

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.367 of 2019

ORDER

The petitioner assails the inaction of the respondent authorities in refunding her the sum of Rs.5,28,750/- along with costs of Rs.5,000/-, as directed by the erstwhile common High Court for the State of Telangana and the State of Andhra Pradesh, *vide* its order dated 07.04.2017 in W.P.No.1257 of 2010.

The petitioner was held to be a surplus land holder to the extent of 26,637.50 square metres under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (*for brevity*, 'the Act of 1976'), *vide* draft statement dated 07.09.1981 issued under Section 8(1) of the Act of 1976. The Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad, passed order dated 23.09.1981 under Section 8(4) of the Act of 1976 confirming that the petitioner was a surplus land holder to that extent. While so, the petitioner made an application on 11.01.2010 under G.O.Ms.No.747, Revenue (UC.I) Department, dated 18.06.2008, to regularize her possession over the surplus land of 9,197 square metres. She deposited a sum of Rs.5,28,750/- for this purpose by way of a banker's cueque. She initially filed W.P.No.1257 of 2010 seeking a mandamus to the authorities to consider her regularization application dated 11.01.2010. Thereafter, she sought amendment of her prayer in the writ petition and sought a declaration to the effect that the proceedings under the Act of 1976 were illegal and to consequently direct the authorities to refund the sum of Rs.5,28,750/- paid by her. According to her, there were various irregularities in the proceedings initiated under the Act of 1976 which rendered them illegal. By the order dated 07.04.2017, a learned Judge of the common High Court accepted the plea of the

petitioner and held that there was no service of the order under Section 8(4) or the final statement under Section 9 of the Act of 1976 upon the petitioner, as required by law, and therefore, the subsequent proceedings taken under Section 10 of the Act of 1976, including the alleged panchanama recording the taking over of possession, were null and void. The learned Judge also dealt with the issue as to whether the conduct of the petitioner in seeking regularization of her possession over the excess land under G.O.Ms.No.747 dated 18.06.2008 would estop her from contending that the proceedings under the Act of 1976 stood vitiated and held that once it was established that there was violation of the mandatory procedure prescribed in relation to Sections 8(4) and 9, the authorities could not raise the plea of estoppel and it would not operate. Taking note of the fact that the Act of 1976 stood repealed in the erstwhile State of Andhra Pradesh with effect from 27.03.2008, the learned Judge concluded that no opportunity could be given to the authorities to undo their earlier wrongs. The learned Judge accordingly allowed the writ petition with costs of Rs.5,000/- setting aside the proceedings initiated against the petitioner under the Act of 1976 and to refund the sum of Rs.5,28,750/- paid by her within four weeks from the date of receipt of a copy of the order. The petitioner presently complains of inaction on the part of the authorities in refunding the sum paid by her, along with the costs awarded by the learned Judge.

The Collector, Ranga Reddy District, filed a counter-affidavit. Therein, while adverting to the merits of the proceedings initiated under the Act of 1976, which do not fall for reconsideration in this writ petition, he stated that the authorities filed WA(SR) No.77254 of 2019 against the order dated 07.04.2017 passed in W.P.No.1257 of 2010 which was pending before a Division Bench of this Court. He further stated that there

was a deficit of Rs.1,39,44,150/- for considering the petitioner's application for regularization and she was already informed of the same, requiring her to remit the balance amount for due consideration of her application. However, she failed to remit the said amount. According to the Collector, the petitioner and her husband already constructed permanent buildings over the surplus land and therefore, it was not possible to refund the sum of Rs.5,28,750/- deposited by her towards regularization of the surplus land unless the structures were dismantled and vacant possession was handed over to the Government. It is on this basis that the Collector sought for dismissal of the writ petition.

Learned Government Pleader would inform this Court that the writ appeal filed by the authorities has been numbered as W.A.No.77 of 2019 but the delay of 590 days in its presentation is yet to be condoned.

The Collector's understanding that the petitioner is not entitled to refund of the amount paid by her as she already constructed buildings on the alleged surplus land and that she would be entitled to seek such refund, only after the structures were dismantled and vacant possession of the surplus land was handed over to the Government, is presumptuous to say the least. The findings of the learned Judge in the order dated 07.04.2017 passed in W.P.No.1257 of 2010 militate against any such assumptions and presumptions by the Collector at this stage to the effect that the authorities are entitled to delivery of vacant possession of the alleged surplus land. It is only if the findings recorded in the said order are set aside in appeal that the authorities can raise such a plea. As matters stand, the findings of the learned Judge in the aforesaid order stare the authorities in the face. In any event, even if it is assumed for the sake of argument that the authorities may succeed in the appeal, it is not open to them to force upon the petitioner a regularization application that

she no longer wishes to pursue. If the authorities do succeed in the appeal and the land in question is held to be surplus land under the Act of 1976, it would be for them to take possession thereof as per procedure if the petitioner does not seek regularization of her possession over the same. At that stage, it would be open to the authorities to decide as to whether they wish to retain any buildings constructed upon such surplus land or demolish the same so as to put the vacant land to some other use. Then, the cause would arise for the authorities to decide as to whether they wish to sue the petitioner for damages in relation to the constructions made by her. For the purpose of securing this distant eventuality, if at all it arises, it is not open to the authorities to now withhold the amount paid by the petitioner in the year 2010, notwithstanding the direction in W.P.No.1257 of 2010 to refund the same within a time frame along with the costs. Having failed to secure any interim order in the pending writ appeal, it is not open to the authorities to baldly refuse to abide by the directions of the learned Judge in the said order passed as long back as on 07.04.2017.

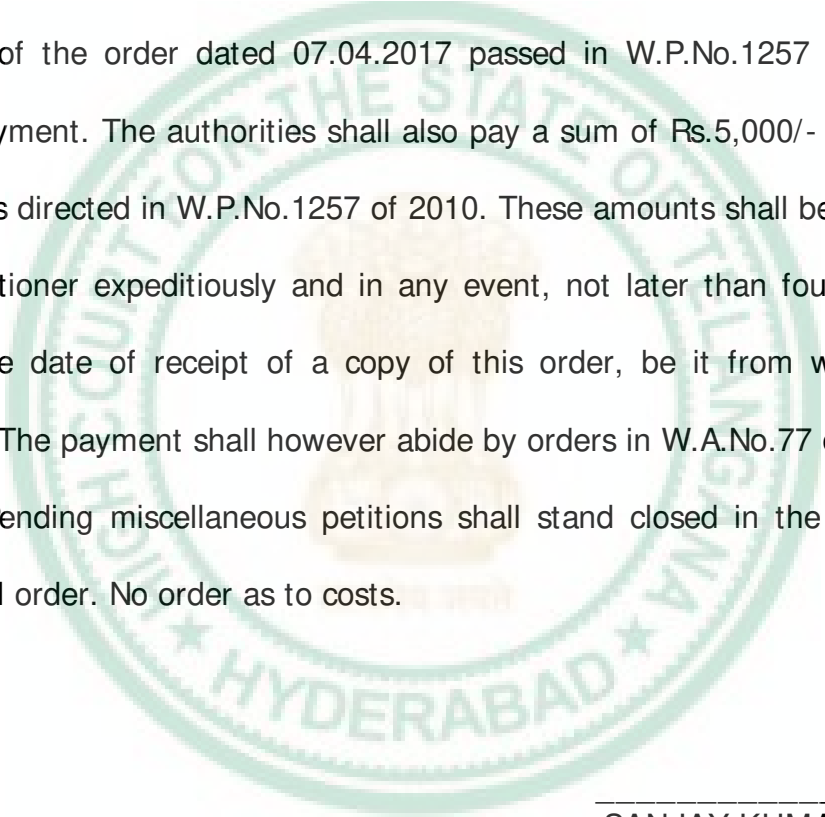
Be it noted that the present writ petition was filed on 02.01.2019 and came up for admission on 21.01.2019 whereas the appeal against the order in W.P.No.1257 of 2010 was filed on 29.12.2018 but it was registered only on 04.02.2019. It is therefore clear that, having filed the appeal in December, 2018, the authorities did not even pursue the same till notice was ordered in the present writ petition.

In any event, it is not open to the authorities to retain the amount paid by the petitioner in the year 2010 when she is no longer desirous of pursuing the regularization application. As already stated *supra*, it is for the State and its authorities to decide upon the course of action to be adopted in the event they succeed in the writ appeal at a later point of

time. At this stage, no cause is made out for them to withhold the amount paid by the petitioner, ignoring the direction of the learned Judge in W.P.No.1257 of 2010. As the authorities were directed to pay the said amount within four weeks from the date of receipt of a copy of the order and they admittedly failed to do so, they would be liable to pay interest upon the same.

The writ petition is accordingly allowed directing the respondent authorities to refund the sum of Rs.5,28,750/- with interest thereon @ 7% per annum from the expiry of the four week period from the date of receipt of the order dated 07.04.2017 passed in W.P.No.1257 of 2010 until payment. The authorities shall also pay a sum of Rs.5,000/- towards costs, as directed in W.P.No.1257 of 2010. These amounts shall be paid to the petitioner expeditiously and in any event, not later than four weeks from the date of receipt of a copy of this order, be it from whatever source. The payment shall however abide by orders in W.A.No.77 of 2019.

Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.


SANJAY KUMAR, J

13th MARCH, 2019

Svv