

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 22912 OF 2006

ORDER :

This Writ Petition is filed seeking a *mandamus* to declare the Order dated 04.10.2006 in File No. Uc/WMC/CP/G1/745/2006 and the action of the respondent Corporation in demolishing the building of the petitioner, as illegal and arbitrary and without jurisdiction and violative of the orders of this Court dated 13.03.2006 and 21.09.2006 in Writ Petitions No.4739 and 8682 of 2006 respectively.

Petitioner claims to be the owner and possessor of building bearing No. 1/472 and 1/473 (old) and 1-6-236 (new) situated at Kazipet, Warangal District. It is his case that his father late Sri G. Buchi Ramulu applied / obtained permission for reconstruction of building on 21.03.1957, but however, since the construction was not completed, his father applied for renewal of the said permission which was granted *vide* permit No. 187, dated 02.05.1962. It is his further case that after death of his father, the house was mutated in the name of his mother and later, after her death, in his favour. Since then, the petitioner claims, he has been paying property tax to the said house building.

While the matter stood thus, in 1994, when the 1st respondent Corporation attempted to demolish the house, the petitioner filed Writ Petition No. 19361 of 1994, wherein, recording the undertaking given by the respondent authorities, this Court disposed it of, *vide* order dated 20.12.1994, directing that demolition should not be made without following due process of law. Thereafter, in 2006, again, the 1st respondent started efforts

for widening the main road from Kazipet to Hyderabad and the Commissioner, at the request of the locality people, agreed to limit the width of the main road from 100 to 85 feet and also agreed to allow the respective owners of the buildings to make constructions on the rare side of their buildings to the extent of 15 feet. However, on 22.02.2006, the Commissioner along with other officials came to the spot and commenced the construction work in the land of 15 square feet. It is the case of the petitioner that when he personally approached the 1st respondent on 20.02.2006 requesting her to pay compensation or to allot a suitable site, the Commissioner, instead of doing so, threatened to demolish the building. Hence, the petitioner states, he got issued the legal notice on 24.02.2006 to the 1st respondent and later, filed Writ Petition No. 4739 of 2006, wherein this Court, by its order dated 13.03.2006, directed the respondents not to demolish the structures and not to dispossess him without following due process of law. Aggrieved thereby, the 1st respondent got issued the order dated 28.03.2006 without any prior notice and enquiry, cancelling the building permission granted to his father. Hence, challenging the said order, the petitioner filed Writ Petition No. 8682 of 2006 and this Court set aside the same, on 21.09.2006. Thereafter, on 27.09.2006, the 1st respondent got issued a notice under Sections 145 to 148 of the Hyderabad Municipal Corporation Act, 1955 calling upon the petitioner to produce the title deeds, building permission and link documents and again, on 04.10.2006, the 1st respondent got issued another order of demolition by giving 24 hours notice. Though, on 06.10.2006, the petitioner got issued a reply, the 1st respondent, with the help of

the personnel, except the rear side portion of 18 feet in size, got demolished the entire building, thereby causing him damages to the tune of Rs. 25 lacs. Now, it is the complaint of the petitioner that the 1st respondent is also trying to demolish the remaining structures. Hence, the Writ Petition.

On behalf of the 1st respondent Corporation, Sri G. Suvarna Panda Das, Commissioner, had filed the counter-affidavit in August 2014 admitting passing the orders by this Court in Writ Petitions, referred to supra and denying the averments made in the Writ Petition. According to him, mere mutation of the petitioner's name in the revenue records does not confer him with any right and title over the subject property. It is further stated that since the houses of the petitioner and so many others were constructed by encroaching the road margin, on the request of the Corporation, other house-holders have voluntarily removed the encroachments, but however, the petitioner, with a *mala fide* intention, to prevent the Corporation from initiating any legal action, filed Writ Petition No. 19361 of 1994. It is further stated that the petitioner, noticing that the other house owners removed the encroachments, had voluntarily removed the same. It is stated that after the orders of the Court, the respondent Corporation has not undertaken demolition of any portion of the structure of the petitioner. It is lastly stated that the petitioner has invented this story for the purpose of claiming compensation.

Sri Bankatlal Mandhani, learned counsel for the petitioner, placing reliance on the judgments of this Court in ***Advocate General v. Executive Engineer¹, Dr. K.I. Askari v. Nawab Mir***

¹ 1998(1) ALT 209 (D.B.)

Barkat Ali Khan @ Waleshan Prinice Mukkaram Jah Bahadur HEH the Nizam VIII² and **State of A.P. v. National Academy of Construction³**, contends that when a material fact is pleaded by one party, unless controverted specifically by opposite party, the said fact must be deemed to have been admitted. According to him, in the instant case, the petitioner pleaded his possession tracing the same from 1950 and the said fact remained uncontroverted by the respondent Corporation. He further contends that the demolition was carried out without putting the petitioner on notice, as is required by the provisions of the Hyderabad Municipal Corporation Act, 1955. The learned counsel takes cue from the judgments of this Court in **T. Subhadra v. Municipal Corporation of Hyderabad⁴**, **Qamar Sultana v. Commissioner, Municipal Corporation of Hyderabad⁵** and that of the Supreme Court in **Urban Improvement Trust, Bikaner v. Mohan Lal⁶** and contends that on account of the illegal and unauthorized demolition undertaken by the Municipal Corporation, the petitioner had suffered huge loss of Rs. 25 lacs, hence, he is entitled to be awarded the said amount towards compensation.

Heard Sri A. Sanjeev Kumar, learned Special Government Pleader on behalf of the Advocate General for the respondent Corporation.

At the outset, it may be noted that the averment of the petitioner in the affidavit that the subject property was in existence prior to 1957 and permission was obtained for reconstruction of

² 2010(4) ALD 244 (DB)

³ 2010(5) ALD 591 (DB)

⁴ 2014(3) ALD 524

⁵ AIR 1995 AP 230

⁶ (2010) 1 SCC 512

the same on 21.03.1957 and thereafter, once again, on 02.07.1962, stands un-rebutted. Further, the specific assertion of the petitioner as to his possession and enjoyment of the property also stands un-rebutted, so also the allegation of the petitioner that he was not issued any notice calling for objections before proposing to demolish the property. The stand taken by the respondents in the counter is only to the effect that the petitioner had failed to establish his title to / ownership over the property, which was, admittedly, demolished on the ground that the latter had encroached the public road and that he refused to hand over the same, hence, it had become imminent to undertake demolition. There is also no dispute of the factum of the petitioner approaching this Court from time to time and obtaining directions to the respondents to follow the procedure prescribed, particularly under Sections 145 to 148 of the 1955 Act.

The contention of the learned Special Government Pleader that inasmuch as the petitioner had failed to establish his title and ownership to the property over which the building came to be constructed and the petitioner being a mere encroacher of the government land, he is not entitled to receive any compensation, as claimed in the Writ Petition, cannot be countenanced as it is settled that the right of a citizen to a property is protected under Article 300-A of the Constitution of India. Merely because, at this point of time, the petitioner was not able to produce the document evidencing his ownership / title to the land and in the absence of any material establishing superior title in 3rd party or in the government, it cannot be presumed that the land over which the petitioner had constructed the house way back in 1950 is

government land. The possessory right of the petitioner over the property is indefeasible. Even assuming for argument sake, the subject land belongs to government, on account of the fact that the petitioner / his predecessors were, admittedly, in possession for more than 50 years, it can be said that they have been perfected their right over the property by way of adverse possession. The rights under the principle 'adverse possession' are now well-recognized and a reference may in that regard be made to the judgments of the Supreme Court in ***Nair Service Society Ltd. V. K.C. Alexander***⁷, ***Kshitish Chandra Bose v. Commissioner of Ranchi***⁸ and ***T. Anjanappa v. Somalingappa***⁹.

The second contention of the learned counsel Sri *Mandhani* that in the process of demolition, the petitioner had suffered huge loss of Rs. 25 lacs and the said fact has not been uncontroverted, and hence, he is entitled to be awarded compensation on that count, cannot be accepted for, in the first instance, there is no material placed before this Court to come to a concrete conclusion that the petitioner had lost gold ornaments and other valuable items, as alleged, in the process of demolition of the building undertaken by the respondents. In the absence of the specific and unimpeachable material evidence, it is impossible for this Court to determine the compensation with respect to the alleged loss / damage suffered by the petitioner. However, assessment of loss suffered by the petitioner can be directed by this Court. In the context of entitlement of the petitioner for damages, the judgment cited by the learned counsel for the petitioner in ***Qamar Sultana's***

⁷ AIR 1968 SC 1165

⁸ AIR 1981 SC 707

⁹ (2006) 7 SCC 570

case (5 supra), **T. Subhadra's** case (4 supra) and **Urban Improvement Trust's** case (6 supra) would squarely apply to the case on hand. In **T. Subhadra's** case, the learned Judge had categorically held that the respondent Municipal Corporation is bound to follow the procedure prescribed under Section 147 of the 1955 Act, as applicable to Warangal Municipal Corporation. It may also be noted that this Court, having found that the respondents have not followed the procedure prescribed in terms thereof, taking into consideration the law laid down by this Court in various judgments, initially, directed the learned Standing Counsel for the Municipal Corporation to explore the possibility of an amicable settlement by paying a reasonable compensation to the petitioner. However, the learned Standing Counsel has placed on record the letter received from the Commissioner, Greater Warangal Municipal Corporation addressed to Additional Advocate General making their stand clear that the petitioner had failed to establish his title over the property and further, he had refused to cooperate by voluntarily handing over the property to the Corporation like others. In other words, the respondents by themselves would not like to compensate the petitioner. In this context, the observations made by the Hon'ble Supreme Court in **Urban Improvement Trust's** case (paragraphs 4 and 6) referred to by the learned counsel may be noticed:

“ 4. It is a matter of concern that such frivolous and unjust litigation by governments and statutory authorities are on the increase. Statutory Authorities exist to discharge statutory functions in public interest. They should be responsible litigants. They cannot raise frivolous and unjust objections, nor act in a callous and highhanded manner. They cannot behave like some private litigants with

profiteering motives. Nor can they resort to unjust enrichment. They are expected to show remorse or regret when their officers act negligently or in an overbearing manner. When glaring wrong acts by their officers is brought to their notice, for which there is no explanation or excuse, the least that is expected is restitution / restoration to the extent possible with appropriate compensation. Their harsh attitude in regard to genuine grievances of the public and their indulgence in unwarranted litigation requires to be corrected”.

6. Unwarranted litigation by governments and statutory authorities basically stem from the two general baseless assumptions by their officers. They are:

(i) All claims against the government / statutory authorities should be viewed as illegal and should be resisted and fought up to the highest court of the land. (ii) If taking a decision on an issue could be avoided, then it is prudent not to decide the issue and let the aggrieved party approach the Court and secure a decision.

The reluctance to take decisions, or tendency to challenge all orders against them, is not the policy of the governments or statutory authorities, but is attributable to some officers who are responsible for taking decisions and / or officers in charge of litigation. Their reluctance arises from an instinctive tendency to protect themselves against any future accusations of wrong decision making, or worse, of improper motives for any decision making. Unless their insecurity and fear is addressed, officers will continue to pass on the responsibility of decision making to courts and Tribunals. The Central Government is now attempting to deal with this issue by formulating realistic and practical norms for defending cases filed against the government and for filing appeals and revisions against adverse decisions, thereby, eliminating unnecessary litigation. But it is not sufficient if the Central Government alone undertakes such an exercise. The State Governments and the statutory authorities, who have more litigations than the Central Government, should also make genuine efforts to eliminate unnecessary litigation. Vexatious and unnecessary litigation have been clogging the wheels of justice, for too long making it difficult for courts and Tribunals to provide easy and speedy access to justice to bona fide and needy litigants.”

In the facts of the present case and in view of the discussion held supra, the impugned order is liable to be set aside and the petitioner is entitled for compensation, as the respondents have made their stand clear that they do not wish to enter into negotiations with the petitioner and as Section 147 itself mandates that the procedure prescribed under the Land Acquisition Act, as applicable, is to be followed in the event of there not being a settlement.

The Writ Petition is therefore, allowed, declaring the action of the respondents in demolishing the structures of the petitioner and utilizing the same for road widening, is in violation of the rights guaranteed to him under Article 300-A of the Constitution besides violation of the procedure prescribed under Section 147 of the 1955 Act. The respondent Corporation shall issue necessary notification in terms of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, within a period of eight weeks from the date of receipt of a copy of this order and determine / pay compensation both with respect to the land and the structures. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

02nd November 2018

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