

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 25944 of 2006

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the proceedings issued by the second respondent in Case No.303/CA1/2005, dated 18.03.2006 and the appeal proceedings in C.M.A.No.145 of 2006, dated 05.09.2006, as illegal, arbitrary and contrary to Section 52 (1) (b) of the Andhra Pradesh Housing Board Act, 1956 (for short "the Act").

2) The averments in the affidavit filed in support of the writ petition would show that the father of the petitioners by name K.Rajaiah, purchased land admeasuring 644 square yards vide document No.2905/1965 dated 07.12.1965 and since then they have been in possession of the property. The third respondent-Andhra Pradesh Housing Board filed a petition under Sections 52 and 53 of the Act, requesting the Court to evict the petitioners, from the land admeasuring 253.11 square yards and recover a rent of Rs.621.50 per month from 01.05.1999 with interest at 18% per annum, wherein it has been stated that the first respondent had acquired Ac.35.28 gts., in various survey numbers in Bahululkhan village, as per award proceedings of Special Deputy Collector, Land Acquisition, dated 26.03.1968 and the possession of the said land was taken from the

pattadars apart from preparing the layout. After formation of the lay-out, an extent of 419.63 square yards including 253.11 square yards of the petitioners land was left vacant, which was occupied by Yellamma and Pochamma temple. It is also stated that the father of the petitioner encroached on to 253.11 square yards of land. It is said that without conducting any enquiry under Section 52 (2) of the Act, the second respondent passed the impugned order. It is stated that aggrieved by said order, the petitioners preferred C.M.A.No.145 of 2006 under Section 55 of the Act, which was dismissed. Hence, the writ petition.

3) A counter came to be filed by the third respondent stating that the Housing Board had acquired Ac.35.28 gts., and 119 square yards in various survey numbers of Bahlookhanguda village as per award proceedings of Special Deputy Collector, Land Acquisition, dated 26.03.1968 and compensation amount of Rs.10,51,179/- was also paid to various pattadars. The possession of the said land was taken from the pattadars and handed over to the Board on 28.03.1968. A lay out was prepared in the year 1970, known as Sanjeeva Reddy Nagar Colony. After formation of the layout, land admeasuring 4,193.63 square yads including land admeasuring 253.11 square yards were left vacant for further development. It is also stated that the father of the petitioners encroached on to 253.11 square yards. A case was filed before the competent authority for

eviction of the father of the petitioners and the authorities also issued eviction orders on 18.03.2006. Aggrieved by the same, the petitioners herein, who are L.Rs. of Rajaiah preferred an appeal vide C.M.A.No.145 of 2006 before the Court, which was dismissed. Challenging the same the present writ petition is filed.

4) Learned counsel for the petitioners mainly submits that the father of the petitioners by name K.Rajaiah was the absolute owner and possessor of 1544 square yards. Out of the said extent, he sold away 600 square yards to third parties, but however sale deed was not executed because of pendency of the suit. A perusal of the counter filed by the respondents in Case No.303/CA1/2005, who are the petitioners herein, shows that the land being acquired without any notice to them and was allotted to Yellamma Temple and the Competent Authority of A.P. Housing Board, passed an order ordering eviction of the petitioners herein, which is illegal. In the said counter, the petitioners herein are alleged to have admitted that the said land was in illegal occupation of Housing Board. Against the said order, an appeal came to be filed. Hence, it is urged that the petitioners are entitled for recovery of the same. Further, in view of the judgment of the Apex Court in *Govt. of A.P. vs. Thummala Krishna Rao and another*¹ it is stated that in a summary proceedings, the petitioners ought not to have evicted without deciding the issue

¹ AIR 1982 Supreme Court 1081

of title, more so, when the petitioners are said to be in possession of the land from the year 1968 onwards.

5) On the other hand, learned counsel for the respondents would submit that though the petitioners claim that the subject land is a patta land and that the acquisition is illegal, but no steps were taken to challenge the same. Having failed to do so, the petitioners cannot now challenge the findings given by the Land Acquisition Officer. It is further stated that even as seen from the record, the petitioners are in possession of the land from the year 1998 and when steps were taken to evict the petitioners from the schedule land, they filed suit seeking injunction, which was decreed on 30.08.2003, directing that the first respondent not to interfere with the peaceful possession and enjoyment of the property.

6) Learned counsel for the petitioners submit that there is no dispute that the petitioners are in possession of the land, but since their possession is illegal, as the land was allotted in favour of the Yellamma Pochamma temple by virtue of G.O.Ms.No.5, Hg, dt:08.01.1990, it is urged that the steps have been taken to evict the petitioners from the land. In the counter filed in case No.303/CA/1/2005 before the competent authority (Tribunal) by the writ petitioners herein stated that their father was owning land to the extent of 1544 sq. yards, out of which his father sold 600 sq. yards to one Sri Lingaiah and Narasimha while remaining extent of

land i.e., 944 sq. yards was retained with him. It was stated that without giving any notice, the respondents herein acquired the said land without following due procedure laid down by the A.P. Housing Boarding Act, 1956, hence, sought for re-delivery of the possession.

7) After considering the arguments and the material, the competent authority ordered eviction of the petitioners therein, which was confirmed in appeal by the III Additional Chief Judge, City Civil Court, Hyderabad. From the averments in the counter, the grievance of the petitioner appears to be that the authorities are trying to evict him from the land without following the procedure laid down in A.P. Housing Board Act, 1956. But, the record discloses that the competent authority has issued a notice in Form-A, in terms of Section 52(1)(b) of the A.P. Housing Board Act. The said notice was acknowledged by the respondents on 15.03.2005. An Advocate filed vakalath and also counter on 02.04.2005. After taking into consideration, the material placed, the trial court ordered eviction of the petitioners herein.

8) Learned counsel for the petitioners mainly submits that Section 52 of the Act applies only to the person who is in authorized possession, but not otherwise. The same appears to be incorrect. A reading of Section 52 of the Act makes it clear that Section 52(1)(a) deals with authorized occupants of board premises and Section

52(1)(b) of the Act deals with the persons in unauthorized occupation.

9) Therefore, the argument of the learned counsel for the petitioners that the authorities erred in invoking Section 52 of the Act, cannot be accepted.

10) At this stage, the learned counsel for the petitioners tried to contend that when the petitioners are disputing the very ownership and title of the property, the authorities erred in adopting the summary procedure in evicting the petitioners. He relied upon the judgment of the Supreme Court in **Govt. of A.P. v. Thummala Krishna Rao and another**² to show that when there is a dispute in the title, the Government should approach the civil court and thereafter take steps to evict the petitioner. But situation on hand appears to be different. It is a case where originally the subject land was a patta land, but subsequently land acquisition proceedings came to be instituted and thereafter an award came to be passed acquiring the land from the father of the petitioners. The same is clear from the findings given by the civil court in para 8 of the order, wherein it has been held that 253.11 sq. yards of land which is part of total extent of 644 sq. yards was acquired by the Housing Board from the father of the petitioners. When once an acquisition was admitted under the provisions of Land Acquisition Act i.e., under Section 16 of

² AIR 1982 Supreme Court 1081

the Act, the same stands vested with the Government and free from all encumbrances. Without challenging the award, it is not open to the petitioners to canvass that the entire proceedings are illegal and that the authorities could not have acquired the land and pass an award without giving notice to the petitioners, which in fact is not the subject matter in the present writ petition. If really the Award was passed in the year 1968 but the same is not challenged till date. Therefore, the plea of the petitioners that there is a dispute with regard to title and that they are the owners of the property even as on today cannot be accepted, in view of the award which remained unchallenged and undisputed. Though the petitioners claim that they are in possession, right from 1965 but no material has been placed to substantiate the same. On the other hand, an award came to be passed in the year 1968 itself, pursuant to which, the land was acquired. Hence, the judgment of the Apex Court relied upon by the learned counsel for the petitioners will not apply to the case on hand.

11) For the aforesaid reasons, I see no merits in the case and accordingly, the Writ Petition is dismissed. No costs. Miscellaneous Petitions pending if any in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:11.09.2017
GM

