

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT

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HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.4607 OF 2018

ORDER: (per Hon'ble Sri Justice Abhinand Kumar Shavili)

1. This writ petition is filed seeking to call for the records relating to and connected with the Award dated 15.4.2006 recorded in PLC.No.47 of 2006 before Lok Adalat, City Civil Court, Hyderabad District and to quash the same and the consequential partition deed dated 29.5.2015 and other documents executed in relation to award dated 15.4.2016 and consequently, to declare that petitioner No.4 is the absolute owner and possessor of the land admeasuring 3500 sq. metres or 4200 sq. yards in Sy.No.45 in premises No.8-3-192/1 to 12 in Ward No.8, Block No.3 of MCH situated at Yousufguda village, Khairatabad Mandal, Hyderabad, and to direct the respondents not to interfere with the possession and enjoyment of the petitioners over the above land.

2. Heard the learned Counsel for the petitioners and perused the material available on record.

3. The case of the petitioners is as follows:

(i) Originally one Farahatullah was the absolute owner and possessor of the land in Sy.No.45 admeasuring Ac.15.38 gts situated at Yousufguda village, Hyderabad. The Government of A.P. initiated land acquisition proceedings for the purpose of A.P. Housing Board in respect of the land in Sy.No.45 of Yousufguda village, which included the land belonging to Farahatullah. The Special Deputy Collector, Land Acquisition, A.P., Housing Board passed award No.5 on 31.12.1971 in respect of the above land. Since the pattadar Farahatullah handed over possession of

only Ac.13.36 gts to A.P. Housing Board, even though the award was passed for Ac.15.38 gts, compensation was paid for the same. As some third parties claimed the land admeasuring Ac.2.02 gts, the original pattadar Farahatullah was not able to hand over possession of the same to the Housing Board and hence, the remaining land of Ac.2.02 gts in Sy.No.45 of Yousufguda village, Hyderabad was deleted from the acquisition proceedings out of Ac.15.38 gts vide G.O.Ms.No.19, dated 13.3.1979. By virtue of the said de-notification, the original pattadar Farahatullah became absolute owner and possessor of the said Ac.2.02 gts and he died in the month of January, 1980 leaving behind his sons and wife viz., respondents Nos.56, 57, Mohammed Fasatullah, S/o Farahatullah and Fareedunnisa Begum W/o Farahatullah, who became absolute owners and possessors of the subject land.

(ii) Even after deletion from the land acquisition proceedings, third parties claimed possession of the property and as such, legal heirs of Farahatullah i.e., respondents Nos.56, 57 along with Mohammed Fasatullah and Fareedunnisa filed LGC No.137 of 1989 against P.S. Rama Swamy and 35 others for declaring the respondents therein as land grabbers and for eviction of the said respondents from the land admeasuring Ac.2.00 gts in Sy.No.45 of Yousufguda village. The Special Court by its judgment dated 4.9.1995 allowed the petition in part regarding the title of the petitioners over the schedule land which is shown as ABCDEFGH in Ex.B35, excluding the area in occupation of respondent Nos.4 to 6 therein. The R.D.O. was directed to take steps to deliver possession of the land to the petitioners by evicting respondent No.22-A.P.Housing Board. The Special Court held that the judgment shall not affect the rights of respondents Nos.14, 16 to 18 and 34 to 36 therein over

the sites covered by the sale deeds in their favour, which they are at liberty to establish before regular civil Court. Aggrieved by the same, A.P. Housing Board filed W.P.No.23232 of 1995, respondent No.4 in LGC filed W.P.No.22580 of 1995, and the petitioners in LGC filed W.P.No.9565 of 1996, Respondents Nos.34, 35 and 36 in LGC filed W.P.No.8797 of 1996 before this Court, and this Court dismissed all the above writ petitions by a common order dated 29.3.2000. Aggrieved by the common order, A.P. Housing Board and original petitioners and respondent No.4 in LGC filed Civil Appeals before the Supreme Court and the Hon'ble Supreme Court passed a common order dated 13.4.2007 dismissing the appeals filed by A.P. Housing Board and respondent No.4 in L.G.C and allowing the appeal filed by the original petitioners by setting aside the finding recorded by the Special Court and confirmed by the High Court on the question of adverse possession, while granting liberty to the consenting parties to take appropriate proceedings by approaching a competent civil court, if they claim title on the basis of adverse possession.

(iii) While so, Indranagar Hut Dwellers Association and 36 others filed O.S.No.581 of 2000 on the file of X Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad against Sadatullah, Fashatullah, Shafatullah and P. Abraham, seeking to declare them as owners and possessors of the land admeasuring 4000 sq. yards out of Ac.2.02 gts forming part of Sy.No.45 of Yousufguda village and also for grant of perpetual injunction. The said suit was dismissed.

(iv) Meanwhile, the legal heirs of original pattadar Farahatullah executed two registered GPAs in favour of B. Lingaiah in respect of land admeasuring 3,500 sq. metres or 4,200 sq. yards in the above survey number and in favour of I. Gopinath in respect of land admeasuring 4500

sq. metres or 5440 sq. yards in the above land. Subsequently, Lingaiah offered to assign his right in the property as per GPA, dated 5.3.2001 and executed deed of assignment dated 29.8.2003 in favour of petitioners Nos.1 and 3. Similarly, I. Gopinath also offered to assign his right in the property as per GPA dated 5.3.2001 and executed deed of assignment dated 1.8.2002 in favour of petitioners Nos.1 to 3.

(v) In view of the judgment of the Supreme Court dated 13.4.2007, legal heirs of Farahatullah filed EP in L.G.No.137 of 1989, and possession was delivered by the Deputy Tahsildar to legal heirs of Farahatullah duly conducting panchanama dated 15.3.2008. Since then, the legal heirs of Farahatullah are in possession and enjoyment of the subject property. In the light of the above facts, the petitioners requested B. Lingaiah and I. Gopinath, who are the GPA holders cum purchasers to execute the sale deed, but the same was postponed by them on one pretext or the other.

(vi) When the GPA holders are trying to negotiate with third parties, the petitioners filed suit in O.S.No.93 of 2008 before the Vacation Civil judge, City Civil Court, Hyderabad for specific performance against B. Lingaiah and legal heirs of Farhatullah for an extent of 3520 sq. metres or 4200 sq. yards. Then, the said B. Lingaiah came to execute sale deed in favour of the petitioners or their nominees. The petitioners nominated their partnership firm-petitioner No.4 and accordingly, sale deed was executed and possession of 4200 sq. yards was delivered to petitioner No.4.

(vii) When the petitioners approached the legal heirs of Farhatullah and I. Gopinath to execute registered sale deed in pursuance of assignment deed, they postponed. As such, the petitioners filed O.S.No.748 of 2008

on the file of II Senior Civil Judge, City Civil Court, Hyderabad for specific performance of an extent of land admeasuring 4500 sq. metres or 5440 sq. yards in S.No.45 of Yousufguda village. During the pendency of the above suit, one A. Laxmamma filed I.A.No.333 of 2016 seeking to implead her in the said suit on the ground that she along with 54 others settled the issue with legal heirs of Farahatullah vide PLC.No.47 of 2006 before Lok Adalat, City Civil Court, Hyderabad on 15.4.2006 and as per the settlement, A. Laxmamma and 54 others are entitled to 60% of the subject property and legal heirs of Farahatullah are entitled to 40% of the subject property admeasuring Ac.2.00 gts and the suit schedule property in O.S.No.748 of 2008 is the subject matter in PLC No.47 of 2006.

4. Learned Counsel for the petitioners submits that respondents Nos.56 and 57 having executed registered GPAs in favour of B. Lingaiah and I. Gopinath, who in turn executed assignment deeds in favour of the petitioners, with fraudulent intention without intimating either B. Lingaiah and I. Gopinath or petitioners, entered into compromise with some unconnected people to the property and obtained the Award impugned. He further submits that some of the respondents herein are plaintiffs in O.S.No.581 of 2000 on the file of X Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad, whereas the alleged compromise in PLC No.47 of 2006 referred to some unconnected persons as petitioners, who did not make any claim before any forum, and that the respondents with a view to grab the schedule property jointly got executed a compromise deed and invited the award in question.

5. From the material filed along with the writ petition, it is apparent that the A.P. Housing Board had acquired only Ac.13.36 gts., belonging to Farahatullah and the remaining Ac.2.02 gts., was not acquired by the

Housing Board and by virtue of de-notification, the original pattadar Farahatullah became absolute owner and possessor of the said Ac.2.02 gts. The said Farahatullah died in the month of January, 1980 leaving behind his sons and wife, who became absolute owners and possessors of the said land.

6. The petitioners claimed to have purchased the said land from the legal heirs of the original pattadar through registered GPA holders B. Lingaiah and I. Gopinath. It is the case of the petitioners that B. Lingaiah and I. Gopinath purchased the above land from the legal heirs of original pattadar by way of unregistered agreements of sale dated 2.3.2001, and later on, the legal heirs of the original pattadar executed registered General Power of Attorney on 5.3.2001 in favour of B. Lingaiah and I. Gopinath, in respect of land of an extent of 4,200 sq. yards and 5440 sq. yards respectively, who in turn executed deed of assignments in favour of the petitioners on 29.8.2003 and 1.8.2002 respectively. In pursuance of deed of assignment dated 29.8.2003, B. Lingaiah executed sale deed in favour of the petitioners on 31.7.2008 in respect of 4,200 sq. yards.

7. Further, it is the case of the petitioners that the legal heirs of the original pattadar having entered into agreement of sale on 2.3.2001 with B. Lingaiah and I. Gopinath and having registered GPAs in favour of B. Lingaiah and I. Gopinath on 5.3.2001, entered into compromise with other parties in PLC.No.47 of 2006 before Lok Adalat, on account of which, an award was also passed in Lok Adalat in terms of the said compromise on 15.4.2006.

8. The contention of the petitioners is that the parties in PLC, who entered into compromise before Lok Adalat, had played fraud and

obtained award in PLC and that it has come to their notice only when the suit for specific performance was filed against I. Gopinath and the legal heirs of the original pattadar, who refused to execute the registered sale deed in respect of 5440 sq. yards of land in question, and that the award impugned was obtained by playing fraud and therefore, the same is liable to be set aside.

9. We have considered the submissions made by the parties. The petitioners have purchased 4,200 sq. yards of land by registered sale deed on 31.7.2008 from B. Lingaiah and they also entered into deed of assignment on 1.8.2002 with I. Gopinath in respect of 5440 sq. yards of the land in question. The award impugned was passed in the year 15.4.2006. The issues prior to sale deed dated 31.7.2008 cannot be declared as illegal as award passed by the Lok Adalat is earlier to the registered sale deed dated 31.7.2008. We have noticed about indemnity clause in the sale deed that if the petitioners suffer any loss, damages, costs and expenses by virtue of sale deed said to have been executed by their vendors, then the vendors will indemnify the purchasers for the loss caused to them. In view of the said clause, the petitioners can ventilate their grievances against the vendors, but they cannot question the award passed by the Lok Adalat in PLC No.47 of 2006, dated 15.4.2006, which was executed much prior to purchase by the petitioners.

10. The suit in O.S.No:748/2008, where one Laxmamma sought to implead as party basing on the award passed before the Lok Adalat is pending adjudication. Admittedly, the award passed in the year 2006. Nearly after 12 years, the same cannot be challenged. There are no merits in this writ petition.

11. Accordingly, the Writ Petition is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

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Dated: 16th February, 2018.

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(Order delivered by AKS, J)

16/02/2018

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