

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.9060 OF 2018

DATE: 02.05.2018

Between:

I.Venkata Leela Krishnam Raju s/o. Bangara Raju,
Aged about 37 years, R/o. Flat No.102, Sai Ahaladam
Apartment, Near Eswar Villas, Nizampet Road,
Kukatpalli, Hyderabad.

.... Petitioner

and

The State of Andhra Pradesh, rep.by its Principal
Secretary, Revenue Department, AP Secretariat Buildings,
Velagapudi, Andhra Pradesh and others.

.... Respondents



The Court made the following :

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ORDER:

Heard Ms.Hamsa Devineni learned counsel for petitioner and learned Government Pleader for Revenue for respondents 1 to 5.

2. Petitioner claims that he purchased the land to an extent of 193.6 square yards equivalent to 4 cents on the East side, out of 10 cents of land in Sy.No.128/7 of Gottiwada village, Sabbavaram Mandal, Visakhapatnam district through a registered sale deed dated 17.05.2013 from Mrs. Varalakshmi Lanki and two others. According to petitioner, his vendor purchased the same land from Mrs. Rallapudi Simhachalam through registered sale deed dated 29.03.1993 executed on her behalf by GPA holder Mr. Veera Raghavulu. According to petitioner, total extent of land in Sy.No.128/7 is Ac.5.08 cents. Out of 10 cents of land, 6 cents of land i.e., 290.4 square yards sold by Mr. Appa Rao to Mr. Lanki Rama Rao vide registered sale deed dated 06.05.2002. In turn, Mr. Lanki Rama Rao sold this land by dividing into two equal parts to two separate persons. One part was sold to Mr. B.Santosh Kumar (9th respondent) vide registered sale deed dated 02.04.2016 and other part was sold to Mr. Sudheer Kumar by registered sale deed dated 02.04.2016. Mr. Sudheer Kumar, in turn, sold the same to Mr. D.Leela Chinna Sridhar Rao (10th respondent) vide registered sale deed dated 04.09.2017.

3. Petitioner alleges that taking advantage of his absence in Visakhapatnam town, respondents 9 and 10 relocated the boundary stones into the land of petitioner. In other words,

petitioner alleges encroachment of his land by respondents 9 and 10. Petitioner alleges that this was done only to save their lands as there was proposal to widen the road affecting this property. By virtue of their illegal action, though otherwise entire extent of land owned by them could have been covered by acquisition, a small portion of land remained un-acquired, which actually belongs to petitioner. Claiming this piece of land as belonging to them, they have also negotiated with the authorities to secure employment in National Law University.

4. According to petitioner, bare look at the schedules of sale deeds would disclose that boundaries as described in the sale deeds are not the same as now claimed by those unofficial respondents. Since petitioner's land is encroached by moving the boundary stones, he applied for conducting survey. The said request of petitioner was rejected. Ex.P2 is the information displayed on the website showing status of application for conducting of survey dated 04.02.2018 as 'rejected'. This online information of rejection of application is assailed in this writ petition.

5. Learned counsel for petitioner attacks the rejection primarily on the ground that it is not sustainable as no reasons are assigned; there cannot be summary rejection of application to conduct survey and on that ground alone the order is liable to be set aside. According to learned counsel, as held by this Court in several decisions, a person can seek to conduct survey and authorities cannot refuse such request. Thus, when there is a right vested in a person to seek survey, the same has to be

conducted and for any reason, request for conducting survey is rejected, the authority must assign reasons in support of his decision. As rejection is bald, same is liable to be set aside on that ground alone.

6. She would further contend that whenever a request is made survey has to be conducted and as the issue agitated in the writ petition is covered by earlier binding decisions of this Court, the matter has to be considered finally at the admission stage and notice can be dispensed. She would further submit that any delay in conducting of survey would cause grave hardship and suffering. She would submit that in view of the decision of authorities to acquire land for widening of the road adjacent to petitioner's property, unless survey is conducted and boundaries of petitioner's land are demarcated at the earliest, petitioner would be put to irreparable loss and prejudice as unofficial respondents would manipulate to unduly benefit.

7. She would further submit that the decision given by the Mandal Surveyor that there are no field measurements to the subject site is erroneous. She drew the attention of Court to the schedule appended to sale deed, through which the property was purchased to point out that sale deed specifies boundaries and extent of land.

8. At the stage of hearing, learned Assistant Government Pleader produced photocopy of decision of Mandal Surveyor dated 05.03.2018 as well as endorsement of Tahsildar bearing SR No.59/2018/MS/dated 05.03.2018 and contended that it is not the summary rejection without reasons as sought to be contended and

the Mandal Surveyor has assigned reasons in his report why survey cannot be conducted and based on said report, the Tahsildar gave endorsement and, therefore, merely referring to information displayed on the Website, it is not open to petitioner to contend that it is without reasons.

9. Responding to this contention of learned Assistant Government Pleader, counsel for petitioner, by placing reliance on the decision of Supreme Court in **Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others**¹, would submit that validity of the order must be seen as contained in the order and reasons cannot be supplemented in any form. As the order displayed on website did not disclose reasons, the same is liable to be set aside and supplementing the decision by separate proceedings is not valid in law.

10. The Online information displayed on the application of petitioner would disclose the status as 'rejected'. As explained by the learned Assistant Government Pleader, the status of application is only indicated on the website, whereas decision assigning reasons would be communicated to party. The Tahsildar gave endorsement dated 05.03.2018 assigning reasons. This decision of Tahsildar is based on the report submitted by Mandal Surveyor dated 05.03.2018. Mandal Surveyor declined to conduct survey and to assign sub-division in Sy.No.128/7 on the ground that the registered document though indicated total extent, has no recorded measurements. The same is accepted by the Tahsildar. It is not in dispute that by assigning reasons the Tahsildar rejected request to conduct survey vide his endorsement dated 05.03.2018.

¹ AIR 1978 SC 851

This decision of Tahsildar is not challenged. Whether such decision is erroneous and would amount to non application of mind can be gone into by this Court only when a challenge is made to the decision of Tahsildar.

11. In **Mohinder Singh Gill**, Supreme Court held that decision of the Administrative/Quasi judicial authority has to be supported by reasons assigned therein and must speak for itself, but authority cannot seek to support the decision by assigning reasons in the form of an affidavit or in an independent proceedings when the same is assailed before the Court. Supreme Court held,

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16]* :

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

12. In the website, on the application filed by petitioner against heading of status it was written as ‘rejected’; and against heading of remarks, again it was written as ‘rejected’. This information may have been uploaded based on endorsement of the Tahsildar. In the case on hand, by endorsement dated 05.03.2018, Tahsildar is not seeking to justify his decision made earlier, but is a decision rejecting the request to conduct survey. By referring to information status of application for survey displayed in the website, learned

counsel cannot contend that it is not supported by reasons and therefore not sustainable. No material is placed on record to show that whatever is shown on the website amounts to decision and website must contain the reasons. The endorsement of Tahsildar dated 05.03.2018 cannot be held as amounting to supplementing the reasons in support of the decision already made. In the absence of challenge to the decision of Tahsildar dated 05.03.2018, albeit in the form of endorsement, no opinion can be expressed. Suffice to note that principle laid down by Supreme Court in **Mohinder Singh Gill** has no application to the case on hand.

13. Though learned counsel for petitioner made elaborate submissions on the alleged illegal action of unofficial respondents in changing the boundary lines and affecting the property of petitioner and in view of the principles laid down by this Court in several decisions, it is mandatory for the respondent authorities to conduct survey as requested and cannot refuse to conduct survey are not gone into and are left open to be urged in appropriate proceedings.

14. For all the aforesaid reasons, writ petition merits no consideration and is accordingly dismissed, leaving it open to petitioner to avail appropriate remedy as available in law against the endorsement of Tahsildar dated 5.3.2018, if so advised. Pending miscellaneous petitions shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

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