

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

W.P.NO.21468 OF 2006

ORDER:

This writ petition is filed, seeking to declare the action of the respondents 1 to 4 in trying to occupy the narrow strip of open space belonging to the 5th respondent, which is lying between the petitioners' land and the land allotted to the second respondent gallery, as illegal and arbitrary.

2. It is the case of the petitioners that the first petitioner is the absolute owner and possessor of the property bearing plot No.770-A, Road No.44, Jubilee Hills, Hyderabad being an allottee of the said land by Jubilee Hills Co-operative House Building Society Limited, the 5th respondent herein. Similarly, the second petitioner was allotted the plot No.770-B and third petitioner was allotted plot No.777-C by the 5th respondent society. Originally, the 5th respondent was assigned an extent of Ac.1398.00 guntas land in Sy.Nos.120/403-1 of Shaikpet Village and Sy.No.102/1 of Hakimpet Village of Golkonda Taluq, Hyderabad District within the limits of Municipal Corporation, Hyderabad vide G.O.Ms.No.147, Revenue Department, dated 31-01-1964 by the erstwhile State of Andhra Pradesh. The 5th respondent society in turn after deducting the extent earmarked for common purposes, such as road, parks, shops, schools and other public amenities common to all the members of the society, divided the remaining land into plots and allotted them by lots to its members who have paid for the said plots for the purpose of constructing house in the year 1998. Later, the petitioners constructed houses in the said plots. There is a strip of land of uneven width covered with boulders and

wood covered hillocks and the said land was left vacant by the 5th respondent society on the northern side of all the plots including the plots allotted to the petitioners abutting Road No.44.

3. It is further stated that the second respondent gallery was allotted certain extent of land by the revenue authorities for establishing a cultural complex on the northern side of the plots belonging to the petitioners. While so, the first respondent representing the second respondent gallery addressed a letter dated 31.03.2004 to the 5th respondent society, requesting to grant permission to the second respondent for using the narrow strip of open space lying between its land and the petitioners' land for its approach or for parking, but the 5th respondent society rejected the said request. Thereafter, the officials of respondents 2 and 4 came to the said land on 11.10.2006 and illegally occupied the narrow strip of open space belonging to the 5th respondent society and they demolished a part of the compound wall of plot No.770-C belonging to the third petitioner.

4. It is further stated that in similar circumstances, the 5th respondent filed W.P.No.965 of 2006 and this Court granted interim orders not to dispossess the society from the land assigned to it without following due process of law. The respondents have not issued any notice to the petitioners as to how the second respondent is entitled for the open space that separates the petitioners' plots from the land allotted to the second respondent.

5. The respondents 1 and 2 filed a counter affidavit denying the allegations in the affidavit. They stated that the Secretary to

Government informed them that the Government have constructed the State Gallery of Fine Arts in part of Ac.6.00 of Government land for the purpose of constructing State Cultural Complex in the remaining land. There is no direct approach from the road for the State Cultural Complex. There is a strip of vacant land belonging to 5th respondent between the road and site of Cultural Complex and the said strip is partly covered by rocks and said land can be used to approach Cultural Complex and also for the purpose of parking. The petitioners have encroached an extent of 1.015 sq.meters and also constructed buildings. The Government appointed Vice Chairman, HUDA., as an enquiry officer to enquire into the alleged irregularities and excess occupation of Government land by 5th respondent society vide G.O.Ms.No.214 MA Department, dated 10-05-1990 and as per the report of the enquiry officer, the 5th respondent society was in excess occupation of Government land to an extent of Ac.16.04 guntas and allotted the same to various individuals in addition to the land allotted to it. The Government in Memo No.52821/ASN III have issued orders to hand over advance possession of the Government land admeasuring Ac.9.00 in TS No.1, Block C, Ward No.9, correlated to Sy.No.403 of Shaikpet Village and Mandal, Hyderabad District in favour of Tourism Department, so as to enable the Tourism Department for getting the foundation stone laid for construction on 27.09.2001 and for setting up Institute of Tourism and Travel on the land and accordingly, possession of the land to the extent of Ac.6.37 guntas and Ac.2.02 guntas on 21.11.2001 and 6.12.2004 respectively was handed over to the Tourism Department.

6. Heard Sri Mohd.Mohinuddin, Assistant Government Pleader for Revenue.

7. It is contended by the petitioners that respondents 1 to 4 forcibly occupied the narrow strip of open space belonging to the 5th respondent, which is lying between the petitioners' land and the land allotted to second respondent gallery and that they tried to encroach upon the petitioners' plots without issuing any notice to them and also demolished the structures including the compound walls of the petitioners. On the other hand, the respondents 1 to 4 contended that they did not occupy the lands belonging to the 5th respondent or the plots belong to the petitioners, but the petitioners themselves encroached into the Government land and made constructions.

8. Since the issue is civil in nature and the disputed question of facts are involved, which cannot be gone into by this Court in writ jurisdiction under Article 226 of the Constitution of India, this writ petition is liable to be dismissed.

9. Accordingly, the writ petition is dismissed, giving liberty to the petitioners to avail the remedies under law before the competent civil Court. As a sequel, the miscellaneous petitions pending if any shall stand closed.

T.AMARNATH GOUD,J

Date: 24-08-2018
Shr