

HON'BLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.12347 of 2007

ORDER:

Heard learned counsel for the petitioners as well as the learned Additional Standing counsel for the respondents.

The relief sought in the present writ petition is as follows:

“For the reasons stated in the accompanying affidavit, this Hon'ble Court may be pleased to issue writ or any appropriate writ or writs or direction/s more particularly in the nature of writ of certiorari to call for records and to set aside the order and decree in CMA.No.11 of 2005 dated 20.04.2007 passed by the Chief Judge, City Civil Court, Hyderabad, confirming the order dated Nil.11.2004 in proceedings No.YW/274/WV/Evic passed by the Estate Officer and Additional divisional Railway Manager, Hyderabad Division, South Central Railway, Secunderabad.”

The facts of the case are that the petitioners herein and their predecessors-in-title have been in possession and enjoyment of the property admeasuring 4876 square meters in house bearing No.10-8-108 situated at Chilakalaguda, Bolakpura, Secunderabad, for the last more than 80 years by virtue of sale deed dated 30/Teer 1310 Fasli (1901). A temple in the name and style of “Draupadi Temple” is existing in the said property and bhajans are being performed in the said temple for the last several decades. When the 2nd respondent herein disputed the title as well as possession of the petitioners over the subject property, the petitioners filed a suit in O.S.No.59 of 1967 for declaration and permanent injunction against the respondents on the file of the Court of IV Additional Judge, City Civil Court, Hyderabad. The said suit was dismissed by judgment and decree dated 30.10.1973 for want of registration of title documents basing on which the petitioners and their

predecessors-in-title were claiming ownership. The said judgment was challenged before this Court vide CCCA.No.27 of 1975. After hearing, the same was dismissed on 12.04.1994. In the year 1982, the petitioners once again filed a suit in O.S.No.3121 of 1982 for injunction simplicitor against the respondents on the file of the Court of the I Assistant Judge, City Civil Court, Secunderabad. On contest, the said suit was also dismissed by judgment and decree dated 03.04.1989. Aggrieved by the said judgment, the petitioners filed an appeal in A.S.No.127 of 1989, which was also dismissed on 29.07.1994. Challenging the said judgment, the petitioners filed S.A.No.427 of 1994 before this Court. However, after hearing, this Court was pleased to dismiss the said appeal on 20.03.2003, observing that it is open to the respondents to initiate proceedings to evict the petitioners in accordance with law. After dismissal of the said second appeal, the respondents, invoking the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short, "the Act"), issued notices as contemplated under Sections 4 and 5 of the Act vide proceedings dated 18.08.2004 and 08.10.2004 respectively. Since the notices could not be served, the respondents have resorted to substitute service by way of publication in newspapers on 10.10.2004/14.10.2004. As there was no reply from the petitioners, orders were passed under Section 5(1) of the Act vide proceedings No.YW/274/WV/EvicVIC dated Nil.11.2004, wherein, it was specifically mentioned that since the predecessors-in-title of the petitioners refused to receive the notice and the registered notice with acknowledgment due sent was

also returned undelivered, notice was published in the daily newspapers and the predecessors of the petitioners were directed to vacate the said premises within 30 days from the date of publication of order i.e., on or before 24.12.2004. Aggrieved by the said proceedings, the petitioners filed an appeal under Section 9 of the Act in the Court of the Chief Judge, City Civil Court, Hyderabad. After hearing, the said appeal was dismissed by orders dated 20.04.2007. Assailing the said orders, the present writ petition is filed.

Per contra, the respondents have filed counter denying the averments made in the affidavit filed in support of the writ petition and contended *inter alia* that the writ petition does not disclose any valid cause of action and the relief sought is misconceived considering the facts that the petitioners are unauthorized occupants of the railway property. Since the petitioners are the unauthorized occupants, a show cause notice was sought to be served under Section 4 of the Act. On refusal to acknowledge the receipt of the said notice, the same was pasted on the door of the unauthorized structure. That apart, the notice was also published in the newspapers fixing the date of enquiry as 30.08.2004. Therefore, the eviction orders were passed under Section 5 of the Act on 25.11.2004. Instead of assailing the said orders by way of an appeal, as provided under Section 9 of the Act, the petitioners filed W.P.No.24291 of 2004 before this Court. However, the said writ petition was dismissed on 27.12.2004 on the ground that the same was filed without exhausting the statutory remedy of appeal

as provided under Section 9 of the Act. After dismissal of the writ petition, the petitioners once again put on notice dated 17.01.2005 for the purpose of physical eviction from the property. In those circumstances, the petitioners filed a civil miscellaneous appeal bearing CMA.No.11 of 2005 and obtained interim stay on 25.01.2005 vide I.A.No.104 of 2005. However, after hearing, the said appeal was dismissed by orders dated 20.04.2007 upholding the eviction order dated 25.11.2004. The subject property admeasuring 4876 square meters bearing plot No.224 belongs to the erstwhile Nizam of Hyderabad and was handed over to the Nizam State Railway on 06.02.1919 and thereafter to the Central Railway till 1966. With the reorganization of Railways in 1966, the possession of the premises was vested with the South Central Railway and the same was incorporated in the Town Survey Records in T.S.No.2 B/A in Ward No.113 and the said aspect was considered by the Courts below as stated supra. Therefore, the petitioners are in unauthorized occupation of the subject property under the guise of Draupadhi Temple and as such there are no merits in the writ petition.

Learned counsel appearing for the petitioners would contend that the petitioners and prior to them their predecessors-in-title have been in possession and enjoyment of the subject property for the last several decades. The authorities under Sections 5 and 9 of the Act failed to appreciate the longstanding possession of the petitioners and as far as the unauthorized occupation of the Government land is concerned, the persons in possession cannot

be evicted by initiating summary proceedings more particularly where complicated questions of title arise for decision. He also contended that Government cannot take unilateral decision that the property belongs to it and takes its possession in a bona fide claim by resorting to the procedure contemplated under the Act, which is summary in nature. He also stated that the longstanding possession would raise the genuine dispute between the petitioners and the Government on the question of title. Therefore, they cannot be summarily evicted.

Learned counsel also contended that the petitioners in view of the longstanding possession over the schedule property have, in alternative perfected their title by way of adverse possession. To substantiate his contentions, he relied on the judgment of the Supreme Court in **Government of A.P. v. Thummala Krishna Rao**¹, the judgment of this Court in **District Collector, Ranga Reddy District, Hyderabad v. K. Narasing Rao**² and the judgment of the Jharkhand High Court in **Ujjal Kanti Banerjee v. State of Jharkhand**³. Basing on the said judgments, the learned counsel made submissions to impress upon this Court on the aspect that if there is a *bona fide* dispute regarding the title of the Government to any property, it cannot take a unilateral decision in its own favour that the property belongs to it and on the basis of such decision take recourse to summary remedy provided under the provisions of the Act for evicting the person, who is in possession of the property

¹ AIR 1982 SC 1081

² 1997 (4) ALT 428 (D.B.)

³ W.P.(c) No.2438 of 2006 & batch dated 20.07.2017

under a *bona fide* claim or title. When there is a *bona fide* dispute, the summary proceedings cannot be resorted to and more particularly from the date of dismissal of the suit in O.S.No.59 of 1967 dated 31.10.1973 the limitation starts to claim for the purpose of adverse possession and by the time the proceedings are initiated in 2004, it is more than 12 years and thereby the petitioners have perfected their title over the subject property on the ground of adverse possession. He also contended that the appellate authority ought not to have discussed the title aspect and instead relegated the parties to the civil Court since there is a genuine dispute regarding title over the subject property.

However, the counsel appearing for the respondents would contend that the subject property belongs to railways and the petitioners are in unauthorized occupation of the same. In the earlier rounds of litigation, the competent civil Courts have negated the contention of the petitioners that they are the owners and possessors of the subject property having acquired the title through a document dated 30/Teer 1310 Fasli (1901). When the Courts below have already negated that the petitioners have no title over the subject property, now it is not open for them to reagitate the same issue of title before this Court and contend that the proceedings, which are summary in nature under the provisions of the Act, cannot be invoked to remove the encroachers i.e., the petitioners. In fact, there is absolutely no irregularity and illegality in the orders passed by the appellate authority in ordering eviction of the petitioners.

From a perusal of the material on record, the facts which are undisputed, it is revealed that the predecessors-in-title of the petitioners based on the sale deed dated 30/Teer 1310 Fasli (1901) filed a suit in O.S.No.59 of 1967 for declaration and permanent injunction against the respondents on the file of the Court of IV Additional Judge, City Civil Court, Hyderabad. On contest, the said suit was dismissed on 30.10.1973. Assailing the said judgment, an appeal vide CCCA.No.27 of 1975 was filed and the same was also dismissed by judgment and decree dated 12.04.1994. After dismissal of the suit, when the respondents wanted to evict the petitioners from the subject property, another suit in O.S.No.3121 of 1982 was filed for injunction simplicitor against the respondents on the file of the Court of the First Assistant Judge, City Civil Court, Secunderabad. The said suit was also dismissed by judgment dated 03.04.1989. Assailing the said judgment an appeal in A.S.No.127 of 1989 was filed which too was dismissed on 29.07.1994. Aggrieved by the said judgment, the petitioners preferred S.A.No.427 of 1994 and the same was also dismissed by this Court by judgment dated 20.03.2003.

From a perusal of the above said sequence of events and the proceedings taken up by the petitioners, it is clear that the petitioners and prior to them their predecessors-in-title are restraining the respondents from taking steps for eviction under the guise of obtaining orders from the Courts below by filing some or the other suits and appeals. In fact, it is only after the conclusion of the proceedings in the second round of litigation i.e.,

after dismissal of S.A.No.427 of 1994 on 20.03.2003, the respondents have initiated proceedings under the Act for eviction of the petitioners. In that context, the contention of the petitioners that by virtue of the said longstanding possession they have perfected title over the subject property by adverse possession cannot be countenanced. In fact, the petitioners have restrained the respondents from taking effective measures to evict them and it is not open to them to turn around and submit that they have perfected title by adverse possession. In this regard the law is well settled that persons who have obtained interim orders from the Courts cannot take advantage of the same and allowed to contend that the respondents have not taken any effective measures for evicting them.

As far as dealing with the aspect of having *bona fide* dispute of title over the subject property between the petitioners and the respondents is concerned, having already suffered in two rounds of litigation before the Courts below as stated supra, it is not open for the petitioners to contend that there is a *bona fide* dispute and as such the respondents cannot resort to the provisions of the Act for evicting them since the proceedings under the Act are summary in nature. When once a competent civil Court has declared that the petitioners have no title over the subject property and when it has become final, it is not for the petitioners to contend that still there is a *bona fide* dispute of title.

On the other hand, the contention of the respondents that the subject property was handed over to the Nizam State Railway on

06.02.1919 and thereafter to the Central Railway till 1966 and with the reorganization of the railways in 1966, the possession of the subject property vested with the South Central Railway and incorporation of the same in Town Survey Records in T.S.No.2 B/A in Ward No.113, clinchingly establish that the subject property belongs to the respondents. Be that as it may, having failed before the competent Court of law in adjudicating the title aspect, it is not open for the petitioners to say that the respondents have to initiate proceedings in a competent civil Court for evicting them. Therefore, viewed from any angle either in the nature of the said longstanding possession of the petitioners over the subject property or on the basis of the said *bona fide* dispute of title, they are not available to the petitioners so as to contend that the proceedings initiated by the respondents under the provisions of the Act are not maintainable. In these circumstances, the judgments referred by the counsel for the petitioners are not applicable to the facts of the case on hand.

Now coming to the aspect of possession as well as *bona fide* title as contended by the petitioners vis-à-vis the provisions of the Act, it is evident from the provisions that summary remedy of eviction as provided under the provisions of the Act can be resorted to only by the Government against the persons, who are in unauthorized occupation of any land, which is its property. Therefore, the basic ingredient and the pre-requisite condition, which is relevant and material for invoking the provisions of the Act, is that the property in respect of which the proceedings under

the Act are invoked should be a Government property. In the conspectus of the facts as discussed supra, the subject property originally was handed over by the erstwhile Nizam of Hyderabad to the Nizam State Railways and which in turn vested with the South Central Railway. The same was also incorporated in the Town Survey Records by the revenue department. That being the position, coupled with the proceedings initiated by the petitioners themselves to declare that they are the owners and on failure to establish their title, it cannot be said at any stretch of imagination that there is a genuine dispute of title over the subject property for which the summary procedure as contemplated under the provisions of the Act cannot be invoked. On the other hand, the petitioners themselves having invoked the competent civil jurisdiction, failed to put up and establish that they have a title over the subject property. Further, the petitioners having put up the title over the subject property through sale deed dated 30/Teer 1310 Fasli (1901), it is not open for them, after loosing the battle on title in a competent civil Court, to project the theory of adverse possession. A person, who has already set up title over a property based on a document, cannot canvass that he has perfected the title by adverse possession, more so, the petitioners herein. In these circumstances, it cannot be said that there is a genuine dispute with regard to title over the subject property and as such this Court feels that there is no irregularity or illegality in the proceedings initiated by the respondents under the provisions of the Act to evict the petitioners from the subject property. Hence,

this Court is of the opinion that there are no merits in the writ petition and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. Interim order, if any, stands vacated.

Miscellaneous petitions, if any, shall also stand dismissed.

Date: 13.04.2018.
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P. KESHA RAO, J

