

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Writ Petition No.17351 of 2017

ORDER :

The petitioners have filed this Writ Petition for a *Writ of Mandamus* to declare the action of respondents in demolishing the compound wall and servant quarters in the property admeasuring 2415 Sq.Yds. in Survey No.44/1 of Miyapur Village, Serlingampally Mandal, Ranga Reddy District belonging to them without issuing any notice and erecting sign board therein stating that the land belongs to the Government, as contrary to Article 300-A of the Constitution of India, and for a direction to restore back possession to them.

2. The petitioners herein claim to have purchased the said property under a registered sale deed being Document No.2652/2004 on 09.03.2004 and contend that the said property was having a compound wall with servant rooms along with power and telephone connection; that they applied to the Greater Hyderabad Municipal Corporation for permission for construction in the said property; but the respondents, on 03.05.2017 at around 09:30 a.m. without any notice, came to the premises with heavy machinery and demolished the compound wall and the servant quarters and installed sign boards stating that the property is Government property.

3. Along with the Writ Petition, the petitioners herein have filed copy of the sale deed dt.09.03.2004, Electricity Bill receipts, Copy of

Letter dt.17.06.2016, issued by the Greater Hyderabad Municipal Corporation, asking the petitioners to remit money for construction of residential building in the said property.

4. Counter-affidavit was filed by the District Collector, Ranga Reddy District (2nd respondent herein) stating that the Writ Petition is not maintainable since disputed questions of title, ownership and possession are raised in the Writ Petition; that petitioners are, in fact, having title only to land in Survey No.44/1 of Miyapur Village, Serlingampally Mandal, but they are in fact in occupation of land belonging to the Government in Survey No.214 of extent Acs.4.22 guntas in Madinaguda Village which is classified as 'graveyard' in the Revenue Records; that petitioners encroached 18 guntas of Government land in Survey No.214; that Survey No.44/1 is part of Government land, and there is a case under the Andhra Pradesh Land Grabbing Prohibition Act, 1982 being Land Grabbing Case No.29/2006 pending before the District Court, Ranga Reddy District. It is contended that there was a survey done by the Mandal Surveyor of Serlingampally Mandal which showed that petitioners had encroached 18 guntas of land in Survey No.214 and when it was noticed that petitioners were making constructions of an illegal compound wall, the Revenue staff of the Tahsildar's Office Serlingampally Mandal dismantled the part of the compound wall in Survey No.214 on 03.05.2014. He contended that petitioners had obtained an interim order of stay of demolition on 25.05.2017 which

applied only to Survey No.44/1 of Miyapur Village, and that the said order was only for a limited period of time till 01.06.2017, and the said order was not extended, that it would not cover the land in Survey No.214, and because of pendency of the above Land Grabbing Case before the District Court, Ranga Reddy District, the Writ Petition is not maintainable.

5. Assuming for the sake of argument that the land in Sy.No.44/1 is Government land without admitting it, the counter-affidavit of the 2nd respondent does not disclose that any proceeding under the Andhra Pradesh Land Encroachment Act, 1905 was initiated against the petitioners for alleged encroachment of the land in Survey No.214 allegedly belonging to the State Government or that any prior notice under Sec.7 of the said Act was issued to the petitioners before demolishing the compound wall. It also does not disclose that petitioners were given any notice before the alleged survey was said to have been done by the Mandal Surveyor of Serlingampally Mandal and even the date of the said survey is not mentioned anywhere.

6. These aspects were pointed out in the reply-affidavit filed by the petitioners.

7. The petitioners pointed out that the 2nd respondent in his counter had filed a Google Sketch which disproved the contention of respondents that the alleged land of Acs.4.22 guntas is a graveyard since several structures were found therein. They also filed copy of

the Pahani for 1426 Fasli in respect of the land in Survey No.44/1 which showed that the subject land is patta land and not Government land. It is also pointed out that Land Grabbing Case No.29 of 2006 is in respect of land admeasuring Acs.169.38 guntas in Survey No.44 and does not relate to land in Survey No.44/1. It is also stated that petitioners were not parties in the said L.G.C. It was denied that petitioners had entered in the land belonging to the Government. They contended that the destruction of the compound wall was not on 03.05.2014, but was on 02.05.2017. It was pointed out that without determining through a Survey whether the land claimed by petitioners is in Survey No.44/1 or in Survey No.214 after notice to petitioners, the respondents cannot straightaway demolish the petitioners' property.

8. Later, an additional counter-affidavit has been filed by the District Collector pursuant to a direction of this Court contending that there was a survey said to have been done by the Assistant Director, Survey and Land Records on 05.07.2019, but it is not stated that it was done after notice to petitioners.

9. It is reiterated in the additional counter affidavit that the land claimed by petitioners forms part of Survey No.44/1 of Miyapur Village, and is part of extent of Acs.169.38 guntas in Survey No.44/1 of Miyapur Village, which is subject-matter of Land Grabbing Case No.29/2006, which is now pending before the District Court, Ranga Reddy District. It is contended that as per Classer Register of the year

1329 Fasli, the land in Survey No.44 is recorded as Government land, and there is nothing to show that there was a change of classification of the land from Government land to patta land in the Revenue Records.

10. Nowhere in the Additional counter-affidavit is it stated as to what due process was followed by the respondents before taking steps to demolish the compound wall around the property of the petitioners.

11. The fact that Land Grabbing Case No.29 of 2006 has been filed by the State in respect of the land in Survey No.44 of Miyapur Village, and the fact that it is pending before the District Court, Ranga Reddy District indicates that any claim of the Government to the land in Survey No.44 had not been decided in its favour by the said Court. So the respondents cannot treat that the subject land claimed by petitioners belongs to them.

12. It is also not the case of respondents that petitioners are parties in the said Land Grabbing Case, and there was any adverse order passed against the respondents in the Land Grabbing Case including the petitioners empowering the respondents herein / State Government officials of the Revenue Department to take the law into their own hands and demolish the compound wall of the petitioners.

13. There is no evidence adduced by the respondents to show that whatever survey was conducted by the respondents was after issuing notice to the petitioners determining that petitioners had encroached

18 guntas of land in Survey No.214. Therefore, any such survey conducted by the respondents will not bind the petitioners.

14. Merely because the respondents chose to dispute the title of petitioners to the property, the respondents cannot contend that the Writ Petition is not maintainable.

15. In **Real Estate Agencies vs. State of Goa and others**¹, the Supreme Court held, relying on the decision in **ABL International Limited vs. Export Credit Guarantee Corporation of India Ltd**² held that there is no absolute rule that in all cases involving disputed questions of fact, the parties should be relegated to a Civil Court; and that it is the duty of the High Court, while entertaining a Writ Petition, to see whether there is any substance in the claim of the State or its entity or such a plea of alternative remedy has been raised merely to relegate the petitioner to a more “lengthy, dilatory and expensive process” that is inherent in a civil suit.

16. In my opinion, the whole intention of the respondents in the instant case appears to be to drive the petitioner to such lengthy, dilatory and expensive process of a civil suit, though the respondents are not able to show *prima facie* any right, title or interest in the land to evict the petitioners though more than two years have elapsed since the filing of the Writ Petition.

¹ (2012) 12 SCC 170

² (2004) 3 SCC 553

17. It is settled law that in India, the law does not permit forcible dispossession even by the real owner of a person in settled possession.

18. In **State of U.P. and others Vs. Maharaja Dharmandar Prasad Singh etc.**³, a lease of Nazool land granted by the State Government was cancelled and invoking a clause in the lease deed, the State Government attempted to resume possession. The Supreme Court held that a lessor with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise; that the use of the expression 're-entry' in the lease deed does not authorize extrajudicial methods to resume possession; that under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited; and a lessee cannot be dispossessed otherwise than in due course of law. It held that the fact that the lessor is a State does not place it in a higher or better position and it is under an additional inhibition stemming from the requirement that all actions of Government and Governmental authorities should have a 'legal pedigree'. It followed the Constitution Bench Judge of the Supreme Court in **Bishandas Vs. State of Punjab**⁴, where the Supreme Court repelled the argument that trespassers could be removed by an executive order and declared that such argument is not only specious but highly dangerous by reason of its implications and impact on law

³ AIR 1989 S.C. 997

⁴ AIR 1961 SC 1570

and order. The Supreme Court in the latter case had declared that the executive action taken by the State and its officers is destructive of the basic principles of the rule of law. It held that possession can be resumed by the Government only in a matter known to or recognized by the law and it cannot resume possession otherwise than in accordance with law.

19. Similar view has been expressed by the Supreme Court in **Rame Gowda (dead) by L.Rs. Vs. M.Varadappa Naidu (dead) by L.Rs. and another⁵**. In this case, the Court declared that as far as Indian Law is concerned, the person in peaceful possession is entitled to retain his possession; that if a trespasser is in settled possession of property belonging to the rightful owner, the rightful owner shall have to take recourse to law; and he cannot take the law in his own hands and evict the trespasser or interfere with his possession. It declared that the law will come to the aid of a person in peaceful and settled possession by *injuncting even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner, if the latter has dispossessed the prior possessor by use of force.*

20. A Division Bench of this Court in its order dt.21.03.2018 passed in Writ Appeal No.1363 of 2017 held as follows :

“While this Court, in proceedings under Article 226 of the Constitution of India, would not adjudicate disputed questions of title, the proceedings under challenge in the Writ Petition are the orders passed by

⁵ (2004) 1 S.C.C. 769

*the Revenue Divisional Officer under Section 10 of the Act, confirming the order of the Tahsildar passed under Section 6 of the said Act. Recourse to the provisions of the Act could only have been resorted to if the subject land is Government land, and where there is a serious dispute whether the subject land is Government land, or the private property of respondent-writ petitioner, this Court would not take upon itself the task of examining these disputed questions of title. That, however, does not mean that the Government, which claims that the subject lands belong to it, can unilaterally and conclusively decide that the subject lands are Government lands based merely on the letter "G" and the words "NIL AREA" as reflected in the TSLR, more so as no explanation is forthcoming as to why the name of the respondent-writ petitioner's vendor i.e., Smt. Fathimunnisa Begum is also reflected in the TSLR, if she was not the owner of the subject lands. As held in **Government of Andhra Pradesh v. Tummala Krishna Rao**⁶, the Government, in summary proceedings, cannot unilaterally decide its own title over the property; and their remedy is only to approach the competent Civil Court seeking declaration of title. Even otherwise, in proceedings under Clause 15 of the Letters Patent, interference is justified only if the order passed by the learned Single Judge suffers from a patent illegality. We find no such infirmity necessitating exercise of jurisdiction under Clause 15 of the Letters Patent.*

21. Thus, it is settled law that State cannot decide for itself whether it has title to the property or not without recourse to due process of law, particularly in the light of the pahani produced by the petitioner of 1426 Fasli showing that the subject land is patta land, take the law into its own hands and demolish the compound wall and structures for watchman in the petitioners' property.

22. Therefore, the Writ Petition is allowed with costs of Rs.10,000/- to be paid by 1st respondent to petitioners; the respondents shall reconstruct the compound wall and the structures demolished by them at expense of 1st respondent within a period of six (06) months;

⁶ AIR 1982 SC 1081

and shall not interfere with the possession and enjoyment of the petitioners over the subject property without following due process of law.

23. As a sequel, miscellaneous petitions pending if any in this Writ Petition shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18.10.2019

Ndr

