

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

WRIT PETITION No.10368 of 2007

Between:

Tirupathi Subhash and others

....Petitioners

And

The State of Andhra Pradesh,
Rep.by its Principal Secretary to Government,
Revenue (Assignment-II) Department,
Secretariat, Hyderabad and others

....Respondents

JUDGMENT PRONOUNCED ON: 28.09.2018

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : No

T.AMARNATH GOUD, J

*** THE HON'BLE SRI T.AMARNATH GOUD**

+ WRIT PETITION NO.10368 OF 2007

% DATED 28TH SEPTEMBER, 2018

Tirupathi Subhash and others

.. Petitioners

Vs.

\$ The State of Andhra Pradesh,
Rep.by its Principal Secretary to Government,
Revenue (Assignment-II) Department,
Secretariat, Hyderabad and others

.. Respondents

<Gist:

>Head Note:



! Counsel for the petitioner : Sri Shafath Ahmed Khan.
^Counsel for the Respondents 1 to 4 : Government Pleader for
Revenue
Counsel for respondent No.5 : Sri P.Roy Reddy/

? CASES REFERRED:

2004 (5) ALD 748

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

W.P.NO.10368 OF 2006

ORDER:

This writ petition is filed seeking to declare G.O.Ms.No.1147 Revenue (Assignments-II) Department dated 15.06.2005, which was served on the petitioners on 03.05.2006 and also the action of the respondents 1 to 4 in allotting the land in Sy.Nos.1684, 1685 and 1686 admeasuring Ac.2.30 guntas, situated in Sitaram Nagar Colony, Nizamabad belonging to the petitioners to the 5th respondent as illegal, arbitrary and against the principles of natural justice and consequently set aside the same.

2. It is the case of the petitioners that they are the owners of the open plots in Sy.Nos.1684, 1685 and 1686, situated at Sitaram Nagar Colony, Nizamabad. They purchased the said plots from the original owner B.Satyanarayana and others through registered sale deeds in the year 1981 onwards. Originally one B.Gangaram (Golla Gangaram) and his brother Laxmikantha Rao are the owners and pattadars of the land admeasuring Ac.2.19 guntas in Sy.Nos.1684, Ac.1.38 guntas in Sy.No.1685 and Ac.2.36 guntas in Sy.No.1686, total Ac.7.07 guntas. They furnished declaration under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 in respect of their lands in Sy.Nos.1684, 1685 and 1686 along with their other lands. The Special Deputy Collector, Nizamabad has determined the holding vide proceedings No.1245/NZB/75 dated 29.11.1975 declaring that said G.Gangaram and his brother Laxmikantha Rao are having equal share in the above said land as owners. Later on, their successors, Satyanarayana and others

have partitioned the land vide Memorandum of Partition dated 20.02.1978 and 08.03.978. They made the said land into plots and sold away the same during 1980-83 to different persons through registered sale deeds. The petitioners also purchased the plots from the successors of Gangaram and Laxmikantha Rao through registered sale deed vide document No. 1539/81, dated 9.04.1981 etc., and they are in possession of the land.

3. It is further stated that while the matter stood thus, on 18.03.2006, the officials of 4th respondent have come to the above land and tried to demarcate the same. On enquiry, the petitioners came to know that the Government has allotted the land to 5th respondent under the pretext that the land belongs to the Government. Immediately, the petitioners made a representation to the 4th respondent, stating that the land in Sy.Nos.1684, 1685 and 1686 belong to them and the Government has nothing to do with the land. The 4th respondent informed the petitioners that the Government has already allotted the land to an extent of Ac.2.30 guntas in Sy.No.1686 KK, situated at Nizamabad in favour of 5th respondent vide G.O.Ms.No.1147, Revenue (Assignments-II) Department, dated 15.06.2005. The 4th respondent has also issued Memo in Lr.No.A5/18253/99, dated 23.08.2005, directing the 5th respondent to pay the market value at the rate of Rs.275/- per Sq.yard, total Rs.36,60,250/-. It is stated that the G.O., was issued on a false report filed by the District Collector, Nizamabad that the land belongs to the Government. The 4th respondent has also collected revenue tax from the original pattadars. During the life time of the original pattadars G.Gangaram and his brother Laxmikantha Rao and over a period of 3 decades, they were in

possession of the land i.e., prior to 1975 and also after 1975. Thereafter, their successors were in possession of the land as owners and they perfected their title by prescription. Since 1981 onwards, the petitioners are in possession of the land by virtue of registered sale deed stated supra. Now the Government cannot allot the land of the petitioners to the 5th respondent without acquiring the same under Land Acquisition Act. The 2nd respondent did not give any prior notice to the petitioners or other purchasers who constructed the houses before sending the report to the Government.

4. The respondents 1 to 4 filed a counter affidavit, contending that as per the revenue records, the lands are Government lands and names of Golla Yellaiah and Gangaram recorded as occupants in possession column. Though G.Gangaram filed declaration under Section 8 of A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, declaring that the above lands are in his possession, but he does not get any right to become owner of Government lands. More over, the declarant Gangaram admitted in his statement that the above lands are Kharij Khata and they are only in his possession as seen from the ceiling file bearing No.CC/1246/Nzb/75. The notices in Form No.7 issued under A.P. Land Encroachment Act, 1905 dated 02.11.1999 were served on Yashwant Rao and Vasanth Kumar, the sons of late Golla Gangaram on 14.11.1999 and they gave reply to the said notice on 23.11.1999. Subsequently considering the same, order was passed under Section 6 of Land Encroachment Act, 1905 vide reference No.A5/18523/99, dated 26.06.2000 and the same was served on the sons of the declarant on 8.07.2000. The Mandal Revenue

Inspector took the lands in Sy.No.1685, in an extent of Ac.1.30 guntas and Sy.No.1686, in an extent of Ac.2.30 guntas into custody under a panchanama on 23.10.2000. Subsequently at the request of the 5th respondent, proposals were sent to the Government for allotment of the land in Sy.No.1686 in an extent of Ac.2.30 guntas to the 5th respondent on payment of market value through the District Collector, Nizamabad and Chief Commissioner of Land Administration, A.P., Hyderabad. Thereafter, considering the issue, the Government allotted the land in an extent of Ac.2.30 guntas in Sy.No.1686 to the 5th respondent on payment of market value vide G.O.Ms.No.1147, Revenue (Assignments-II) Department, dated 15.06.2005. Accordingly, the 5th respondent remitted the entire market value of Rs.36,60,250/- to the Government and thereafter, possession of the above land has been handed over to 5th respondent on 2.03.2006 under a cover of panchanama.

5. The 5th respondent filed a counter affidavit, contending that the Government of Andhra Pradesh issued G.O.Ms.No.1147, Revenue (Assignments-II) Department, dated 15.06.2005 allotting an extent of Ac.2.30 guntas of land in Sy.No.1686 KK of Nizamabad in his favour in terms of Rule 10 of the A.P. (TA) Alienation of State Land Rules, 1975 and that the petitioners have no *locus standi* to assail the said G.O., and if at all they have any grievance, it is for them to establish and prove their claims before a competent civil Court. It is further stated that one Gangaram who is shown to be the occupant of these lands in the pahanies from 1969-70 to 1997-98 was an un-authorised occupant, upon whom encroachment tax was imposed under the A.P. Land Encroachment Act, 1905. He further contended that mere filing of declarations

under the provisions of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 does not confer any right or title in respect of any land and that said Gangaram made a categorical admission before the Land Reforms Tribunal, Nizamabad in C.C.No.1246/NZB/75 admitting that the lands were Kharij Khata (Government land) and he was only in occupation of the same. When the persons through whom the petitioners are alleged to have derived title, did not have any right in respect of the land in question as they could not have passed on better title than what they originally possessed and said Gangaram was not in possession of the land in question subsequently. There are no merits in the writ petition and therefore prayed to dismiss the same.

6. Heard.

7. Admittedly, the petitioners have purchased the subject land vide registered sale deeds way back in the year 1981. Initially, the documents were kept pending due to deficiency of stamp duty and vide proceedings dated 2.11.1983 of the District Collector, Nizamabad, deficient stamp duty was collected and documents were released in favour of the petitioners and since then, they are in peaceful possession and enjoyment of the open plots. No notice is said to have been issued to the petitioners by the official respondents before initiating any action adverse to the interest of the petitioners.

8. Admittedly, the vendors of the original owners who are the successors of the occupants of the subject lands, though filed their declarations before the concerned authority under A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, are only

occupants and cultivating the lands, but they are not owners as per the revenue records i.e., kasra pahani of the year 1954 onwards. It is evident from the ownership column that the subject land is a Government land and the persons in occupation are the declarants. In view of the fact that the vendors of the petitioners themselves have no alienable right and title, they cannot transfer better title in favour of the petitioners. The petitioners cannot purchase the Government lands from un-authorised persons and the sale deeds cannot confer any title upon them whether they are registered or un-registered. The doctrine of *caveat emptor* comes in the way of the petitioners' claim. The petitioners are duty bound to verify the antecedents of title before they could enter into the sale transaction with the owners of the land.

9. In so far as the action of the District Collector, Nizamabad in ordering collection of deficit stamp duty in respect of the sale deeds is concerned, it cannot be taken as shelter for conferring title upon the petitioners as there cannot be a promissory estoppel against the State if its employee acts contrary to the provisions of law. This Court in **The State of Andhra Pradesh V. Bheemunipatnam Co-operative Building Society Limited**¹ held:

“Promissory estoppel against the State cannot be applied when an officer of the State has acted directly contrary to the general instructions issued by the Government. In such cases, the plea of promissory estoppel is not available as the Doctrine of ultra vires becomes applicable. Promissory Estoppel cannot legitimise an ultra vires act of any governmental authority.”

¹ 2004 (5) ALD 748

10. The vendors of the petitioners have no *locus standi* to alienate the Government land in favour of the petitioners. One can possess the Government lands either by way of getting pattas regularized by the competent authority and the other mode is to get a decree and judgment by the competent civil Court by filing a suit for declaration of title. The petitioners have not invoked any of these methods for obtaining title upon the Government lands. All through, the petitioners were under the impression that they are holding alienable right and title upon the subject lands. The petitioners possession on land by virtue of the above sale deeds would be un-authorised and is by way of adverse possession.

11. The Government never recognized the petitioners as owners in respect of the subject lands and on the other hand, the Government has taken all precautions to protect the lands and have issued notice to the legal heirs of the original declarants under the Land Encroachment Act, 1905 vide notice dated 2.11.1999, which was served on 14.11.1999, for which they filed reply dated 23.11.2000 and final orders of eviction dated 26.06.2000 were passed by the competent authority and also by a separate Memo dated 22.6.2000 was issued rejecting the request of the declarants that mere possession of lands by them cannot confer any right as pattadars and the above lands are Karij Khatha (Government lands). Later, the Government by way of a panchanama dated 8.11.2000, taken possession of the lands. The petitioners, who are successors in interest or the legal heirs of the declarants/vendors have not chosen to challenge the encroachment proceedings of the year 2000 and allowed it to become final.

12. The Government, upon the application filed by the 5th respondent and after due enquiry and upon taking into consideration all the aspects, alienated the subject lands in favour of the 5th respondent by collecting the market value of Rs.36,60,250/- for allotting 105 house sites in favour of members of 5th respondent association and issued G.O.Ms.No.1147, Revenue (Assignments-II) Department, dated 15.06.2005 and by way of a panchanama dated 2.3.2006 hand over possession to the 5th respondent association. Sy.No.1686 KK is not a sub division of survey number, but it denotes Karij Khata i.e., Government land. It is not for this Court to give a finding with regard to the disputed question of facts as to who is in possession of the subject lands, but as per the record, it is obvious that paper possession (symbolic possession) is in favour of the 5th respondent.

13. Unless the petitioners establish their title, they cannot question the action of the Government in issuing the impugned G.O., alienating the subject lands in favour of the 5th respondent association for allotting house sites to its members.

14. For the reasons stated above, no relief can be granted under Article 226 of Constitution of India as this Court found no illegality in issuing the impugned Government Order. Hence, the writ petition is dismissed. No order as to costs. As a sequel, the miscellaneous petitions pending if any shall stand closed.

T.AMARNATH GOUD,J

Date: 28-09-2018
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