections 8 (1) and 8 (4) of the Act. If the competent authority is not inclined to accept the enquiry report, he shall give reasons for not accepting the report and for not considering the land as an agricultural land. In the instant case, the competent authority has not assigned any reasons. Under clause (B) of Section 2 (o) of the Act, the land which

has been entered in the revenue record as an agricultural land, shall be taken as agricultural land and the competent authority has no discretion to come to a conclusion contrary to the revenue record. Therefore, the order passed under Section 8 (4) of the Act, declaring the subject land as surplus land is illegal and incorrect.

12) Section 10 (5) of the Act deals with voluntary surrender of possession, by the land owner or person in possession of the property. There is no record to show that the Government has taken actual physical possession on 28.08.1995. Except the pahani for the year 2003-2004, the earlier and subsequent pahanies, for the year 1983-84 to 2008 to 2009, show the name of Mrs. Sujatha Reddy as the person in possession of the property. It is also to be noted here that pursuant to the letter of the Collector dated 22.06.2001, the name of tourism department was shown as person in possession for the year 2003-2004 only.

13) It is to be noted that the Government shall take physical possession of the surplus land, but not symbolic possession and if any symbolic possession is taken by the Government, the same would not amount to taking possession of the land in the eye of law. Even assuming for a moment that the Government has taken possession of the land on 28.08.1995,

it is not a valid possession, since no notice was served either on the pattadar or on the person in possession of the property. If the Government has taken possession of the land on 28.08.1995, the name of the Government should have been reflected in the subsequent pahanies, as possessor of the land. But the name of the Government was not recorded in any of the subsequent pahanies. On the other hand, as stated earlier the name of Mrs. Sujatha Reddy was recorded as pattadar of the land in all the pahanies from 1983-84 to 2001-2002. From the above, it is clear that the Government had not taken actual physical possession of the land as on 28.08.1995, in the manner prescribed.

14) The notice under Section 10 (5) of the Act dated 15.12.1993 was said to have been affixed in the land of the petitioner. The extent of land is about 20 acres and there is no proof as to which portion of 20 acres, the notice was affixed, as the land, which is subject matter of dispute, is only 10 acres. A perusal of the original file, no where shows service of notice under Section 10 (5) of the Act, either on the declarant or on the petitioner. Therefore, once the respondents failed to prove service of notice under Section 10 (5) of the Act, the question of failure to surrender possession does not arise. Unless there is a failure on the part of the declarant to surrender possession under Section 10 (5) of the

Act, the question of issuing proceedings under Section 10 (6) of the Act would not arise. The record does not indicate that the notice under Section 10 (6) of the Act, dated 27.07.1995 was served and the proceedings relating to taking possession on 28.08.1995, was marked to the land owner. It is well established that the proceedings under Section 10 (6) of the act shall be served before taking possession of the land. The same are held to be mandatory. The panchanama dated 25.08.1995 is very vague. The total extent of the land is shown as 20 acres, out of which possession in respect of 10 acres of land was said to have been taken. Which portion of the said 10 acres of the land was taken into possession, is not reflected anywhere. It appears that, symbolic possession has been taken, which is improper and illegal. Para No.258 in Page No.75 of the note file clearly shows that only symbolic possession was taken. As observed earlier, any symbolic possession does not amount to taking possession of the land and the same is invalid in the eye of law.

15) Dealing with the said aspect, a Division Bench of Madras High Court in *The Government of Tamil Nadu rep. by its Secretary to Government Vs. Nandagopal and others*¹ held as under:

¹ (2011) 3 CTC 843

“In order to find out as to whether the notice as required under Section 11 (5) of the Act read with Rule 8 of the Rules was served on the respondents or not, we called for the records and perused. Admittedly, there is no such notice sent through registered post, except the competent authority affixing the said notice on the vacant site, which should be only a last resort after making an attempt to send the notice by registered post and in spite of the same, they could not be served with the notice. In that view of the matter, even assuming that the possession is said to have been taken as contended by the learned Special Government Pleader, such taking over of possession cannot be considered to be valid in the eye of law so long as the provisions of Section 11 (5) of the Act read with Rule 8 of the Rules was not complied with.”

16) Further, the State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. Any possession said to have been taken without service of notice either under Section 10 (5) and 10 (6) of the Act on the declarant, cannot be considered as taking possession of the land.

17) In *State of Uttar Pradesh v. Hari Ram*² the Apex Court while dealing with the same situation held as under:

“The requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory. Though the word “may” has been used therein, the word “may” in both the sub-sections has to be understood as “shall” because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-section (5) or sub-section (6) of Section 11 is that it might result in the landholder being dispossessed without notice, therefore, the word “may” has to be read as “shall”.

The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have *de facto* possession of the vacant land unless there has been a voluntary surrender of vacant land.”

18) In the light of the judgment of the Apex Court referred to above; in the absence of any notice under Section 10 (5) and 10 (6) of the Act being served and as only symbolic possession appears to have been taken, as the pahanies indicate the name of the declarant even after 1995, the alleged possession taken in the year 1995 is invalid.

² (2013) 4 SCC 280

19) Learned Government Pleader further submits that there is abnormal delay in filing the writ petition and the delay is fatal to the case of the petitioners.

20) As stated earlier, when the orders and notices under various provisions of the Act were not served either on the land owner or on the person, who is in possession of the property, the argument that the writ petitioners were aware of the proceedings under the Act cannot be accepted. The petitioners came to know about the proceedings long after 28.08.1995, when their possession was disturbed. Immediately thereafter, they filed W.P.No.24398 and 25156 of 1995 questioning the acquisition and for prevention of allotment of excess land. It is also to be noted that from the year 1995 the petitioners have been fighting the litigation. Hence, it cannot be said that there was inordinate delay in filing the writ petition. Apart from that when the orders passed by the competent authority are in violation of the mandatory provisions of the Act and the Rules, the writ cannot be dismissed on the ground of delay.

21) In *Competent Authority vs. Barangore Jute Factory*³ the Apex Court held as under:

“The Act requires the Notification to be issued in a particular manner with brief particulars of land being

³ (2005) 13 SCC 477

acquired. The Notification in this case fails to meet this requirement. We have held it to be bad in law. It has no legs to stand. The conduct of the opposite party cannot be used to make it stand. Moreover, the Writ Petitioners have explained the reasons for the delay in filing the Writ Petition. The Company which owns the lands had been de-registered. It is a Company registered in the U.K. It had to be revived. Revival came in mid-2001 whereafter the action was taken. Thus we find no merit in the argument about delay in challenging the Notification rendering the challenge liable to be rejected.”

22) Learned Government Pleader further argued that earlier the petitioners filed W.P.No.14128 of 2002 which was withdrawn on 19.12.2005, as such the petitioners are not entitled to file the present writ petition in respect of the same cause of action. In support of his argument, he relied on the judgment of the Apex Court in *Sarguja Transport Service v. State Transport Appellate Tribunal, Gwallior and others*⁴

23) Learned counsel for the petitioners would submit since the representation made by the petitioners, as per G.O.Ms.No.455, was not considered in view of pendency of W.P.No.14128 of 2002, the same was withdrawn. After withdrawal of the said writ petition, the Government has not considered the representation, hence W.P.No.10550 of 2006 came to be filed, which was disposed on 25.07.2006,

⁴ AIR 1987 SC 88

directing the first respondent therein to consider the representation of the petitioner in accordance with the guidelines issued in G.O.Ms.No.455. Having regard to the above, the judgment of the Apex Court relied upon by the Government Pleader, in support of his plea of *resjudicata*, is not applicable to the case on hand.

24) Even otherwise, it is to be noted that in the earlier proceedings, the legality or otherwise of the order was not challenged. While dismissing W.A.Nos.1785 of 1999 and 1987 of 1999, this Court observed as under:

“the dismissal of the writ petitions or these writ appeals would not be an impediment for the petitioner to seek any other remedy that may be available to her in law for redressal of her grievance.”

25) Hence, the findings given by this Court in the earlier writ petitions do not operate as *resjudicata*.

26) The case of the respondents is that the possession was already taken over and the same was allotted to Tourism Department, but the learned counsel for the petitioners placed on record G.O.Ms.No.215, to show that the government has allotted land to a Charitable Trust, which was also revoked vide G.O.Ms.No.297.

27) Having regard to the above, all the writ petitions are allowed setting aside the orders under challenge. There shall be no order as to costs.

28) Consequently, miscellaneous petitions, if any, pending in these Writ Petitions shall stand closed.

JUSTICE C. PRAVEEN KUMAR

29.12.2017
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