

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.23498 OF 2003

ORDER:

This writ petition is filed challenging the show cause notice of the Station Commander-cum-Estate Officer, Secunderabad, third respondent herein, in Form 'A' dated 17.10.2003 under Section 4(i) (b) (ii) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (Act 40 of 1971) (for short, the Act), whereunder the third respondent asked the first petitioner to submit his explanation on or before 13.11.2003 and to produce evidence on 15.11.2003 at 10.00 hours during personal hearing as to why he should not be evicted from the premises bearing Bungalow No.219, situated in Sy.No.170 of Thokatta Village, Secunderabad on the ground that he has been in illegal occupation of the said bungalow.

2. It is the case of the petitioners that the subject bungalow originally belonged to one Smt.Sultani Begum who purchased the same from Sri G.Narsinga Rao Cullappa under a registered document dated 03.12.1868. Thereafter, Smt.Sultani Begum, represented by her legal heir son Sri Nawab Mir Parwarish Ali Khan executed a lease deed in favour of H.G. Buller, Assistant Cantonment Magistrate on 19.10.1911. Later, Sri Nawab Mir Parwarish Ali Khan, S/o. Smt.Sultani Begum, in the capacity of legal heir, sold the said bungalow to Sri Syed Shah Abdul Hai Qumaisal Quadri under a sale deed dated 24.11.1922. In turn, Sri Syed Shah Abdul Hai Qumaisal Quadri, gifted a part of the property i.e., subject bungalow in favour of his three daughters

under a registered gift deed dated 01.10.1935, who in turn, sold the same to Smt.Lalithabai on 03.02.1967. During the life time of Smt.Lalithabai, she executed a Will dated 26.04.1983 bequeathing her property in favour of her son M.Rammohan Rao and later she died on 11.02.1984. M.Rammohan Rao also died on 06.10.1984. Upon the death of M.Rammohan Rao, his wife Smt.M.Rajyalakshmi and his sons Dr.M.Narsimha Rao, Sri M.Seshagiri Rao and his daughter Smt.M.Indumathi succeeded the property of M.Rammohan Rao.

3. Thereafter, the legal heirs of M.Rammohan Rao entered into an agreement of sale on 01.08.1987 with Mohd.Abdul Khadar for sale of total extent of 23000 square yards consisting of subject bungalow. In turn, the legal heirs of M.Rammohan Rao along with their agreement holder Mohd.Abdul Khadar have executed an Irrevocable Power of Attorney dated 29.12.1989 in favour of the petitioner herein. While so, as Smt.M.Rajyalakshmi died, the remaining 3 vendors i.e., Dr.M.Narsimha Rao, Sri M.Seshagiri Rao and Smt.M.Indumathi executed a General Power of Attorney in favour of the first petitioner on 09.01.1995. M.Seshagiri Rao also executed a notarized declaration dated 25.10.1996 stating that the petitioner was put in physical possession of the subject bungalow on 05.09.1996. Thereafter, at the instance of Mohd.Abdul Khadar, the first petitioner purchased the property under a fresh agreement of sale dated 19.02.1997 from Dr.M.Narsimha Rao, Smt.Indumati, represented by her Power of Attorney Holder Sri M.Seshagiri Rao and M.Seshagiri Rao. Under the said agreement of sale, the first

petitioner has paid an amount of Rs.1,12,50,000/- towards part of sale consideration.

4. While so, the third respondent issued the impugned notice dated 17.10.2003 stating that the petitioner has been in illegal occupation of the subject bungalow and called upon the petitioner to show cause why he should not be vacated from the bungalow, which led the first petitioner to file the present writ petition.

5. During the pendency of the writ petition, the first petitioner died and his wife, sons and daughter were brought on record as petitioner Nos.2 to 6 in the capacity of his legal representatives by order of this Court dated 03.08.2009 in WPMP.No.18608 of 2009.

6. Respondents filed counter-affidavit stating that the subject bungalow has been entered in the General Land Register (GLR) prepared for the first time during 1933 under Rule 3 of the Cantonment Land Administration Rules, 1930 and it comprises of GLR Survey No.507 of Secunderabad Cantonment. As per GLR of 1956, the subject bungalow situated on land comprising GLR Survey No.465 of Secunderabad Cantonment, admeasuring Ac.4-51 cents belongs to the Central Government. The recorded holder of occupancy rights is Syed Shaw Abdulla Bhoy and the nature of holders rights are governed under the old grant terms. Under the terms of the said grant, the holder of occupancy rights will not use the premises or permit the same to be used for any other purpose other than residential building or do or suffer to be done anything thereon any act or thing whatsoever, which is in the opinion of the

Central Government is not in conformity with the instructions relating to use of land held on old grant terms. The holder of occupancy rights will not transfer the occupancy rights of the lands or the ownership rights in the building without prior permission in writing of the Central Government. The vacant land from the site shall not be transferred separately and the site shall not be subdivided. The land shall not be sold, leased, licensed, or mortgaged by the holder of occupancy rights. On every transfer of the property, the holder of occupancy rights and the transferee shall give intimation of the transaction to the Defence Estates Officer and the Cantonment Board within one month of the transfer of interests and furnish the authenticated copy of the transfer deed to them. Smt.Sultanee Begum had purchased the subject bungalow alone under the sale deed dated 13.12.1868 and not the land covered by it and the same belongs to Government. The said sale deed does not mention about the sale of land, but it mentioned as "to certify that this day sold to Smt.Sultanee Begum, W/o. Mirza Sabut Ali, the bungalow and out of offices No.224 for a consideration of Rs.H.S.4800". Therefore, no sale of land is conveyed through this sale deed in favour of the vendee. Further, the sale documents have been got registered by the vendor in the office of the quarter Master General, Hyderabad Subsidiary Force, Secunderabad subject to the condition that "the house to be kept in a perfect state of repairs and to be rented to any officer who may require it etc., to be produced when required." Therefore, no conclusion other than that the land was of the Government can be derived from the sale

deed dated 03.12.1868. The western portion of subject bungalow was given on lease to the Government of India in the year 1967 on payment of monthly rentals and the rentals are being regularly paid by the Defence Estates Officer. Now the western portion of subject bungalow is being allotted to the third respondent and the third respondent is paying the rentals to M.Seshagiri Rao. The petitioner was never put in position of the subject bungalow and he has trespassed and forcibly occupied the same and is an unauthorized occupant of all purposes. Therefore, the impugned notice issued by the third respondent under the Act is within the law and powers vested in him.

7. The petitioners filed reply affidavit stating that the impugned notice issued by the third respondent based on General Land Register does not have any legal sanctity, as this Court in **Union of India v. Vasavi Co-operative Housing Society Ltd.**¹ and **Government of India, Ministry of Defence, New Delhi v. Indira Devi**² held that General Land Register does not have any statutory force.

8. With regard to subject property, the first petitioner earlier filed W.P.No.9381 of 1994 in respect of entries in the General Land Register and the same was allowed by order of this Court dated 26.04.1999. Aggrieved by the same, the Union of India preferred an appeal in W.A.No.936 of 1999. During the pendency of W.A.No.936 of 1999, the Executive Officer, Secunderabad

¹ 2002 (5) ALD 532

² 2003 (4) ALD 302

Cantonment Board and Others filed W.A.Nos.890 and 1407 of 2001 challenging the order in W.P.No.12124 of 2000 which was filed against the first petitioner herein with regard to the subject property. A Division Bench of this Court allowed W.A.No.936 of 1999 and batch, by common judgment dated 14.08.2003, holding that the disputed questions of facts pertaining to the title cannot be gone into under Article 226 of the Constitution of India. Challenging the said order, the first petitioner carried the matter to the Apex Court in SLP.Nos.1839 of 2006 and batch. The Apex Court, by order dated 28.04.2014, dismissed the SLPs by permitting the first petitioner to withdraw the appeals in order to move the civil Court seeking declaration of title and for other reliefs.

9. During the course of arguments, learned counsel for the petitioners fairly submitted that a suit has been filed before the Court below and the same is pending and that in the meanwhile the present writ petition has been filed challenging the impugned notice dated 13.11.2003. He also submitted that there is a dispute with regard to title of the subject property pending on the file of the Court of I Additional Chief Judge, City Civil Court, Secunderabad in O.S.No.9 of 2003 (old No.455/2000).

10. It is seen from the record that the documents filed by the petitioner as part of evidence in support of his claim of title is inadequate. The petitioner has not filed any explanation to the impugned show cause notice and also not attended the personal

hearing, but straightaway approached this Court by way of present writ petition. No judicial review can be made under Article 226 of the Constitution of India in respect of matters where the title dispute is involved. In the present case, the dispute undoubtedly is civil in nature and to be resolved by a competent Civil Court, but this Court, under Article 226 of the Constitution of India, cannot decide such a dispute. It is settled law that no writ petition lies against a show cause notice which carries no legal infirmity.

11. In view of the above discussion, the writ petition is devoid of merits and the same is liable to be dismissed and accordingly it is dismissed. Consequently, interim stay granted by this Court on 07.11.2003 in WPMP.No.29517 of 2003, stands dismissed. There shall be no order as to costs.

Date: 08-06-2018
TJMR

T.AMARNATH GOUD, J

