

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD**

Coram :

*** The Honourable Mr. Justice V.RAMASUBRAMANIAN
and
The Honourable Mr. Justice P. KESHA VA RAO**

+ Writ Petition No.46114 of 2018

% Delivered on: 23-04-2019

Between:

Sri Uppalapati Venkata Satyanarayana Prabhas Raju
S/o Upppalapati Venkata Satyanarayana Raju,
R/o Plot No.11A, Road No.10C, Gayatri Hills,
Jubilee Hills, Hyderabad, rep.by his GPA Holder
Sri DVV Satyanarayana Raju.

.. Petitioner

Vs.

\$ The State of Telangana, rep.by its Prl. Secretary,
Revenue Dept., Hyderabad and others.

.. Respondents

! For Petitioner

: Mr. S. Niranjana Reddy,
Senior Counsel for
Ms. Rubaina S. Khatoon

^ For Respondents

: Mr. K. Sharat Kumar,
Special Government Pleader

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> Head Note

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? Cases Referred

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- 1) 1989(2) SCC 505
- 2) 1989 (4) SCC 131
- 3) 2002(4) SCC 134
- 4) 1885 (3) SCC 544
- 5) 2018 (5) ALT 645

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND

HONOURABLE SRI JUSTICE P. KESHA VA RAO

WRIT PETITION No.46114 OF 2018

ORDER: *(Per Hon'ble Sri Justice V. Ramasubramanian)*

Challenging his dispossession from a property comprised in land of an extent of 2083 square yards in Plot Nos.221, 222 and 223 in Survey No.5/3, Raidurg, Serilingampally Mandal, Ranga Reddy District, the petitioner has come up with the above writ petition.

2. Heard Mr. S. Niranjan Reddy, learned Senior Counsel appearing for the petitioner and Mr. K. Sharath Kumar, learned Special Government Pleader appearing for the respondents.

Pleadings

3. The case of the petitioner, in brief, is that he is the absolute owner and possessor of the land measuring 2083 square yards in Plot Nos. 221, 222 and 223 in Survey No.5/3, Raidurg, Serilingampally, Ranga Reddy District, he having purchased the same, under two sale deeds, one dated 05.10.2005 registered as document No.14842 of 2005 from Ms. B. Vaishnavi Reddy, and another dated 24.04.2006 registered as document No.9733 of 2006 from Ms. Usha S. Ari and Mr. Shashank Reddy Bommi Reddy through their General Power of Attorney Holder, Mr. B. Ravinder Reddy; that a larger extent of land in Sy.No.5/3 was purchased originally by one Mr. P. Vidyasagar Rao and Mr. P. Sangameshwar Rao from Mrs. Kaisar Jahan Begum and others through registered sale deeds bearing document Nos.11738 and 11739 of 1989;

that the larger extent of land was divided into plots and a layout promoted therein; that the layout was sanctioned by Hyderabad Urban Development Authority (HUDA) in File No.12484 of 1988, dated 21.04.1989; that after the larger extent was developed into a layout of plots, one plot of land bearing Plot No.221 was purchased by Ms. Usha S. Ari and another, the Plot bearing No.222 was purchased by Mr. Shashank Reddy Bommi Reddy and the Plot bearing No.223 was purchased by Ms. B. Vaishnavi Reddy; that the petitioner purchased these 3 plots from them in the years 2005 and 2006; that in the year 2012, the composite State of Andhra Pradesh introduced a Scheme for Regularization of land holdings; that the Government of Telangana also issued G.O. Ms. No.59, dated 30.12.2014 for the regularization of land holdings; that since the Government started making a claim that the entire village of Raidurg got escheated to the Government, the petitioner, by way of abundant caution, made an application on 19.01.2015 for regularization, by paying a regularization fee of Rs.1.05 Crore; that no orders have been passed on the application for regularization so far; that the petitioner has put up temporary structures in the property and has been paying property tax and also electricity charges duly and promptly; that all of a sudden, the Tahsildar, Serilingampally Mandal, who is the 4th respondent herein, and a team of Officials landed up on the property on 17.12.2018 and attempted to take possession of the same forcibly, purportedly on the basis of an order passed by the Hon'ble Supreme Court on 29.10.2018 in Special Leave Petition (C) Nos.24646 and 24647 of 2018; that the petitioner is neither

a party nor connected to the case before the Supreme Court; that the petitioner and his predecessors have been in possession and enjoyment of the property for the past over 30-40 years and their possession is settled for a long time; that when the law is well-settled that even trespassers cannot be dispossessed by forcible means, the attempt of the respondents to dispossess the petitioner, who has a valid title, is violative of Article 300A of the Constitution and that therefore a writ of *mandamus* should be issued.

4. The 4th respondent has filed a counter affidavit, contending *inter alia* that the lands in Plot Nos.221, 222 and 223 over which the petitioner claims a right, fall in Survey No.46 of Raidurg Paigah and not in Survey No.5/3; that Sy.No.5/3 is located in Raidurg Now Khalsa, according to the Village Map; that the entire village known as Raidurg Paigah became the subject matter of a suit for partition in C.S. No.7 of 1958; that the entire village was included at serial No.234 in the list of properties in Schedule - A to the plaint in C.S. No.7 of 1958; that the entire village of Raidurg Paigah included as item No.234, forms part of some properties mentioned in the plaint schedule as *makthas*; that in a judgment delivered by this Court in C.A. No.33 of 2017 and LPA No.1 of 2018, this Court has recorded the entire history of litigation surrounding the lands in the entire village called Raidurg Paigah; that since a factual dispute has arisen as to whether the plots of land bearing Nos.221, 222 and 223 are in Sy.No.5/3 or Sy.No.46, the same cannot be adjudicated in a writ petition under Article 226 of the Constitution; that when the Revenue Authorities visited the property, the occupants of the

property voluntarily left the property and possession was not taken forcibly; that possession of the land was surrendered voluntarily by the petitioner's men who were squatting on the property; that by virtue of the operation of Section 24 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli, all lands became the property of the Government, except a few categories; that the very fact that the petitioner filed an application for regularization would show that he has no valid title to the property; that the petitioner cannot approbate and reprobate, claiming ownership on the one hand and seeking regularization on the other hand; that the regularization of land holdings is available only if the land falls under the category of unobjectionable government land and surplus land under the Urban Land Ceiling Act; that the petitioner has in fact made two applications on 19.01.2015, under application Nos.APLRRD 150121001010 and 150120000121, for regularization of two parcels of land, one measuring 1389 square yards and another measuring 694 square yards, in Sy.No.5/3; that the petitioner also paid regularization fee; that in Column No.6 of the applications for regularization, where details of pending litigation are to be mentioned, the petitioner indicated the case number LGC No.13 of 2004; that for the purpose of taking a decision on the applications for regularization, a survey was conducted by the authorities on 21.09.2015; that the survey indicated that the plots of land are situate in Sy.No.46; that as per *Khasra Pahani* of the year 1953-54, the land in Sy.No.46 is a Government Land; that since a long drawn litigation in C.S. No.7 of 1958 is pending with respect to the land in Sy.No.46, the petitioner's

case was not recommended for regularization; that the said decision was communicated to the petitioner through on-line on 02.11.2015; and that the Scheme for Regularization is applicable only to the encroachments of unobjectionable government lands and surplus land under ULC and that therefore the writ petition is devoid of merits.

Contentions

5. Assailing the action of the 4th respondent, it was contended by Mr. S. Niranjan Reddy, learned Senior Counsel for the petitioner (i) that when the petitioner was admittedly in uninterrupted possession of the property for a long time, he could not have been dispossessed by the 4th respondent except by due process of law; (ii) that the reliance placed upon the judgment of this Court in L.P.A. No.1 of 2018 and C.A. No.33 of 2017, which is confirmed by the Supreme Court, is completely misplaced, as this Court did not decide the title of the Government to the lands in the village of Raidurg Paigah; (iii) that the applications for regularization have not so far been rejected in a manner provided under G.O.Ms.No.59 and the memo relied on by the 4th respondent in his counter affidavit, is only an internal communication dated 02.11.2015; (iv) that the Land Grabbing Case, the pendency of which is cited as one of the reasons for not entertaining the applications for regularization, was a case against third parties; (v) that the land in question cannot be classified as an objectionable government land; (vi) that G.O.Ms. No.59 covers all lands of larger extents including those used for non-residential purposes, while there is another Order in G.O.Ms.No.58 issued for the regularization of small dwellings, of an area of less than 125 square

yards and that therefore the dispossession *per se* in a forcible manner, was illegal. The learned senior counsel also relied upon a few judgments of the Supreme Court to drive home the point that a person in settled possession cannot be dispossessed forcibly without following due process of law.

6. In response, it is contended by Mr. K. Sharath Kumar, learned Special Government Pleader (i) that factual disputes about the Survey Number in which the subject lands are located, arise in this writ petition; (ii) that these factual disputes cannot be settled in a writ petition under Article 226; (iii) that the benefit of regularization will not apply to the holders of objectionable government lands; and (iv) that the petitioner was not forcibly thrown out, but he voluntarily surrendered the possession.

7. We have carefully considered above submissions.

Issues arising for consideration

8. From the pleadings on record and the rival contentions, we think the following issues arise for consideration in this writ petition:

- (i) Whether disputed questions of fact arise in this writ petition, warranting this Court to drive the parties to the Civil Court?
- (ii) Whether the manner in which the 4th respondent took over possession (or resumed possession) of the disputed property, is authorized by law and if not, to what relief, the petitioner would be entitled?
- (iii) Whether the manner in which the respondents dealt with the applications of the petitioner for regularisation, was proper ?

ISSUE No.1

9. It is the contention of the learned Special Government Pleader that a disputed question of fact arises in this writ petition as to whether the land in question is situate in Sy.No.5/3 or Sy.No.46 and that therefore the same cannot be settled in a writ petition under Article 226.

10. But, the above contention of the learned Special Government Pleader is liable to be rejected outright for the following reasons:

- i) The petitioner has not sought the relief of a declaration of title in this writ petition to the lands in Sy.No.5/3. According to the petitioner, he has been dispossessed from the land in Sy.No.5/3. According to the 4th respondent, the petitioner was an encroacher of a land in Sy.No.46 and that when the 4th respondent went to evict him from the land, the petitioner's men and servants squatting there, went out of the property without any protest. In the light of the stand so taken by the respondents, it is clear that the possession of some property was taken by the 4th respondent forcibly or otherwise from the petitioner. Therefore the only question that arises for consideration is as to whether the petitioner was dispossessed from the land in his occupation without due process of law or not. The focus of this writ petition is not on the location of the property, but on the question whether even an encroacher can be thrown out without following due process of law or not. For deciding this question as to whether a Government Authority can dispossess an encroacher (assuming that the petitioner is an encroacher) without following due process

of law, the petitioner cannot be driven to the Civil Court. Though the right to property is not a fundamental right, it is both a Constitutional right and a human right guaranteed under Article 300-A. Therefore, a person in occupation of a property, even if he is an encroacher, cannot be dispossessed except by due process of law. The due process of law for dispossessing encroachers and unauthorized occupants of government properties, is stipulated in Andhra Pradesh Land Encroachment Act, 1905 (for short 'Act, 1905'). Section 14 of the said Act, 1905 bars the jurisdiction of a Civil Court, over the decisions taken, orders passed or proceeding initiated under the 1905 Act. Therefore, it does not lie in the mouth of the learned Special Government Pleader to say that the petitioner should go to Civil Court.

- ii) The contention that a disputed question has arisen in the writ petition about the Survey Number in which the land is located, is a myth. The petitioner came up with the writ petition, aggrieved by the action of the 4th respondent in dispossessing him from a land, which is described in the documents of title that he has, to be located in Survey No.5/3. Irrespective of whether the land is located in Survey No.46 or Survey No.5/3, the question to be addressed by this Court is as to whether the petitioner could have been dispossessed without following the procedure prescribed by the 1905 Act, or not?

11. Therefore, we reject the contention of the learned Special Government Pleader that disputed questions of fact arise in this writ

petition and that therefore the petitioner ought to have approached the Civil Court.

ISSUE No.2

12. The second issue arising for consideration is as to whether the petitioner was in fact dispossessed otherwise than by due process of law and if so, to what relief he is entitled. The case of the petitioner is that he was forcibly dispossessed by the Officials from the Office of the 4th respondent on 17.12.2018 and that neither his claim to title nor his applications for regularization were taken into account by the 4th respondent.

13. The response of the learned Special Government Pleader is (i) that the petitioner's men who were squatting on the property, voluntarily went out of the property and hence there was no forcible eviction; and (ii) that the applications for regularization were already rejected on the ground that the land in question fell under the category of "objectionable government land".

14. In the light of the rival contentions, two ancillary issues arise for consideration under the second issue that we are now dealing with. These ancillary issues are;

- (i) whether the action of the persons in occupation of a property, walking out voluntarily upon seeing the Government Officials, would tantamount to a surrender of possession of the property; and
- (ii) If the answer to the above ancillary issue is in the negative, whether the eviction of the petitioner from the land in

question was unlawful and if so to what relief the petitioner would be entitled ?

15. Let us now take up the first ancillary issue. In paragraph No.12 of the affidavit in support of the writ petition, the petitioner has made a positive averment that without any notice to him, the 4th respondent and his Officials suddenly and forcibly sought to enter the premises on 17.12.2018 and tried to take control of the property. In response to this positive assertion, it is stated by the 4th respondent in paragraph No.12 of the counter affidavit that when the Revenue Officials visited the spot, the petitioner was not physically present and that all persons, who had encroached into the property, like the petitioner, in the entire area, vacated the lands in a non-violent manner.

16. As rightly argued by Mr. S. Niranjan Reddy, learned Senior Counsel for the petitioner, two options are open to a person faced with the situation of Revenue Authorities landing up on the property in his possession. The first option is to resist the attempt of Revenue Officials and face the consequences of being arrested. The second option is to walk out of the property, so as to avoid any unpleasant situation and untoward incident.

17. In our considered view, persons exercising either of two options will fall under the same category of being dispossessed forcibly. In the case of a person exercising the first option, forcible eviction will be by the use of physical force when he will be bundled into a Police Van. In the case of a person exercising the second option, it will be the use of mental force.

18. As per paragraph No.12 of the counter affidavit, the petitioner's men as well as encroachers of other properties, walked out in a non-violent manner. Instead of putting a premium on such a conduct, it is surprising that the 4th respondent is taking advantage of the same.

19. The question of forcible eviction arises in the context of the core issue as to whether the due process was followed before eviction or not. If the occupants of a property, assuming that it is a government property, walk out upon seeing a large number of Government Officials, the same cannot be elevated to the status of a lawful eviction. In fact, a forcible eviction after following due process of law may be legal, while a peaceful eviction carried out otherwise than in accordance with law, may be illegal. If the petitioner's servants and others who were there in the property had actually resisted, leading to a scuffle, they might have even become liable for prosecution for obstructing the Government Officials in the discharge of their duties. Therefore, the first ancillary issue that there was no forcible eviction, is to be answered against the respondents.

20. That takes us to the next ancillary issue as to whether the eviction of the petitioner was in accordance with law or not. Let us, for the purpose of finding an answer to this question, proceed on the presumption that the petitioner is not the owner of the property and that the land in question is a Government Land into which the petitioner had encroached.

21. A detailed procedure for the removal of encroachments is prescribed under an Act called the Andhra Pradesh Land Encroachment Act, 1905. Under the said Act, a person in an unauthorized occupation of Government land, is liable for three things, viz., (i) Assessment, (ii) Penalty and (iii) Summary Eviction. Both for levying penalty under Section 5 and for summary eviction under Section 6, a prior notice is necessary under Section 7. Under Section 7, an unauthorized occupant should be served with a notice calling upon him to show cause as to why he should not be summarily evicted. Section 6 (2) of the 1905 Act, stipulates that an eviction under this Act can be made (i) after serving a notice as provided in Section 7, (ii) followed by the Collector holding a summary inquiry into the facts of the case, if there is resistance or obstruction; and (iii) by the issue of a warrant of arrest in case the obstruction or resistance continues.

22. Apart from the statutory requirement of issuing a notice under Section 7 and the passing of an order under Section 6 (2), a remedy of appeal is also provided under Section 10 against any decision rendered by the Collector. The appeal may be either to the Collector or to the Board of Revenue (now Commissioner). Apart from the provision for appeal, there is also a provision for revision by the Government under section 12-A.

23. Therefore, even the encroachers are vested with certain rights, such as a right of notice before eviction, passing of an order and the remedies of appeal and revision.

24. Admittedly, the procedure prescribed under the 1905 Act, was not followed at all by the 4th respondent. **Therefore, we have no doubt in our mind that the petitioner has been dispossessed from the property, otherwise than by due process of law.**

25. Once it is seen that the petitioner has been dispossessed otherwise than by due process of law, it should follow as a corollary that he should be restored to possession. As observed by the Supreme Court in **State of Uttar Pradesh v. Maharaja Dharmandar Prasad Singh¹**, relied upon by Mr. Niranjan Reddy, learned Senior Counsel for the petitioner, no one can appropriate to himself, the extra judicial right of re-entry. Even the government cannot resume possession otherwise than in accordance with law.

26. Again in **Krishna Ram Mahale v. Mrs. Shobha Venkat Rao²**, the Supreme Court reiterated that a person who is in settled possession of a property, cannot be dispossessed except by due recourse of law, even if that person had no right to remain on the property.

27. In **State of West Bengal v. Vishnu Narayan³** the Court quoted with approval the decision in **Maharaja Dharmandar Prasad Singh**.

28. But, we must point out that what the Supreme Court was concerned in **Maharaja Dharmandar Prasad Singh**, was a case of lease granted by the Government. It was not a case of encroachment but a case of the lessee continuing in occupation after the termination of

¹ 1989(2) SCC 505

² 1989 (4) SCC 131

³ 2002(4) SCC 134

lease. Similarly, the case in **Krishna Ram Mahale**, was one of lease/licence between private parties and the matter arose out of a civil suit to which Section 6 of the Specific Relief Act, 1963 applied.

29. The case in **Vishnu Narayan** also arose out of tenancy rights and that was also not a case of encroachment.

30. However, irrespective of whether it is a case of licence or lease between private parties or a case of encroachment into government land, a person who is dispossessed otherwise than by due process of law is normally entitled to restoration of possession. But, a majority of cases where the Court restored possession to persons who were unlawfully dispossessed, related to slum dwellers or occupants of petty shops. One of the leading cases on this point was the decision of the Constitution Bench of the Supreme Court in **Olga Tellis v. Bombay Municipal Corporation**⁴. The Court held in that case that the eviction of persons belonging to the marginalized sections of Society, from pavements (or small extents of government land) into which they had encroached, would infringe upon their right to life guaranteed under Article 21, as it included a right to livelihood.

31. Therefore, **while exercising jurisdiction under Article 226 of the Constitution of India in cases of removal of encroachments (assuming that they are encroachments), the Court has to see whether the case of the petitioner would fall under the category of infringement of right to life guaranteed under Article 21 of the Constitution of India or the infringement of a lesser right, viz.,**

⁴ 1885 (3) SCC 544

either a right to property or a right not to be dispossessed except by due process of law.

32. In cases that fall under the first category, viz., the cases of persons whose right to livelihood is infringed by the sudden dispossession, the Court should be liberal in granting restoration to the persons who are dispossessed unlawfully. But in cases that fall under the later category, viz., cases where only a right under Article 300-A of the Constitution of India is infringed or a right not to be evicted except by due process of law is violated, the Court should be slow to grant the relief of restitution.

33. In the case on hand, the extent of property in the occupation of the petitioner was about 2,083 square yards. It is not the case of the petitioner that what was infringed by his unlawful eviction, was a fundamental right guaranteed under Article 21 of the Constitution of India. What is allegedly infringed is a right under Article 300-A of the Constitution of India. Therefore, it may not be possible for us to order restoration of possession to the petitioner.

34. We have one more reason for our inability to order restoration of possession. The land in question is situate in a village, the whole of which is embroiled in a huge legal battle in C.S. No.7 of 1958 on the file of this Court. Persons, who sold a larger extent of land way-back in the year 1989, included one Mrs. Kaiser Jahan begum, who appears to have been a party to C.S. No.7 of 1958. The entire Raidurg village with a vast extent of land measuring about Acs.209.00 in Sy. Nos.1 to 49, was included as item No.234 to the plaint schedule in C.S. No.7 of 1958.

According to their convenience, various parties to the dispute in C.S. No.7 of 1958 entered into any number of settlements outside the Court and got final decrees passed by this Court. The Government at times watched in utter shock and disbelief and at times, the officials of the Government simply remained as mute spectators. A useful reference may be made in this regard to the judgment of this Court in **S. Tirupathi Rao v. M. Lingaih**⁵. Even now, several applications for final decree and a few appeals challenging the final decrees, are all pending before this Court. Therefore, in the light of the controversies surrounding the land in question, we do not wish to put the petitioner back into possession on the ground that they have been dispossessed otherwise than in accordance with law.

35. We make it clear that we have not gone into the question of title, as it is beyond the pale of writ jurisdiction. We have tested here, under issues 1 and 2, whether the petitioner could have been dispossessed in the manner now done, even if the petitioner is presumed to be an encroacher and if not, to what relief he would be entitled.

ISSUE NO. 3

36. The third issue arising for consideration is as to whether the manner in which the applications for regularization filed by the petitioner were dealt with, was proper or not?

37. The fact that a Scheme for Regularization was floated way back in the year 2012 by the combined State of Andhra Pradesh is not in dispute. The State got bifurcated on 02.06.2014. The newly born State

⁵ 2018 (5) ALT 645

of Telangana issued G.O.Ms.No.59, Revenue Department, dated 30.12.2014, providing for regularization of possession of unobjectionable government land and surplus land under the Urban Land Ceiling Act, on payment basis. Paragraph No.2 of the Government Order reads as follows:

“ 2. In view of this, the Government hereby order to alienate and regularize possession of unobjectionable Government land and surplus land under Urban Land Ceiling in respect of the possessions held by people, on payment basis for possessions held for both residential and non residential purposes. The following are the terms and conditions for regularization:

- i) Possessions in Unobjectionable Government lands and Surplus Lands under Urban Land Ceiling will be regularized by way of alienations.
- ii) Only encroachment by way of functional building units is considered for assignment.
- iii) Possession held on or before 02.06.2014 is eligible for regularization.
- iv) The following are the rates to be collected for regularization to the respective extents of **residential**:
 - 1) Possession up to 250 square yards: 50 % of the Basic Value as on 02.06.2014.
 - 2) Possession up to 500 square yards: 75 % of the Basic Value as on 02.06.2014.
 - 3) Possession above 500 square yards : Basic Value as on 02.06.2014.
- v) **Non-residential possessions:** Irrespective of extent, Basic Value as on 02.06.2014 shall be collected.
- vi) Possession of government land as extension or appurtenant to a dwelling unit on land already owned or assigned may be considered for regularization on payment of full basic value.
- vii) The possessors in the encroachments, who are desirous to get regularization should submit applications to the Tahsildar concerned within 20 days from the date of issue of this G.O.
- viii) The applicants should pay 25% of basic value of the land by way of Demand Draft in favour of Government of Telangana State and enclose the same to the application.
- ix) **PROOF OF IDENTITY** (any of these) –
 - a) Adhaar card,
 - b) Any other document.
- x) **Proof of possession** (any one of these)
 - 1) A Registered Document
 - 2) Property Tax Receipt
 - 3) Electricity Bill Receipt
 - 4) Water bill receipt

- 5) Any other proof to establish possession
- xi) Competent Authority for regularization: A Committee consisting of Revenue Divisional Officer of the concerned Division as Chairman and the Tahsildar concerned as the Member Convener shall be the Committee of Regularization.
 - xii) The Committee of Regularization shall dispose of all the applications received for regularization within 90 days from the date of its receipt.
 - xiii) As per the recommendations of the Committee, the Tahsildar concerned shall get conveyance Deed executed in the name of a Female member of the Family.
 - xiv) The Joint Collector concerned will be the Grievance Redressal Authority in the matter if any and he may give directions to the committee as he deems fit. xv) Government reserve right to reject any application without assigning any reason.”

38. According to the learned Special Government Pleader, the benefit of the said Government Order would inure only to small time encroachers who have built residential houses on government lands. But, the said contention is falsified by paragraph No.2 of the Government Order that we have extracted above. Paragraph No.2 makes it very clear that regularization was contemplated in respect of lands held both for residential and non-residential purposes. If the G.O. was intended only for the benefit of small time encroachers, there was no need to stipulate the value for lands of the extent of more than about 500 square yards.

39. An argument was advanced about the term “unobjectionable government land”. Unfortunately, the Government Order does not define what Objectionable Government Land is and what unobjectionable government land is. Therefore, the decision as to what is objectionable land and what is unobjectionable government land, is now left to the whims and fancies of the respondents. Though a Committee comprising of the Revenue Divisional officer as the

Chairman and Tahsildar as Convener is vested under the Government Order with the power to consider applications for regularization, there are no guidelines in the Government Order as to how to determine what is objectionable land and what is not.

40. The petitioner has admittedly filed applications for regularization on 19.01.2015, along with payment of a sum of Rs.1.05 Crore. According to the respondents, the applications were not recommended for regularization, as per a check memo.

41. But, we do not think that an entry made in Column No.8 of the scrutiny check memo to the effect that the applications are not recommended, will tantamount to a proper consideration of the application for regularization. Paragraph No.2 of G.O.Ms.No.59 contemplates the disposal of applications for regularization within ninety (90) days. If the mere filling up of Column No.8 in the scrutiny check memo that the application is not recommended, tantamounts to a rejection, the petitioner was entitled to the refund of the amount of Rs.1.05 Crore paid along with the application. In fact, a careful look at paragraph No.2 (xv) of G.O.Ms.No.59 shows that it was the Government which was reserved with the right to reject any application without assigning any reason. Therefore, we do not think that there was any proper consideration of the applications of the petitioner for regularization.

42. As a matter of fact, there is a chequered history, both preceding and succeeding the issue of G.O.Ms.No.59. It appears that orders were first issued in G.O.Ms.No.166 Revenue dated 16.02.2008

for regularization. But, no action was taken pursuant to the same. Thereafter, two Government Orders in G.O.Ms.Nos.58 and 59 Revenue, dated 30.12.2014 were issued, the former dealing with the cases of slum dwellers and the latter dealing with the lands of larger extents.

43. G.O.Ms.Nos.58 and 59 were followed by several Government Orders, the last of which was in G.O.Ms.No.134 Revenue dated 16.07.2018. Under G.O.Ms.No.134, dated 16.07.2018, orders were issued for the refund of the amounts received under G.O.Ms. No.166, dated 16.02.2008. Persons who had applied under G.O.Ms.No. 166, were also given opportunities to file applications afresh. This was in terms of G.O.Ms.No.179, Revenue dated 01.09.2018. This G.O.Ms. No.179, Revenue, dated 01.09.2018, made it clear that wherever the extent of land is above 1000 square yards, the applications should be forwarded to the Government.

44. Therefore, it is clear that the applications for regularization filed by the petitioner, were not dealt with properly. Though, the petitioner has claimed title to the property on the basis of the registered sale deeds, the petitioner had, in all fairness, also applied for regularization. This does not tantamount to approbating and reprobating. If, with a view to purchase peace, a person, who claims title to a property, chooses to apply for regularization and conveyance, the same can, at the most, tantamount to giving up their title, subject however to the grant of regularisation. If regularisation is rejected, it may be open to such persons to pursue their remedies before the normal civil court to establish title. In fact, the Government Orders stipulate the payment of

market value of the land as per the Basic Value Register maintained in the Office of the Sub-Registrar.

45. A look at the decision of this Court in **S. Tirupathi Rao**, which arose out of C.S. No.7 of 1958 would show that a vast extent of paigah property is involved in a huge litigation for the past more than six decades. The entire land has been divided and sub-divided into smaller extents and innumerable transactions such as the one under which the petitioner claims to have purchased three plots of land, have taken place in the past several decades. For some transactions, the Hyderabad Urban Development Authority also appears to have granted a seal of approval. Properties have changed several hands and constructions, both residential and non-residential, have also come up. The government have not so far taken action under the Land Encroachment Act, 1905 to throw all the encroachers out of all the lands in the village of Raidurg Paigah. If the government initiates action under the Land Encroachment Act, 1905, the same is sure to take decades if not centuries, before the Government could take possession. A lot of persons may claim title under registered sale deeds, some of them may have obtained pattas and many of them may claim adverse possession. Once the parties drag the government to civil litigations, we are sure that the Government may not be able to resume possession in the near future.

46. Therefore, it would be ideal if the Government takes advantage of the applications for regularization filed at least by a few persons like the petitioner, who were/are in occupation. After all, the regularization fee fixed under the relevant Government Order, is not a

nominal amount but the basic value of the property as reflected in the relevant registers in the office of the Sub-Registrar. Therefore, if the Government takes a policy decision to regularize the occupation of persons like the petitioner, who are willing to give up their claim on the basis of registered sale deeds, the Government may stand to benefit in two ways, *viz.*, (1) the collection of thousands of crores of rupees from a majority of the occupants, who may not like to litigate and (2) the eviction of the remaining persons becoming easy, with the scope of the controversies getting narrowed down.

47. Therefore, we are of the considered view that the only way in which all the controversies surrounding huge extents of properties involved in C.S. No.7 of 1958, could be resolved by the Government, (1) with maximum monetary gain to the Government, (2) with minimum damage to the occupants and (3) the termination at once of a majority of the litigation in C.S. No.7 of 1958, would be to take a positive look at the applications for regularization filed by persons like the petitioner, at least in respect of the land involved in C.S. No.7 of 1958. There is no use in categorizing the lands involved in C.S. No.7 of 1958 into objectionable and unobjectionable government lands. As on date most of these lands are in the possession of third parties. There is no point in the government having objections on paper, while parties continue to enjoy the possession of the properties.

48. Therefore, we hold that the dispossession of the petitioner from the land in question is clearly unlawful, as it was not through due process of law. But we refrain from putting the petitioner back into

possession, as the land in question is part of a larger extent of land that is involved in a huge controversy in C.S. No.7 of 1958. However the applications of the petitioner for regularization deserve to be considered, in a proper manner, not merely because it may be fruitful to the petitioner but also because the Government may be able to resolve a long standing dispute and set a precedent with regard to hundreds of acres of lands involved in C.S. No.7 of 1958.

49. In view of the above, the Writ Petition is allowed directing the Government to consider the applications of the petitioner for regularization, in a proper manner, taking into account the larger public interest as well as the interest of the Government that may be served in this process. The Government may pass appropriate orders within eight (8) weeks of receipt of a copy of this order, keeping in mind the necessity to set a precedent through such an order, to enable the occupants of other lands in C.S. No.7 of 1958 to treat the same as something like a scheme for amnesty. If the order so passed by the Government is favourable to the petitioner, the petitioner shall be put back to possession. It is needless to say that if the order is adverse to the interest of the petitioner, he will have liberty to come back to Court seeking appropriate reliefs. We also make it clear that if, due to the unwillingness on the part of the Government to grant regularisation, the petitioner wishes to fall back upon his claim of title to the property on the basis of the registered sale deeds in his favour, it is open to him to approach the appropriate civil court, as this court has not gone into the

question of title and it cannot also go into it, in a writ petition. The writ petition is disposed of accordingly.

The miscellaneous petitions, if any pending, shall stand closed.

No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHA VA RAO, J

April 23, 2019

Note:

L.R. Copy to be marked.

**B.O.
Mgr/KTL**

