

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 22838 of 2015

ORDER:

1) Questioning the action of the respondents in not constructing houses under Rajiv Gruhakalpa and Permanent Urban Development Housing Scheme by making allotment of house-sites in Sy.No.62 of Masthan Nagar as proposed by 3rd and 5th respondents herein, as illegal and arbitrary and contrary to directive principles of State policy and consequently seeking a direction to the respondents to construct houses under Rajiv Gruhakalpa and Permanent Urban Development Housing Scheme in view of the proposal made by R-5 on 09.02.2012 and 10.09.2012, the present Writ Petition came to be filed.

2) The facts, which lead to filing of the Writ Petition, are as under :-

2.1) The petitioners, who are 50 in number, filed the present Writ Petition seeking issuance of a Writ, more particularly one in nature of mandamus, seeking the above mentioned relief. The petitioners, claim themselves to be landless poor, SC, ST, and BC persons eking out their livelihood by doing coolie works in houses around and adjacent to colonies of Masthan Nagar. They claimed to have submitted applications to 3rd and 4th respondents for allotment

of house-sites. Vide proceedings dated 18.02.1993, the 4th respondent (R.D.O., Chevella) is said to have assigned 60 sq. yards of land to each of the petitioner in Sy.No.87 of Madhapur village and pattas were also granted by the 4th respondent in respect of plot Nos.23, 126, 128 to 131, 133 to 140, 142, 145 to 148, 162 to 167, 169, 170 to 187, 191 to 199 and 226. The petitioners claim to have been residing therein, by erecting huts.

2.2) Land in Sy.No.87, which was allotted to the petitioners, came to be acquired for the construction of police quarters subject to exchange of lands elsewhere without canceling pattas issued. It is stated that the petitioners were asked to shift their families to a piece of land situated in Sy.No.62 in Masthan Nagar, Gutla Begumpet, Serilingampally Mandal, Ranga Reddy District. It is the case of the petitioners that they got themselves shifted to the said place and have been living there by erecting small huts. The repeated requests of the petitioners for allotment of house-site pattas in Sy.No.62, made the Collector to direct the respondents 4 and 5 to submit a report. The 4th and 5th respondents are said to have prepared a sketch plan with the list of eligible persons and produced the same before the Collector. But for reasons best known, no action has been initiated till date. As the petitioners are receiving calls of dispossession, they filed W.P.No.18090 of 2006. While admitting the same on 01.09.2006, this Court held that if the petitioners are in

possession of the land in Sy.No.62, there shall not be any dispossession without following the procedure. As the authorities tried to evict inspite of the orders passed by this Court, the petitioners approached A.P. Humanrights Commission and lodged a complaint vide H.R.C.No.1963 of 2006. The State Humanrights Commission issued summons to the officials of the Tourism Department and also Revenue Department, and directed them to submit their reports. Interrogatories were framed by the Humanrights Commission after receiving the reports and directed the 4th and 5th respondents to submit their report on the said interrogatories. The 5th respondent submitted a report before the Humanrights Commissioner, to which the petitioners submitted a reply. Final report came to be filed stating that in view of the ban on assignment of house-sites in 10 Municipalities of Ranga Reddy District, allotment of the land may not be possible. However, it was stated that the proposals would be sent to the Collector, Ranga Reddy District for allotment of house-sites under Rajiv Grujakalpa. The averments in the affidavit also show that the 5th respondent addressed a letter to the District Collector, Ranga Reddy District for issuance of necessary orders providing house-sites under the Rajiv Gruhakalpa scheme in Sy.No.62 adjacent to existing Masthan Nagar slum to the persons who were granted patta in Sy.No.87 of Madapur village. A list of beneficiaries was also submitted along with the said

letter. Though the 5th respondent again addressed a letter dated 24.04.2013 to the 3rd respondent, however no action has been initiated by any of the other respondents till date. However, the 3rd respondent is said to have addressed a letter dated 23.01.2014 to the 5th respondent to enquire into the vacant land available in Sy.No.62 and submit a report within 15 days along with a sketch for construction of flats under JNNURM scheme. The 5th respondent in turn is said to have drawn the attention of Mandal Revenue Inspector and Mandal Surveyor to enquire about the existence of vacant land in Sy.No.62 along with the proposal for construction of flats, within 7 days, but there was no action. The averments indicate that except correspondence between the authorities with regard to providing house-sites or construction of flats under a scheme, no concrete action has been initiated till date. Challenging the action of the respondents in not constructing any houses as promised and also not allotting any land, the present Writ Petition came to be filed. By an order dated 01.04.2016, this Court directed the respondents not to evict the petitioners from the subject property without following due process of law. As the respondents tried to evict the petitioners from the land, a Contempt Case also came to be filed.

3) A counter came to be filed by the 3rd respondent denying the allegations made in the affidavit filed in support of the Writ Petition except to the averments admitted therein. It is stated in the counter

that in the year 1993, the Collector accorded permission for issuance of house-site pattas to 23 beneficiaries (to some of the writ petitioners herein) at 60 sq. yards each in Sy.No.87 of Madapur village. Later, it was noticed that the beneficiaries were non-local people of Ranga Reddy District. Basing on a report, delivery of possession of individual patta certificates were withheld. It is stated that the Revenue Divisional Officer, Chevella issued orders for cancellation of house-site pattas. It is said that the total extent of land in Sy.No.87 is about Ac.5.27 guntas, out of which Ac.3.27 guntas has been allotted to police quarters, Ac.0.20 guntas of land towards grave yard, Ac.0.09 guntas of land covered by Primary School and Ac.1.11 guntas of land is under road widening. Insofar as land in Sy.No.62 is concerned, the total extent of land is Ac.84.04 guntas, out of which the Tourism Department was granted Ac.1.20 guntas, and Ac.5.00 for weaker sections colony. To a specific averment that the petitioners are in possession and that they have been dispossessed by force, it is stated that house-suite pattas were issued to 48 petitioners but possession was never handedover to them. Subsequently, some of the pattas were cancelled as they were found ineligible. It is urged that when possession itself was not handedover, the question of dispossessing them would not arise. Insofar as possession in Sy.No.62 of Guttala Begumpet village is concerned, it is averred that the petitioners tried to encroach on to the Government

land allotted to various organizations and that they were never in possession of the land. It is their case that the petitioners are trying to grab the land, which was allotted to various Government organizations. Coming to the orders passed by the Humanrights Commission, it is urged that after bifurcation of the State, the Government has discontinued the scheme of constructing houses under Rajiv Gruhakalpa scheme. It is further stated in the counter that as and when Government announces a new policy, the request of the petitioners for allotment of houses would be considered.

4) M/s. Royal Housing Private Limited filed W.P.M.P.No.46249 of 2016 seeking to implead themselves as 7th respondent. It is their case that they were allotted land to an extent of Ac.1.17 guntas in Sy.No.62/P of Guttala Begumpet village, Serilingampalli Mandal to the Youth Advancement Tourism and Culture vide panchanama dated 24.01.2005. The said project was awarded to M/s. Curevin Pharma Private Limited as the lead member, along with M/s. Balaji Hospitality LLC as Technical member and M/s. My Home Constructions Pvt. Ltd., as financial member. A letter of intent was issued dated 30.01.2009. It is stated that possession of the land was handedover to the proposed 7th respondent vide order dated 11.11.2009 and since then the 7th respondent is in possession of the subject land, undertaking developmental activities for setting up of a three-star hotel. Since the land has been allotted to them and as construction activity has

been taken up in the said land, they claim to be necessary parties to the proceedings. However, a counter came to be filed opposing the same. It is stated that the 7th respondent has no direct interest in the subject matter, which fact is evident from the order dated 03.02.2009 issued by Government in G.O.Ms.No.2. It is urged that a reading of the said G.O., makes it clear that the land allotted to the consortium was in in Sy.No.62/P of Gutla Begumpet Village, but however location of the project is shown as Sy. 62/1 of Gutla Begumpet village. Since the records do not indicate the sub division of the plots, it is contended that any amount of doubt is created as to whether the implead petitioner was allotted any site in dispute. But, since the land in the said survey number is allotted in favour of the 7th respondent/implead petitioner for construction of a three-star hotel, this Court is of the view that it would be just and proper to implead them as necessary party. For the aforesaid reasons the W.P.M.P. is allowed.

5) Heard Sri P.Venu Gopal, learned Senior Counsel for the petitioners and Sri P.Durga Reddy, learned Government Pleader for respondents 1 to 5 and Sri D.V.Sitarama Murthy, learned Senior counsel for respondent No.6.

6) It is to be noted that initially the petitioners were given house-site pattas in Sy.No.87 of Madhapur village. Since the land therein was allotted to police quarters, the petitioners were asked to move to

Masthan Nagar, promising allotment of house-sites. The record further shows that on 01.04.2016, this Court while issuing notice directed the authorities not to dispossess the petitioners without following due process of law. It is the case of the petitioners that on 15.10.2016 the Authorities brought bulldozers and tried to demolish the huts, which lead to filing of the contempt case on 28.10.2016. After filing of the contempt case, a vacate stay applications came to be filed, raising various issues.

7) The learned Government Pleader for Revenue would contend that since prayer of the petitioners was only for construction of houses under Rajiv Gruhakalpa scheme and that there is no request from the petitioners with regard to stay of dispossession from the property, he submits that the Court erred in granting interim direction of dispossession without following due process of law. In substance, it is his case that order passed in W.P.M.P., is beyond the relief sought for by the petitioners. Further more, it is his case that the allegation of the petitioners that they are in possession of the land which was allotted to the implead petitioner, is absolutely false. It is also his case that though there is some variation in the subdivision numbers but that by itself would not entitle the petitioners to possession, more so when the pattas granted are cancelled.

8) A reading of the entire material placed before this Court and also from the arguments advanced by both the parties, the issue that

boils down to, is as to whether the petitioners are in possession of the land in Sy.No.62 of Masthan Nagar, which was allotted to the implead petitioner/7th respondent?.

9) It is pertinent to note that the proceedings before the Humanrights Commission came to be initiated vide H.R.C.No.1963 of 2016. In the said H.R.C., pursuant to the directions of the A.P. State Humanrights Commission, the petitioners produced the original certificates before the Tahasildar, Serilingampally who on verification stated that the said certificates, which relate to Sy.No.87 of Madapur are genuine. It is further stated that an alternative land has to be shown to the patta certificate holders since they belong to SC., ST., and BC., communities. It is further stated that the hut dwellers were allotted house sites in Sy.No.87 and since police quarters are proposed to be constructed therein, the hut dwellers were permitted to occupy the land in Sy.No.62. Thereafter, Tourism department tried to vacate the hut-dwellers in the year 2005, which made them to approach the High Court by filing writ petition. The said petition also discloses that in view of the directions dated 08.04.2011, no further constructions are allowed and both parties are kept away from the site. However, in paragraph 4 of the said application, it is said that about Ac.1.17 guntas was originally allotted to Baratiya Vidya Bhavan which was handedover to Tourism Department on 24.01.2005 and since then the land continued to be in possession of the Tourism

Department. On 30.12.2012 the Collector, Ranga Reddy District wrote a letter to Special Chief Secretary and Chief Commissioner of the Land Administration, Hyderabad stating that in view of the proposal submitted by the Tahasildar, Serilingampalli vide letter dated 10.09.2012, the Project Officer, Rajiv Gruhakalpa requested their office to consider allotment of house-sites under Rajiv Gruhakalpa Urban Development Housing Scheme for 50 effected beneficiaries. On 01.09.2016 this Court in W.P.M.P.No.22078 of 2006 in W.P.No.18090 of 2006 passed the following interim order:

"If the petitioners are in possession of the land in Sy.No.62 of Masthan Nagar, Gutla Begumpet, Ranga Reddy District, there shall not be any dispossession of the petitioners, without following the procedure either under the A.P. Land Encroachment Act, 1905 or appropriate Board Standing orders."

10) The report of the Humanrights Commission was also taken into consideration while issuing G.O.Ms.No.493 Revenue dated 28.04.2016 wherein it has been stated that no assignment of housesite pattas can be made in 10 municipalities of Ranga Reddy District, surrounding Hyderabad city, as there is total ban on assignment of individual house sites. Thereafter, the present Writ Petition came to be filed in which there is a direction to the authorities not to dispossess the petitioners without following due process of law. However, as noted earlier, there is no prayer in the Writ Petition with regard to the relief, which was granted by while issuing notice. The only request

made by the petitioners was with regard to construction of houses under Rajiv Gruhakalpa scheme.

11) Having regard to the orders passed in the month of September, 2008 in Writ Petition No.18090 of 2008 the petitioners' claim that they are in possession of the land and are not liable to be evicted without following due process of law. Pursuant thereto, this Court on 01.04.2016 directed the respondents not to dispossess the petitioners without following due process of law. Be that as it may, the implead respondent in their affidavit categorically stated that construction activity is going on in the land allotted to them and the writ petitioners were never in possession of the same. But, however the additional reply affidavit dated 06.12.2016, which came to be filed by 48th petitioner categorically states that the petitioners are in possession of the property and when the authorities tried to evict them forcibly, inspite of order dated 01.04.2016, a Contempt Case No.2009 of 2016 came to be filed, in which this Court issued Form-I notice to respondents 3 to 5. An additional affidavit came to be filed by petitioner on 10.03.2016 requesting them not to evict on the ground that they are in illegal occupation of the land in Sy.No.62.

12) As stated earlier, the issue which boils down is as to who is in possession of the property? The documents, which have been filed by the petitioners, relate to granting of pattas in respect of land in Sy.No.87 of Madapur village. It is their case that though they were

asked to occupy the land in Sy.No.62 of Masthan Nagar, no pattas were issued and their request for issuance of pattas have been kept pending since long time. It is their case that though they are in possession, land was allotted to the 7th respondent/implead petitioner. No documentary material has been placed to show that the petitioners are in possession of the land in Masthan Nagar except the photographs showing forcibly eviction from a particular piece of land. But, however the statement of the Tahasildar before the Humanrights Commission goes to show that the petitioners occupied land in survey No.62. As stated earlier, the same is strongly contraverted by the implead petitioner as well as by the respondent/authorities that the petitioners were never in possession of any land in Sy.No.62 and that the entire extent of Ac.1.17 guntas allotted to the proposed respondent has been demarcated by erecting sheets around the extent.

13) Though no documents are filed to prove that the petitioners are in possession of the property, but basing on the representation of the Deputy Tahasildar before the Humanrights Commission and also on a oral statement said to have been made by the authorities in directing the petitioners to occupy the land in Sy.No.62 of Masthan Nagar colony, it is urged that they are in possession of the property and have been living there by raising huts. The said fact is strongly negated by the learned counsel for the respondents stating that

neither possession was delivered in respect of land in Sy.No.87 of Madapur nor the petitioners are in occupation of the land in Sy.No.62. In the absence of any documents, it is very difficult for this Court to come to a conclusion, as to who is in possession of the property. It is nodoubt true that there is an interim direction that the respondents are directed to follow due process of law before dispossessing the petitioners, but that by itself cannot be a ground to declare that the petitioners are in actual possession of the property. Since factual aspects are in dispute it may not be proper for this Court to investigate into the same and come to a conclusion as to who is in possession of the property, basing on affidavits, counter affidavits and oral arguments. The issue as to whether this Court can go into the factual aspects with regard to possession under Article 226 of the Constitution of India came up for consideration before various Courts.

14) In **S.Lingamaiah v. State of Andhra Pradesh and others**¹ this Court was dealing with an issue where a Writ Petition came to be filed against a show cause notice issued under Land Encroachment Act. The petitioner did not respond to the show cause notice, which lead to passing of the final orders and consequently eviction of the petitioner from the land. A Writ Petition came to be filed challenging the very

¹ 2004(2) ALD 837

issuance of notice under Land Encroachment Act. While dealing with the dispute over title, this Court observed as under :

40. So from the above narration of facts, it becomes crystal clear that the petitioner has not only taken inconsistent pleas, but has himself made a candid admission that there is a serious dispute with respect to his title to the land. It is long well settled by a plethora of decisions that where there are serious disputes with respect to title of a property, this Court in exercise of its jurisdiction under [Article 226](#) of the Constitution of India, does not decide such disputed questions, for such questions have to be decided upon leading of evidence by the contesting parties, and unless and until the contesting parties lead evidence in support of their respective claims, such disputed questions cannot be decided or gone into. Therefore, the remedy of the parties, if any, is to approach the competent civil Court and get their title disputes to the property settled by leading evidence in support of their respective claims.

49. In the instant case, it is the case of the Government that the land which the petitioner claims to be in his possession, was recorded as Government poramboke land in the revenue records in the survey made during 1964 to 1969 and the same was finally notified in the Gazette on 29-10-1979 and that the petitioner was shown as an unauthorized occupant and Sivai Jamabandi (penalty) was being collected from him. When such is the case of the Government, it is for the petitioner to prove his title to the property by filing a suit for declaration before the competent Civil Court having jurisdiction. Therefore, the contention of the petitioner that inasmuch as he is in possession of the land, the Government cannot evict him therefrom, and it has to approach the competent Civil Court for his eviction and it cannot take recourse to the proceedings under the Land Encroachment Act, is not well-founded and is rejected.

15) Similarly in **State of Assam V. Bhaskar Jyoti Sarma and others**² the Apex Court while dealing with the provisions of Urban Land (Ceiling and Regulation) Act, 1976 and the possession of the respondents over the said land observed as under:

The case of the appellant is that actual physical possession of the land was taken over on 7th December, 1991 no matter unilaterally and without notice to the erstwhile land owner. That assertion is stoutly denied by the respondents giving rise to seriously disputed question of fact which may not be amenable to a satisfactory determination by the High Court in exercise of its writ jurisdiction. But assuming that any such determination is possible even in proceedings under [Article 226](#) of the constitution, what needs examination is whether the failure of the Government or the authorized officer or the competent authority to issue a notice to the land owners in terms of [Section 10\(5\)](#) would by itself mean that such dispossession is no dispossession in the eye of law and hence insufficient to attract [Section 3](#) of the Repeal Act. Our answer to that question is in the negative.

In support of the contention that the respondents are even today in actual physical possession of the land in question reliance is placed upon certain electricity bills and bills paid for the telephone connection that stood in the name of one Mr. Sanatan Baishya. It was contended that said Mr. Sanatan Baishya was none other than the caretaker of the property of the respondents. There is, however, nothing on record to substantiate that assertion. The telephone bills and electricity bills also relate to the period from 2001 onwards only. There is nothing on record before us nor was anything placed before the High Court to suggest that between 7th December, 1991 till the date the land in question was allotted to GMDA in December, 2003 the owner or his legal heirs after his demise had continued to be in possession. All that we have is rival claims of the parties based on affidavits in support thereof. We repeatedly asked learned counsel for the parties whether they can, upon remand on the analogy of the decision in the case of *Gyanaba Dilavarsinh Jadega* (supra), adduce any documentary evidence that would

² 2015(5) SCC 321

enable the High Court to record a finding in regard to actual possession. They were unable to point out or refer to any such evidence. That being so the question whether actual physical possession was taken over remains a seriously disputed question of fact which is not amenable to a satisfactory determination by the High Court in proceedings under [Article 226](#) of the Constitution no matter the High Court may in its discretion in certain situations upon such determination. Remand to the High Court to have a finding on the question of dispossession, therefore, does not appear to us to be a viable solution.

16) In **State of Rajasthan v. Bhawani Singh**³, the Apex Court observed as under:

"Having heard the counsel for the parties, we are of the opinion that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition."

17) In **M.S.N.Raju and others v. M.R.O., Jami Mandal, Vizianagaram and others**⁴ this Court held that when the controversy between parties is factual, it is not proper for this Court to take up investigation of such disputed facts and record its finding thereupon. It has been held that factual controversies cannot be taken up in writ petition and that the parties have to work out other legal remedies available to them.

18) From the judgments referred to above, it is clear that when the issue involves disputed questions of fact with regard to immovable property, it shall not be proper for this Court to take up investigation

³ AIR 1992 SC 1018

⁴ 2011(3) ALT 118

of such disputed factual aspects and record a finding thereon. Disputes regarding possession of immovable property cannot be summarily decided under Article 226 of the Constitution of India basing on the affidavits and counter affidavits. As held by this Court in **Syed Kazim Bahadur v. District Collector, Rangareddy District**⁵ the parties have to avail effective, alternative, comprehensive remedy by way of private law review, for declaration, injunction and damages before the Civil Court.

19) In **Sohan Lal v. Union of India**⁶ the Apex Court held as under :-

".....We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the appellant and Jagan Nath. If we were to do so, we would be entering into a field of investigation which is more appropriate for a civil court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs. There are questions of fact and law which are in dispute requiring determination before the respective claims of the parties to this appeal can be decided. Before the property in dispute can be restored to Jagan Nath it will be necessary to declare that he had title in that property and was entitled to recover possession of it. This would in effect amount to passing a decree in his favour. In the circumstances to be mentioned hereafter, it is a matter for serious consideration whether in proceedings under Article 226 of the Constitution such a declaration ought to be made and restoration of the property to Jagan Nath be ordered....." (emphasis supplied).

"In support of the contention that the respondents are even today in actual physical possession of the land in question reliance is placed upon certain electricity bills and bills paid for the telephone connection that stood in the name of one Mr. Sanatan Baishya. It was

⁵ 2002(3) ALT 389

⁶ 1957(7) SCR 738

contended that said Mr. Sanatan Baishya was none other than the caretaker of the property of the respondents. There is, however, nothing on record to substantiate that assertion. The telephone bills and electricity bills also relate to the period from 2001 onwards only. There is nothing on record before us nor was anything placed before the High Court to suggest that between 7th December, 1991 till the date the land in question was allotted to GMDA in December, 2003 the owner or his legal heirs after his demise had continued to be in possession. All that we have is rival claims of the parties based on affidavits in support thereof. We repeatedly asked learned counsel for the parties whether they can, upon remand on the analogy of the decision in the case of Gyanaba Dilavarsinh Jadega (supra), adduce any documentary evidence that would enable the High Court to record a finding in regard to actual possession. They were unable to point out or refer to any such evidence. That being so the question whether actual physical possession was taken over remains a seriously disputed question of fact which is not amenable to a satisfactory determination by the High Court in proceedings under [Article 226](#) of the Constitution no matter the High Court may in its discretion in certain situations upon such determination. Remand to the High Court to have a finding on the question of dispossession, therefore, does not appear to us to be a viable solution."

20) As stated earlier, initially the request was only for construction of houses under Rajiv Gruhakalpa scheme but in the month of March 2016, relief with regard to stay of dispossession was sought. The Dispute now is with regard to possession. Since the said issue cannot be answered basing on affidavits and counter affidavits, this Court is of the view that it would be appropriate if the party aggrieved approaches the appropriate forum for an appropriate relief.

21) Having regard to the facts and circumstances of the case, the interim orders dated 01.04.2016 granted by this Court in

W.P.M.P.No.13129 of 2016 shall be extended for a period of 16 weeks.

Meanwhile, the aggrieved persons shall approach the appropriate Forum and obtain necessary orders therefrom.

22) With the above direction, the Writ Petition is disposed of. No costs. As a sequel to it, miscellaneous petitions pending if any in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date:17.02.2017

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