

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.21305 OF 2018

ORDER

The petitioners assail the action of the Revenue authorities in interfering with their construction of a building with stilt + three floors in H.No.2-113/1/9, Plot No.39 part, Engineers Enclave, Chandanagar Village, Serilingampally Mandal, Ranga Reddy District. They seek a consequential direction to the authorities not to interfere with such construction activity.

The petitioners before this Court are three brothers and their wives. They claim joint ownership over the northern and southern parts of Plot 39 part, each admeasuring 150 square yards, at Engineers Enclave in Survey No.316/1 of Chandanagar Village, Serilingampally Mandal, Ranga Reddy District, under two registered sale deeds dated 23.11.2016, bearing Document Nos.8079 and 8080 of 2016. According to them, B.Satyamma was the owner of a vast extent of land in Survey Nos.95, 315/1, 316, 317 and 318 of Chandanagar Village. She was held entitled to retain 0.5697 standard holding, equivalent to Ac.27.15 guntas in the said survey numbers, under the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973. Out of this retainable land, she subjected an extent of Ac.4.00 guntas in Survey Nos.315/1 and 316/1 to a layout in September, 1979, and sold a few of the plots. Upon her death in April, 1993, her adopted son, B.Sohan Lal, inherited her properties. B.Sohan Lal gifted a part of Plot No.39 in this layout, being an extent of 300 square yards, to his son, B.Shyam, under registered settlement deed dated 04.02.2006, bearing Document No.2550 of 2006. In turn, B.Shyam sold this plot to one P.Anusha under registered sale

deed dated 08.09.2006, bearing Document No.18295 of 2006. P.Anusha obtained regularisation of this unapproved plot under a notified layout regularisation scheme *vide* proceedings dated 26.04.2010 of the Commissioner, Greater Hyderabad Municipal Corporation (GHMC). She then constructed a house in the plot and the municipal authorities assigned it House No.2-113/1/9. While so, P.Anusha gifted the subject plot to her father, P.Viswanadha Rao, under a registered gift settlement deed dated 16.11.2015, bearing Document No.14606 of 2015. The petitioners purchased the northern and southern portions of the subject plot from P.Viswanadha Rao under the aforesaid registered sale deeds dated 23.11.2016, bearing Document Nos.8079 and 8080 of 2016. According to the petitioners, they made this purchase intending to construct a house with stilt + three floors, after obtaining necessary municipal permission, so that the family could live together jointly.

However, after sanction of the building permission by the GHMC, the petitioners received notice dated 16.04.2018 from the GHMC alleging that they had obtained the building permission by misrepresentation and suppression of facts, as the subject plot fell within the Full Tank Level (FTL) of a water body, viz., Bachukunta Cheruvu. The GHMC therefore cautioned them not to commence construction until clearance was obtained from the Irrigation department. The petitioners claim to have approached the municipal authorities and apprised them of the fact that Bachukunta Cheruvu was in Survey No.319 of Chandanagar Village and not in Survey No.316/1. They relied upon the letter dated 04.08.2008 of the Executive Engineer of the Irrigation department in this regard. In spite of the same, the GHMC authorities issued notice dated 03.06.2018 to the

petitioners under Section 636 of the Greater Hyderabad Municipal Corporation Act, 1955, directing them to remove/demolish their unauthorised construction. Aggrieved thereby, the petitioners filed O.S.No.910 of 2018 before the learned VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, and an order of *status quo* was passed therein on 05.06.2018.

The petitioners claim that at this stage, the Revenue authorities started interfering with their possession. Earlier, when the Revenue authorities did so while the plot was still in the possession and enjoyment of B.Shyam, he filed a suit in O.S.No.932 of 2002 before the learned Principal Junior Civil Judge, West & South, Ranga Reddy District, and the said suit was disposed of on 21.02.2006, directing the authorities to follow the due procedure. The petitioners also point out that as regards the balance portion of Plot No.39 part, B.Lavanya, w/o B.Shyam obtained permission from the GHMC for construction of a building comprising ground + 3 floors in February, 2008. While construction activity was in progress in her plot, the Revenue authorities interfered with the same. She thereupon requested the authorities to undertake demarcation of the FTL of Bachukunta Cheruvu to enable her to proceed with her construction. Acting upon this request, the Tahsildar, Serilingampally Mandal, addressed letter dated 28.07.2008 to the Irrigation authorities to conduct a joint inspection. A joint inspection was duly conducted by the Irrigation and Revenue authorities on 02.08.2008. In the course of this inspection, the authorities determined that Bachukunta Cheruvu was located in Survey No.319 of Chandanagar Village and occupied an extent of Ac.2.19 guntas. The Executive Engineer of the Irrigation department

drew up his report dated 04.08.2008, certifying that an extent of ½ acre in Survey No.319 was above the FTL. However, no boundaries were fixed. Aggrieved by this failure, B.Lavanya filed W.P.No.8009 of 2009 seeking fixation of the boundaries by planting stones in relation to the water body, in terms of the report dated 04.08.2008. This writ petition was disposed of by a learned Judge of the erstwhile High Court of Andhra Pradesh, *vide* order dated 23.04.2009. The learned Judge noted therein that substantial work in the context of fixation of boundaries and determination of FTL had already been completed and disposed of the writ petition directing the authorities to implement the Memo dated 24.01.2009, whereunder the Tahsildar, Serilingampally Mandal, directed the Mandal Surveyor and the Mandal Revenue Inspector to fix the boundaries and plant stones with reference to the sketch furnished by the Executive Engineer, Irrigation, North Tanks Division, Hyderabad. Complaining of inaction in relation to this order, B.Lavanya filed C.C.No.1080 of 2009. This contempt case was closed on 20.10.2009, when it was brought to the notice of the Court by the then learned Government Pleader for Revenue that a joint inspection was conducted on 21.08.2009 and boundaries were fixed by duly planting the stones, with reference to the sketch furnished by the Executive Engineer, North Tanks Division, Irrigation department, Hyderabad.

On the strength of the aforestated history, the petitioners assert that their plot is in Survey No.316/1, far away from the water body, and no justifiable reason exists for interference by the Revenue authorities. They point out that the layout consisted of 100 plots, wherein all the plot owners already completed their constructions. Plot No.39 part, which was purchased by them, also had a house constructed therein with a house

number allotted to it by the municipal authorities but as they demolished the same for undertaking a larger building for the joint family, the Revenue authorities were resorting to illegal interference.

The present Tahsildar, Serilingampally Mandal, who took charge of the post on 07.09.2018, filed a counter affidavit. Therein, he stated that as per the revenue records, i.e. the pahani for the year 2014-15, the land in Survey No.316/1 of Chandanagar Village, admeasuring Ac.9.21 guntas, was classified as patta land and still stood in the name of Sathyamma. According to him, the vendor of the petitioners failed to obtain necessary permission for conversion of the use of this agricultural land for non-agricultural purposes and got regularised the illegal layout by suppressing the fact that part of the land was in the buffer zone of a water body. He asserted that the construction by the petitioners was in the catchment area and would restrict the free flow of water into the tank. He asserted that the petitioners' construction would fall in the buffer zone of the tank, in which construction was prohibited. He alleged that despite the *status quo* order passed by the trial Court in O.S.No.910 of 2018, the petitioners were proceeding with the construction and having noticed the same, his staff obstructed the work. The building permission and the regularisation of the plot by the municipal authorities, *per* the Tahsildar, did not confer any right upon the petitioners to proceed with the construction activity in the buffer zone.

The Executive Engineer, North Tanks Division, Irrigation & CAD department, Hyderabad, filed a counter stating that Bachukunta Cheruvu was spread over an extent of Ac.2.23 guntas near Chandanagar and a buffer zone of 9 metres has to be observed from the FTL. He sought to

deny the letter of the Executive Engineer, North Tanks Division, Hyderabad, given in the year 2008, on the ground that the survey map attached thereto was not signed by the Executive Engineer. According to him, Bachukunta Cheruvu would have a 9 metre buffer zone and the petitioners' site would come within that distance from the FTL of the tank.

Though a map was appended to the aforestated counter, wherein the petitioners' site is shown practically touching Bachukunta Cheruvu, the counter is significantly silent as to the actual distance between the two and the existence of buildings in the other plots in this layout and more particularly, the abutting Plot No.39 part, belonging to B.Lavanya.

The petitioners filed a reply-affidavit in response to the counter of the Executive Engineer. Therein, they stated that their site was regularised in terms of the Andhra Pradesh Regulation of Unapproved and Illegal Layout Rules, 2007 (*for brevity*, 'the Rules of 2007'), promulgated *vide* G.O.Ms.No.902, Municipal Administration & Urban Development (M1) Department, dated 31.12.2007. In terms of Rule 5 of the Rules of 2007, restrictions were put in place as to approval being granted in the vicinity of certain areas. Rule 5(a) provides that no layout/development activity should be allowed in the bed of water bodies like a river or nala and in the FTL of any lake, pond, cheruvu or kunta and in shikam lands. Rule 5(b) states to the effect that the above water bodies should be maintained as recreational/green buffer zone and no layout or development activity, other than recreational use, should be carried out within the specified distances from the boundaries of the water bodies. Significantly, the Rule stipulates that for a lake with an area of less than 10 hectares, the distance to be maintained from the boundary of the lake is 9 metres.

The petitioners claim that it is only after taking into consideration the aforesaid restriction that the GHMC approved their plot, while it was still owned by their predecessor-in-title. They refer to the inspection that was carried out in 2008 and the litigation that ensued before the erstwhile High Court of Andhra Pradesh and assert that the boundaries fixed pursuant to the Memo dated 24.01.2009 are still in existence as on date and their Plot No.39 part is 3 metres away from one such boundary stone. They further point out that the Andhra Pradesh Building Rules, 2012, promulgated by the erstwhile Government of Andhra Pradesh under G.O.Ms.No.168, Municipal Administration and Urban Development (M) Department, dated 07.04.2012, reiterated the same restriction in relation to building activity by prescribing a 9 metre buffer zone for a water body of less than 10 hectares area.

Though the Revenue and Irrigation authorities now seek to assert that the construction undertaken by the petitioners would affect the water body, they are silent as to how a building was allowed to be constructed earlier in this plot by P.Anusha, the predecessor-in-title of the petitioners. They are also silent as to the constructions in the surrounding plots, including that of the petitioners' immediate neighbour, B.Lavanya. Though the Executive Engineer, North Tanks Division, Hyderabad, asserted that the site of the petitioners would fall within the buffer zone of Bachukunta Cheruvu, he did not state the actual distance that the plot would fall from the FTL. As already noted *supra*, the buffer zone required to be maintained for Bachukunta Cheruvu is 9 metres. However, the authorities did not disclose as to how the petitioners' plot would come within this 9 metres distance, as neither the Tahsildar nor the Executive Engineer

stated in clear terms the actual distance from the FTL up to the petitioners' plot, as per their reckoning.

In any event, it is not open to the Executive Engineer, North Tanks Division, to disown the proceedings of his predecessor-in-office dating back to the year 2008 when the same were placed before the erstwhile High Court of Andhra Pradesh in W.P.No.8009 of 2009 and thereafter, in C.C.No.1080 of 2009, and were duly accepted and acted upon. The letter dated 04.08.2008 addressed by the then Executive Engineer, North Tanks Division, Hyderabad, to the Tahsildar, Serilingampally Mandal, reflects in clear terms that an extent of about $\frac{1}{2}$ acre in Survey No.319 was above the FTL. No doubt, the location sketch map appended to the said letter does not shed light on the demarcation of the FTL. The joint inspection report dated 21.08.2009, bearing the signatures of the Assistant Engineer, Irrigation, North Tanks Division, Hyderabad; the Mandal Revenue Inspector, Office of the Tahsildar, Serilingampally Mandal; and the Mandal Surveyor, Office of the Tahsildar, Serilingampally Mandal, bears out that in terms of the Memo dated 24.01.2009 of the Tahsildar, Serilingampally Mandal, they fixed the boundaries and planted the stones physically with reference to the sketch furnished by the Executive Engineer, *vide* his letter dated 04.08.2008. It was on the strength of this report that C.C.No.1080 of 2009 came to be closed.

It is the specific case of the petitioners that the boundary stones planted by this joint inspection team still remain and the distance from one such boundary stone to the petitioners' plot is 3 metres. It may be noted that the joint inspection report does not disclose whether these boundary stones were fixed taking into account the buffer zone to be

maintained around the lake. However, as it is an admitted fact that the GHMC undertook regularisation of the petitioners' plot in accordance with the Rules of 2007 and there is a specific condition therein that such regularisation could not be undertaken within 9 metres from the boundary of a water body having less than 10 hectares area, the Revenue and Irrigation authorities cannot blithely seek to brush aside such regularisation by the GHMC. It is to be noted that this regularisation of Plot No.39 part, which was effected as long back as on 26.04.2010, has not been cancelled. There is not even any mention of steps having been initiated in this regard.

That being so, the only inference that can be drawn is that the GHMC would have ensured compliance with the restriction in the Rules of 2007 in relation to the distance to be maintained from water bodies and only thereafter, it would have permitted the regularisation of this plot. It is not open to one department or authority of the State to distance itself from the stand taken by another department or authority of the State and claim that it is not bound thereby. Authorities of the State are expected to act in tandem, duly keeping in mind the prescribed norms, and adherence to such norms by one authority cannot be ignored by another department or authority. Therefore, the regularisation of the subject plot by the GHMC under the Rules of 2007 would estop the Revenue and Irrigation authorities from claiming otherwise. All the more so, when they are not even in a position to assert in definite terms as to the distance between the FTL of Bachukunta Cheruvu and the plot of the petitioners. Their lack of forthrightness in this regard supports the stand of the petitioners that their plot falls beyond the buffer zone of Bachukunta Cheruvu.

In the aforesaid circumstances, the action of the Revenue authorities in awakening only when they see any signs of construction activity, ignoring the constructions already made and in existence, clearly reflects their lack of bonafides. In the case on hand, as the GHMC, having applied the Rules of 2007, regularised the subject plot in 2010, this Court is left with no option but to conclude that the petitioners' plot does not fall within the buffer zone of Bachukunta Cheruvu. In such circumstances, it is not open to the Revenue and Irrigation authorities to claim otherwise and interfere with the petitioners' possession. Be it noted that in the event the petitioners resort to violation of the *status quo* order passed by the trial Court in their suit, it is for the GHMC, the defendant in the said suit, to take necessary steps. The Revenue authorities cannot cite that as a ground for their interference with the petitioners' possession, when they are not even parties to the said suit.

As regards the Tahsildar's allegation that agricultural land is being put to non-agricultural use without obtaining conversion as per due procedure, it may be noticed that this unapproved plot was gotten regularized in the year 2010 by P.Anusha, the predecessor-in-title of the petitioners' vendor, and she gifted it to their vendor in 2015, who then sold it to them in 2016. Having failed to take action all along, if there was any illegality in this regard, and having remained unmoved when surrounding plots were put to similar use, it is not open to the Tahsildar to now cite the petitioners' isolated case as justification for the present interference with their enjoyment of one such plot amongst many.

The writ petition is accordingly allowed declaring the action of the Revenue authorities in interfering with the possession of the petitioners

over the subject plot as illegal and restraining them from resorting to such isolated and individual interference in future. The petitioners are however bound to abide by the *status quo* order passed by the trial Court which is stated to be in operation as on date and the allowing of this writ petition does not entitle them to undertake construction in the subject plot contrary thereto.

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

28th FEBRUARY, 2019

Sv

SANJAY KUMAR, J

