THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

I.A.No.2 of 2018 in W.P.M.P.No.50121 of 2017
In/and
W.P.No.40388 of 2017
And
C.C.No.521 of 2018

COMMON ORDER:

Petitioner was gifted under a registered gift deed dt.27-03-2006 a house bearing D.No.10-105 covered with asbestos sheets along with appurtenant land of Ac.0.05 cents in Ward No.10 of Kesarapalli village by her grand mother Ravi Suseela Devi and her mother Rathnam Naga Lakshmi.

2. She filed the Writ Petition contending that she is in possession thereof and was paying house tax from 2007 and also possessing electricity service connection and water tap connection, and that the Revenue officials of the State of Andhra Pradesh (respondent Nos.1 to 4) high handedly tried to evict her from the said property without following due process of law.

Interim Order dt.29-11-2017 in W.P.M.P.No.50121 of 2017

3. She filed W.P.M.P.No.50121 of 2017 for a direction to respondent Nos.1 to 4 not to dispossess her from the subject property.

4. On 29-11-2017, this Court directed respondent Nos.1 to 4 not to dispossess her from the subject property without following due

process of law since she admittedly had title over the same and possession thereof.

C.C.No.521 of 2018

5. However, alleging that respondent Nos.1 to 4 demolished her house on 31-01-2018 around 4 a.m. without following any due process of law and have thus willfully disobeyed the order passed on 29-11-2017, she filed C.C.No.521 of 2018.

6. She contended therein that she had suffered loss of Rs.20.00 lakhs by such illegal action of respondent Nos.1 to 4 and they ought to be punished under the Contempt of Courts Act, 1971 for willfully disobeying the interim order dt.29-11-2017 in W.P.M.P.No.50121 of 2017 in W.P.No.40388 of 2017.

I.A No. 1/2018

7. The Andhra Pradesh Industrial Infrastructure Corporation Limited filed I.A.No.1 of 2018 in W.P.No.40338 of 2017 to implead itself. It contended that it had given a requisition to the State Government of Andhra Pradesh through the District Collector (2nd respondent) for lands in Keesarapalli village on 07-10-2017, that it requires such lands for developing IT/ITES in the State, that Ac.29.86 cents was allotted by it to M/s.HCL Enterprises, which has invested Rs.400.00 crores, that petitioner's land is also part of the land requisitioned by it and it should therefore be impleaded as a respondent in the Writ Petition.

8. I.A.No.1 of 2018 was allowed on 02-07-2018 and the said Corporation was impleaded as 5th respondent in the Writ Petition. However, it did not file any separate counter in the Writ Petition.

I.A.No.2 of 2018

9. I.A.No.2 of 2018 was filed by the Tahsildar of Gannavaram Mandal (4th respondent in the Writ Petition) to vacate the interim order dt.29-11-2017 in W.P.M.P.No.50121 of 2017 in W.P.No.40388 of 2017, along with counter-affidavit.

10. In the said counter-affidavit, he stated that the 5th respondent had requested for allotment of Government land measuring Ac.28.27 cents in Rs.No.20-3 of Kesarapalli village, Gannaravam Mandal for it vide proceedings dt.09-03-2017 and 07-10-2017, that the petitioner was an encroacher of 242 sq. yds in Sy.No.20-4, that she has erected an asbestos shed and she had given a letter of consent on 16-11-2017 agreeing to give up her land if compensation is paid. It is contended that without waiting for payment of compensation, petitioner approached this Court on 27-11-2017 and obtained interim order on 29-11-2017 not to dispossess her without following due process of law.

11. It is further contended that a notice under Section 7 of the A.P. Land Encroachment Act, 1905 (for short "the Act") was issued on 13-12-2017 which was served on petitioner by way of affixture on the building; that on behalf of petitioner, her mother had taken the notice

by signing it; petitioner gave a reply dt.19-12-2017 stating that petitioner had perfected her title by way of adverse possession; and thereafter an order dt.22-12-2017 was passed under Section 6 of the said Act and sent it to the petitioner through registered post, but the same was returned on 02-01-2018.

12. It is contended that an order dt.27-12-2017 was passed directing the Revenue Inspector to take possession of petitioner's land, that it was sent through courier and also affixed on the structure; that petitioner did not file any appeal challenging it; and that on 27-01-2018 respondent Nos.1 to 4 tried to remove the structure but petitioner's mother obstructed.

13. It is also contended that there is no document in the name of petitioner establishing her title over the property. It is contended that only after following the procedure under the Act, the petitioner was evicted.

14. Alternatively, it is the further contention of 4th respondent that asbestos sheets shed erected by petitioner is in Sy.No.20-4, which is a tank poramboke.

15. Along with counter-affidavit, encroachment notice dt.13-12-2017 under Section 7 of the Act issued to petitioner by 4th respondent, copy of the alleged consent letter dt.16-11-2017 issued by the petitioner, and order dt.19-12-2017 allegedly passed under Section 6 of the Act are enclosed.

The Reply affidavit of petitioner

16. Reply affidavit has been filed by petitioner stating that she obtained property through registered gift deed dt.27-03-2006 from her mother and grand mother, that she is in continuous possession and enjoyment since 2006 for more than 12 years and prior thereto, the possession was with her grand mother and mother.

17. Petitioner contended that without following due process of law, the 4th respondent demolished petitioner's house ignoring her and her family's long standing possession of the property, by applying the Act, even though it is not applicable.

18. Petitioner denied that she gave letter of consent to 4th respondent on 16-11-2017.

19. She also contended that the notice under Section 7 of the Act 13-12-2017 was not served on her. She contended that even according to 4th respondent, she had given a reply on 19-12-2017 to the show cause notice taking the plea of adverse possession and raising a plea of inapplicability of the Act, and without considering the said plea, the order was passed on 27-12-2017.

20. She therefore asserts that the 4th respondent had intentionally violated the order of the Court and is liable to be punished for demolishing petitioner's property in violation of this Court's interim order.

21. It is contended that the Station House Officer, Gannavaram P.S. did not give any police aid when demolition was undertaken of petitioner's property in spite of the complaint made by petitioner.

22. Petitioner contended that if really petitioner's property is in a tank poramboke as contended by 4th respondent, it could not have been allotted to M/s.HCL Technologies by 5th respondent and that the said plea that it is a tank poramboke land is a false plea.

23. It is contended that only to get over the Contempt proceedings, the proceedings under the Act were created and that the intention of the respondents is to favour big industrial houses like M/s.HCL Technologies and the said allotment is not in public interest.

THE CONSIDERATION BY THE COURT

24. From the facts narrated above, it is clear that there is a claim by petitioner that the subject land is gifted to her by her mother and grand mother under registered gift deed dt.27-03-2006 and in the alternative, she has also taken the plea that even assuming that the subject land was once a Government land, she and her predecessor-in-title have acquired title thereto by adverse possession as against the Government on account of long standing possession.

25. Respondent Nos.1 to 4 on the other hand contended that the subject land is Government land and a tank poramboke.

26. Admittedly, this Court granted interim order on 29-11-2017 in W.P.M.P.No.50121 of 2017 in W.P.No.40388 of 2017 that respondent

should not dispossess the petitioner without following due process of law.

27. According to respondents, they followed the procedure under the Act to evict the petitioner. Alternatively, it is also contended by respondents that the petitioner had herself given a consent letter on 16-11-2017 to 4th respondent stating that she has no objection to give up the land subject to payment of market rate compensation to her.

28. I will first examine whether the plea of respondents that petitioner had given consent to give up her property voluntarily on 16-11-2017 is correct or not. The petitioner denied giving of such a letter in her reply affidavit.

29. The said letter 16-11-2017 filed by the respondents contains a signature purporting to be that of the petitioner in Telugu language, while signature of the petitioner not only on vakalat but also in the affidavit filed in support of the Writ Petition/reply affidavit are in English language. No material has been placed by respondents to show that the petitioner was in the habit of signing in Telugu language in the manner indicated in the letter dt.16-11-2017 filed by them. Therefore, I hold that the letter dt.16-11-2017 alleged by respondents to have been written by petitioner is not proved to have been written by petitioner. Consequently, the respondents cannot rely on the same.

30. Even assuming for the sake of argument without conceding that the said letter is genuine, the contents of the said letter also show that

the petitioner wanted compensation at market rate in return for giving her property and had asserted therein also that she is the owner of the property under the registered document i.e. gift deed dt.27-03-2006. It is not the case of respondents that they have accepted petitioner's offer on those terms. Once the said offer of the petitioner as per the terms of the said letter is not accepted by respondents, the respondents are *estopped* from placing any reliance on it.

No evidence that land is tank poramboke land

31. As regards the plea of respondents that the structure erected by petitioner in the subject land is in fact in a tank poramboke and that the said structure is in Sy.No.20-4 of Kesarapalli village is concerned, no revenue record in support of the said plea has been placed on record by respondents *before this Court*.

32. If the lands were to be in tank poramboke lands, then under the Board Standing Orders, the said land cannot be assigned or alienated for any purpose. This legal position is not disputed by the learned Government Pleader for Revenue appearing for respondents.

33. So the respondents could not have taken the land and given it to M/s.HCL Technologies either, if really it is in fact tank poramboke land.

34. Therefore, I hold that the plea of respondents that the land claimed by petitioner is a tank poramboke land, is a false plea raised

deliberately to mislead the Court and prejudice the Court against petitioner.

RE: Proceedings under the A.P.Land Encroachment Act,1905

35. (i) As regards the proceedings under the Act are concerned, a notice under Section 7 thereof issued on 13-12-2017 which alleges that the petitioner has occupied Government land in Sy.No.20-4 and that the said land is tank poramboke land. The notice was received by petitioner's mother and not by the petitioner.

(ii) But the petitioner did give a reply thereto on 19-12-2017 stating that she is in possession and enjoyment of the petitioner for more than 11 years, that prior thereto, her mother and grand mother were in possession thereof, that they constructed the house long back, and since more than 40 years, the said site in which the house bearing No.10-105 was constructed, was in their possession and they perfected their title by prescription of time. Reference was also made to water and electricity connection bills to the said property being raised for more than 12 years.

(iii)There is also a specific contention raised by petitioner that summary proceedings under the Act cannot be resorted to since petitioner is in settled possession and enjoyment of the property.

(iv) No doubt the 4th respondent claims to have passed an order on 22-12-2017 stating that the subject land is tank poramboke land and registration done in the said land is null and void and it is also stated

that mere possession of petitioner for more than 11 years does not confer any title and petitioner is liable to be evicted.

(v) According to petitioner, she has not received the said order and no hearing was provided before passing of the said order.

(vi) The fact that the order under Section 6 of the Act passed on 27-12-2017 was not served on petitioner is admitted by respondents in para-4. When it is admittedly not served on petitioner and is produced along with the counter affidavit by 4th respondent on 13.7.2018, petitioner cannot be blamed for not filing an appeal against it under the Act. Even if she preferred any appeal after being given the said order, it would have been dismissed as barred by limitation.

(vii) Also *no material* in support of the claim of the Government that the subject land is poramboke land or Government land *was adverted to even in the order dt.27-12-2017* by 4th respondent. Which revenue record was considered by 4th respondent for giving the finding that the land claimed by petitioner is Government land or tank poramboke land is thus not known.

(viii) That apart, the Supreme Court of India in **Government of Andhra Pradesh Vs. Thummala Krishna Rao and another**[1] has held that if there is a *bona fide* dispute regarding the title of the Government to any property, the Government cannot taken a unilateral decision in its own favour that the property belongs to it,

[1] AIR 1982 SC 1081

and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a *bona fide* claim or title. It held that *the summary remedy prescribed by Section 6 is not the kind of legal process which is suited to an adjudication of complicated questions of title; and said procedure therefore is not a due process of law for evicting such parties in possession*. It also observed that duration of occupation is relevant in the sense that a person who is in occupation of a property openly for an appreciable length of time can be taken *prima facie* to have a *bona fide* claim to the property requiring an impartial adjudication according to the established procedure of law. It held that *if there is a long possession of the party, who is sought to be evicted and his predecessor-in-tile, it raises a genuine dispute between them and the Government on the question of title and the summary procedure under the Act could not have been followed to evict them.*

(ix)This legal position is not disputed by the learned Government Pleader for Revenue appearing for respondents.

(x) In the present case also, there is a registered gift deed dt.27-03-2006 being relied upon by the petitioner and her possession till her eviction in January, 2018 is not disputed by respondents. This long standing possession coupled with registered gift deed produced by petitioner, in my considered opinion, indicate existence of a genuine dispute between petitioner and the State regarding title to the

property. So the summary remedy prescribed by Section 6 of the Act is not the legal process suited for such adjudication of title. Consequently, the procedure followed by 4th respondent for evicting the petitioner and demolishing the structure erected by her and handing over her property to the 5th respondent/ M/s.HCL Technologies is not "due process of law".

36. For the aforesaid reasons, I hold that the order dt.22-12-2017 passed by the 4th respondent cannot be said to be an order passed after following 'due process of law'. The said order dt.22-12-2017 under Sec.6 of the Act is accordingly set aside; the respondents are directed to restore the subject property to the petitioner with the asbestos structure (which existed before it was demolished by 4th respondent and other officials) within two (02) months from today. The 1st respondent shall also pay costs of Rs.25,000/- (Rupees Twenty Five Thousand only) to the petitioner and shall take disciplinary action against 4th respondent for demolishing the petitioner's structure in violation of due process of law directed to be followed by this Court in its order dt.29-11-2017 in W.P.M.P.No.50121 of 2017 in W.P.No.40388 of 2017.

37. The Writ Petition is allowed accordingly and I.A.No.2 of 2018 in W.P.M.P.No.50121 of 2017 in W.P.No.40388 of 2017 is dismissed.

C.C.No.521 of 2018

38. I have held while deciding the Writ petition No.40388 of 2017 that respondents in the Writ Petition did not follow due process of law while evicting the petitioner and demolished the structures in the subject land; that the petitioner is not proved to have given consent letter to take over the land; that there is no evidence that the land claimed by petitioner is 'tank poramboke' land. The 1st respondent in the Contempt Case did not deny that the structure in the subject land was demolished by her.

39. In view of the above, I hold that there is willful and deliberate violation of the order dt.29-11-2017 in W.P.M.P.No.50121 of 2017 in W.P.No.40388 of 2017 and that the 1st respondent has tried to mislead the Court and give an impression that 'due process of law' was followed by her, when it is not so.

40. So the 1st respondent is sentenced to Simple Imprisonment for a period of one (01) month and fine of Rs.2,000/- (Rupees Two Thousand only), which shall be paid within four (04) weeks from today. The sentence of imprisonment shall stand suspended for a period of six (06) weeks. The petitioner shall deposit subsistence allowance @f Rs.300/- (Rupees Three Hundred only) per day within four (04) weeks from today.

41. The Contempt Case is allowed accordingly.

42. As a sequel, miscellaneous applications pending, if any, shall stand closed.

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JUSTICE M.S.RAMACHANDRA RAO

Date: 10-08-2018
Vsv/*

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
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