

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

I.A.No.2 of 2018 in WPMP.No.20568 of 2017

in / and

WP.No.16756 of 2017 and C.C.No.2825 of 2017

COMMON ORDER :

The 1st petitioner initially filed the W.P.16756 of 2017 to declare the action of the respondents particularly respondent no.s 3,7 and 9 in interfering with his private patta lands admeasuring Ac.0.33 gts in S.No.285 and Ac./3.32 gts in S.No.294 at Kanteshwar Shivar, near Gangasthan Phase-I, Nizamabad and forcefully carrying on excavation work with assistance of police as illgal and highhanded and to stop them from doing so.

2. The 1st respondent is the State of Telangana, rep. by its Principal Secretary, Revenue Department; 2nd respondent is the District Collector, Nizamabad; 3rd respondent is the Joint Collector, Nizamabad; 4th respondent is the Revenue Divisional Officer, Nizamabad; 5th respondent is the Tahsildar (North), Nizamabad; 6th respondent is the Assistant Director, Survey and Land Records, Nizamabad; 7th respondent is the Station House Officer, Rural Police Station, Near Armour Road, Nizamabad; 8th respondent is B.C. Welfare Officer, Nizamabad; and 9th respondent is the Executive Engineer, Telangana State Education and Welfare Infrastructure Development Corporation.

3. Pending the Writ petition, the 1st petitioner died on 12.1.2018 and the other petitioners have been brought on record as his legal heirs.

THE CASE OF THE PETITIONERS

4. The petitioners contend that the 1st petitioner was the owner and possessor of agricultural lands of extent Ac.0.33 gts. in Sy.No.285, Ac.0.21 gts.in Sy.No.286/A, 333.666 Sq.Yds. in Sy.No.293, Acs.3.32 gts. in Sy.No.294 and Acs.6.04 gts. in Sy.No.307 of Kanteswar Shivar, Nizamabad; that these lands were 1st petitioner's ancestral lands standing in the name of his grandfather Mansoor Ali Shah and inherited by him on his death; that the lands were Mafi Inam lands and his grandfather was the Inamdar; that the lands were standing in the name of the 1st petitioner in the Revenue Records; and that vide proceeding No.RTI/178/2015 DT.27.10.2015 (Ex.P.4), the Assistant Director, Survey and Land Records, Nizamabad (6th respondent), informed the son of the 1st petitioner Raees Mirza (petitioner no.9) that as per the *Sethwar of 1963*, land in Sy.Nos.285 and 294 are recorded as patta lands in the name of Mansoor Ali Shah.

5. The petitioners contend that respondent nos.1,2,5, the District Registrar, Stamps and Registration, Nizamabad, The Executive Engineer, Telangana State Medical Services Infrastructure Development Corporation and it's contractor by name Vidyapal Reddy tried to interfere with his possession and enjoyment of the land admeasuring 333.666 Sq.Yds. in Sy.No.293 by allotting the same to

the District Registrar, Stamps and Registration Department, Nizamabad District without following due process of law alleging that it is a defunct canal land; that 1st petitioner filed WP.No.39333 of 2014 in this Court to stop interference by them; while ordering notice before admission on 23.12.2014 in that Writ Petition, *status quo* order was granted which was subsisting.

6. The petitioners contend that respondent nos.1, 2, 4, 5 and 8 in this Writ Petition started interfering with the 1st petitioner's lands of extent Ac.0.33 gts. in Sy.No.285 and Ac.3.32 gts. in Sy.No.294 and sought to allot it to B.C. Welfare Officer, Nizamabad (8th respondent) by trespassing into the said land and levelled it using machinery and laid a foundation stone for construction of B.C. Study Circle; that 1st petitioner filed WP.no.29344 of 2016 questioning the said illegal action of respondents; on 31.08.2016, this Court posted the matter after two (02) weeks and directed *status quo* obtaining as on that day to be maintained till then.

7. The petitioners contend that subsequently, the Joint Collector, Nizamabad (3rd respondent herein), who was not a party in the said Writ Petition No.29344 of 2016, gave instructions to respondent nos.5 and 6 to conduct survey; he also instructed respondent no.4 to take police force from Station House Officer, Rural Police Station, Near Armour Road, Nizamabad (7th respondent) and caused a survey to be made violating the *status quo order* and allowed the Executive Engineer of Telangana State Education and Welfare Infrastructure

Development Corporation (9th respondent) to start construction work by excavating with J.C.B. Proclainer in petitioner's land; though notice of Contempt was given to these respondents on 10.04.2017, since respondent nos.3, 7 and 9 were not parties to the W.P.no.29344 of 2016, the 1st petitioner was constrained to file the present Writ Petition seeking relief against them and to stop them from interfering with 1st petitioner's land of Ac.0.33 gts. in Sy.No.285 and Ac.3.32 gts. in Sy.No.294.

8. The petitioners contend that the 1st petitioner's father by name Sher Ali Shah had filed O.S.No.28 of 1996 before the Principal Junior Civil Judge, Nizamabad for a perpetual injunction against (i) the Executive Engineer (Irrigation), Nizamabad, (ii) the District Collector, Nizamabad, (iii) the Mandal Revenue Officer, Nizamabad, (iv) the Municipal Council, Nizamabad and certain third parties (defendant nos.5 to 8 therein) when they attempted to interfere with the land admeasuring Ac.0.05 gts. on the western side of Sy.No.293 which was being used by him as a water channel for supply of water from his well to his other land in the said Sy.No. where he also intended to construct a house; that defendant nos.5 to 8 therein, who were allegedly assigned plots on 27.05.1996 by the Joint Collector in the land adjacent to Distributory Canal (D-54/3), were interfering with his said possession; that the Executive Engineer, Nizamabad and the Mandal Revenue Officer, Nizamabad filed written statements stating that adjacent to the plaintiff's land in Sy.No.293, there is a

Distributory Canal (D-54/3) which was handed over to Revenue Department more than 60 years back; that this land was converted into plots and assigned to defendant nos.5 to 8 in the suit by the Joint Collector and plaintiff had no title to the land; that in that suit the Surveyor, attached to the Office of the Mandal Revenue Officer, Nizamabad gave evidence as DW.2 admitting that in the original village map of Kanteswar Village, there is no mention of canal boundary and the Distributory Canal is not passing through Sy.No.293 and that the canal is only after the land in Sy.No.293 on the other end; and that the Civil Court gave a judgement decreeing the suit on 6.9.2000 recording a finding on the basis of the oral and documentary evidence that the Distributory Canal (D.54/3) was not passing through Sy.No.293 and it starts after the land in Sy.No.293 on the other end. They filed the said judgment as Ex.P.7 in this Writ Petition.

9. The petitioners contend that no appeal was filed against the said judgment by the defendants in the suit including the District Collector, Nizamabad and the findings therein that there is no Distributory Canal (D-54/3) in Sy.No.293 and the canal is only after the land in Sy.No.293 on the other end are binding on the respondents in this Writ Petition; and when the location of the Sy.Nos. is noted from Ex.R.23 filed by the respondents, it is clear that Sy.No.294 is adjacent to Sy.No.293 on the northern side and Sy.No.285 is adjacent to Sy.No.294 on the western side of Sy.No.294; and there cannot be any canal in between Sy.No.285 and 294, as contended by respondents in

which land can be allotted to the B.C. Study Circle by them. They contend that respondents wish to grab petitioners' lands by pleading existence of a fictitious Distributory canal without following due process of law and this cannot be allowed.

10. The petitioners contend that the survey allegedly conducted by 6th respondent is not binding on 1st petitioner or on them as it was done behind their back; that the 3rd respondent is directing the 7th respondent to provide police protection and force to respondent no.9 to proceed with the construction and 9th respondent started excavation with J.C.B. proclainer in the said land; and that respondent nos.3, 7 and 9 ought not to be allowed to proceed with construction in the petitioners' lands taking advantage of the fact that they were not parties in WP.No.29344 of 2016.

11. The counsel for petitioners reiterated the said contentions.

THE INTERIM ORDER IN WP.NO. 16756 OF 2017

12. On 04.05.2017, while directing maintenance of *status quo* till 11.05.2017, this Court directed the Government Pleader for Revenue to get the village map, field maps of Sy.Nos.285 and 294 and D-54/3 (where according to the respondents, Nizamsagar Canal passes in between Sy.Nos.285 and 294).

13. On 11.05.2017, there was direction to post the matter after summer vacation. On 22.11.2017, the Writ Petition was admitted and an order was granted in WPMP.No.20568 of 2017 that pending

further orders, no construction activity shall be done in the subject land.

THE STAND OF RESPONDENT NO.S 1-5

14. On 15.02.2018, the respondent nos.1 to 5 filed I.A.No.2 of 2018 to vacate the said order.

15. In the counter-affidavit filed by them, it is contended that the State Government proposed to construct Study Circle for Backward Classes and decided to identify suitable Government vacant land; that the Tahsildar, Nizamabad (5th respondent) on 25.06.2013 submitted proposals to the Revenue Divisional Officer, Nizamabad that 2000 Sq.yds. of vacant Government land on defunct D-54/3 Nizamsagar Canal boundary situated at Gangasthan of Kanteswar Village, Nizamabad was available for the said purpose; that the Director, A.P. Study Circle for Backward Classes, Nizamabad was requested by the Collector, Nizamabad to submit alienation proposals on 02.07.2013; the proposals received were forwarded by the Tahsildar for alienation of the said land and possession was handed over by the Tahsildar, Nizamabad of 2000 Sq.Yds. on the defunct D-54/3 canal boundary under a Panchanama dt.20.08.2013 for construction of B.C. Study Circle; and the Government vide G.O.Ms.No.20 B.C. Welfare (G) Department dt.25.01.2014, accorded administrative sanction of Rs.2.55 crores for construction of the Study Circle for Backward Classes at Nizamabad.

16. It is denied by the respondent nos.1 to 5 that the land earmarked for the construction of the Study Circle for Backward Classes is in the land of the petitioners. It is contended that D-54/3 canal land alienated for the said purpose lies in between Sy.Nos.285 and 294 and the petitioner has no concern with it. It is stated that as per village map of Kanteswar Village, the canal D-54/3 passes between Sy.Nos.285 and 294 and other Sy.Nos.; that the ayacut under D-54/3 was converted for non-agriculture purpose, i.e., housing colonies; and the petitioner did not put forth any evidence that B.C. Study Circle being constructed by 9th respondent is in Sy.Nos.285 or 294.

17. It is alleged that the petitioner is obstructing its construction stating that he has got *status quo* order. It is stated that a Survey was conducted by the Assistant Director, Survey and Land Records along with the Dy. Inspector of Survey, Mandal Surveyor, Village Revenue Officer on 10.04.2017 for identification of the site of 2000 Sq.Yds. which is in the defunct D-54/3 Nizamsagar Canal boundary.

**NO COUNTER AFFIDAVITS FILED BY RESPONDENT NOS 6-9
DENYING PETITIONERS' CONTENTIONS**

18. No counter-affidavits have been filed by respondent nos.6 to 9 though notices to them sent through Court have been served. Sri A. Yadav Reddy, counsel for 9th respondent stated that because of the interim order granted by this Court in this Writ Petition, no construction activity is being done by his client.

CONTENTIONS OF THE GOVERNMENT PLEADER FOR REVENUE

19. The Government Pleader reiterated the contentions in the counter filed by respondent no.s1-5.

20. He further contended that this Court should not decide civil disputes of the nature raised in the Writ Petition since disputed questions of fact are involved, and the rights claimed by the petitioners are private in character, and should relegate the petitioners to the Civil Court. He relied on the decisions in **Union of India and others v. S.M. Hussain Rasheed and others¹**, **M.S.N. Raju and others v. Mandal Revenue Officer, Jami Mandal, Vizianagaram and others²** and **Joshi Technologies International Inc. v. Union of India³**.

21. The Government Pleader also contended that the present Writ Petition is not maintainable since the petitioners have already filed WP.No.29344 of 2016 seeking similar relief.

22. Apart from these contentions, the Government Pleader also placed reliance on an order passed by the Joint Collector, Nizamabad in Case No.F1/914/2017 dt.24.11.2017 under the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 in relation to land in Sy.No.136 (Old) equivalent to New Sy.No.307 of extent Ac.6.04 cents at Kanteswar Village cancelling the pattadar pass book and title deed issued to the 1st petitioner's father Sher Ali Shah.

¹ 2003 (5) ALD 150 (D.B.)

² 2011 (3) ALT 118

³ (2015) 7 SCC 728 – At Para No.56, Pg.757

FURTHER EVENTS PENDING THE WRIT

23. On 25.04.2018, the Government Pleader for Revenue was directed to produce the village map of Kanteswar, and the matter was posted 30.4.2018. He stated on 30.4.2018 that such village map was not available.

24. So, on 30.04.2018, the Government Pleader for Revenue was directed to produce the Revenue Record indicating the existence of the Nizamsagar canal D-54/3 either in Sy.No.285 or in Sy.No.294 or in between the said two Sy.Nos. and the matter was posted after summer vacation.

25. The Government Pleader for Revenue stated on 20.06.2018 that no such revenue record exists and so the same is not being produced. He only sought to rely on Ex.R.23, a location sketch prepared by the Tahsil Surveyor, Nizamabad pursuant to the alleged survey conducted by the 6th respondent.

26. I have noted the contentions of both sides.

THE CONSIDERATION BY THE COURT

27. It is true that normally in exercise of jurisdiction under Article 226 of the Constitution of India, disputed questions of fact are not gone into.

28. However, the Supreme Court in **A.B.L. International Limited v. Export Credit Guarantee Corporation of India**⁴ has held that there is no absolute rule that in all cases involving disputed questions of fact, the parties should be relegated to a civil court.

29. It relied on **Gunwant Kaur v. Municipal Committee, Bhatinda**⁵ where it had been held that a High Court is not deprived of its jurisdiction to entertain a Writ Petition under Article 226 merely because in considering the petitioner's right to relief, questions of fact may fall to be determined; that the High Court has jurisdiction to try issues both of fact and law in a petition under Article 226; and only where questions of fact of complex nature are raised which may require oral evidence and the High Court is of the view that it is not appropriate to decide it in a Writ Petition, it may decline to try.

30. Similar view has also been taken in **Century Spinning and Manufacturing Company Limited v. Ulhasnagar Municipal Council**⁶, where it was held that merely because a question of fact is raised, the High Court will not be justified in requiring a party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit against a public body.

31. Therefore, this contention raised by the Government Pleader for Revenue is rejected.

⁴ (2004) 3 SCC 553

⁵ (1969) 3 SCC 769

⁶ (1970) 1 SCC 582

32. Article 300-A of the Constitution of India states that no person shall be deprived of his property save by authority of law.

33. The Supreme Court held in **Meghmala and others v. G. Narasimha Reddy and others**⁷ that even the State authorities cannot dispossess a person by an Executive Order and the State can resume possession only in a manner known to or recognized by law and not otherwise. Similar view has been taken in **Bishan Das v. State of Punjab**⁸, **Express Newspapers (P) Ltd. v. Union of India**⁹, **State of U.P. v. Dharmender Prasad Singh**¹⁰ and **State of West Bengal v. Vishnunarayan and Associates (P) Ltd.**¹¹

34. This legal position is not disputed by the Government Pleader for Revenue.

35. In the instant case, the petitioners contend that their land in Sy.No.285/294 of Kanteswar Shivar is being attempted to be forcibly taken away by the respondents for construction of a B.C. Study Circle.

36. The 6th respondent had issued proceedings No.R.T.I/178/2015 dt.27.10.2015 under the Right to Information Act, 2005 to the 9th petitioner that the land in the said Sy.Nos. is recorded in the *Sethwar* as patta land belonging to Mansoor Ali Shah, the grandfather of the 1st petitioner.

⁷ (2010) 8 SCC 383

⁸ AIR 1961 SC 1570

⁹ (1986) 1 SCC 133

¹⁰ (1989) 2 SCC 505

¹¹ (2002) 4 SCC 134

37. Notwithstanding the above, without any basis, in para no.14 of the counter-affidavit, the respondents 1 to 5 deny that 1st petitioner is the rightful owner of the said land and state that it is a wakf land. This plea cannot be countenanced.

38. Their further plea is that the construction of B.C. Study Circle is not in Sy.No.285 and 294, but it is in D-54/3, the Nizamsagar Defunct Canal boundary *allegedly lying between the two Sy.Nos.*

39. If there is any such canal in between the said Sy.Nos. formed after survey and settlement operations, there would be a Revenue Record corroborating it. As stated above, the Government Pleader for Revenue has not produced any Revenue Record to show the existence of such a canal in between Sy.Nos.285 and 294.

40. Ex.R.23, sketch prepared by the 6th respondent, cannot be the basis for any such claim, not only because it was prepared by him behind the back of the petitioner, but also since there is no Revenue Record in support thereof.

41. Moreover, as rightly contended by the counsel for petitioner in O.S.No.28 of 1996 between the 1st petitioner's father and the District Collector, Nizamabad and others, the Surveyor, attached to the Office of the Mandal Revenue Officer, Nizamabad produced the original village map of the village and stated that there is no canal boundary shown therein and the Distributory Canal (D-54/3) did not pass through even Sy.No.293 and had ended before Sy.No.293 at the other

end. The Civil Court decreed the suit on the said basis and the judgment therein became final since there was no appeal thereto. The said judgment thus binds the respondent nos.2, 5 and the other respondents who claim through them.

42. According to Ex.R.23, filed by the respondents, Sy.No.293 is to the south of Sy.No.294, and Sy.No.285 is to the west of Sy.No.294. If the canal boundary ended before Sy.No.293 at the other end, it could not have progressed in between Sy.Nos.285 and 294. So there is no canal boundary land in between Sy.No.285 and 294 which could have been earmarked by the respondents for construction of B.C. Study Circle *prima facie*.

43. It is not disputed by respondents that there are housing colonies in the neighbourhood of land in S.No.285 to 294.

44. It thus appears that the respondents invented a fictitious Nizamsagar canal boundary in between Sy.Nos.285 and 294 to grab petitioner's land in the said Sy.Nos. which is admittedly patta land belonging to them highhandedly, arbitrarily in violation of Article 14, 300-A of the Constitution of India. Thus *prima facie* the State is trying to grab petitioners' property without following due process of law by violating Art.14 and 300-A of the Constitution of India.

45. The respondents cannot be allowed to raise the technical plea of existence of a 'property dispute' to do a *fait accompli*, grab the petitioners' property and compel the petitioners to file a civil suit for

its recovery and wait inordinately for relief, in the facts and circumstances of the case.

46. No doubt, there are observations in the Division Bench judgment in **S.M. Hussain Rasheed and others** (1 supra) to the effect that where there is a dispute as to whether a particular property vests or not, in the State or in any private individual, the dispute is a civil dispute and must be resolved by a suit and not in a proceeding under Article 226 of the Constitution of India. It was also stated therein that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between the parties. The Court relied upon **New Satgram Engineering Works v. Union of India**¹², **Mohan Pandey v. Usha Rani Rajgaria**¹³ and **Lambadi Pedda Bhadrur v. Mohd. Ali Hussain**¹⁴.

47. In **M.S.N. Raju** (2 supra), it is stated that disputes regarding possession of immovable property cannot be effectively resolved in summary proceedings under Article 226 of the Constitution of India only on the basis of affidavits and counter-affidavits without tendering witnesses for cross-examination. It was also held that effective, alternative and comprehensive remedy is by way of private law review for declaration, injunction and damages before the Civil Court. Reliance was placed therein on **Syed Khasim Bahadur v. District**

¹² (1980) 4 SCC 570

¹³ (1992) 4 SCC 61

¹⁴ 2003 (4) ALD 673 (D.B.)

Collector, Ranga Reddy District¹⁵ and Sohanlal v. Union of India¹⁶.

48. But having regard to the decision of the Supreme Court in **Meghmala and others** (7 Supra) and the like referred to supra, which enjoin a duty on this Court to protect property right of citizens from State action without authority of law, I am not inclined to follow the decisions cited by the Govt. Pleader for Revenue. In my opinion, it would be a travesty of justice to permit the respondents to grab what is *prima facie* petitioners' land and drive them to a civil court in the facts and circumstances of the case.

49. The Government Pleader also contended that the present WP is not maintainable in view of filing by 1st petitioner of earlier WP.No.29344 of 2016 seeking similar relief.

50. Admittedly, respondent no.s 3(Jt.Collector), respondent No.7 (Station House Officer, Rural Police Station, Near Armour Road, Nizamabad) and respondent no.9 (the Executive Engineer, Telangana State Education and Welfare Infrastructure Development Corporation) herein are not parties in W.P.29344 of 2016. So to seek directions against these respondents, petitioners are entitled to file the instant Writ Petition.

51. Petitioners have alleged specifically that taking advantage of the same, at the instigation of respondent no.3, respondent no.9 is

¹⁵ 2002 (3) ALT 739

¹⁶ (1957) S.C.R. 738

proceeding with construction work in the property of petitioner with help of 7th respondent police. Since no counter affidavit is filed by respondents 7 and 9, this allegation remains un-rebutted. The respondents 3, 7 and 9 cannot be allowed to circumvent the status quo order passed on 31.8.2016 and grab the petitioners' property.

52. Much emphasis was placed by the Govt. pleader on the order passed by the Joint Collector, Nizamabad in Case No.F1/914/2017 dt.24.11.2017 under the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 in relation to land in Sy.No.136 (Old) equivalent to New Sy.No.307 of extent Ac.6.04 cents at Kanteswar Village cancelling the pattadar pass book and title deed issued to the 1st petitioner's father Sher Ali Shah. This has no relevance since it does not relate to S.No.285 or S.No.294 with which we are concerned in the instant case.

53. Therefore the Writ Petition is allowed with costs of Rs.5,000/- to be paid by respondent no.s 3,7 and 9 to petitioners and the said respondents are restrained from interfering in any manner with possession and enjoyment of the petitioners of the land in S.No.285 and 294 of Kanteswar Shivar and make any excavation or construction therein. The 9th respondent shall remove the structures erected in the petitioner's land forthwith. Consequently I.A No.2/2018 is dismissed.

C.C.No.2825 of 2017

54. This Contempt Case is filed alleging wilful disobedience by respondent Nos.2, 3, 4, 5 and 9 in the Writ Petition of the order dt.22-11-2017 in W.P.M.P.No.20568 of 2017 in W.P.No.16756 of 2017 wherein this Court had directed that pending further orders in the Writ Petition, no construction activity shall be done in the subject land.

55. Petitioner alleges that columns were raised in the subject land in violation of the above order by the respondents. Photographs filed by the petitioners in the CC corroborate this allegation.

56. In the counter-affidavit filed by the respondents they allege that the construction is being taken up in 2000 sq.yds of defunct D-54/3 Nizam Sagar Canal in between both the said S.no.s 285 and 294 and not in the said S.No.s. and there is no violation of the interim orders. They contend that the defunct Nizamsagar Canal has no survey numbers. They denied violation of the said interim orders.

57. I have already held while deciding W.P.No.16756 of 2017, that there is no revenue record produced to prove existence of the D-54/3 defunct Nizam Sagar Canal boundary in between Sy.Nos.285 and 294 and the decision of the Civil Court in O.S.No.28 of 1996 rendered on 06-09-2000 also corroborates the same.

58. Therefore, I reject the plea of the respondents.

59. Accordingly, the Contempt Case is allowed and the respondents therein are directed to remove the constructions made in the land of the petitioners in Sy.No.285 and 294 forthwith within four (04) weeks from today without fail. If not, they shall suffer Simple Imprisonment for a period of two (02) months and fine of Rs.2,000/- each for proceeding with construction in violation of the above order dt.22-11-2017 in W.P.M.P.No.20568 of 2017 in W.P.No.16756 of 2017.

60. In consequence, miscellaneous applications pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

Date: 17.07.2018.
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