

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 39329 of 2014

AND

WRIT PETITION No. 24820 of 2015

COMMON ORDER:

- 1) W.P.No.39329 of 2014 came to be filed seeking issuance of Writ of Mandamus to quash the order dated 23.08.2014 in case No.F1/ 441/ 2009 passed by the Joint Collector-I, Ranga Reddy.
- 2) W.P.No.24820 of 2015 came to be filed seeking issuance of Writ of Mandamus declaring the orders dated 23.08.2014 passed in Case No.F1/ 706/ 2010 by the second respondent, thereby setting aside the Occupancy Right Certificate granted by the 3rd respondent as illegal, contrary to law, arbitrary and without any jurisdiction.
- 3) Since the issue involved in both the writ petitions is interconnected, they are being disposed of by this common order.
- 4) Taking Writ Petition No.39329 of 2014 as a lead petition, I proceed to deal with the matter. The subject matter of the property in the writ petition is also the same property in Writ Petition No.24820 of 2015
- 5) The petitioner, who is said to be involved in real estate business, purchased Ac.95.00 from respondents 28 to 43 under various registered sale deeds in the year 1994. The said extent of Ac.95.00 forms part of larger extent of Ac.402.20 guntas in Survey Nos.250 to 267, 270 to 279, 281, 293 to 295, 322, 323, 325 to 328 and 346 situated at Pedda Amberpet Kalan Village, Hayatnagar Mandal, Ranga Reddy District. After purchase of the land, the petitioner made a layout and sold various plots in favour of various third parties during the years 1997-

2005. On 18.11.2003, a legal notice was issued to the petitioner on behalf of the alleged pattadars of the said land, claiming that the petitioner has, by illegal means, entered into the said land, disturbed their possession and is carrying out plotting activities. On 25.11.2003, the petitioner sent a reply notice stating that he is the bonafide purchaser of the lands from the holders i.e. respondents 28 to 43, in whose favour the Occupancy Right Certificates were issued by the 3rd respondent under various proceedings. While so, respondents 4 to 27, represented by their GPA holder Syed Nawaz Hussain filed W.P.No.1441 of 2004 questioning the issuance of Occupancy Right Certificates in favour of the vendors of the petitioner. By an order dated 28.01.2004, this Court disposed of the said writ petition granting liberty to respondents 4 to 27 to file an appeal before appropriate authority.

6) Thereafter, respondents 4 to 27 preferred an appeal under Section 24 of the Inams Abolition Act before the 2nd respondent stating that their great grand father-Syed Mohd.Azgar Hussain was the pattadar of agricultural lands admeasuring Ac.402.20 guntas comprising of survey numbers referred above, having purchased the same under registered sale deed dated 67/ 1303 Fasli and thereafter, the said Syed Mohd. Azgar Hussaini transferred the said land in favour of his son viz. Syed Shah Mohd. Shabir Hussaini, who is grand father of respondents 4 and 5 by way of Gift Deed bearing No.1244, dated 27.07.1928. The said Syed Shah Mohd.Shabir Hussaini claims to be in continuous possession and enjoyment of the said land and that O.S.No.1005 of 1982 filed before VI Additional Judge, City Civil Court, Hyderabad was withdrawn in view of compromise; in that suit one M.E.Satyanarayana was appointed as Receiver in the year 1982; that the said land was in possession and under supervision of the Receiver till the year 1994. Thereafter

respondents 4 and 5 issued a legal notice on 18.11.2003, claiming that they came to know that a model building has been constructed on the said land. The appeal filed by respondents 4 and 5, before the 2nd respondent was dismissed vide order dated 08.11.2005 on the ground that the appeal was barred by limitation. Aggrieved by the order dated 08.11.2005 passed by the 2nd respondent, the respondents 4 to 24 filed W.P.No.7142 of 2007 before this Court, which was dismissed on 09.04.2007. Aggrieved by the dismissal of W.P.No.7142 of 2007, respondents 4 to 27 preferred W.A.No.24 of 2008. The said writ appeal was disposed of on 08.12.2008, directing the 2nd respondent to consider the appeal filed by respondents 4 to 27 and dispose of the same on merits after affording reasonable opportunity to both parties. As per orders in writ appeal, the 2nd respondent renumbered the appeal as Case No.F1/ 441/ 2009. Respondents 4 to 27 have not chosen to question any of the orders passed under Sub-Rule (2) of Rule 6. The provisions of the Act and Rules contemplate filing of an appeal against the order passed by the preliminary authority and filing of one appeal is not maintainable against several certificates of registration issued in Form III. The appeals were disposed of without reference to alleged inherent defects pointed out during the course of arguments. It is also stated that the respondents had not applied for certified copies of any of the orders or even the Occupancy Right Certificates issued in Form III and in the absence of certified copies being filed, the appeals are not maintainable. It is submitted that on improper reading of the provisions of Inams Abolition Act and the Rules made thereunder, the 2nd respondent allowed the appeal setting aside the Occupancy Right Certificates issued in favour of the predecessors-in-title of the petitioner and remanded the matter to the 3rd respondent with a

direction to conduct a denovo enquiry and dispose of the case afresh after serving notices to all parties.

7) A counter came to be filed by respondents 7 to 10, 12, 13, 15 to 21, 23 to 27 stating that the writ petition is not maintainable on facts and as the petitioner has raised disputed questions of fact, the same cannot be adjudicated under Article 226 of the Constitution of India. The allegation that the respondents were involved in real estate business and has purchased a total extent of Ac.95.00 of land in Survey Nos.250 to 260 of Pedda Amberpet Village, Hayathnagar Mandal from respondents 28 to 43 by various sale deeds is absolutely false, fabricated and bogus and that respondents 28 to 43 are in no way concerned with the said land, which is part of larger extent of Ac.402.20 guntas in Survey Nos.250 to 265, 267, 272 to 279, 281, 293 to 295, 322, 323, 325 to 328 and 346. Originally common ancestor of these respondents viz Syed Mohammed Asghar Hussaini was the pattadar of said agricultural land having purchased the same under a registered sale deed bearing No.67/ 1303 Fasli and later transferred the entire land by way of a Gift deed vide document bearing No.1244, dated 2nd Dai, 1338 Fasli (27.07.1928) in favour of his son viz. Syed Shah Mohammed Saber Hussaini. Since then, the said Syed Shah Mohammed Saber Hussaini is in possession and enjoyment of the said lands. The petitioner has not obtained any lay out from the concerned authorities. The sale transactions of plots alleged to have been made by the petitioner are sham and bogus and as such they are not binding on these respondents. The respondents received a letter dated 01.12.2014 from HMDA and a letter dated 05.12.2014 from the office of Nagar Panchayat, Pedda Amberpet respectively informing that no lay out was approved in relation to the subject land. After the demise of Syed Shah

Mohammed Saber Hussaini, who is the original Inamdar of the subject land, his sons could not regularly visit the lands. Taking advantage of the same, the petitioner created some documents in collusion with the revenue authorities with a dishonest intention to grab the land and divided the same into plots. The said fact came to the knowledge of the respondents in the month of November, 2003. Respondents 4 and 5 filed W.P.No.1441 of 2004 before this Court challenging the issuance of Occupancy Right Certificates, by the Revenue Divisional Officer in favour of respondents 28 to 36 and that this Court disposed of the said writ petition giving liberty to approach the concerned appellate authority and raise all grounds which were raised in the writ petition. After receipt of the order of this Court in the writ petition, respondents 4 and 5, claiming ownership over the land, preferred an appeal before the 2nd respondent, inter alia, contending that Occupancy Right Certificates were issued in favour of third parties without conducting any enquiry and without causing any notice to the parties. Some of the family members of respondents 4 and 5 filed O.S.No.1005 of 1982 before VI Additional Judge, City Civil Court, Hyderabad for partition of ancestral and joint family property, which was withdrawn as compromised. During the pendency of the said suit, VI Additional Judge appointed a Receiver to take charge of all properties and to do all acts. The said Receiver issued a notice on 18.04.1983 to the concerned Tahsildar, Hayatnagar not to make any entries in the revenue records in respect of the said land. However, it is said that the Revenue Divisional Officer, in collusion with the petitioner; without issuing any notice to the respondent and their predecessors and even without issuing notice to the concerned MRO, issued Occupancy Right Certificate in favour of the third parties, who are no way concerned with the said land. This

fact was noticed by the respondents only after receiving the reply notice dated 25.11.2003 issued on behalf of the petitioner. Against the order dated 09.04.2007 in W.P.No.7142 of 2007, the respondents filed W.A.No.24 of 2008 before the Division Bench of this Court and the same was allowed on 08.12.2008 setting aside the impugned order dated 09.04.2007 and consequently directing the 2nd respondent to consider the matter afresh, after affording reasonable opportunity to all parties. Against the orders in the writ appeal, the petitioner filed Special Leave Appeal (Civil) No.131 of 2010 before the Supreme Court, which was dismissed on 11.01.2010, at the admission stage. As per the orders in writ appeal, the respondents preferred appeals before the 2nd respondent and that the 2nd respondent after conducting an elaborate enquiry passed a common order setting aside the Occupancy Right Certificates issued by RDO and remanded the matter to RDO with a direction to conduct denovo enquiry and dispose of the case afresh within three months.

8) It is also stated in the counter that the impugned order passed by the 2nd respondent in setting aside the occupancy rights and remanding the matter back to the 3rd respondent for de novo enquiry is proper and legal since the petitioners obtained Occupancy Rights Certificates basing on forged documents. It is also stated in the counter that the respondents also filed application in Form-I, before the 3rd respondent for grant of Occupancy Rights Certificate, as the Joint Collector declared the lands as Inam Lands and the same is pending for adjudication. It is also stated that instead of contesting the same, the petitioner filed the present writ petition.

9) Heard and perused the material available on record.

10) Respondents 4 to 27 are represented by their GPA holder Syed Bandenawaz Hussain.

11) The main ground urged by the learned counsel for the petitioner is that without taking into consideration, as to who was in possession as on 11.01.1973, the Joint Collector remanded the matter to the Revenue Divisional Officer to decide the questions raised therein. He further submitted that while remanding the matter, the Joint Collector further made a mistake in canceling the NOC granted by the Revenue Divisional Officer after a full-fledged enquiry. While pointing out the averments made in the counters filed by the respondents, it is stated that the land being an inam land, the respondents have no authority to claim. It is stated that if the respondents have no claim over the land, nothing prevented respondents 4 to 27 from obtaining the Occupancy Right Certificate. It is his case that the impugned order is totally in violation of the orders passed by the 2nd respondent in W.P.No.7142 of 2007.

12) Learned counsel appearing for the petitioner in W.P.No.39329 of 2014 would submit that no document has been produced by the respondents to show that they are in possession of the property and the documents which are referred do not relate to the subject matter of the property in dispute. According to him, the land was converted from agricultural to non-agricultural purpose in the year 2000, to which the Government gave the approval. Thereafter, the HUDA also approved the lay out. It is his case that the petitioners herein have converted lands into plots and sold the same to third parties, who raised independent houses in the said land. In the absence of any enquiry as to whether the petitioner was in possession as on

11.01.1973, the Joint Collector committed an irregularity in setting aside the order of the Revenue Divisional Officer.

13) Various factual aspects came to be raised before this Court more particularly with regard to manner in which the land is described in the revenue records. According to him, in the pahanies for the year 1954-55, the name of the land was shown as “mannevani chelaka Dastugardan” and whereas in the documents which are now relied upon by the respondents, it was described as “Kanchalwani Namal”. He further placed reliance on the Statement of Permission for transfer of Inam land etc. situated at Amberpet Kalan, Taluq East, District Atraf-Balda Sare-e-khas Mubrak, as approved by the Inam Department as per proforma (C) of the Rules of Sale and Transfer of Lands, wherein it is mentioned as “self purchased land pertaining to the Watan”.

14) It is thus urged that in view of the documentary evidence which has been placed before this Court, the order under challenge warrants interference. On the other hand, learned counsel would submit that since the issue involves number of factual aspects and Occupancy Rights Certificates were issued without any notice to the unofficial respondents herein, the Joint Collector rightly set aside the order of the Revenue Divisional Officer and remanded the matter back, directing him to pass orders in accordance with law, after hearing all the parties. According to him, no prejudice will be caused to the parties if once again the matter is heard by the Revenue Divisional Officer, after taking into consideration the material, which is now placed before this Court, by all the parties.

15) It would be useful to refer to the order passed by this Court in W.P.No.7142 of 2007, wherein a learned single judge of this Court held as under:

“Be it noted, under Section 27 of the Limitation Act, 1963, at the expiry of the period of limitation, the right of a person to the property claimed shall be extinguished. Indeed, at this point of time, the petitioners cannot even maintain a suit for declaration or title having regard to the period of limitation. The impugned order does not suffer from any illegality or infirmity.”

16) Challenging the same, W.A.No.24 of 2008 came to be filed. The Division Bench of this Court, while considering the aspect of delay in filing the appeal and also taking into consideration the various arguments advanced on merits held as under:

“11. The factum of creating rights under the Act was brought to light by the learned Government Pleader stating that in the year 1984 occupancy rights have been created in favour of respondent.

12. On the other hand, the learned Senior Counsel appearing for the petitioners contends that the very act of conferring rights whatsoever, in any manner or by any means, is contrary to the rights already created in favour of the petitioners, at least with effect from 1973-74, as could be evident from the revenue records like pahanis etc.”

“In the result, the writ appeal is allowed, at the stage of admission, setting aside the impugned order, dated 09.04.2007, passed by the learned single Judge in W.P.No.7142 of 2007, and the first respondent-Joint Collector, Panga Reddy District, is directed to consider the appeal filed by the petitioners afresh and dispose of the same on merits basing on the records made available to him by both the parties and pass appropriate orders in accordance with law, after affording reasonable opportunity to all the contesting parties. There shall be no order as to costs.”

17) Challenging the same, S.L.P came to be filed before the Supreme Court, which was dismissed. In view of the orders passed by the Division Bench of this Court, 2nd respondent proceeded with the matter and decided the issue. Therefore, the argument that the 2nd respondent has acted without jurisdiction or that he could not have entertained the matter without the order of the Revenue Divisional Officer being challenged cannot be accepted. After perusing the entire material on record and after hearing all concerned, the 2nd respondent found that Occupancy Right Certificate came to be issued without giving notice to the unofficial respondents therein. Hence, the 2nd respondent has rightly set aside the matter and remanded the matter to the Revenue Divisional Officer directing him to consider the matter afresh in accordance with law. The relevant portion of the order of the joint collector is as under:

“The appellants have further averred that in view of the above proceedings of the then Joint Collector that Syed Shah Mohammed Saber Hussaini alone is recorded as Khatedar in the Khasra Pahani and no proceedings have been taken place thereafter for deletion of his name and entering of the names of the respondents herein and same have resulted again by tampering of records. The appellants have pointed out that the respondents have not even stated anything as to how their names have been entered in the records in the place of original Inamdar and by which proceedings the change of entries have taken place. In the absence of the said proceedings the illegal entries in revenue records do not form basis to establish their possession over the said lands. If the imams tribunal issued Form II notices to the recorded Inamdar or legal heirs before grant of ORC to the respondents, the appellant would have opportunity to place all the records and hence the ORCs issued in favour of the respondents are liable to be set aside, as the orders impugned in this appeals have not been preceded by any notice much less the

notice inform to. The above arguments of the appellants have reasoning, weight and deserve consideration.”

“While setting aside the said ORCs the matter is remanded back to the RDO, Saroornagar Division with a direction to conduct denovo enquiry and dispose the above case afresh, serving notices on all the concerned, giving them an opportunity of being heard and pass appropriate orders duly examining the nature/ classification of lands in question and thoroughly verify possession over the said lands on the crucial date i.e. 01.11.1973 and eligibility of the possessors for grant of ORC within the frame work of the AP (TA) Abolition of Inams Act, 1955 and Rules framed there with. Further the RDO is directed to dispose of the case as expeditiously as possible within a period of three months. Accordingly all the above appeals are disposed of.”

18) It may be true that Revenue Divisional Officer has dealt with the same after perusing the available record, but as held by the Joint Collector, the same came to be passed without hearing the unofficial respondents herein, who claimed to be the descendant legal heirs of the original inamdars. Hence, I see no merits to interfere with the same and accordingly the writ petitions are dismissed. However, having regard to the facts and circumstances and in view of the interim order, *status quo* obtaining as on today with regard to the possession of the property shall be maintained till the matter is decided by the Revenue Divisional Officer, which shall be as early as possible, preferably, within a period of three to six months from the date of receipt of a copy of this order. There shall be no order as to costs.

19) Miscellaneous petitions, if any, in these writ petitions shall stand dismissed.

C. PRAVEEN KUMAR,J

Date: 17.08.2017
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