

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.28472 OF 2019

Date:26.12.2019

Between:

Sri P. Sharath Babu, S/o. Late P. Yugandhara
Rao, aged about 54 years, Occ: Business,
R/o.H.No.12-2-725/32/3/C, Rethi Bowli,
Mehdipatnam, Hyderabad

.. Petitioner

And

The State of Telangana, rep., by its
Principal Secretary, Revenue Department,
Secretariat, Saifabad, Hyderabad and others

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO**WRIT PETITION No.28472 OF 2019****ORDER:**

Heard learned senior counsel for the petitioner and learned Government Pleader for Revenue for the respondents.

2. Facts relevant to the issue, as can be culled out from the averments in the Writ Petition are as under:

Petitioner claims that he purchased land to an extent of Acs.3.30 guntas in Survey No.66/2 of Raidurg Panmakta Village, Serilingampally Mandal, Ranga Reddy District, by way of a registered sale deed dated 11.04.2005. Since then, he is in possession and enjoyment of the said extent of land. He obtained building permission from the Greater Hyderabad Municipal Corporation and is undertaking construction of the buildings strictly in accordance with the building permission granted to him. Copy of the building permission dated 11.07.2018 is filed as Ex.P7 at Page No.75 of the Writ Petition material paper book. Petitioner also enclosed photographs evidencing the construction activity undertaken on the subject premises as Ex.P6 from Page Nos.72 to 74. While that being so, on 20.11.2018, a notice was issued under Section 7 of the Telangana State Land Encroachment Act, 1905 (for short, 'the Act, 1905') alleging that petitioner is in occupation of the Government land and called upon him to show cause as to why eviction proceedings should not be taken against him. It appears, petitioner submitted detailed explanation on 27.11.2018. No further steps were taken thereafter. While so, on 11.12.2019, notice under Section 7 of the Act, 1905 was issued to

the petitioner. It is verbatim same to the previous notice. However, the said notice does not refer to the previous notice issued to the petitioner and the steps taken thereon, but shows as if for the first time, notice was issued. The present Writ Petition is filed challenging the notice under Section 7 of the Act, 1905.

3. Learned senior counsel for the petitioner has taken through the various documents forming part of the writ petition paper book to show the history of litigation and entries in the revenue records. According to learned senior counsel, the entries in the revenue records would disclose, for a very long time, the Government is not in possession of the subject land and third parties are in possession of the same including the original pattadar, by name, Sona Bai. Petitioner purchased the subject land from the successors of Sona Bai in the year 2005. He would submit that though endeavor was made in the year 1999 to change the entries in the revenue records, the same was set aside by this Court and thereafter no changes are affected and the Government's name is not reflected in the revenue records. He would therefore submit that having regard to the fact that admittedly the Government is not in possession of the subject land, but others are in possession from the year 2005 and the revenue records do not reflect the name of the Government, the provisions of the Act, 1905 are not attracted. In support of the said contention, learned senior counsel placed reliance on the judgments of the Supreme Court in **Union of India and others v. Taj Trading Company**¹ and **Mandal Revenue Officer v. Goundla Venkaiah and others**².

¹ (1982) 2 SCC 141

² (2010) 2 SCC 461

4. According to learned senior counsel, as held in **Government of Andhra Pradesh v. Tummala Krishna**³, a long possession would *prima facie* establish title to the property by the person in possession and if there is a dispute on this aspect, in this case by the Government, *vis-à-vis* the person in possession, the provisions of the Act, 1905 are not attracted and normally civil law remedy has to be availed to assert title and to seek eviction of the person claimed to be in illegal possession. He would therefore submit that in the present context also, having regard to the history of litigation, flow of title and possessory claim of the petitioner, provisions of the Act, 1905 are not attracted.

5. What is contended by learned senior counsel for the petitioner may be true, but the same is required to be considered by the competent authority by verifying the records. It is always open to the petitioner to establish before the competent authority his *prima facie* claim of long possession and also tracing of the title to the vendor of the petitioner. If the petitioner *prima facie* establishes before the Tahsildar the claim of long possession, in response to the show cause notice impugned herein, the competent authority has to take a decision whether to proceed further or to relegate the parties to the civil law remedy. At this stage and even before petitioner responded to the notice, it cannot be expected that the Tahsildar would not appreciate the stand of petitioner.

6. Be that as it may, it cannot be said that the Tahsildar is not competent to issue notice under Section 7 of the Act. The writ remedy is available to a person challenging the show cause notice

³ (1982) 2 SCC 134,

only in case authority who issues show cause notice does not have the jurisdiction and the procedure set in motion by such person is *ex facie* illegal. As noted above, the issue as to whether the petitioner is in long possession and *prima facie* claim of title by his vendor are the matters which require consideration. Merely because petitioner claims long possession, the notice under Section 7 of the Act, 1905 cannot be said as without jurisdiction. No opinion can be expressed on the aspect of long possession, at this stage, even before the issue is considered by the competent authority. Therefore, the Court is not inclined to entertain the Writ Petition, at this stage.

7. However, learned senior counsel for the petitioner would submit that there is every possibility of the authorities acting against the petitioner, passing orders on the explanation and summarily directing the petitioner to evict without giving reasonable time to work out his remedies.

8. The provisions of the Act, 1905 is silent as to how much time is required for eviction, but ordinarily the moment the order is made and notice is issued under Section 6 of the Act, 1905, the authorities would ask the occupant to vacate within 24 to 48 hours. However, in the instant case, earlier notice was issued on 20.11.2018; explanation was submitted by the petitioner but for more than one year no further action was taken. Without reference to the earlier notice, the present notice is issued. It thus appears, the respondents are not in a hurry to throw out petitioner.

9. Therefore, the Tahsildar is directed to give reasonable time to the petitioner to work out his remedies, at any rate, one week time

from the date of decision taken on due consideration of the explanation offered by the petitioner in response to the impugned show cause notice.

10. Learned senior counsel for the petitioner submits that to establish his claim, petitioner needs to obtain certified copies of the documents and therefore requests two weeks time to submit his explanation. Time as sought for is granted. If such explanation is submitted within two weeks from today, the same shall be considered by the Tahsildar.

11. The Tahsildar shall consider all aspects and pass a reasoned order. If no such explanation is offered within the time granted, the Tahsildar shall proceed in accordance with law based on the material on record.

12. The Writ Petition is accordingly disposed of. Miscellaneous petitions, if any, shall stand closed.

P.NAVEEN RAO, J

Date:26.12.2019

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