

HON'BLE SRI JUSTICE S.V.BHATT

W.P.Nos.7631 AND 42574 OF 2015

COMMON ORDER:

The prayers in these two writ petitions read thus:

W.P. No.7631 of 2015:

“The petitioner prays for Mandamus declaring the action of 3rd respondent in trying to conduct survey of petitioner's land in Survey No.191/30 at Kollur Village, Ramachandrapuram Mandal, Medak District, as illegal, arbitrary and unconstitutional. The petitioner prays for consequential direction to 3rd respondent not to conduct survey of bearing Survey No.191/30 situated at Kollur Village, Ramchandrapuram Mandal, Medak District.”

W.P. No.42574 of 2015:

“The petitioners pray for Mandamus declaring the inaction of 4th respondent in undertaking survey and demarcating the land claimed by petitioners to an extent of Ac.0-20gts in Survey No.191/55 of Kollur Village, Ramachandrapuram Mandal, Medak District in terms of application of 2nd petitioner dated 09.11.2015, as illegal and amounts to abdication of functions assigned to respondent under the Survey and Boundaries Act.”

Heard Mr.Staram Chaparla and Mr.Subba Reddy for petitioners in these writ petition and Mr.B.Nalin Kumar for respondent No.6 in W.P. No.7631 of 2015 and the Assistant Government Pleader for Revenue for respondents.

These two writ petitions are posted and directed to be heard along with writ petition Nos.34940, 41187 & 35787 of 2015. These writ petitions are ordered by separate common order on even date. Counsel appearing for the parties in these two writ petitions have suggested for consideration and disposal of these two writ petitions by a separate order, for the prayers in these two writ petitions relate to either action or inaction in undertaking survey and demarcation of properties claimed by the parties.

At the outset, the submissions of Mr. Staram Chaparla are placed on record, for he has substantially narrowed down the controversy in W.P. No.7631 of 2015. The learned counsel states that firstly there is no occasion for conducting survey of subject land and even assuming that survey is required to be undertaken at the instance of any person in the neighbourhood including the petitioners in W.P.No.42574 of 2015, the respondents are under legal obligation to issue notice to all the persons interested in the neighbourhood in the same survey number and the petitioner is given opportunity as and when survey is undertaken and the petitioner is satisfied with such procedural safeguard. He further states that in the present writ petition none of the issues on the title, identity or possession is canvassed by petitioner. Therefore, he is not inviting any order from this Court on these aspects and whenever the petitioner served notice of proposed survey, the petitioner will firstly file documents in support of his case and secondly raise objections if the survey tries to reopen settled issues.

Mr.Subba Reddy appearing for petitioners in W.P.No.42574 of 2015 contends that on 09.11.2015 the petitioners requested for survey and demarcation of property claimed by petitioners through sale deed dated 23.06.1994. The application was made on line, the respondents are not moving in the matter and he places on record the orders of this Court dated 14.06.2013 in W.A.No.110 of 2013 and dated 28.04.2016 in W.P.No.4811 of 2011 and batch and also the circulars issued by the Government from time to time to contend that the respondents are entitled to survey private or assigned lands. Mr.Subba Reddy submits that the application if considered and decision communicated, the petitioners, if aggrieved will work out the remedies in accordance with law, on the other hand, if a decision is taken to survey the land, the petitioners have no objection to issue notice to all the parties interested in the neighbourhood and proceed to conduct survey and demarcate the land in accordance with the Survey and Boundaries Act. He submits that the prayer is limited to the extent of inaction and therefore, prays for issuing appropriate directions.

Mr.Nalin Kumar submits that the prayer though is limited to inaction, in reality what is happening is by referring to the orders passed by this Court survey is conducted behind the back of land owners in the survey number and he prays for appropriate direction to issue notice to respondent No.5 as well, when survey and demarcation of land in Survey No.191/55 is taken.

The Government Pleader for Revenue submits that this Court in the decisions referred to above has been directing survey and

demarcation and by following the earlier orders, the present writ petitions can also be disposed of. For convenience, I refer to the judgment dated 14.06.2013 in W.A. No.110 of 2013 and the common order dated 28.04.2016 in W.P.No.4811 of 2001 and batch:

W.A.No.110 of 2013:

“From the pleadings of the appellant/petitioner, it is evident that he made representation dt.17.10.2012 to the Tahsildar, Kethepalli, Nalgonda District, who in turn forwarded the same to the Revenue Divisional Officer. Pursuant thereto, respondent No.4, namely the Deputy Inspector of Survey, Nalgonda, issued notice dt. 31.10.2012 informing the appellant/petitioner that fixation of boundary stones will take place on 8.11.2012 and directed him to be present on that day at 9.00 a.m. Respondent No.4, having issued notice to the appellant/petitioner for conducting survey and fixing the boundaries, ought to have conducted the survey and fixed the boundaries, and more so, when the circular instructions/guidelines/Board Standing Orders, issued by the Government, permit the revenue officials to conduct survey on applications filed by private parties, as admitted by the learned Government Pleader for Revenue appearing on behalf of the respondents.

For the foregoing reasons, we set aside the order passed by the learned single Judge and allow the writ appeal. Consequently, we direct respondent No. 4, namely the Deputy Inspector of Survey, to conduct survey of the land in question as per the circular instructions/guidelines/Board Standing Orders, issued by Government referred above, and furnish the survey report/proceedings to the appellant/petitioner, within a period of two months from the date of receipt of a copy of this order.”

W.P.No.4811 of 2011 and batch:

“A perusal of the Circulars relied on by the learned Government Pleader for Revenue goes to show that subject to compliance of conditions in the Circulars, survey can be undertaken. The Division Bench in the said judgement also considered the effect of Circulars and set aside the order of learned Single Judge. Learned counsel for the petitioners also not disputed that the petitioners have to comply the conditions in the Circulars relied on by the learned Government Pleader for Revenue. In fact, Division Bench issued directions basing on the Circulars. Learned Government Pleader for Revenue also states that while taking up the survey and demarcation of the lands, the Survey Department has to follow the provisions under Sections 89, 89-A and 92 of the Andhra Pradesh (Telangana AR ea0 Land Revenue Act, 1317 Fasli.

In view of the above facts and circumstances, the writ petitions are disposed of directing the respondent-authorities to consider the applications of the petitioners for survey and demarcation of lands after receiving necessary charges, keeping in view the Circulars vide Rc.No.N1/1408/07, dated 13.07.2007, Rc.No.N1/6543/99, dated 25.07.2001 and Circular vide Rc.No.N2/1741/2010, dated 18.05.2010 and also in terms of the judgement in W.A. No.618 of 2013 and also keeping in view the provisions of Sections 89, 89-A and 92 of the Act and take necessary action and communicate the decision to the parties. It is open for the petitioners to prefer appeal against the said order, if they are aggrieved in terms of circulars referred to above.”

Hence, the writ petitions are disposed of by this order:

- a) The petitioners in W.P.No.42574 of 2015 are given liberty to re-submit their representation to 4th respondent by enclosing a copy of this order within eight weeks from the date of receipt of copy of

this order. The 4th respondent is directed to examine the request of petitioners and take a decision within six weeks thereafter. The 4th respondent, if decides to accept the request for survey of land in Survey No.191/55, he is under obligation to follow all the circulars issued by the Government from time to time and issue notice to the neighbouring land owners including the petitioner in W.P.No.7631 of 2015 and thereafter undertake survey and demarcation. This Court has not examined the merits of the matter. A party aggrieved either by the refusal to conduct survey or by the survey report, if any given in due course of time, can work out remedies either before the authorities or by filing a civil suit.

The writ petitions are disposed of accordingly. No order as to costs.

Miscellaneous petitions pending if any shall stand closed.



S.V.BHATT,J

Date: 22.09.2017
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