

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.15509 OF 2014

Date: 31.01.2018

Between:

M/s. Gachibowli Village Welfare Association,
Bearing Regd.No.1322/2010, rep.by its President,
T.Vemananda Rao s/o. late T.Jeetaiah, Aged about
48 years, Occu: Business, r/o. H.No.1-2, Gachibowli
Village, Serilingampally (M), S.R. District.

.....Petitioner

and

The Government of Telangana, rep.by its
Principal Secretary, Revenue Department,
Secretariat, Hyderabad and others.

.....Respondents



The Court made the following:

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ORDER:

Petitioner-Association claims that said association was formed by the villagers of Gachibowli village to look after the welfare of residents of village and its surrounding areas. The owner of land in Sy.Nos.90/1 and 90/2 of Gachibowli village, by name, T.K.Shyam dedicated the said land to Pochamma and Mysamma temple, admeasuring Ac.0.14 guntas and the association is looking after the affairs of the temple and in the land belonging to the temple in Sy.No.90/1 and 90/2, Tin shed was being constructed. Alleging that petitioner association is in encroachment of Government land in Sy.No.91, notice under Section 7 of the Land Encroachment Act (for short, Act) was issued on 11.01.2013. Notice alleges that petitioner encroached 130 square yards of Government land. Detailed explanation was filed by the petitioner on 23.01.2013. Alleging that without considering the said explanation, notice under Section 6 of the Act was issued on 19.02.2013, petitioner earlier filed W.P.No.6115 of 2013. Said Writ Petition was disposed of by order dated 04.03.2013 directing the competent authority to consider the explanation filed by petitioner and to pass orders thereon. Petitioner Association also filed W.P.No.11447 of 2013 challenging the action of the Deputy Collector & Tahsildar in putting the Government Board to the Tin shed and in issuing another notice under Section 7 of the Act on 08.04.2013. Said Writ Petition was disposed by order dated 23.04.2013 directing the Deputy Collector & Tahsildar to consider the objections filed by petitioner and to pass orders thereafter, if need be, under Section 6 of the Act.

2. On 15.07.2013, orders were passed, in due consideration of explanation filed by the petitioner and in due compliance of the directions issued by this Court, holding that petitioner is in encroachment of Government land in Sy.No.91 and on the same day, notice under Section 6 of the Act was issued directing him to vacate the premises. Aggrieved thereby, appeal was preferred.

3. Sri T.Vemananda Rao, President of petitioner association also filed W.P.No.22606 of 2013 challenging the order dated 15.07.2013. It was alleged that even before the appeal was disposed of, petitioner was asked to vacate the land. This Court by order dated 31.07.2013, ordered not to evict the petitioner till appropriate orders are passed on appeal preferred by petitioner.

4. The appellate authority passed orders on 23.05.2014 affirming the decision of the original authority. Aggrieved thereby, this Writ Petition is filed.

5. By order dated 06.06.2014, this Court granted *status quo*. Praying to vacate the *status quo* order, respondents filed the vacate petitions.

6. On consideration of the matter, by order dated 26.07.2017, Court directed for production of survey map of the subject matter.

7. Heard learned counsel for petitioner, learned Assistant Government Pleader for respondents 1 to 4 and learned counsel Sri V.S.R.Anjaneyulu for 5th respondent. With the consent of learned counsel, writ petition is disposed of finally.

8. Learned counsel for petitioner contends that petitioner is in occupation of land belonging to the temple in Sy.Nos.90/1

and 90/2 and Tin shed is being constructed only in the said land and petitioner is not in encroachment of Government land as alleged. In fact, learned counsel for petitioner asserted that land in Sy.no.91 is not adjacent to the land in Sy.Nos.90/1 and 90/2. There was a road separating the two extents of land and, therefore, question of petitioner encroaching into the Government land and constructing a Tin shed on Government land is not valid. Only at the behest of some vested interest, proceedings were initiated culminating the orders in the writ petition. Learned counsel further contends that no proper survey was conducted and no material is placed on record to show that petitioner is in occupation of Government land; that several contentions were urged by petitioner, but none of them were considered before rejecting the appeal by the appellate authority.

9. Learned Assistant Government Pleader submits that land in Sy.No.91 is Government land. The sketch filed before the authority under the Land Encroachment Act, the copy of which is produced and copy of which is also filed by the party respondent along with the counter-affidavit, would disclose that the marked portion, which is part of Sy.No.91, is encroached and Tin shed sought to be constructed. No prior permission was obtained from the Government nor from the Municipal authorities to undertake construction and that is being illegal construction by encroaching into the Government land, appropriate steps were taken and due compliance of statutory requirements of Land Encroachment Act. Learned Assistant Government also produced copies of adangal and points out that in the revenue records, name of Sri T.K.Shyam

was shown as Director, but not as pattadar in individual capacity and the land in Sy.No.90/1 and 90/2 belongs to some institutions.

10. Sri V.S.R.Anjaneyulu submits that by encroaching into the road margin, petitioner obstructing a passage, causing lot of hardship to the neighbouring people. Material on record would substantiate that petitioner has encroached the Government land. According to the learned counsel, no material is placed to show that land claimed by petitioner belongs to Sri T.K.Shyam and that he has gifted the said land and that petitioner is in valid occupation of said land and that he is not in encroachment of the Government land.

11. To appreciate the contentions of the learned counsel for petitioner, two aspects relevant to be noted. No material is placed on record before the authorities under the Land Encroachment Act or before this Court to show that Sri T.K.Shyam is the owner of the property in Sy.Nos.90/1 and 90/2 and extent of land gifted for the temple. The adangal copy produced by the learned Assistant Government Pleader would disclose that name of T.K.Shyam is shown as Director of an institution against Sy.Nos.90/1 and 90/2. In the absence of any other material placed on record pointing out that petitioner has valid possession of disputed land, it is not open to petitioner to say that he is not in occupation of the land belonging to the Government and land is part of Sy.Nos.90/1 and 90/2. Furthermore, though it is vehemently contended that Sy.No.91 is not adjacent to Sy.Nos.90/1 and 90/2, the sketch filed by the petitioner along with writ petition, sketch map filed by the respondents and sketch available in the record produced by

the learned Assistant Government Pleader would show that Sy.No.91 is adjacent to Sy.No.90. According to the location sketch, triangle piece of land forming part of Sy.No.91 is alleged to have been encroached by the petitioner and Tin shed is constructed.

12. Further, as fairly submitted by the learned counsel, no building permission was obtained before undertaking construction. In the absence of any material placed on record to show that piece of land on which Tin shed sought to be constructed is part of Sy.Nos.90/1 and 90/2, it cannot be said that proceedings initiated under the Land Encroachment Act are vitiated. It cannot be said that the decisions arrived at by the original authority and appellate authority are perverse and contrary to the material on record.

13. With reference to the assertion of the learned counsel for petitioner that no reasons are assigned in support of the decision, it is seen that the original authority considered all the contentions urged by the petitioner and held that piece of land on which Tin shed sought to be constructed is part of Sy.No.91. The Deputy Collector also further observed that in addition to the fact that, according to the Government records, land in Sy.No.91 is Government land and piece of land occupied by the petitioner is Government land, he has also observed that no material is placed on record to show that the extent of land and ownership in Sy.Nos.90/1 and 90/2. On appeal after extracting the grounds raised by the petitioner, the appellate authority concurred with the view taken by the original authority and upheld the decision. It is settled principle of law that when the appellate authority concurs with the view of the original authority and affirms the decision, no

elaborate reasons are required to be recorded. However, it is appropriate to note that in the present case, the issue is whether petitioner is in encroachment of the Government land. Petitioner do not dispute the fact that land in S.No.91 is Government land. Though, learned counsel for petitioner sought to contend that Sy.No.91 is not adjacent to the land in Sy.Nos.90/1 and 90/2, the sketch map filed by the respondents and sketch available in the record produced by the learned Assistant Government Pleader, would disclose that it is an adjacent land. No other material is placed on record to disprove the view taken by both the authorities. Thus, it cannot be said that there is no application of mind.

14. In the facts of this case, it cannot be said that decision arrived at by the authorities under the Land Encroachment Act is vitiated by non application of mind, perverse and not supported by reasons, warranting interference by this Court. Thus, Writ Petition merits no consideration and is accordingly dismissed.

15. It is needless to observe that if petitioner has any other valid claim, it is always open to him to work out his remedies as available in law including the issue of conducting of proper survey.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

JUSTICE P.NAVEEN RAO

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