THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.6250 OF 2007

ORDER:

This Writ Petition is filed to declare the order dated 16.12.2006 passed in proceedings No.D5/5029/2003 by the second respondent as illegal, without jurisdiction and further to declare that the fourth respondent is not entitled to any claim in respect of the land admeasuring Acs.6.12 guntas in survey Nos.88, 89 and 90 of Karmanghat Village, Saroor Nagar Mandal, Ranga Reddy District (hereinafter called as 'subject land').

Brief facts of the case are that the subject land was the private property of HEH Nizam of Hyderabad and the same was included in the list of immovable properties of HEH Nizam, as part of agreement dated 30.11.1953 between Union of India and Hyderabad State under List-II, described as 'Sirajunnisa Begum Garden, Phisalbanda'. The agreement and list of properties are known as 'Blue Book'. One late Abdul Khadir purchased the entire Sirajunnisa Begum Garden from HEH Nizam of Hyderabad in the year 1956 by paying sale consideration and possession was also delivered to him. The Committee of HEH Nizam Private Estate has also communicated the same to the revenue authorities and accordingly the name of Abdul Khadir was recorded as occupant in respect of the subject land in revenue records. Abdul Khadir had also paid land revenue to the State Government. HEH Nizam Barkat Ali Khan has also admitted in the suit filed by him being O.S.No.1211/1969 that the land known as 'Sirajunnisa Begum Garden' was alienated to Abdul Khadir. During the year 1975-76, the legal heirs of Abdul Khadir filed declaration under A.P. Land

Reforms (COAH) Act, 1973 and also under the provisions of Urban Land (Ceiling & Regulation) Act, 1976 and the land was computed to their holdings and the petitioners were declared as non-surplus holders. The legal heirs of Abdul Khadir filed application under Section 5-A of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short 'ROR Act') for validation/regularization of alienation before the Mandal Revenue officer, Saroornagar. The Mandal Revenue Officer, after due enquiry, passed the order of regularization vide proceedings No.B/1091/96 dated 24.01.1996 and issued validation certificate and Form XIII B & C. As against the said order, the fourth respondent filed an appeal under Section 5 (5) of the ROR Act before the third respondent belatedly. However, the third respondent allowed the appeal vide Lr.No.A2/5090/98 dated 25.04.2003 and remanded the matter for conducting *de nova* enquiry. Being aggrieved by the same, the petitioners herein filed a revision petition before the Joint Collector under Section 9 of the ROR Act. The Joint Collector vide impugned order disposed of the revision petition confirming the order of the Revenue Divisional Officer dated 25.04.2003, against which, the present writ petition came to be filed.

Sri B.Mahender Reddy, learned counsel appearing for the petitioners, would contend that the petitioners filed application under Section 5-A of the ROR Act in Form X under Rule 22 (2) of the Rules under ROR Act seeking to regularize the alienation of land by validating the sale in respect of the land admeasuring Acs.2.38 guntas in survey No.89, Ac.1.24 guntas in survey no.89 and Ac.1-30 guntas in survey No.90 of Karmanghat (V), Saroornagar Mandal of Ranga Reddy District, before the Mandal

Revenue Officer. Pursuant thereto, notices in Form 11 and 12 were issued calling objections. Further, the Mandal Revenue Officer called for the records and verified the same. As per pahani of Karmanghat Village, the lands in survey Nos.88, 89 and 90 admeasuring Acs.2.38, Ac.1.34 and Ac.1.30 respectively were shown as patta lands in the name of Meer Osman Ali Khan (Raj Pramuk). On perusal of the document in Ltr.No.2350 dated 06.11.1956 issued by the Managing Committee of the Private Estate of HEH Nizam, the Sirajunnisa Begum Garden was sold to Abdul Khadir for a sale consideration of Rs.2,550/- and the amount was deposited in the treasuries of the Secretary's office. It is further revealed from the copy of the order of the Land Reforms Tribunal, Hyderabad East Division, in C.C.No.2306/E/75 dated 24.09.1975, copy of the judgment of the District Judge, dated 15.04.1994 in A.S.No.33 of 1992 and copy of the judgment dated 13.03.1991 of the Principal District Munisiff, Hyderabad East and North, in O.S.No.89/1983 that the subject land was purchased from HEH Nizam and the petitioners were in possession of the land. The material on record shows that Late Abdul Khadir purchased the land from HEH Nizam on 30.10.1956 and died leaving behind the petitioners and further the sale is not attracted by the provisions of the A.P. Land Reforms (COAH) Act, 1973 and The Urban Land (Ceiling & Regulation) Act, 1976, Andhra Pradesh Schedule Areas Land Transfer Regulation, 1959 and Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977. The sale transaction was regularized by the Mandal Revenue Officer on remittance of requisite registration fee and stamp duty of Rs.30/- and Rs.240/- respectively vide challan Nos.924 and 925 dated

17.01.1996. The Mandal Revenue Officer had issued certificate in Form XIII B under Section 5(A) and Rule 22-5(2) dated 24.01.1996. But, the fourth respondent filed appeal under Section 5 (5) of the ROR Act after two years eight months whereas the appeal has to be filed under Section 5 (B) of the Act within thirty days, without any petition to condone delay. The Revenue Divisional Officer erroneously entertained the appeal and allowed the appeal mainly on the ground that no notices were issued to the interested persons and without enquiring into the validity of the sale transaction. Against which, the petitioners filed revision before the second respondent under Section 9 of the ROR Act contending that the Revenue Divisional Officer entertained the appeal without jurisdiction under Section 5 (5) of the Act and the appeal is filed after two years eight months after prescribed period of thirty days and without therebeing any evidence with regard to possession and enjoyment of the land and claiming the land through gift deed. The gift deed is not filed either before the appellate authority or the revisional authority. The second respondent instead of deciding the revision as per Section 9 of the ROR Act, erroneously held that as per Setwar, which is a basic settlement record, the lands in survey Nos.88, 89 and 90 of Karmanghat (V) are classified as 'Inam lands' falling within the ambit of Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955. As per Section 3 of the Act, the lands vest with the State. On re-grant of occupancy rights certificates, the lands will be ceased to be government land. Hence, as there is no grant of occupancy rights certificate, the revision petitioner or their vendor has no right to claim lands as patta lands. Further, based on the report submitted by the

Mandal Revenue Officer on 12.04.2006, the Joint Collector erred in holding that the lands ceased to be put to agricultural use and were converted into plots. As such, the provisions of ROR Act have no application to the lands in question. But, the Joint Collector failed to see that as on the date of issuance of validation certificate, the land is agricultural land and the provisions of ROR Act are applicable. Accordingly, the revision petition was disposed of stating that there is no reason to interfere with the impugned order of the Revenue Divisional Officer and thereby he set aside the order of the Mandal Revenue Officer dated 24.01.1996 wherein the un-registered document in respect of the land has been validated under Section 5-A of the ROR Act.

Learned counsel would further contend that the fourth respondent filed Land Grabbing Cases in LGC Nos.151/1999 and 33/2000 on the file of the Sub-Court constituted under Andhra Pradesh Land Grabbing (Prohibition) Act, for declaring the members of the first petitioner Society as well as the owners of the land as land grabbers, but the same were dismissed on 19.08.2002 and 21.08.2002 respectively.

No counter affidavit is filed on behalf of the respondents. However, the learned Assistant Government Pleader appeared for respondents 1 to 3.

None appeared for the fourth respondent.

The learned Assistant Government Pleader appearing for respondents 1 to 3 would contend that the land is a Mafi Maqutha, the lands are Inam lands and attract the provisions of Andhra Pradesh (TA) Abolition Act, 1955 and the validation of the lands under Section 5-A by the Mandal Revenue Officer is illegal and contrary to the provisions of the Section 5-A of the ROR Act and Rules made thereunder. He further contended that as per the report of the Mandal Revenue Officer dated 12.04.2006, the land is patta land converted into plots and sold to several individuals and some houses are constructed. Hence, the provisions of ROR Act are not applicable to the land.

In the facts and circumstances of the case, in considered view of this Court and on perusal of the record, it is found that the land admeasuring Acs.6-12 guntas in survey Nos.88, 89 and 90 of Karmanghat (V), Saroor Nagar (M) of Ranga Reddy District, is the private property of HEH Nizam of Hyderabad. Said property is included in the list of private immovable properties of HEH Nizam, as per the agreement dated 30.11.1953 entered between Union of India and Hyderabad State under List-II, described as 'Sirajunnisa Begum Garden, Phisalbanda', and recorded in Blue Book containing the agreement and list of properties of HEH Nizam. One late Abdul Khadir purchased the entire Sirajunnisa Begum Garden in the year 1956 from HEH Nizam of Hyderabad on payment of sale consideration and possession was also delivered to him. The sale was recognized by the Managing Committee of HEH Nizam Private Estate. Even HEH Nizam Barkat Ali Khan also admitted the sale transaction in O.S.No.1211/1969. The legal heirs of Abdul Khadir filed declaration under the provisions of Andhra Pradesh Land Reforms (COAH) Act, 1973 and under the provisions of The Urban Land (Ceiling & Regulation) Act, 1976. During the period of 1975-76 and they were declared as non-surplus holder. On application of the petitioners under Section 5-A of the ROR Act, the Mandal Revenue Officer, after due enquiry and as per the records, recorded petitioners' names in the records vide proceedings dated 24.01.1996 validating the sale transaction dated 30.10.1956 on remitting the requisite registration fee and stamp duty of Rs.30/- and Rs.240/- vide challan Nos.924 and 925 dated 17.01.1996 and issued validation certificate and the same cannot be found to be illegal. The third respondent-Revenue Divisional Officer, on appeal under Section 5(5) of the Act filed after two years eight months, entertained the appeal without therebeing any evidence in support of the claim of the fourth respondent. The appeal against an order passed under Section 5-A of the ROR Act is maintainable only under Section 5-B of the Act that too within thirty days. However, the appellate authority i.e. The Revenue Divisional Officer, on mere surmises and conjectures, held that the Mandal Revenue Officer has not properly conducted enquiry with regard to the genuineness of the sale transaction and no notices were issued to the interested persons. The fourth respondent's name is nowhere mentioned in the revenue records and he had not filed any valid documents in support of his claim before the Revenue Divisional Officer and the Revenue Divisional Officer contrary to the facts and law has remanded the matter for *de nova* enquiry. Against which the petitioners filed revision under Section 9 of the ROR Act before the second respondent, the second respondent instead of deciding the matter under Section 9 of the Act as to validity or otherwise of the proceedings, but totally on a different ground based on the Mandal Revenue Officer's Report dated 12.04.2006, said to have been collected behind the back of the petitioners, after much water has been flown, held that the land is Mafi Inam land and lands are attracted the provisions of Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955, and there is no re-grant of occupancy rights to the persons in occupation. Thus, the second respondent set aside the order of the Mandal Revenue Officer dated 24.01.1996 on different grounds to that of the Revenue Divisional Officer before whom the fourth respondent raised the only ground that no notices were issued to the interested persons as he was in possession of the land by virtue of gift deed, however, no documentary evidence was filed in support of his claim that he is in possession of the land by virtue of gift deed, either before the Revenue Divisional Officer or before the Joint Collector.

The plea of the learned Assistant Government Pleader that the land is Mafi Maqutha based on the isolated entry in the Sethwar when there is no corroborative evidence, could not be countenanced. Further, the contention of the learned Assistant Government Pleader that the provisions of the ROR Act are not applicable to the land as the land is covered by plots could not be accepted in view of the submission of the learned counsel for the petitioners that as on the date of issuance of Validation Certificate, the land is agricultural land. Hence, the provisions of ROR Act are applicable to the land.

As per the provisions of ROR Act, Section 5-A provides for regularization of certain alienations or other transfer of lands. After due enquiry, the Mandal Revenue Officer issues a certificate declaring that the alienation or transfer is valid from the date of issuance of certificate under Section 5 (4) of the Act. Under Section 5-B of the Act, appeal shall lie against the order of the Mandal Revenue officer passed under Section 5 (4) of the Act to the

Revenue Divisional Officer within thirty days of the date of communication of the order. Such order shall be subjected to revision under Section 9 of the Act. As per Section 10 (2) of the Act, the provisions of Section 5 and Sections 12 to 24 of the Limitation Act, 1963 shall apply for the purpose of extension and computation of the period prescribed in Section 3 (3), 4 (1), 5 (5), 5-A and 5-B of the Act. It is evident from the record that the fourth respondent filed appeal under Section 5 (5) of the Act before the third respondent against the order of the Mandal Revenue Officer dated 24.01.2006 passed under Section 5-A of the Act after two years eight months of passing the order, instead of filing appeal under Section 5-B of the Act, without any application to condone the delay and such delay has to be condoned for valid reasons. However, the third respondent on erroneous approach of facts and law, entertained the appeal of the fourth respondent and set aside the Validation Order dated 24.01.1996 passed by the Mandal Revenue Officer without properly considering the evidence on record and the aspect of delay, which is illegal and contrary to law. The second respondent dismissed the revision filed by the petitioners under Section 9 of the Act confirming the order of the Revenue Divisional Officer. Thus, the impugned order of the Joint Collector confirming the order of the Revenue Divisional Officer ordering for *de nova* enquiry is liable to be quashed.

Accordingly the writ petition is allowed and the impugned order is set aside. However, the respondents are not precluded from initiating proceedings against the petitioners under the provisions of Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 and in accordance with law. Further, it is open to the fourth respondent to approach the Civil Court, if he is so advised, to establish his title to the lands in question. If he succeeds in the civil proceedings, he is at liberty to seek mutation of the subject land in his favour.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

27th April, 2018
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