

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

WRIT PETITION No.40887 of 2017

ORDER :

Heard the counsel for petitioner, the learned Government Pleader for Revenue for respondent nos.1 to 3; Sri G. Vidyasagar, learned Senior Counsel appearing for Smt. K. Udaysri / Sri M. Ajay Kumar, learned Standing for 4th respondent; and the learned Government Pleader for Home, for respondent nos.5 to 7.

2. This Writ Petition has been filed by petitioner to declare the action of respondents in preventing him from fencing land admeasuring Acs.1.20 gts in S.Nos.91 and 92/B of Lakshmipuram Village, Warangal Mandal, Warangal District.

3. According to petitioner, he and his family members own an extent of Acs.2.05 gts in S. No.91, and Acs.2.00 gts in S. No.92/B in the said village and their possession is also reflected in the Pahani as well as in the *Khasra Pahani*.

4. It is also not in dispute in respect of the lands mentioned above that petitioner filed O.S.No.966 of 2013 against certain third-parties before the

II Additional Junior Civil Judge, Warangal for a perpetual injunction, and obtained temporary injunction against them in I.A.No.1276 of 2013 on 24.09.2013.

5. It is not in dispute that adjacent to the land claimed by petitioner, M/s.Azam Zahi Mills Limited own an extent of Acs.106.03 gts, and out of this extent Acs.0.27 gts fell in S. No.92 [vide proceeding bearing Ref.No.7538 dt.02.05.1968 of M/s.Azam Zahi Mills Limited] which is not disputed by the respondents.

6. This entire extent of Acs.106.03 gts was admittedly sold to the National Textiles Corporation which in turn alienated it to the 4th respondent-Authority.

7. The petitioner had also earlier filed W.P.No.877 of 2014 before this Court when the 4th respondent tried to interfere and dispossess the petitioner from his land without following due process of law.

8. By order dt.01.09.2014, this Court disposed of the Writ Petition holding that the 4th respondent cannot interfere with the enjoyment of petitioner over the subject land. It was also specifically held therein that the land in S.No.92 had been sold away by the 4th respondent to certain third parties and that both with regard to land in S.No.91 and S.No.92, the

4th respondent herein had no right, title or interest. The contention of 4th respondent that petitioner was trying to grab the land of Ac.0.27 gts in S. No.92 belonging to it was rejected. No appeal was filed against this order by 4th respondent and this order thus attained finality.

9. Alleging that the order dt.01.09.2014 in WP.No.877 of 2014 was violated, the petitioner herein filed C.C.No.2270 of 2014.

10. In that Contempt Case, after hearing the counsel for 4th respondent an interim order was passed directing survey of the land in S.No.91 and 92 by the Survey Authorities to identify Ac.0.27 gts in S.No.92 which originally belonged to the 4th respondent.

11. However, this order was stayed in L.P.A.No.9 of 2017 which was filed by the 4th respondent, on the ground that in the exercise of contempt jurisdiction, survey of the land could not have been directed by this Court.

12. The petitioner therefore filed the present Writ Petition stating that he ought to be allowed to fence the land claimed by him and the respondents cannot be allowed to interfere with his possession and enjoyment of the same.

13. The petitioner contended that the extent of land for which there is no litigation even with the 4th respondent is Acs.1.20 gts and there could not be any prejudice to anybody including the 4th respondent if the petitioner were to construct a compound wall after demarcating the Ac.0.27 gts, which was earlier owned by the 4th respondent.

14. The counsel for petitioner also placed reliance on the Division Bench judgment of this Court dt.14.06.2013 in Writ Appeal No.110 of 2013 wherein this Court categorically held that the Revenue Officials can conduct survey even at the instance of private parties and contended that unless such a survey is directed to be conducted by the Officials attached to the Office of the 3rd respondent, the issue will not get a *quietus*.

15. Sri G. Vidyasagar, learned Senior Counsel appearing for 4th respondent and the learned Government Pleader for Revenue, for respondent nos.1 to 3, contended that in the Writ Petition petitioner did not make any prayer seeking relief for survey of the lands claimed by him; that there is nothing to show that he is the owner of the land; and in any event, the Civil Suit O.S.No.966 of 2013 is pending. They however did not dispute that the interest of the 4th respondent was only to the extent of Ac.0.27 gts in S. No.92. According to them, the pahani copy for the year 2011-12 mentions that the land claimed by petitioner is in the name of Smt. Mahboobunnisa Begum @ Meharunisan Begum. They contend that the petitioner has not established his relationship with the said person.

16. The counsel for petitioner on the other hand contended that the said Smt. Mahboobunnisa Begum is his mother, and when the 4th respondent has no interest even in the Ac.0.27 gts of land which he originally owned (having alienated it to several persons), it cannot oppose the petitioner's action in fencing/building a compound wall in the land claimed by him, including the land which previously belonged to the 4th respondent.

17. I have noted the contentions of both sides.

18. From the facts narrated above, it is clear that though originally Acs.0.27 gts of land in S. No.92 belong to M/s.Azam Zahi Mills Limited, it devolved on the 4th respondent and the 4th respondent also alienated the same to certain third parties. This fact is recorded in the order dt.01.09.2014 in WP.No.877 of 2014 wherein this court categorically

held that the land in S.No.92 had been sold away by the 4th respondent to several third parties and it has no subsisting right, title or interest in S.No.92 at all. It directed the 4th respondent not to interfere with the enjoyment of petitioner over the land in S.No.92. This judgment attained finality, and has not been questioned by the 4th respondent.

19. The right, title or interest of the petitioner in the land in S.No.92 has been upheld by implication in the order passed in W.P.877 of 2014. Therefore, the stand taken by the 4th respondent in the counter-affidavit filed by it that petitioner's title to the land is in doubt, cannot be countenanced.

20. It cannot also claim that unless the petitioner establishes his relationship with Smt. Mahboobunnisa Begum, he is not entitled to any relief in the instant Writ Petition. It is common knowledge that any proof of identify of a person would only indicate the father's name, and not the mother's name. I also see no reason to disbelieve the statement of the counsel for petitioner that Smt. Mahboobunnisa Begum is petitioner's mother. In any event, when this Court had held that respondent no.4 has no right, title or interest in the land in S.No.92 in WP.877 of 2014, it has no *locus* to question the title of petitioner to the land therein.

21. As regards the contention of the counsel for respondents that there is a civil suit already pending, i.e., O.S.No.966 of 2013, admittedly the 4th respondent is not a party in the suit although it claims that purchasers from it are parties therein. However, the pendency of such a civil suit does not preclude the petitioner from seeking relief in this Writ Petition against the 4th respondent, who is not a party therein.

22. Also, when the 4th respondent does not own any land in S. No.92 as was held in WP.No.877 of 2014 it has no *locus* to oppose the petitioner's request for demarcation of the land belonging to him. It only indicates the cantankerous attitude of the 4th respondent and other respondents and their intention to harass the petitioner who has succeeded in WP.No.877 of 2014 against the 4th respondent.

23. Since the total land in S.No.92 is said to be Acs.5.00, of which Acs.2.00 belongs to petitioner, and the balance belongs to third parties, the issue can only be given a *quietus* if a survey is conducted demarcating the land of petitioner and the land belonging to other persons in the said S.No.92.

24. No doubt a specific prayer has not been made seeking survey in this Writ Petition. But it is settled law that High Courts have a constitutional duty to enforce the law by giving appropriate directions and to mould relief where necessary. (See **Dwarkanath v. ITO**¹)

25. This Court has already held in order dt.14.06.2013 in W.A.No.110 of 2013 that Circular instructions / guidelines / Board Standing Orders issued by the Government permitting Revenue Officials to conduct survey of land of private parties also.

26. Therefore, on payment of requisite charges therefor by the petitioner for such survey within two (02) weeks from today the respondent nos.2 and 3 shall cause survey to be done and demarcate the land claimed by petitioner admeasuring Acs.2.00 in S. No.92/B as well as

¹ AIR 1966 SC 81

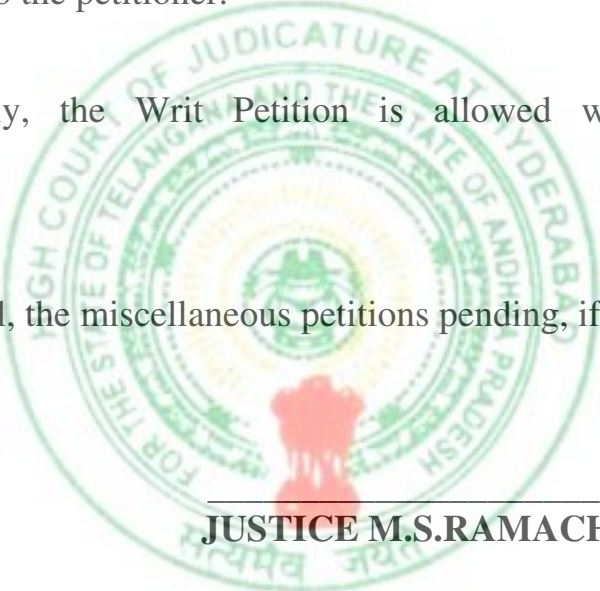
land owned by others in the said S.No. 92 by giving notice to all affected parties, within a period of four (04) weeks of making such application by petitioner for the said survey before the 3rd respondent.

27. On such survey being done, the petitioner would be entitled to erect fencing or compound wall around the land claimed by him in S. No.92/B, and none of the respondents shall interfere with the erection of the same.

28. The 4th respondent shall pay costs of Rs.2,000/- (Rupees Two Thousand only) to the petitioner.

29. Accordingly, the Writ Petition is allowed with the above directions.

30. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.



JUSTICE M.S.RAMACHANDRA RAO

Date: 19.01.2018

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