

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 27477 of 2014

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus to declare the order of the 1st respondent (Commissioner, Survey Settlements and Land Records), dated 09.09.2014, as illegal, arbitrary and violative of principles of natural justice.

2) The averments in the affidavit filed in support of the writ petition would show that the second petitioner is said to be the owner and possessor of plots bearing No.50 and 51, admeasuring 270 square yards each in Sy.No.15/1 situated at Hydershakot Village, Rajendra Nagar Mandal, Ranga Reddy District and his wife is the owner of plot No.49, admeasuring 270 square yards situated in the same Village. These plots came to be purchased by way of registered sale deeds dated 27.05.2003 and 28.08.2003. It is further stated that the first petitioner herein is also the owner of plots bearing Nos. 36 to 39 total admeasuring 2122.41 square yards in Sy.No.15/1 of Hydershakot Village, Rajendra Nagar Mandal, which he purchased by way of registered sale deed dated 27.11.2002. Since then, they claim to be in possession of the said plots.

3) While things stood thus, the un-official respondents 3 to 10, represented by their General Power of Attorney Holder, started

interfering with their possession on the ground that the plots fall in Sy.No.18/ 4 and not in Sy.No.15/ 1. The interference lead to lodging of a report on 21.03.2014 by the petitioners. Pursuant to which, the police addressed a letter to the Mandal Revenue Officer, for conducting a survey. The petitioners herein made an application to the second respondent (Assistant Director of Survey and Land Records), for conducting survey in respect of lands in Sy.Nos.18/ 4 and 15/ 1. Notices came to be issued to all concerned, the survey was conducted on 04.04.2014 in the presence of all and the boundaries were re-fixed with the help of village map and village sikham. It is said that as most of the area was covered by structures, the demarcation work could not be finalized and the same was postponed to a further date for ETS Survey. It is said that notices came to be issued again on 07.05.2014, ETS survey was conducted and a report was submitted vide proceedings in Rc.No. A3/ 1052/ 2014, dated 17.05.2014. Questioning the same, respondents 3 to 10 filed an appeal before the first respondent and took a plea that no survey was conducted on 07.05.2014 and that another survey conducted on 05.10.2010, to which, the defence officials gave no objection. At that stage, the appeal filed vide Rc.No.F2/ 5025/ 2011, challenging the survey conducted in the year 2010 was clubbed and a common order came to be passed on 09.09.2014, setting aside the order of the second respondent, on the ground that no panchanama was prepared at the time of survey, which was conducted on

07.05.2014. The order of the first respondent is challenged in the present writ petition.

4) Learned counsel for the petitioners mainly submits that the first respondent has set aside the order of the second respondent mainly on the ground that no panchanama was prepared after the survey, which is contrary to the executive instructions issued with regard to maintenance of lands in Telangana Area. According to him, no objection was raised at the time when the survey was conducted in the month of April, 2014 and also at the time when the boundaries were fixed by ETS on 07.05.2014. It is urged that after ETS was conducted, the data would be downloaded and a combined sketch of Sy.No.15/1 and 18/4 will be prepared. Without taking into consideration the survey conducted under ETS, the first respondent erred in setting aside the order of the second respondent on the said ground. In other words, it is urged that it is not a regular survey, for which panchanama will be prepared by drafting a sketch at the spot. The ETS method is an optical theodilite combined with electronic distance measurement instrument with a mini computer, which is helpful in collecting data from a distance, angle and height. The material which is stored in the said system will be downloaded later and then a sketch would be prepared. Therefore, conducting of a panchanama at the spot showing the location and boundaries etc., may not be possible in this method.

5) Insofar as the conclusion arrived at by the first respondent that earlier survey was in respect of land in Sy.No.18/ 4 and there is no order of stay passed by the first respondent, it is urged that in the survey conducted in the year 2010, the writ petitioners were not parties and no notice was given to them. The survey was in relation to land in Sy.Nos.16 to 21 and that it has no connection with the land in Sy.No.15/ 1. Having regard to the above, it is urged that both the grounds on which the first respondent passed the impugned order cannot be accepted.

6) A counter came to be filed by the respondents 3 to 10 disputing the averments made in the affidavit filed in support of the writ petition, but however admitted that the un-official respondents have no land in Sy.No.15/ 1. It is stated that pursuant to a notice received by the respondents 3 to 10, their GPA holder approached the second respondent and objected for the survey. On a representation made on 07.05.2014, the second respondent asked them to come to the site on 23.05.2014. In the said representation, the respondents 3 to 10 have brought to the notice of the authority about the earlier survey conducted in the year 2010 and also about Smt. Prameela Devi, filing an appeal and the order of stay in the said appeal. In view of the above, it is urged that no survey was conducted and no panchanama was drawn. Hence, pleaded that the alleged report submitted by the second respondent saying that he conducted survey on 07.05.2014 and his report dated 17.05.2014 are false and fabricated. When survey has already been done in the year 2010, the question of

resurveying the very same land after the stay order was passed by the first respondent, is illegal and improper. The manner in which the report came to be submitted by the second respondent, led to filing of the appeal by the un-official respondents before the first respondent. They also disputed the averments in the affidavit that the un-official respondents along with their G.P.A. have participated in the survey without raising any objection. It is further stated that survey of land in Sy.No.15/1 was also completed as per the survey report dated 16.06.2011, when a dispute between the petitioners' predecessor in title and third parties was raised. Therefore, urged that conducting re-survey, even in respect of land in Sy.No.15/1 is illegal, when the earlier survey report/proceeding is still in force. Hence, it is mainly urged that since no panchanama was prepared after the alleged survey, a doubt arises as to whether really any survey was conducted, more so, when the stay of the earlier order of survey was in force as on the said date.

7) As seen from the material available on record, earlier one Smt. Prameela Devi, filed an appeal before the first respondent, challenging the proceedings of the second respondent in Rc.No.A4/ 707/ 2008 dated 05.10.2010. The said appeal came to be filed on 14.12.2011. One of the grounds raised in the said appeal was that this Court while disposing of W.P.No.4495 of 2009, on 05.03.2009, directed the authorities to issue notice to the affected parties before conducting any survey. Since no notice came to be issued even though the said Prameela Devi is

the owner of the property, which was demarked, preferred the said appeal. It is not in dispute that the said appeal relates to land in Sy.Nos. 16, 17 and 18 of Hydershakot Village. While admitting the said appeal, the authority granted stay of all further proceedings insofar as the said land is concerned. Thereafter, the said appeal came to be heard along with the appeal filed against the survey conducted in the impugned proceedings. Findings in the impugned proceedings are as under:

“The verification of connected records reveals that the notices for conducting survey by A.D.S & LR, Ranga Reddy District in Rc.No.A1/ 707/ 2008 dated 10.06.2010 were served on the President, Raghuram Nagar Welfare Association and Sri M.Vamsi Krishna, S/o. Laxma Reddy, who filed WPMP Nos.22818/ 2009, 22819/ 2009, 22820/ 2009 and 22821/ 2009 and Sri Laxma Reddy, father of M.Vamsi Krishna and the husband of Smt. M.Prameela Devi, the appellant herein, participated in the survey conducted on 24.09.2010 and signed the proceedings, but did not file any objection petitions.

In view of the above facts, the allegation that the appellant herein was not served with notices for survey conducted on 24.09.2010 is baseless and is not supported by the connected records.

The other appeal No.F2/ 1762/ 14 filed by Sri B.Ravi Yadav, G.P.A. of E.Narasimha and 7 others, is examined with reference to the connected records. The appellant contended that the respondents 2 and 3 herein who applied for survey on 24.03.2014 do not have any right, title or interest in the land in Sy.No.18/ 4 and the respondent No.1 has not verified the title of the applicants with reference to title documents and revenue records. He further stated that the respondent No.1 also

ignored the pending proceedings before the Commissioner, SS & LR in respect of the land in question and also the objection petition filed by the appellant fixed a date for conducting survey on 07.05.2014 and conducted the survey, though none of the interested parties were present. The respondents represented by their counsel Sri I.Nagender, Advocate argued the matter and contended that much of the land in Sy.No.18/4 of Hydershakote village is acquired for defence purpose and the left over land is covered by PWD road from Hyderabad to Vikarabad and there is no land left on the other side of the road.

The matter verified with reference to the connected record. The applicants Sri Om Prakash and Sri Pratap who applied for survey of the land in Survey Nos. 15/1 and 18/4 are plot owners in the land bearing Survey No.15/1 and are not interested parties on the land in Survey No.18/4 of Hydershakote Village. Ignoring the fact that the applicants are not interested parties in the land bearing Survey No.18/4 of Hydershakote Village the respondents-1 issued notices to the affected parties vide reference No.A3/ 1052/ 14, dated 02.05.2014 mentioning the survey of the land in Survey No.15/1 and 18./4 of Hydershakote Village on 07.05.2014 at 9.30 A.M. Further the respondent No.1 ignored the fact that his predecessor has already conducted the survey of the land in Survey Nos. 16, 17, 18/1, 18/2, 18/3, 18/4, 19 and 21 of Hydershakote village on 24.09.2010 and an appeal filed by Smt. M.Prameela Devi on the said survey is pending before the Commissioner, SS & LR, in ref.No.F2/ 5025/ 11 and the interim suspension granted on 16.12.2011 is still in effect.

The verification of connected record further reveal that the respondent No.1 issued proceedings in Rc.No.A3/ 1052/ 14 on 17.05.2010 discussing the survey details of the land in Sy.No.18/4 and 15/1 of Hydershakote village but did not conduct panchanama of the said survey conducted on 07.05.2014. No such

panchanama copy is available in the connected records along with the survey report. As per the Executive instructions issued with regard to the maintenance of Land Records in Telangana region, after conducting the survey in the presence of village officers, applicants and other interested parties, a panchanama has to be conducted and the signature of the panchas present has to be obtained for the purpose of record. But no such action was taken by the respondent No.1. The survey conducted by the A.D.S & LR herein differs with the survey conducted by his predecessor earlier in compliance with the orders of the Hon'ble High Court of Andhra Pradesh in W.P.No.4495/ 2009, dated 05.03.2009."

8) Further, it would be of some use to refer to the contents of the report of the Assistant Director of Survey and Land Records dated 5.10.2010 with regard to land in Sy.No.18/4, which is as under:

"Survey No.18/4 is admeasuring Ac.15.20 gts., also belongs to the same pattadars as mentioned in the Survey No.16. The survey number has been demarcated with the help of teepan measurement and village map. There is a existing road leading from Hyderabad to Chevella in the said survey number."

9) From the proceedings initiated by Smt. Prameela Devi, it is clear that a survey came to be conducted in respect of lands in Sy.Nos. 16, 17, 18/4, 18/2 and 19 but not in Sy.No.15/1. Further, the petitioners herein were not parties to the said proceedings. Therefore, the argument of the learned counsel for the respondents that the authorities could not have conducted any survey in respect of land in Sy.No.15/1 cannot be accepted.

10) It is to be noted that the petitioners were not aware about the earlier survey conducted, and as such made an application before the second respondent, for holding a survey, since the un-official respondents started interfering with their property on the ground that their plots fall in Sy.No.18. The dispute is whether the plots are in Sy.No.15/ 1 or in Sy.No.18/ 4. Unless an inspection is done in respect of both the survey numbers, probably it would be difficult to identify as to whether these plots fall in Sy.No.15/ 1 or 18/ 4 and whether there was any encroachment by the petitioners, as alleged by the un-official respondents.

11) As observed earlier, the earlier survey was conducted in respect of Sy.No.18/ 4, to which the petitioners were not parties. In one way it would imply that the plots which are in occupation of the petitioner do not fall within Survey No.18/ 4. If really the land occupied by the petitioners fall within Sy.No.18/ 4, definitely notice would have been issued to them. Probably notice was not issued since their plots do not fall in Sy.No.18/ 4. Be that as it may, as observed by me earlier, the first ground on which the appeal came to be allowed is not preparing a panchanama after the survey and the second ground was the existence of earlier survey.

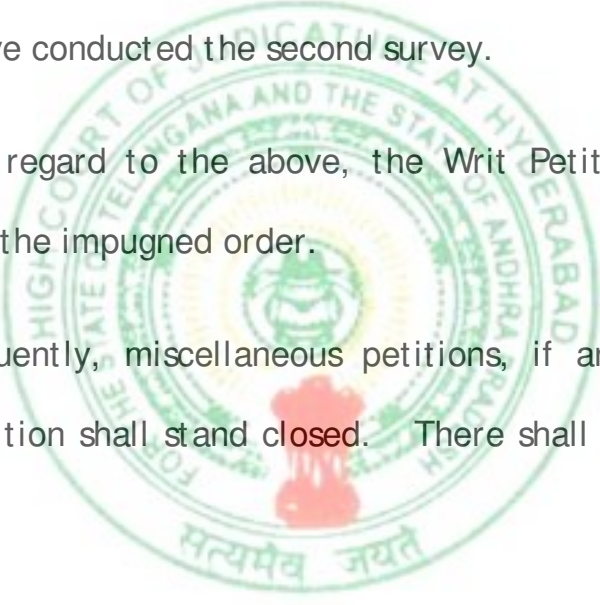
12) Insofar as preparing panchanama after the survey, it was observed earlier that since the entire area was having structures, ETS system was adopted for conducting survey. No objection came to be raised when the said survey was conducted. Preparing

a panchanama at the spot in my view may not arise since the recordings made through electronic system are required to be downloaded later and then a report has to be prepared. There was nothing at the scene to be prepared and probably for that reason no panchanama was prepared.

13) Insofar as the second issue is concerned, as held by me earlier, the first survey was in respect of plots in Sy.Nos. 16, 17, and 18 and not in Sy.No.15/ 1. Therefore, it cannot be said that the earlier survey and stay was in force and that the authority could not have conducted the second survey.

14) Having regard to the above, the Writ Petition is allowed setting aside the impugned order.

15) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.


JUSTICE C. PRAVEEN KUMAR

27.09.2018
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