

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

I.A.No.1 of 2018 in I.A.No.1 of 2017 in WP.No.44813 of 2017

and

WP.No.44813 of 2017;

and

C.C.No.161 of 2018 in I.A.No.1 of 2017 in WP.No.44813 of 2017

COMMON ORDER :

This Writ Petition is filed by the petitioner seeking a *Writ of Mandamus* to declare the action of the respondents in interfering with his possession and enjoyment of land admeasuring Acs.4.00 cents in Survey No.332 of Nizampet Village (erstwhile Medchal Taluq), presently within the Bachupally Mandal, Medchal District, and affixing a board displaying that the land belongs to the Government on the gate erected by the petitioner therein, as arbitrary, illegal and unconstitutional and in violation of principles of natural justice and to pass consequential orders in that regard.

2. The 1st respondent is the State of Telangana represented by it's Principal Secretary, Revenue Department, the 2nd respondent is the District Collector, Medchal District, the 3rd respondent is the Revenue Divisional officer, Malkajgiri, Ranga Reddy District and the 4th respondent is the Mandal Revenue Officer, Bachupally Mandal, Medchal District.

The brief facts in WP.No.44813 of 2017 :

3. The petitioner is Tekula Venkat Reddy. His father's name is also Venkat Reddy. On 15.8.1961 vide proceedings A3/9420/60, Tekula Venkat Reddy was granted a patta in Form –G under Rule 9(g) of the Loani Rules,1950 issued under Section 172 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli (**for short, 'the Act'**) on payment of consideration, which petitioner contends to be almost par with a sale. The petitioner claims to be in continuous possession and enjoyment thereof from the date of grant of such assignment.

4. When the respondents started interfering with possession and enjoyment of petitioner and 4 others in the year 2003 and proposed to sell by conduct of public auction their land through a public auction notice dt.06.09.2003, the petitioner along with others filed WP.No.19605 of 2003 challenging the same.

5. In the counter-affidavit filed therein by the Deputy Collector and Mandal Revenue Officer, Qutbullapur Mandal, Ranga Reddy District on behalf of himself, the District Collector, Ranga Reddy District, the Revenue Divisional Officer, Hyderabad East Malakunta and the then Government of Andhra Pradesh, represented by it's Principal Secretary, Revenue Department, they did not dispute the fact that petitioners therein, including Tekula Venkat Reddy, were issued Form-G certificates under Rule 9(g) of the Laoni Rules vide Proceedings A3/9420/60.

6. It was also stated therein that some of the petitioners are in possession of part of land in Survey No.332 of Nizampet Village from 1963-64 to 1980-81 only and they are not in possession from the year 1981-82 till date, and it was stated that petitioners abandoned the land long back and the lands were lying vacant and fallow.

7. This Court allowed the said W.P.No.19605 of 2003 on 3.1.2012 and the impugned auction notice dt.6.9.2003 so far as the land in possession of the petitioners therein is concerned, was set aside observing that this will not preclude the respondents to take appropriate action afresh following due process of law. This Court followed the Division Bench judgment in **Letter sent from Plot No.338 v. The Collector and District Magistrate and the Secretary to Government of Andhra Pradesh, Revenue Department¹**, wherein the Division Bench considered the nature of rights acquired by allottees under Form-G certificates issued under Rule 9(g) of the Laoni Rules framed under Sec.172 of the Act.

8. No appeal was filed against this order, and it attained finality.

9. The petitioner in the present case contends that no proceedings have been initiated by the respondent in compliance with due process of law after the WP.No.19605 of 2003 was disposed of on 03.01.2012; that suddenly the officials of the Revenue Department came to the site and affixed a board to the gate erected by the petitioner in the Ac.400 in Sy.No.332 of Nizampet Village in his

¹ 2008 (5) ALT 313

occupation stating that the land belongs to the Government and they were threatening to dispossess the petitioner from the land. The petitioner asserts that he is in possession and enjoyment of the property from the date of issuance of the assignment patta to Tekula Venkat Reddy under Rule 9(g) of the Laonee Rules in 1961, and the respondents cannot interfere with his possession and enjoyment and erect the said board.

10. The petitioner had also filed I.A.No.1 of 2017 to direct the respondents not to interfere with his possession and enjoyment of the subject land and to remove the board affixed by them displaying that the land belongs to the Government on the gate erected by the petitioner.

11. On 04.01.2018, this Court passed the following order :

“Learned Government Pleader for Revenue takes notice for respondents.

Having regard to the order dt.03.01.2012 in WP.No.19605 of 2003 stating that the petitioner was issued patta under Form-G Certificate as per Rule 9(g) of Loani Rules, 1958 framed under Section 172 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli, and stopping auction of the lands in occupation of the petitioner and holding that such an auction is illegal, there shall be interim direction as prayed for.”

C.C.No.161 of 2018 :

12. Alleging that in spite of the said order, the Mandal Revenue Officer and the Mandal Revenue Inspector came to the subject land along with JCB and tractors on 20.01.2018 and started removing sand

and bricks stored by one Srinivas in the subject land with permission of petitioner, and stating that in spite of a written representation dt.21.01.2018 by the said Srinivas to the Mandal Revenue Officer and the Station House Officer, Bachupally P.S. informing about the interim order dt.04.01.2018 in this Writ petition, the respondents continued to remove the sand and bricks with the help of the police, Contempt Case No.161 of 2018 has been filed.

I.A.No.1 of 2018 (the vacate stay petition)

13. I.A.No.1 of 2018 in I.A.No.2 of 2017 in WP.No.44813 of 2017 has been filed by the 4th respondent on behalf of himself and respondent nos.2 and 3 to vacate the interim order dt.04.01.2018 passed in I.A.No.1 of 2017 in WP.No.44813 of 2017.

14. In the vacate stay petition, for the first time, a plea is raised that the petitioner would have been aged only two years at the time of the alleged assignment of the subject land in 1961 and so the said assignment in Form-G claimed by the petitioner is fake, bogus and was created to grab valuable Government land.

15. Another contention is advanced in the counter-affidavit that to the land of the Acs.4.00 cents assigned to petitioner under Form-G certificate on 15.08.1961 no boundaries were mentioned therein, and therefore, he is not entitled to claim the subject land.

16. It is also contended that the subject land is under exclusive possession of the State Government with a boundary wall constructed

during 2014 and so there was no necessity to issue any notice to petitioner under any Act as he is totally unconcerned with the same. It is stated that the land is proposed to be allotted to the Hyderabad Metro Water and Sewerage Board and for Bachupally Police station. It is denied that petitioner is in possession of the subject land.

17. I have noted the contention of the parties.

THE CONSIDERATION BY THE COURT

(i) **The patta dt.15.8.1961 is not a fake or bogus or created one**

18. According to petitioner there was a patta granted in Form-G under Rule 9 (g) of the Laoni Rules framed under Sec.172 of the Act in favour of Tekula Venkat Reddy.

19. In the counter affidavit filed by the then Deputy Collector and Mandal Revenue Officer in WP.No.19605 of 2003 it is stated as follows:

“2. In reply to para 2 it is respectfully submitted that on perusal of the Xerox copies of documents filed by the writ petitioners, it is revealed that the then Tahsildar, Medchal has issued Form ‘G’ under Rule 9(g) of the Laoni Rules granting written permission to the following persons to occupy the land bearing s.no.332 of Nizampet village as shown below:

<i>Sl.no</i>	<i>Name of beneficia ries</i>	<i>Sy.no.</i>	<i>Extent Ac-gts</i>	<i>File no.</i>
...	...	...	...	...
5.	<i>Tekula Venkat Reddy s/o Venkat Reddy</i>	332	4-00	<i>A3/9420/60 dt.15.8.196 1</i>

20. Having admitted in the counter affidavit filed in WP.No.19605 of 2003 that the Tahsildar, Medchal did issue a patta certificate in Form 'G' under Rule 9(g) of the Laoni Rules to Tekula Venkat Reddy for Ac.4.00 gts in Sy.No.332 of Nizampet village on 15.8.1961, it is not open to the respondents to now contend that it is a fake, bogus and created one. The respondents are estopped in law from raising such a contention.

21. Merely because the petitioner and his father share the same name 'Tekula Venkat Reddy', it cannot be contended by respondents that the said patta was issued to the petitioner when he was only 2 years old and so it is a fake one. It was obviously issued to petitioner's father Tekula Venkat Reddy. The respondents are trying to mislead the Court by twisting facts and this cannot be countenanced.

22. In the order dt.03.01.2012 in WP.No.19605 of 2003 also this Court recorded that in the counter-affidavit filed on behalf of respondents the fact that Tekula Venkat Reddy and others was issued Form-G certificate under Rule 9(g) of Laoni Rules had not been disputed. This Court granted relief to petitioner and the other parties therein on the said basis only.

23. There was admittedly no challenge by respondents to the order dt.03.01.2012 in WP.No.19605 of 2003 on the ground that Form-G certificate issued to Tekula Venkat Reddy on 15.08.1961 in respect of the subject land is a fake certificate.

24. So the order dt.03.01.2012 in WP.No.19605 of 2003 operates as *res judicata* and bars the respondents from now contending that the said Form-G certificate issued on 15.08.1961 to Tekula Venkat Reddy in respect of the subject land is a fake and bogus document.

25. Therefore the contention of the respondents that the said patta issued in Form-G under Rule 9(g) of the Laoni Rules is a fake, bogus or created one is rejected.

(ii) The patta certificate issued under Rule 9 (g) of the Laoni Rules is not an assignment but a sale:

26. In Letter sent from Plot No.338 (1 supra), the Division Bench discussed this issue thread bare and declared that the Laoni Rules 1950 were framed under Sec.172 of the Act for implementation of the Act; that Rule 2 enables person desiring to take up any occupied land to petition to the Tahsildar in writing; that under Rule 5 (c), such application is to be forwarded to the Girdawar for submission of detailed inspection and report; under Rule 7 the Girdawar makes inspection and draws panchanama, sketch etc., and sends his inspection report to the Tahsildar; that as per Rule 9, the Tahsildar shall, on receipt of report of the Girdwar, decide whether the request of the applicant for grant of land may be complied with after giving due consideration to the various matters mentioned therein. It held that **in fact there is a sale of the land to the applicant on payment of market value when an allotment/certificate is issued under**

Form-G under Rule 9(g) of the Laoni Rules and it was not a case of assignment or grant of a mere right to occupy the land. It held:

*“ 27. ... Under Rule 9(c)(i) if the Tahsildar comes to the conclusion that from the panchanama and the report of the Girdawar it is apparent that the land applied for is only an assessed waste, whether from the commencement of the period of settlement or has become waste-land subsequently due to the resignation of resumption, he shall proceed to dispose of the application (i) if the land is dry land and has long lain waste, Tahsildar shall fix a date for the sale of such land in the village where it is situate. If the value of such land mentioned in Clause (i) is estimated to be less than Rs. 100/-, the Tahsildar may allow the sale to be conducted on the spot by the Girdawar. If the value of the land exceeds Rs. 100/- but does not exceed Rs. 500/- as per the panchanama sent up by the Girdawar with his report, the Tahsildar shall conduct the sale personally on a specified date after giving due publicity thereto in the village where the land is situate and after affixture of a copy of the notice to the Notice Board of Tahsil Office. Under Rule 9(c)(iv), if the value of the land is estimated to be Rs. 500/- or more but within Rs. 2000/-, the Tahsildar shall submit a recommendation to the Deputy or Assistant Collector and as per Rule 9(c)(v) if the estimated value of the land is Rs. 2000/- or more the recommendation shall be submitted by the Deputy or Assistant Collector to the Collector to conduct sale personally, as the case may be, on a specified date. **The prominent feature, which is noticeable under Rule 9, is that the entire transaction is a sale but not an assignment.** As per Sub-rule (g) of Rule 9, when it is decided to dispose of the land by auction, the auction amount of the land and the tress standing thereon shall be recovered in the manner prescribed under the said rule. Under Sub-rule (h) of Rule 9, if on the report of the local officers, the Collector finds that a proper price may not be secured by an auction or that there is likelihood of vested interests acting together and putting up prices so as to make it impossible for the poorer classes to get the land at a fair price, he may fix an upset price and allot the land to the applicant without*

holding an open sale. The sale shall be held after giving 15 days previous notice to the inhabitants of the village by pasting sale notice in Form-H on the notice board of the Tahsil office and the village chavidi. Rule 10 provides for confirmation of sale by the Tahsildar where it is held by the Girdawar; by the Deputy or Assistant Collector-in charge of the division where it is held by the Tahsildar and by the Collector where it is held by the Deputy or Asst. Collector. Where the sale is conducted by the Collector himself, the Board of Revenue shall be the confirming authority. At the conclusion of the sale, the authority conducting the sale shall submit the records along with the necessary challan numbers pertaining to the payment of the full price by the party to the proper authority as indicated above. The confirming authority shall pass orders either confirming the sale if there be no objection or cancelling the same if he is of the opinion that the sale should be cancelled and a fresh sale held. In case the confirming authority is of the opinion that the land cannot be granted for laoni, he shall order accordingly. After the endorsement of his order, the papers shall be sent back to his next subordinate officer, and if that subordinate officer is not the Tahsildar, the intermediate authority shall send the papers with the final orders to the Tahsildar. In case of confirmation of sale, the Tahsildar shall issue permission for occupation in Form-G prescribed under Sub-rule (g) of Rule 9 of the Laoni Rules.”

(emphasis supplied)

27. In G. Amrutha Rao and others v. Government of Andhra Pradesh and others², this Court reiterated that for all practical purposes what accrues in Sub-Rule (g) of Rule 9 of the Laoni Rules on a outright sale of the land is an absolute right in the land, except that the Government happens to be the vendor. It held that the rights of a purchaser under such transaction cannot be curtailed because a

² 2013 (1) ALD 570

certificate issued under Form-G is issued instead of a sale deed being executed.

28. This legal position is not disputed by the learned Government Pleader for Revenue.

29. Thus on issuance of Form G patta pursuant to proceedings A3/9420/60 dt.15.8.1961 in favour of Tekula Venkat Reddy by the Tahsildar, Medchal after receiving the consideration, title to the land admeasuring Ac.4.00 in Sy.No.332 of the Nizampet village was conveyed to him by the State. The State therefore cannot contend that there is a dispute as to title to the land and only a civil court should decide it in a suit by relying on **Union of India v. SM Hussain Rasheed and others**³.

(iii) **Whether the land claimed by petitioner is identifiable?**

30. Another contention is advanced in the counter-affidavit stating that to the Acs.4.00 cents assigned to petitioner under Form-G certificate on 15.08.1961, no boundaries were mentioned, and therefore, he is not entitled to claim it.

31. I have already quoted the detailed procedure which would be followed before issuing a patta certificate in Form-G under Rule 9(g) of the Laoni Rules as extracted in the Division Bench judgement in **Letter sent from Plot No.338** (1 supra). There is an inspection by the Girdawar of the land, a panchanama, preparation of sketch etc.

³ (2003) 5 ALD 150 (DB)

before such certificate is given to an applicant. These procedures are presumed to have been followed by the Revenue department before issuing the certificate in Form G to Tekula Venkat Reddy on 15.8.1961. So the respondents cannot now say that because no boundaries are mentioned in the said certificate, the land claimed by petitioner cannot be identified.

32. It is important to note that along with the counter-affidavit filed in the earlier Writ Petition, an annexure was filed by the then Mandal Revenue Officer showing that Tekula Venkat Reddy was also in possession of land in Survey No.332 from 1963-64 till 1980-81 along with others. This also indicates that he was in possession of land sold to him by the State and there was no doubt about the land alienated to him by the State.

33. This contention of respondents is accordingly rejected.

(iv) **Whether the petitioner is in possession of the subject land?**

34. Having admittedly alienated the land to Tekula Venkat Reddy on 15.8.1961 with possession, and having admitted his possession of the petitioner till 1981 in the counter affidavit filed by them in W.P.19605 of 2003, it is not open to the respondents to now take a plea that his possession did not continue after 1980.

35. Under Section 114 of the Indian Evidence Act, 1872 that if a thing or state of things is shown to exist, an inference of its continuity

may be drawn. [See illustration (d) to Section 114 of the Indian Evidence Act, 1872].

36. This Principle has been accepted by the Supreme Court in **Ambika Prasad v. Ram Eklal Rai**⁴, wherein it held that the presumption of future continuance flows from illustration (d) to Section 114 of the Indian Evidence Act, 1874.

37. Obviously, taking advantage of non-mention of petitioner's name in the Revenue Records in the possession column for the period after 1980-81, the respondents are claiming to be in possession.

38. In fact no Revenue record has been filed along with the counter-affidavit by the respondents showing that the State is in possession of the land. Also there is no explanation from the respondents as to how and when they took possession of the land in occupation of the petitioner.

39. The petitioner is thus entitled to the benefit of presumption under Section 114 Illustration (d) of the Evidence Act, 1872 and the claim of the respondents that they are in exclusive possession of the subject land and built compound wall in 2014, cannot be accepted.

40. Also when this Court in WP No.19605 of 2003 set aside the auction notice dt.6.9.2003 *in so far as land in possession of petitioner*, not only did the respondents challenge the said order, they *did not even proceed with the auction stating that petitioner is not in*

⁴ AIR 1966 SC 605

possession and the State is in possession. This conduct of the respondents also proves that their plea that they took possession of the land and built compound wall in 2014, is a false plea.

41. Having admitted the settled possession of Tekula Venkat Reddy from 1961 till 1981, it is not open to the State to grab the land illegally and highhandedly. (see **Rame Gowda v. M.Varadappa Naidu**⁵)

42. It is important to also note the decision in **Bishan Das v. State of Punjab**⁶, where the Supreme Court cautioned:

*“14. Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law. The facts and the position in law thus clearly are (1) that the buildings constructed on this piece of Government land did not belong to Government, (2) that the petitioners were in possession and occupation of the buildings and (3) that by virtue of enactments binding on the Government, the petitioners could be dispossessed, if at all, only in pursuance of a decree of a Civil Court obtained in proceedings properly initiated. In these circumstances the action of the Government in taking the law into their hands and dispossessing the petitioners by the display of force, exhibits a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive of peaceful possession of property. As pointed out by this Court in **Wazir Chand v. State of Himachal Pradesh**⁷, the State or its executive officers cannot interfere with the rights of others unless they can point to some specific rule of law which authorises their acts. ... We have here a highly discriminatory and autocratic act which deprives a person of the possession of property without*

⁵ (2004) 1 SCC 769

⁶ AIR 1961 SC 1570

⁷ 1955 1 SCR 408

*reference to any law or legal authority. Even if the property was trust property it is difficult to see how the Municipal Committee, Barnala, can step in as trustee on an executive determination only. The reasons given for this extraordinary action are, to quote what we said in **Sahi case**⁸, remarkable for their disturbing implications.”*

43. Therefore, even assuming for the sake of argument without conceding that the State is in possession of the land claimed by petitioner, it cannot be allowed to retain it illegally since such action amounts to land grabbing without following due process of law, and such illegal action cannot be left un-remedied.

44. For all the aforesaid reasons, the Writ Petition is allowed; the action of the respondents in affixing the board displaying that the subject land is Government land on the gate erected by the petitioner in the subject land, is declared as illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India; and the respondents are directed to remove the said board forthwith; the respondents shall restore possession of the land claimed by petitioner and shall not interfere with the possession and enjoyment by the petitioner of the subject land.

45. The interim order dt.04.01.2018 passed in I.A.No.1 of 2017 in WP.No.44813 of 2017 is made absolute, and I.A.No.1 of 2018 in I.A.No.2 of 2017 in WP.No.44813 of 2017 filed by the 4th respondent on behalf of himself and respondent nos.2 and 3 to vacate the said

⁸ Ram Prasad Narayan Sahi v. State of Bihar ... AIR 1953 SC 215

interim order dt.04.01.2018 passed in I.A.No.1 of 2017 in WP.No.44813 of 2017, is dismissed.

46. The respondents shall also pay costs of Rs.10,000/- to the petitioner.

C.C.No.161 of 2018 :

47. In view of the order passed in the Writ Petition, the CC is closed. No order as to costs.

48. As a sequel, miscellaneous petitions, pending if any in the Writ Petition as well as in the Contempt Case, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 05.06.2018

Ndr/*

