

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT APPEAL NO.1363 OF 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in WP.No.21906 of 2011 dated 01.12.2015. The first respondent herein filed WP.No.21906 of 2011 seeking a direction from this Court to quash the order passed by the Revenue Divisional Officer (RDO) under Section 10(i)(a) of the Andhra Pradesh Land Encroachment Act ("the Act" for brevity), confirming the order passed by the fourth respondent under Section 6 of the Act dated 04.03.2011, as illegal and arbitrary. A consequential direction was sought to set aside the said proceedings, and to direct the appellant-respondents not to interfere with their peaceful possession and enjoyment of the subject property.

Facts, to the limited extent necessary, are that, initially, a notice was issued under Section 7 of the Act on 15.11.2010 calling upon the respondent-writ petitioner to vacate the land by removing all the material from the site within three days from the date of receipt of the notice, on the ground that he was in unauthorised occupation of land of an extent of 1194.36 square meters. Questioning the same, the respondent-writ petitioner filed WP.No.29010 of 2010. In the meanwhile, the Tahsildar served a notice under Section 6 of the Act, and consequently W.P. No.29010 of 2010 was dismissed as infructuous, giving

liberty to the respondent-writ petitioner to question the subsequent notice. WP.No.29591 of 2010 was filed challenging issuance of the notice under Section 6 of the Act and this Court, by order dated 26.11.2010, quashed the impugned notice and directed the Tahsildar to pass a speaking order afresh after considering the explanation submitted by the respondent-writ petitioner. The Tahsildar passed the order dated 04.03.2011 rejecting the petitioner's request questioning which the respondent-writ petitioner preferred an appeal to Revenue Divisional Officer under Section 10(i)(a) of the Act. On the said appeal being dismissed on 27.11.2011, the respondent-writ petitioner invoked the jurisdiction of this Court.

Having noticed that the appellants had taken over possession of the subject land, this Court had, by its order in WP.MP.No.26680 of 2011 in WP.No.21906 of 2011 dated 05.08.2011, directed the appellants herein not to change the nature of the land or to make any constructions thereupon. The Writ Petition was, eventually, heard and disposed of by the order under appeal dated 01.12.2015.

The case of the respondent-writ petitioner, before the learned Single Judge, was that the subject property bearing No.5-7-232 admeasuring 2010 square yards belonged to Sri Abdul Rehman Siddique who had purchased it from one Sri Amzad Ali under sale deed dated 27.1.1348 Fasli (1348 Fasli corresponds to the year 1938); Sri Abdul Rehman had, in turn, sold the same to Smt. Fatimunnisa Begum W/o.Moinuddin Siddique under a registered sale deed dated 03.02.1955; later

Smt. Fathimunnisa Begum sold 1900 square yards of the said land to Sri Shankarlal under registered sale deed dated 12.12.1973 bearing document No.3319/1973; subsequently, Shankarlal executed a gift settlement deed dated 31.03.2006 vide document No.1392/2006 for an extent of 558.5 square yards in favour of the petitioner herein, who is his son; in so far as the property, of an extent of 870 square yards bearing Municipal No.5-7-233 is concerned, it belonged to Smt. Sayeedunnisa Begum who sold it to Sri Banwarilal vide registered document No.3318/1973 dated 12.12.1973; the said Banwarilal bequeathed the said property, in terms of the Will dated 08.11.1999, in favour of Sri Surender Agarwal; later, Sri Surender Agarwal was declared the absolute owner in O.S.No.311 of 2004 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad; he executed two gift settlement deeds dated 31.03.2006 in favour of the respondent-writ petitioner; the respondent-writ petitioner is in possession of 1428.5 square yards (558.5 + 870); and, thereafter, proceedings under the Andhra Pradesh Land Encroachment Act was initiated by the appellants herein.

In the order under appeal, the learned Single Judge, relying on the judgments of the Supreme Court in **Hyderabad Potteries Pvt. Ltd. v. Collector, Hyderabad District and another¹**, **State of Andhra Pradesh v. Prameela Modi and others²**, **Savitha Avasthi v. Greater Hyderabad Municipal Corporation (GHMC) Lower Tank Bund, Hyderabad rep.by its**

¹ 2001(3) ALD 600

² 2005(3) ALT 379 (D.B.)

Commissioner and others³ and G.Satyanarayana v. Government of Andhra Pradesh⁴, held that, in the light of the said judgments, it was clear that the entry made in the Town Survey Land Register (TSLR) did not, by itself, confer any title unless the same were supported by other material; and since the impugned order came to be passed basing on the entries made in TSLR alone, which was unsustainable, the Writ Petition was liable to be allowed. The orders, impugned in the Writ Petition, were set aside leaving it open to the appellant to avail their legal remedies to prove their case. Aggrieved thereby, the present appeal is filed.

Learned Government Pleader for Revenue (Telangana) would rely on **District Collector, Hyderabad and Ors. v. K.Narasing Rao and Ors.⁵, Mahavir Pershad v. Collector, Hyderabad District, Hyderabad⁶, Union of India v. Vasavi Cooperative Housing Society Ltd.⁷ and Hyderabad Potteries Pvt. Ltd.¹**, in support of his submission that, since it is the respondent-writ petitioner who has invoked the jurisdiction of this Court, the burden lies on him to establish his title over the subject land; this onus cannot be shifted on to the appellants herein to establish their title; as the subject land is Government land, proceedings were initiated under the Act; and, since this Court would not adjudicate disputed questions of title, it is for the respondent-writ petitioner to avail his common law remedy

³ Order in WP.No.25840 of 2011 dated 20.06.2012

⁴ Laws (APH) 2014(4) 33

⁵ 1997(4) ALD 649 (DB)

⁶ 2004(6) ALD 708

⁷ (2014)2 SCC 269

of filing a Civil Suit seeking declaration of the title, and not for the Government to do so.

The stand taken by the appellants herein, in their counter affidavit, is that these lands are classified as 'Nil Area' lands which do not have any survey number, and have been recognised as per the village map and the entries made in the revenue records; the Town Survey of Nampally Village was conducted, during the years 1963-76, under the provisions of the Andhra Pradesh Survey and Boundaries Act, 1923; the final check operation was conducted by the Special Deputy Collector by issuing notices, and also inviting objections; after completion of the Town Survey, the subject land was recorded as Government land in the TSLR by issuing a notification under Section 13(1) of the 1923 Act; the said notification was published in the Hyderabad District Gazette; the entries, recorded in the TSLR have become final and conclusive after publication of the notification; as they were not modified by a decree of the Civil Court, within three years from the date of publication of notification in the District Gazette as stipulated under Section 14 of the Act, 1923, they must be held to have attained finality; no person had challenged the said entries by filing a Civil Suit within three years; and, therefore, neither the respondent-writ petitioner nor their predecessors-in-title had any right over the subject Government land.

A copy of the TSL Register is enclosed along with the Writ Appeal wherein column Nos.8 and 10 relate to the number of registered holders or inam title deed, and the name of the

holder. The name reflected therein, as per the Municipal Register, is Smt. Fatimaunnisa Begum, Afsarunnisa Begum. In column No.20 thereof, the name of the present enjoyer is recorded as "G". The sole basis, for proceedings to be initiated under the Act, is this entry "G" in column No.20 of the Town Survey Land Register.

The respondent-writ petitioner contends that the subject land had been sold by Sri Amzad Ali in favour of Sri Abdul Rehman Siddique in 1348 Fasli (1938); Sri Abdul Rehman Siddique had, in turn, sold the subject land to Smt. Fatimunnisa Begum under registered sale deed dated 03.02.1955. This specific plea of theirs has not been disputed by the appellants herein in their counter-affidavit, though this contention was raised by the respondent-writ petitioner in the Writ Petition, and before the authorities under the Act. Neither were these contentions dealt with by the Tahsildar in the proceedings under Section 6 of the Act, nor by the RDO under Section 10(i) of the said Act. Even in the counter-affidavit, filed in response to the Writ Petition, this issue has not been dealt with. No explanation is forthcoming from the appellants as to why the name of Smt. Fatimunnisa Begum is reflected in the Town Survey Land Register if, as is contended by them, these lands are Government lands. Proceedings, under the Land Encroachment Act, are summary in character and, in cases where there are serious disputes regarding title, the rival claims can only be adjudicated in a properly constituted Civil Suit.

While the learned Government Pleader for Revenue would submit, based on the judgments referred to hereinabove, that it is not the Government, but the respondent-writ petitioner, who should have been relegated to avail the common law remedy of a Civil Suit, and the initial onus which lies with him to establish his title cannot be placed on the Government, the present case is not one where the respondent-writ petitioner has not shown any basis for their claim to own the subject land. On the other hand except entry “G”, reflected in column No.20 of the TSLR and the words ‘Nil Area’ in column No.10 (which according to the learned Government Pleader can only mean that these lands are Government lands), there is no other material on record to show that the subject land is government land.

While this Court, in proceedings under Article 226 of the Constitution of India, would not adjudicate disputed questions of title, the proceedings under challenge in the Writ Petition are the orders passed by the Revenue Divisional Officer under Section 10 of the Act, confirming the order of the Tahsildar passed under Section 6 of the said Act. Recourse to the provisions of the Act could only have been resorted to if the subject land is Government land, and where there is a serious dispute whether the subject land is Government land, or the private property of respondent-writ petitioner, this Court would not take upon itself the task of examining these disputed questions of title. That, however, does not mean that the Government, which claims that the subject lands belong to it, can unilaterally and conclusively decide that the subject lands are Government lands based merely on the letter “G” and the

words “NIL AREA” as reflected in the TSLR, more so as no explanation is forthcoming as to why the name of the respondent-writ petitioner’s vendor i.e., Smt. Fathimunnisa Begum is also reflected in the TSLR, if she was not the owner of the subject lands. As held in **Government of Andhra Pradesh v. Tummala Krishna Rao**⁸, the Government, in summary proceedings, cannot unilaterally decide its own title over the property; and their remedy is only to approach the competent Civil Court seeking declaration of title. Even otherwise, in proceedings under Clause 15 of the Letters Patent, interference is justified only if the order passed by the learned Single Judge suffers from a patent illegality. We find no such infirmity necessitating exercise of jurisdiction under Clause 15 of the Letters Patent.

As possession of the subject land has been taken by the Government as early as on 03.08.2011, and it is not in dispute that the subject land is in their possession ever-since for the past more than six and a half years, the interests of the appellants would be adequately safeguarded if the order of the learned Single Judge is modified to the limited extent that, for a period of four (4) months from today *status quo* as on today, with regards the subject land, shall be maintained in all respects to enable the appellants, if they so chose, to file a Civil Suit in the meanwhile. It is made clear that, in case any such suit is filed, the competent Civil Court shall examine the rival claims on its merits uninfluenced by any observations made either in the

⁸ AIR 1982 SC 1081

order under appeal, or in the order now passed by us. Needless to state that, in case the appellants herein do not avail their common law remedy of filing a Civil Suit within the time stipulated hereinabove, the order of the learned Single Judge shall become operative.

The Writ Appeal is disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

21st March 2018

NOTE: Issue CC by one week
B/O
RRB

