

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.1696 of 2007

ORDER:

This writ petition is filed to declare the action of the 1st respondent-Government in regularizing the alleged unauthorized occupation of the 5th respondent in G.O.Ms.No.100 dated 17.01.2005 when the possession of the piece of land is with the 3rd respondent, as illegal and arbitrary.

2. The brief facts of the case, according to the petitioner, are that the petitioner is the welfare association; the colony people formed into an association to pursue the matter with the Municipal Authorities and other authorities; an extent of 290 sq. mts. is there in the colony and the same was being used as play ground by the children of the members of the petitioner-association; when the Municipal Corporation was planning to construct a multi-storied complex, having five floors with the alleged purpose of rehabilitating hut dwellers, the petitioner-association and five others, filed WP No.2577 of 2000 questioning the action of the 4th respondent-District Collector, Hyderabad; the said writ petition was dismissed on 17.06.2005; thereafter, the 4th respondent did not make any constructions in the land in question; the petitioner-association and others have been making repeated requests to the 4th respondent and the Municipal Corporation to convert the land either as a park or as a lung space for the use and enjoyment by the colony people; even till today, the colony people are using the said land as park area and play ground; the 5th respondent showing the impugned G.O.Ms. No.100 dated 17.01.2005 and the proceedings of the 2nd respondent dated 10.04.2005 and preventing the public from using the said land stating that he purchased the said property and got the property

regularized through the 1st respondent; the 5th respondent made an application dated 13.12.2004 for regularizing his possession by paying amount to the government; respondent Nos.1 and 2, without looking into whether the 5th respondent is in possession or not, simply believed non-existing premises and regularized the unauthorized occupation of the 5th respondent; the Mandal Revenue Officer, Maredpally filed counter-affidavit in WP No.2577 of 2000 in the year 2001 stating that the land in question was taken possession on 28.10.1998 and the said land is covered with compound wall and is under his custody; the 5th respondent gave some false premises door number and claimed that he is in possession; the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad gave a false report as if the 5th respondent is in possession and regularized the same; G.O.Ms.No.455 contemplate regularization of possession of third parties, who are actually in possession of the land; in this case, the 3rd respondent Mandal Revenue Officer is in possession of the land as per the counter-affidavit filed by him in WP No.2577 of 2000 and hence, the regularization of the said land in favour of the 5th respondent, is illegal. Hence, the present writ petition.

3. A counter-affidavit has been filed by the 2nd respondent-Special Officer & Competent Authority, Urban Land Ceiling, Hyderabad on behalf of Respondent Nos.1 to 4 stating *inter-alia* that one Smt. Chitra Narsing Rao, owner of the scheduled land to an extent of 1337.67 sq. mts. in Sy.No.156/ 1 (old) & 165/ 5 (new) of Lallaguda Village of Marredpally Mandal, Hyderabad District filed a declaration in Form-I under Urban Land (Ceiling & Regulation) Act, 1976 (for short 'ULC Act'); after due enquiry under Section 8(1), notice under Section 8(3) of the ULC Act was issued on 15.01.1977 calling objections; after due enquiry, final orders

under Section 8(4) of the ULC Act was passed on 04.01.1978 determining the land holder has surplus vacant land to an extent of 302.31 sq. mts. situated at old Sy.No.156/ 1 and 165/ 5 (new) of Lallaguda village and a notification under Section 10(3) of the Act was published in A.P. Gazette No.17 dated 21.05.1998 and order under Section 10(6) was issued vide proceedings dated 26.08.1998; the surplus vacant land to an extent of 302.31 sq. mts was handed over to the Mandal Revenue Officer, Marredpally on 28.10.1998; at present the land is vacant on ground; the Mandal Revenue Officer in the counter-affidavit filed in WP No.2577 of 2000 stated that the land is covered with compound wall and is under his custody and that the colony people never used the said land as park or play ground; the 5th respondent filed a petition under G.O.Ms.No.455 dated 27.02.2002 for regularization of ceiling surplus land to an extent of 214 sq. mts. situated at Lallaguda village; basing on the primary documents, tax receipt bill dated 06.12.1999 and also registered sale deed dated 19.02.1993 produced by the 5th respondent, the 2nd respondent has recommended the case to the Government for allotment of land under Section 23(4) of the ULC Act; accordingly, the 1st respondent has issued G.O.Ms.No.100 Revenue (UC.II) Department dated 17.01.2005 allotting the excess land of 214 sq. mts. in Sy.No.165/ 5 (new) and 156/ 1 (old) situated at Lallaguda village, in favour of M.Pratap Reddy-5th respondent; accordingly, endorsement was issued on 10.04.2005 by the 2nd respondent; the contention of the colony people are enjoying the said land since more half a decade is not correct.

4. The 5th respondent also filed counter-affidavit stating *inter-alia* that the petitioner-association have no legal right with respect to the said land in question; representation of the petitioner dated 09.01.2007 itself shows that the petitioner-association wants the land in question to

be converted into park and that the subject land not being part of the land of the petitioner, they cannot seek allotment of the land; earlier the petitioner filed WP No.2577 of 2000, wherein no relief as is sought for in the present writ petition is not claimed and the petitioner cannot seek any more relief in the present writ petition on the principle of constructive *res judicata*; earlier writ petition was dismissed specifically holding that the petitioner have no claim over the land in question; the findings in the previous writ petition have attained finality; he has purchased the subject land i.e., 214 sq. mts. along with house bearing No.12-13-643/ 1 being part of Sy.No.166/ 1, situated at Lallaguda Village, under a registered sale deed dated 11.06.1993 and his vendor purchased the said property in the year 1962 by way of registered sale deed dated 10.10.1962; the said land is not used by the children of the petitioner-association as a park; after purchase, he is in possession and enjoyment of the said property; subsequently after purchase, he came to know that the property purchased by him was shown as excess land, he paid substantial amount at the time of purchase and made an application seeking allotment of the same; thereafter, the Government issued G.O.Ms.No.100 dated 17.01.2005 allotting the excess land of 214 sq. mts. to the 5th respondent and pursuant to the said G.O. and endorsement dated 10.04.2005, the 5th respondent is in legal possession of the land from the year 1993 and prior to him his vendor was in possession since 1962; the contention that he gave wrong door number is denied; the petitioner do not have any right whatsoever in the said land.

5. This Court while admitting the writ petition on 02.04.2007 granted an order of *status quo* as on that date.

6. Heard Sri K.V. Bhanu Prasad, learned counsel for the petitioner, the learned Assistant Government Pleader for Revenue for

Respondent Nos.1 to 4 and Sri M.Papa Reddy, learned counsel for the 5th respondent. Perused the record.

7. As seen from the record, the petitioner is a registered welfare association. According to them, an extent of 290 sq. mts. is there in their colony and a small piece of land is used as a long space by all the colony people. When the District Collector, Hyderabad i.e., 4th respondent tried to construct multi-storied complex, the petitioner-association along with five others filed WP No.2577 of 2000. The averments in the said writ petition are that the action of the District Collector (4th respondent herein) in constructing the multi storied complex, without a sanctioned plan, without any set-backs contrary to the bye-laws and zoning regulations and law of the land and silently approving the same by the Hyderabad Municipal Corporation, is illegal and arbitrary, and a consequential direction to the respondents to dispose of the representation filed by the petitioner, in accordance with law. As seen from the order in WP No.2577 of 2000, the Government started constructing G+2 housing scheme for the benefit of 21 poor persons, the Municipal Corporation of Hyderabad has approved the lay out under G+2 scheme and that the construction work was in progress, the said writ petition was filed on the ground that an extent of 290 sq. mts. was being used by the senior citizens and others and that no space is left over for park. A counter-affidavit was filed by the 4th respondent therein stating that the Urban Land Ceiling Authorities have declared an extent of 302.3 sq. mts. as surplus land and that the possession of the land was taken over on 28.10.1998 and that the colony people never used the said land as a park or play ground. The Municipal Corporation also filed its counter-affidavit therein stating that the open space provided and reserved in the lay out should be used for public purpose

only and that the Collector is undertaking construction work in the area in question for allotment of house sites to the weaker sections and that the hut dwellers who are residing in the area were removed pursuant to the directions in WP No.22190 of 1999 dated 27.10.1999, that the land in question is the government land and no lung space is available in the approved lay out. The said writ petition was dismissed on 17.06.2005 observing that the land in question is the government land and the petitioners have no claim over it. Hence, as seen from the order in WP No.2577 of 2000, the Municipal Corporation of Hyderabad stated that the land in question is the government land and there was no lung space in the approved lay out. The petitioner also filed copy of the representation submitted by them to the District Collector on 09.10.2007 requesting for allotment of this particular land to MCH for developing children's park in the said area. This representation filed along with the writ petition itself shows that even in the year 2007 they filed an application to the District Collector for allotting this land to MCH for developing children's park. In view of the said representation, which was filed in the year 2007, the contention of the petitioner is that the colony people are enjoying this piece of land for the last more than 1½ decades may not be believed. In WP No.2577 of 2000, this Court categorically observed that the petitioner have no claim over the land in question. Admittedly, the said judgment has become final, as no appeal, whatsoever was filed challenging the said judgment.

8. The main contention of the petitioner is that possession of the subject property was taken over on 28.10.1998 by the Mandal Revenue Officer, according to the counter-affidavit in WP No.2577 of 2000 and as the possession of the subject land is with the Tahsildar, the impugned G.O.Ms.No.100 dated 17.01.2005 is bad and liable to be set aside.

9. Learned counsel for the 5th respondent submits that he is not a party to the earlier writ petition i.e., WP No.2577 of 2000 and that the recitals in the said counter-affidavit stating that the Mandal Revenue Officer has taken possession of the subject land on 28.10.1998 could not be rebutted by him. He submits that as the 5th respondent purchased the subject land in the year 1993 for valid consideration and since then he has been in possession and enjoyment of the same and prior to him, his vendor was in possession of the same. As the 5th respondent purchased the subject land for valid consideration in the year 1993 and his vendor purchased the same in the year 1962, the 5th respondent filed an application in accordance with G.O.Ms.No.455 dated 29.07.2002 and accordingly, proceedings were issued in G.O.Ms.No.100 dated 17.01.2005 regularizing the land in his favour. Admittedly, the petitioner does not have any right over the subject land. Even in the representation filed by the petitioner-association on 16.01.2007, they sought allotment of the land to the Municipal Corporation of Hyderabad for developing it as children's park. The 5th respondent is a *bona fide* purchaser for valid consideration and sought regularization in accordance with G.O.Ms. No.455 dated 29.07.2002 by paying prescribed fees. As the 5th respondent purchased the land in the year 1993 by registered sale deed, it cannot be said that he is not in possession of the subject land basing on the recitals in the counter-affidavit filed by the Mandal Revenue Officer in a writ petition, to which the 5th respondent is not a party.

10. Having regard to the facts and circumstances of the case and for the reasons stated above, the writ petition is devoid of any merit and is liable to be dismissed.

11. The writ petition is, accordingly, dismissed. No order as to costs. Pending miscellaneous petitions, if any, in this writ petition, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 17.08.2018
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HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

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