

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 18365 of 2018

ORDER:

1) Rejecting the request of the petitioner for issuance of 'No Objection Certificate' in respect of premises No. 5-5-689/ A, 5-5-689/ A/ 1 and 5-5-689/ A2, Goshamahal, Hyderabad, on the ground that the said land was classified as G. Government Land, lead to filing of the present Writ Petition.

2) The averments in the affidavit filed in support of the Writ Petition are as under:

The petitioner and his two sisters are the absolute owners and possessors of house property bearing Premises Nos. 5-5-689/ A, 5-5-689/ A/ 1 and 5-5-689/ A2 situated at Goshamahal, Hyderabad. They claimed to have inherited the said property from their late father Hari Kishan Biyani, who is said to have purchased the same under a registered sale deed bearing document No.228 of 1969 from one Mohd. Mohiuddin. While things stood thus, on 29.09.2017 the petitioner made a representation to the first respondent (District Collector, Hyderabad), for issuance of No Objection Certificate, as it is necessary to obtain permission from the Greater Hyderabad Municipal Corporation, for the constructions to be made therein. In response there to, the Tahsildar directed the petitioner to furnish the original documents vide his letter dated 29.11.2017,

which came to be complied with. On 16.04.2018, the first respondent intimated the decision of rejecting the request for issuance of No Objection Certificate as the property is classified as G.Government Land as per Town Survey Land Register (hereinafter referred as "TSLR"). Challenging the same the present Writ Petition came to be filed.

3) Sri Vedula Venkata Ramana, learned Senior Counsel appearing for the petitioner would submit that the entries in the Town Survey Land Register, classifying the land as G.Government does not have any authenticity insofar as the title of the property is concerned. According to him, the endorsement 'G' does not indicate that it is a Government Land. He pleads that in view of the above endorsement, the petitioner is unable to obtain building construction permission from the Greater Hyderabad Municipal Corporation and as such he is put to irreparable loss.

4) A counter came to be filed by the Tahsildar (second respondent) disputing the averments made in the affidavit filed in support of the writ petition except to the extent admitted by him. According to him, the said property is classified as "G.Government" and T.S.No.40 is correlating to old Sy.No.104/ 1, 2/ P of Nampally Village and Tahsildar. As per the pahani of the year 1965-66, it is classified as "sarkari". The Town Survey of Nampally Village, which was conducted during the years 1963-76 under the provisions of Andhra Pradesh Survey

and Boundaries Act, 1923 (hereinafter referred as “the Act”), the final check operation was conducted by the Special Deputy Collector by issuing notices and inviting objections. After completing the survey, the land in question was recorded as Government Land in TSLR by issuing a notification under Section 13 (1) of the Act. Thereafter the said notification came to be published in Hyderabad District Gazette. It is said that the entries made in TSLR have become final as stipulated under Section 14 of the Act. Since the same are not challenged, they are binding on the parties. It is further stated that column No.10 of TSLR discloses the land as “Kharij Khata” and column No.20 of TSLR show the classification of the land as “G.Government” and that khariz khata denotes as Government Land.

5) Though no reply is filed, but the learned Senior counsel would contend that the word “Kharij Khata” does not by itself indicate it is a Government Land. He relies upon the judgment of this Court in *Hyderabad Potteries Private Limited v. Collector, Hyderabad District and another*¹ to show that entries in TSLR by itself cannot be made the basis to say that it is a Government Land.

6) As seen from the affidavit and the counter filed, though the petitioner in his affidavit claimed to be in actual possession of the property, the same is not specifically denied by the

¹ (2001) 3 ALD 600

respondents in their counter. The dispute raised in the counter mainly relate to the title over the property. The record also does not anywhere indicate initiation of any proceedings by the respondents to dispossess the petitioner over the property.

7) A reading of scheme of the A.P. Survey and Boundaries Act, 1923, would make it clear that the survey made under the said Act, is mainly intended to identify the lands and fix the boundaries. There is no provision under the Act, for making detail enquiry with regard to right, title and interest of the persons over the lands. It is neither the object nor the scheme of the Act. There is no presumption that every entry made in the TSLR shall be presumed to be true until contrary is proved as in the case of entries made in the record of rights under the provisions of A.P. Record of Rights in Land Act, 1971.

8) Therefore, the question which arises for consideration is whether Municipal Corporation is entitled to reject the application for grant of building permission on the ground of an adverse entry was made in TSLR.

9) In W.A.Nos.115 and 160 of 2000, a Division Bench of this Court while adverting to the said question, observed as under:

“The controversy does not rest there. Assuming that the TSLR extract is not available in respect of a particular property or TSLR entries do not go to substantiate the writ petitioner’s case, the question then is whether the building permission

should be refused automatically. The answer in our view should be in the negative. We have to read the bye-laws in harmony with the relevant section viz., Section 429. What is stressed by Section 429 (aa) is the document proving title to the property. TSLR may be one such document. There are also other documents which are mentioned in the bye-law No.4 (2) (v). The insistence on the production of those documents is only to facilitate the competent authority to satisfy itself that the application has *prima facie* title and legal authority to erect or re-erect the building. There can be no hard and fast rule as to how to establish the title or lawful authority of the applicant and the basis on which the *prima facie* satisfaction should be reached by the competent authority. Entries in TSLR are no doubt relevant. But they are no conclusive. It is common knowledge that there may be many instances where the owners of land in urban areas will not be in a position to correlate the house numbers or ward numbers to the survey numbers or the entries may not be upto date and that may introduce some practical difficulties in obtaining TSLR extracts. Therefore, the mere non-production of TSLR extract, if a valid reason could be given for such non-production, does not clinch the issue. The TSLR cannot be regarded as a sole guiding factor to the competent authority while dealing with the building applications. TSLR entries have to be considered in conjunction with other documents which the appellants would like to place reliance upon. The stand taken by the Municipal Corporation that the proof of

ownership/possession in the form of TSLR is an essential pre-requisite cannot be upheld though as we have already observed, such document is a relevant piece of evidence. It will have to be considered in combination with other documents which will have bearing on the title and possession of the applicant for building permission. At best, it can be said that insistence on the extracts from TSLR register may be a rule of prudence. But, it cannot be a rule of rigid and mechanical application.”

10) The Bench further held that as “the question of title and lawful possession of the applicants cannot be solely decided on the basis of TSLR entries, but also on the basis of any other relevant evidence that may be furnished by the applicants.

11) Relying upon the observations made by Division Bench in W.A.No.115 of and 160 of 2000, a learned Single Judge of this Court in *Hyderabad Potteries Private Limited case (1 supra)* held that “an entry in TSLR itself cannot be a conclusive proof of title or lack of it, and the decision either to grant or refuse permission, cannot be taken solely on the basis of an entry made in the TSLR. It may be one of the factors that may have to be taken into consideration along with the other material available on record. An entry made in TSLR *per se* could not create any doubt or cloud on the right, title and interest of a person in respect of the property.

12) The dispute now is with regard to refusal by the authorities for issuance of No Objection Certificate on the ground that it is a Government Land, as per the entries in TSLR.

13) It is also to be noted here that the petitioner has not filed any application before the Municipal Authorities seeking permission for construction of the building. He made an application before the District Collector, for issuance of no objection certificate. The respondents in their counter relied upon the entries in TSLR to show that the land is classified as "G. Government". Though in para No.4 of the counter they refer to conducting of survey, and the entries in the pahanies of the year 1965-66, but the said documents are not filed along with the counter.

14) As observed earlier, the decision with regard to permission, either to grant or refuse cannot be solely on the basis of the entry made in TSLR. It could be one of the factors that may be taken into consideration along with the other material. Since the counter and documents filed along with the counter mainly relate to the entries in TSLR, the authorities cannot deny issuance of no objection certificate unless as observed by me earlier, there is some other material evidencing that it is a government land. In the absence of the same, the Writ Petition is allowed, directing the authorities to issue the no objection certificate.

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
gkv



