

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.228 OF 2006

ORDER:

This Writ Petition is filed for issuing Writ of Mandamus declaring the proceedings of the first respondent issued in G.O.Rt.No.1890 Revenue (Assn.III) Department dated 01.10.2005 as illegal, arbitrary, without authority and without jurisdiction, violative of the provisions of Article 300A of the Constitution of India and contrary to the principles of natural justice and consequently direct the respondents to restore the land of the petitioner in plot No.533, Road No.26 of the Jubilee Hills Co-operative House Building Society, Jubilee Hills Colony, Hyderabad.

2. The case of the petitioner is that he is the member of the third respondent-The Jubilee Hills Co-op. House Building Society (for short 'Society'), he was allotted plot No.533 from the approved housing plots by the Society. After allotment, the Society took the developmental work i.e. laying roads, drainage, electricity and water supply. After development, the third respondent Society conveyed plot No.533 of the approved lay out to the petitioner through registered sale deed dated 21.08.1987 and thereby the title had been passed to the petitioner absolutely without encumbrance. He was in possession of the land. While so, the third respondent Society informed the petitioner that the first respondent issued a notice asking the third respondent to show cause as to why the plot standing in the name of the petitioner and other two members, who were similarly allotted the plots, could not be resumed. The petitioner had not received any notice, however,

the third respondent Society submitted a reply on 07.09.1987 to the notice dated 12.08.1987 stating that the plots, which are said to be resumed, were already allotted to some members of the Society and were registered in the name of the members. However, the first respondent without giving any opportunity and without following due process of law passed the resumption order vide Memo No.3563/Q2/87-5 dated 08.03.1988. Against the resumption order, the petitioner filed W.P.No.7752 of 1989. While admitting the said writ petition, this Court passed the order dated 17.05.1988 in WPMP No.9673 of 1988 directing the first respondent not to enter the land in plot No.533 of the third respondent or to erect any construction thereon. In spite of the order of this Court, the first respondent proceeded with construction work in the plot. Meanwhile, this Court allowed the W.P.No.7752 of 1988 by order dated 08.07.1996 setting aside the resumption order dated 08.03.1988 on the ground that the impugned resumption order was passed without hearing the petitioner and contrary to the provisions of the natural justice, giving liberty to the first respondent to issue a fresh notice to the petitioner and pass appropriate orders. When the first respondent was proceeding with the construction, without passing any orders as per the resumption notice, the petitioner filed another writ petition in W.P.No.4233 of 2004. This Court disposed of the said writ petition on 09.03.2004 directing the first respondent to pass appropriate order in resumption notice after considering the representation made on 04.09.1997 by giving an opportunity of hearing to the petitioner, within a period of three months from the date of receipt of the copy of the order. When the first respondent

was proceeding with the construction without passing any order on the resumption notice, the petitioner filed C.C.No.588 of 2005. The first respondent without considering the reply to the resumption notice, without hearing the petitioner, contrary to the orders of this Court passed in W.P.No.4233 of 2004, hurriedly passed the impugned resumption order dated 01.10.2005, against which the present writ petition came to be filed.

3. The first respondent filed a counter affidavit stating that the land to an extent of Acs.224-39 guntas in survey No.126 of Yousufguda Village and land to an extent of Acs.2967-27 guntas in survey No.403 of Shaikpet Village of Hyderabad District was classified as government poramboke land, both the survey numbers situated adjacent to each other. The land to an extent of Acs.1195.00 guntas in survey No.403 of Shaikpet Village was allotted to Jubilee Hills Society on payment of market value of Rs.200/- per acre while the land to an extent of Acs.30.00 guntas in survey No.403 of Shaikpet Village was allotted to the Institute of Administration, Hyderabad. The land was handed over to the Society in the year 1965. For long period, the Society has not utilized a large extent of land for which it was allotted. No construction was made during the period 1965-1988 i.e. for a period of 23 years. A portion of the subject land was used as public passage. A notice bearing No.1554/Q2/85 dated 12.08.1987 was issued to the Society, for resumption of the land in plot Nos.533, 534 and 535 as no constructions have been taken up and they are vacant even after twenty years. The area covered by the plot Nos.533, 534 and 535 was needed by the government for providing access to the campus of Institute of Administration. For

the notice served on the Society on 27.08.1987, the Society had given telegram objecting to the resumption on the ground that the land was already allotted and registered to the members. However, the Government passed the order in Memo No.3563/Q2/87-5 dated 08.03.1988 ordering for resumption of the land. Accordingly, the Mandal Revenue Officer conducted Panchanama and resumed the land covered by plot Nos.533 and 534 and handed over to R&B department on 17.03.1988, against which the petitioner filed W.P.No.7752 of 1988. Further it is stated that plot No.533 is covered by Institute of Administration campus and it is located near the main gate of Dr.Marri Chenna Reddy Human Resources Development Institute. As per the orders of this Court, the Government examined the matter and rejected the request of the petitioner vide G.O.Rt.No.1890 Revenue (Assn.III) dated 01.10.2005. C.C.No.585 of 2008 was closed on 31.10.2005.

4. Learned counsel Sri J.V.Prasad would contend that the land to an extent of Acs.1195.10 guntas in survey No.403 of Shaikpet Village, Hyderabad District, was allotted to the third respondent Society on payment of market value of Rs.200/- per acre. Thereafter, the third respondent Society after developing the land got lay out approval from the competent authority. The petitioner, being a member of the respondent Society, was allotted with plot No.533 of the lay out and was conveyed the plot through registered sale deed dated 21.08.1987 and thereafter the third respondent Society took time to lay roads, drainage, etc. in the lay out. In the meanwhile, the first respondent issued a notice of resumption to the third respondent Society stating as to why plot

Nos.533, 534 and 535 stood in the name of the Society shall not be resumed. The third respondent, which received the said notice on 12.08.1987, replied on 07.09.1987 stating that the lands which are sought to be resumed were already allotted to some members and the registration was also effected in their favour. However, the first respondent without any notice to the affected persons, passed orders resuming the land vide Memo No.3563/Q2/87-5 dated 08.03.1988.

5. Learned counsel further submits that after coming to know the order passed, the petitioner filed W.P.No.7752 of 1987 before this Court questioning the order dated 08.03.1988 of the first respondent as illegal. This Court while admitting the said Writ Petition, passed an interim order on 17.05.1988 in WPMP No.9673 of 1988 directing the first respondent not to enter upon the petitioner's plot in plot No.533 of the third respondent and not to erect any constructions thereon. The said writ petition was disposed on 08.07.1996 setting aside the resumption order dated 08.03.1988 leaving it open to the first respondent to issue fresh notice to the petitioner before passing appropriate orders. *In spite* of orders in the writ petition, the first respondent made encroachments in the land of the petitioner. Thereafter, the first respondent issued resumption notice in Memo No.68725/ Assn.III(2)/88-89 dated 17.07.1997. Petitioner submitted a reply dated 04.08.1997 to drop the resumption proceedings and direct the second respondent to release the plot as it was encroached upon by them. The first respondent continued to develop the land, without passing any orders on the resumption proceedings. In those circumstances, the petitioner filed another writ petition in

W.P.No.4233 of 2004. The said writ petition was disposed on 09.03.2004 directing the first respondent to pass appropriate orders on the resumption notice after considering the petitioner's representation made on 04.08.1997 by giving an opportunity of hearing to the petitioner, within a period of four months. The first respondent without passing any orders permitted its officials to make construction in the plot of the petitioner. In those circumstances, the first respondent hurriedly passed the impugned orders without proper appreciation of facts and without hearing the petitioner, contrary to the orders of this Court. He would further contend that the first respondent had no authority to pass resumption orders after the land is allotted to the third respondent-Society on market value. In turn, the third respondent-Society has allotted and conveyed the plot to the petitioner through registered sale deed. He placed reliance on ***Dr.Dinakar Mogili v. State of Andhra Pradesh***¹ and submits that the impugned order passed by the first respondent is wholly illegal and without any authority of law.

6. In view of the submission of the learned counsel, in considered view of this Court, the first respondent passed the impugned order of resumption without any authority on the petitioner's plot of land, improperly high handedly *in spite* of resistance of the petitioner and allowed the second respondent to make constructions in petitioner's plot. Unilateral resumption of private lands, except in accordance with the provisions of the Land Acquisition Act, would violate Article 300A of the Constitution of India. Hence, the impugned resumption order of the first

¹ 2011 (6) ALD 502

respondent is set aside. The first respondent is directed to pay compensation for the petitioner's plot under the provisions of the Land Acquisition Act or else allot another house plot in the vicinity of the petitioner's plot equal to the value of the petitioner's plot. The entire exercise in this regard shall be completed within a period of four months from the date of receipt of a copy of this order.

7. Accordingly, the Writ Petition is disposed of. However, in the circumstances, without costs.

8. Miscellaneous petitions pending in this petition, if any, shall stand closed.

25th January, 2018
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(M.GANGA RAO, J)