

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**W.V.M.P.No.2473 of 2013 in W.P.No.16674 of 2013****and****W.P.No.16674 of 2013****ORDER:**

Heard the learned counsel for the petitioners and the learned Government Pleader for Revenue appearing for the respondents.

2. Petitioner has filed this Writ Petition assailing the order dt.27-12-2012 in proceedings No.A/1064/2012 of 3rd respondent passed under Section 6 of the A.P. Land Encroachment Act, 1905 holding that the land in occupation of the petitioners is Government land and directing the petitioners to vacate the said land.

3. The Writ Petition was admitted on 13-06-2013 and on the same day in W.P.M.P.No.20220 of 2013, this Court held, after hearing the contentions of the learned counsel for the petitioners and the learned Government Pleader for Revenue, that *prima facie* there is a *bona fide* dispute regarding the title over the property; that the judgment of the Supreme Court in **Government of A.P. Vs. Thummala Krishna Rao and Another**¹ would disentitle the respondents from invoking the provisions under the Act; and suspended the order dt.27-12-2012 passed by 3rd respondent. It however directed that the petitioners should not alienate the subject land, create third party rights over it or make any further construction thereon or change the nature of subject land pending further orders.

¹ AIR 1982 S.C. 1081

4. W.V.M.P.No.2473 of 2013 is filed by the respondents to vacate the said order.

5. Learned counsel for the petitioners contends that in the impugned order, the 3rd respondent has only relied upon an entry in town survey record to contend that the subject land is the Government land; that in **Hyderabad Potteries Private Limited v. Collector, Hyderabad District & another**², it was held that entry in town survey land record is not evidence of title; that petitioners are claiming the subject land to be private land which was originally purchased by one P. Lakshminarayana through a registered sale deed dt.17-02-1962 by virtue of Sale Certificate granted by the II Assistant Judge, City Civil Court in Case No.384/3 of 1951 dt.05-01-1956; the said sale was confirmed on 14-03-1961 in E.P.No.9 of 1961; the Sale Certificate was engrossed on stamp paper by the said Court on 23-08-1961; that the property is in their possession ever since 1962; and that in the impugned order, the respondents have erroneously held that mere registration of sale deed would not confer title on the petitioners; and this order cannot be therefore sustained particularly in view of the judgment of the Supreme Court in **Thummala Krishna Rao and another** (1 supra), referred to above.

6. In the counter affidavit/W.V.M.P. filed by the respondents, the respondents reiterate that as per the revenue records, and town survey land record, subject land is recorded as Government

² 2001(3) ALT 200

land; without obtaining any NOC from the District Collector, Hyderabad, petitioners directly approached the municipal authorities, misrepresented the facts and obtained building permission without any lawful entitlement over the land. When the petitioner started encroaching the land by constructing a compound wall, 3rd respondent stopped the same; petitioners then filed W.P.No.34745 of 2012 before this Court to declare the action of the respondents in interfering with the alleged possession and enjoyment of the subject land as illegal and arbitrary and for consequential direction to the respondents not to interfere with the subject land; the Court then disposed of the Writ Petition on 26-12-2012 stating that the Government would not interfere with the petitioners' possession except invoking the provisions of the AP Land Encroachment Act, 1905; and thereafter, the impugned order is passed.

7. It is stated that pursuant to the order dt.27-12-2012, the petitioners were dispossessed on 06-06-2013 and a signed board was also erected and that there is no *bona fide* dispute in this case. Reference is also made to the A.P. Survey and Boundaries Act, 1923 and it is stated that after final notification is issued under the Act and it was published in the gazette on 31-12-1976, without filing a civil suit within three years, the petitioners cannot now seek correction of Town Survey land record. It is stated that the petitioners have an effective alternative remedy by way of appeal under Section 10 of the AP Land Encroachment Act, 1905 and that action was also taken by

invoking AP Land Grabbing (Prohibition) Act, 1982 for recovery of possession.

8. I have noted contentions of both sides.

9. It is not in dispute that the Supreme Court in **Thummala Krishna Rao and another** (1 supra) held that in case a *bona fide* dispute in regard to title of the Government to any property, Government cannot take unilateral decision in its favour that the property belongs to it and on the basis of such a decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a *bona fide* claim or title. Further the Supreme Court in **Goan Real Estate and Construction Limited and Another Vs. Union of India through Secretary, Ministry of Environment and others³** and **Hyderabad Potteries Private Limited** (2 supra), has held that entries in revenue records/town survey record are not conclusive proof to establish the title of the Government.

10. Having regard to the documents on which reliance is placed by the petitioners, I am of the opinion that *prima facie* there is a *bona fide* dispute of title in relation to the subject land.

11. Therefore, in view of the judgment in **Thummala Krishna Rao and another** (1 supra), it was not open to the

³ (2010) 5 S.C.C. 388

respondents to initiate action under the A.P. Land Encroachment Act, 1905.

12. Since the matter relates to the jurisdiction of 3rd respondent to initiate proceedings under the A.P. Land Encroachment Act, 1905, and since the contention of the petitioners that 3rd respondent had no jurisdiction to initiate proceedings under the said Act has been upheld, I also reject the contention of the respondents that the petitioners should have availed the remedy of appeal under the said Act. It is settled law that existence of alternative remedy is not a bar to approach this Court under Article 226 of the Constitution of India where an authority acts without jurisdiction. (**Whirlpool Corporation Vs. Registrar of Trade Marks⁴**).

13. Admittedly, L.G.C.S.R.No.24535 of 2013 was initiated by the Special Court under AP Land Grabbing (Prohibition) Act, 1982 as a suo motu case on the basis of news item published in Andhra Jyothy dt.11-07-2013 in respect of the subject land.

14. When this Court enquired from the learned Government Pleader as to the status of the said L.G.C., it was informed that it is not even numbered till date. Having initiated proceedings before the Special Court for eviction of petitioners, the respondents cannot fall back on the proceedings issued under the AP Land Encroachment Act, 1905.

⁴ (1998) 8 S.C.C. 1

15. Writ Petition is accordingly allowed and the impugned order dt.27-12-2012 of 3rd respondent is set aside. Liberty is granted to the respondents to pursue the said remedy under the AP Land Grabbing (Prohibition) Act, 1982 or in the competent Civil Court for recovery of the land in possession of the petitioner in accordance with law, if they are so advised. Consequently, W.V.M.P.No.2473 of 2013 is dismissed. No costs.

16. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 24-04-2017
kvr

