

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NOS.14881 AND 14885 OF 2020

COMMON ORDER:

(Per Sri Justice M.S.Ramachandra Rao)

Since common issues arise for consideration in these two Writ petitions, they are being disposed of by this common order.

2. The petitioner in W.P.No.14881 of 2020 is the absolute owner and possessor of Plot Nos.141 and 140 Part admeasuring 461 square yards in Block No.III on Southern part of the land in Survey No.78 (78/B as per internal division) of Hafeezpet Village, Serilingampally Mandal, Ranga Reddy District, having purchased it from M/s. Cyrus Investments Limited under a Registered Sale Deed being Document No.12420 of 2012 dt.07.11.2012.

3. The petitioner in W.P.No.14885 of 2020 is the absolute owner and possessor of Plot Nos.154, 155, 172 and 173 admeasuring 300 square yards each in Block No.III on Southern part of the land in Survey No.78 (78/B as per internal division) of Hafeezpet Village, Serilingampally Mandal, Ranga Reddy District, having purchased it from M/s. Cyrus Investments Limited under a Registered Sale Deed being Document Nos.508, 506 of 2015 dt.31.7.2014.

4. The vendor of petitioners had acquired title to this land by virtue of Final Decree passed in Application Nos.517 and 239 of 2009

in C.S.No.14 of 1958 on 31.03.2010 passed by the High Court of Andhra Pradesh, the predecessor of the High Court for the State of Telangana.

5. The petitioners submitted an online Application on 05.06.2020 and 2.6.2020 respectively to the Greater Hyderabad Municipal Corporation (**for short 'GHMC'**) for construction of a house along with a process fee of Rs.10,000/-. It was received in File No.2/C20/07809/2020 and File No.2/C21/07608/2020. The petitioner also alleges that he submitted relevant document to show his *prima facie* title over the said property.

6. The Assistant City Planner, GHMC (4th respondent) sent an intimation letter dt.29.06.2020 to the petitioner in WP.No.14881 of 2020, and the Chief City Planner, GHMC (2nd respondent) sent a Shortfall letter dt.11.6.2020 to the petitioner in WP.No.14885 of 2020 rejecting the petitioners' proposal stating that the lands in Survey No.78 of Hafeezpet Village are 'Sarkari' Government lands and so permission for construction cannot be granted to such lands. The petitioner in WP.No.14881 of 2020 claims to have given letters on 14.07.2020 and 27.08.2020 and the petitioner in WP.No.14885 of 2020 claims to have given letters on 18.6.2020 and 9.7.2020 pointing out that the State Government has no claim to this land and to reconsider the petitioners' Application without reference to the said aspect.

7. The petitioners contend that in a portion of the land covered in the same survey number, the 1st respondent had granted construction permission to high rise buildings to M/s. Prajay Engineers Syndicate Limited for 20 acres, to M/s. Mahendra Constructions Company Limited for 10 acres, to M/s. Adithya Constructions Company Limited for 10 acres and to M/s. G.K. Constructions and several other persons, but has discriminated against the petitioners and rejected the petitioners' application for permission on untenable grounds.

8. It is also contended that the total extent of land in Survey No.78 of Hafeezpet Village is Ac.215.20 guntas and there are nearly 1000 buildings in this land with approved plans and also unapproved plans.

9. The petitioners therefore challenge the refusal of the respondents in granting construction permission to the petitioner in WP.No.14881 of 2020 *vide* intimation letter dt.29.06.2020 in File No.2/C20/07809/2020 issued by the 4th respondent, and to the petitioner in WP.No.14885 of 2020 *vide* Shortfall letter dt.11.6.2020 issued by the Chief City Planner, GHMC (2nd respondent), and seek a direction to the respondents to grant such permission.

The contents of the impugned orders

10. In the intimation letter dt.29.06.2020 issued by the 4th respondent to the petitioner in WP.No.14881 of 2020, it is mentioned that *'the site under reference in Survey No.78 of Hafeezpet Village is falling within Government (Sarkari) land in which proposal (for*

construction) may not be considered for approval. Hence suggested for rejection’.

11. In the Shortfall letter dt.11.6.2020 issued by the Chief City Planner, GHMC to the petitioner in WP.No.14885 of 2020 it is stated that “ *the site under reference Sy.No.78 is classified as ‘Sarkari’ as per the list furnished by the Tahsildar and Dy.Collector, Serilingampally mandal in which building permission may not be considered.’*

The stand of the GHMC

12. In the counter affidavit filed on behalf of respondents 1 to 4, the 4th respondent raised a plea that the petitioners’ plots form part of larger extent of land and they are shown as prohibited property in the Online Urban Prohibited Register.

13. He also stated that the 1st respondent Corporation considered their Applications and observed that the subject site is falling within Government (Sarkari) land, and so the proposals for construction permission cannot be approved and rejected their Applications on 29.06.2020 and 11.6.2020. It is stated that the 1st respondent Corporation is duty bound to verify only *prima facie* factors and is not obligated to dwell deep into the title of the petitioners. It also contended that the petitioners should have made the State or Revenue Officials of the State as parties in the Writ Petition.

Reply affidavits of the petitioners

14. Reply affidavit is filed by the petitioners pointing out that in several proceedings, the State had lost its claim of title over the said property, which has been confirmed even by the Supreme Court and so the respondents cannot contend that the State Government is a necessary party to the Writ Petitions filed challenging the rejection of the building permission to the petitioners.

15. A tabular statement is given indicating that on six occasions the State failed in its attempt to claim title over the land in Hafeezpet Village. We shall advert to this later.

16. It is contended that the 1st respondent is a statutory authority and it is also bound by the orders passed against the State Government.

17. It is pointed out that when a Notification was issued under Section 22-A of the Registration Act, 1908 including the land in Survey No.78 of Hafeezpet Village as Government property and prohibiting its registration, W.P.No.19069 of 2014 was filed by certain third parties and the said Notification under Section 22-A was set aside and a direction was given to the Registering Authorities to entertain registrations with reference to the Draft Notification.

18. Reference is also made to an interim order passed on 01.10.2019 in I.A.No.1 of 2019 in W.P.No.21799 of 2019, wherein a direction had been given by this Court to delete the lands in Survey

No.78 of Hafeezpet Village from prohibitory list in the official website of the State Government and the Revenue Authorities.

19. Reliance is also placed on the order dt.11.08.2020 in I.A.Nos.1 and 2 of 2020 in W.P.No.12548 of 2020, wherein the claim of the Wakf Board through proceedings dt.16.06.2020 was suspended.

20. The petitioner has pointed out that the State Government of Andhra Pradesh had issued Memo No.28908/JA1/2004-1, dt.05.11.2004, wherein the State Government had permitted the Collector, Ranga Reddy District to effect mutation in the Land Records in respect of the lands in Survey No.78 of Hafeezpet as per the recommendation of the Special Chief Secretary and the Chief Commissioner of Land Administration; and another Memo No.59734/JA.1/2005, dt.18.05.2009, whereunder the Principal Secretary to Government, Hyderabad issued orders permitting mutation of names of the parties who had succeeded in C.S.No.14 of 1958 as per the orders of the High Court.

21. It is contended that when there are specific orders for deletion from the prohibitory register issued by the State Government and also the District Collector pursuant thereto, the respondents cannot rely on Urban Prohibited Register, that the contents of the said Register have not been placed on record and the authenticity of the said Register is itself doubtful and it has no authority in law.

Contentions of counsel for the parties

22. Learned counsel for the petitioner and Sri Harendra Prasad, Special Government Pleaded attached to the Office of the Advocate General appearing for the respondents have reiterated their submissions mentioned above.

The consideration by the Court

23. Before we discuss the contentions, we shall first advert to the powers of Commissioner, GHMC in regard to consideration of applications for Building permission made to him.

24. In exercise of the powers conferred by Section 589 of the Act, the then Government of Andhra Pradesh accorded sanction to the Bye-laws approved by the General Body of Municipal Corporation of Hyderabad in its Resolution No.561, dated the March, 1981.

25. These Bye-laws are called “The Municipal Corporation Building Bye-Laws, 1981”.

26. Bye-law No.4.2 prescribed the various documents to be filed and requirements to be complied with while filing the application for building permit. Clause (v) of the said Bye-law stipulates that every application for building permit shall be accompanied by the attested copy of the original sale/lease deed; and attested copy of Revenue Survey Sheet/Municipal Survey Sheet with Mutation Record No. or affidavit or other documents acceptable to the Commissioner, MCH, as proof of ownership of the applicant.

27. The scope and ambit of the power of the Commissioner of the Municipal Corporation under Section 428 and 429, in particular, to the extent of his power to examine the title of the applicant for building permit has fallen for consideration of this Court in **Hyderabad Potteries Private Limited v. Collector, Hyderabad**¹. In para 40 of the said judgment it is held thus:

“Of course, the Commissioner has to consider the objections, if any, raised for grant of permission. But, an objection raised by a member of the Committee itself would not be enough to reject the application for grant of permission. The Commissioner is required to make pragmatic assessment of the material available on record and decide the question of prima facie title and lawful possession of the applicants. The applications for grant of permission cannot be rejected solely on the basis of TSLR entries. After all, the decision to grant permission itself would not confer any title upon the applicant, nor it would take away the rights of the objector (s), whether the Government or any individual, for asserting their right, title and interest in the land in respect of which permission has been granted and dispute the title in any manner known to law. Similarly, the Commissioner is not entitled to decide any disputed questions of title or the ownership. All that the Commissioner required to do is to find out prima facie title and lawful possession of the applicant and obviously such consideration is confined to only for the purposes of granting permission and nothing more.”(emphasis supplied)

This decision was approved by order dt.24-12-2001 in W.A.No.1096 of 2001; and in **State of A.P. Vs. Pramila Modi and others**², it is stated that the decision in **Hyderabad Potteries** (1 supra) was also confirmed in Supreme Court. The said decision has been followed in several cases by this Court³.

¹ MANU/AP/0361/2001 : 2001(3) ALD 600

² MANU/AP/0170/2005MANU/AP/0170/2005 : 2005 (4) ALD 105 (DB)

³ MANU/AP/0649/2017; MANU/AP/0067/2017

28. In T. Rameshwar vs. Commissioner, Municipal Corporation of Hyderabad and Ors⁴, a single Judge of this court held:

“ The law as interpreted by this Court with reference to HMC Act and the Act, which requires the Commissioner to consider the objections, as and when they are raised, for grant of permission on the ground of title in a pragmatic manner taking into consideration only prima facie factors. While doing so, the Commissioner cannot assume the role of an adjudicator or arbitrator and decide the title inter se between the applicant for building permission and the objector of such building permission. If the applicant is able to show that prima facie such applicant has a right to proceed with the construction notwithstanding the pendency of any litigation by way of a suit or other proceeding subject to the applicant applying the certain conditions, the Commissioner may either grant permission or postpone the grant of permission.” (emphasis supplied)

29. This legal position is not disputed by the learned Special Government Pleader.

30. In our opinion, the Commissioner of GHMC is not empowered to entertain title dispute and adjudicate the same before disposing of the Application for grant of building permission.

31. Sections 428 and 429 and Clause (v) of Bye-Law No.4.2 envisage filing of copies of title deeds and there is no provision under which the Commissioner can reject building permission on the ground of title dispute as held in **Hyderabad Potteries Private Limited (1 supra)**.

⁴ MANU/AP/0156/2006 = (2006) 3 ALD 337

32. In K.Pavan Raj v. The Municipal Corporation of Hyderabad⁵, this Court held following the decision in Hyderabad Potteries Ltd (1 supra) :

“If any objection regarding title is received, the Commissioner is required to be prima facie satisfied about the Applicant’s title to the property and his lawful possession of the same and he cannot decide title dispute because that is not one of the duties assigned to him and he is not provided with any adjudicatory mechanism.

A person setting up a rival claim of title is free to approach the Court of competent jurisdiction and seek appropriate relief in that regard.

If the applications for building permissions are rejected merely on the ground of third parties raising disputes of title, that may result in serious hardship to the owners of the properties where frivolous, speculative and vexatious claims may be made by third parties by setting up title.

*So, as a matter of law if the Commissioner is prima facie satisfied about legal title of the Applicant and his lawful possession, he is bound to consider the Application for building permission on merits leaving the objector free to approach an appropriate court of law.”
(emphasis supplied)*

33. We agree with the above observations in the above case that if applications for building permissions are rejected merely on the ground of third parties raising disputes of title, that may result in serious hardship to the owners of the properties where frivolous, speculative and vexatious claims may be made by third parties by setting up title.

⁵ 2008(1) ALD 792

34. In the instant case, the impugned intimation letter dt.29.06.2020 and Short fall letter dt.11.6.2020 simply say that the site under reference in Survey No.78 of Hafeezpet Village is falling within Government (Sarkari) land. On what basis the respondents came to the conclusion that it is falling under the Sarkari (Government) land and what is the record relied upon by them is not mentioned therein.

35. We have already mentioned that tabular information of the number of times the State Government lost in its claim for the properties in Hafeezpet Village is given in the reply affidavit. The same is extracted below:

S.NO.	DATE	PARTICULARS
1	1955	Mrs. Dildarunnisa Begum, has filed suit for partition of Matraka Properties of Nawab Kursheed Jahi Paigah. The State is defendant No.53 and Jagir Administrator is D.43 and they have contested the suit lands by claiming title over the properties.
2	28-06-1963	The contention of the State was rejected and preliminary decree was passed.
3	05.07.1974	The order of the Hon'ble High Court in Appln. No.19 & 114 of 1973, directing the Government to deliver the suit schedule item 37 lands to the Receiver-cum-Commissioners.
		FIRST TIME LITIGATION TO SUPREME COURT
4	18-12-1982	The State had filed Appln.No.44 of 1982 for amendment of the decree to delete the suit schedule item Nos.37 (lands in SNo.77,78,80 of Hafeezpet village) of Schedule-IV from the suit schedule by contending that the lands are Inam Lands and are not available for partition. The contention of the State was rejected and the application was dismissed.
5	24-12-1999	Against the orders passed in Appln.No.44 of 1982, appeal in OSA No.1 of 1985 was filed before the Division Bench and the said appeal was dismissed.
6	2000	The State Government carried the matter to the Hon'ble Supreme Court challenging the orders passed in O.S.A.No.1 of 1985 and later on it withdrew the SLP with a permission to challenge the preliminary decree.
		SECOND TIME LITIGATION TO SUPREME COURT
7	17-02-2001	The State Government had filed appeal in O.S.A.Sr.Nos.3526 & 3527 of 2000, challenging the preliminary decree by contending that the lands are Inam lands. The said appeal was dismissed. (pages 24-40 of writ paper book)
8	16-07-2001	Aggrieved by the above orders dt.17-02-2001, the State had filed SLP.Nos.10622 and 10623 of 2001 and the same were dismissed. Thus the preliminary decree was confirmed by the Supreme

		Court. (Pages 41-42 of Writ Paper Book)
		THIRD TIME LITIGATION TO SUPREME COURT
9	24-08-2001	Thereafter when there are alienations of decree by the sharers with regard to the suit schedule item No.37 (which contains Hafeezpet village) the State had filed O.S.A.Nos.19 to 26 of 2001, challenging the orders of recognition of assignment deeds and the orders of impleadment of the purchasers as defendants in the suit. The grounds are that the lands are Inam lands and the lands were not released by the Government, but rejecting the said contention the Division Bench of the High Court had dismissed the appeals.
10	08-04-2002	Aggrieved by the above said orders of the Division Bench dt.24-08-2001, the State had filed SLP.Nos.4463 to 4470 before this Supreme Court and the same was dismissed.
11	2003	After dismissal of the above SLP, the State had filed Review Petitions before the High Court in O.S.A.Nos.19 to 26 to Review the orders, but the same were dismissed by holding that the lands are paigah patta lands. Thus it is confirmed that the lands are released and the lands available for partition belong to decree holders.
12	05-11-2004	After exhausting the legal battle, the State had constituted a High Level Committee and finally after obtaining the opinions of the committee, CCLA and the Advocate General, the State had issued Memo directing the District Collector to grant mutations in respect of the suit schedule lands. (Pages 21-22 of Writ Paper Book)
		FOURTH TIME LITIGATION TO SUPREME COURT
13	26-04-1999	As per the orders passed in W.P.No.10605 of 1997 the lands in Hasmathpet (also in item 37 of plaint in the CS) were identified and declared as lands belonging to Kursheed Jahi and are available for partition.
14	11-03-2004	Aggrieved by the orders in the above W.P., the Government filed W.A.No.2222/2003 and the same was dismissed.
15	05-01-2005	The orders in the above W.A. were challenged in SLP.NO.11996/2004, before the Supreme Court and the same was dismissed.
		FIFTH TIME LITIGATION TO SUPREME COURT
16	2007	After dismissal of SLP, the State had filed Review WPMP Nos.11425 & 11426 of 2006 in W.P.No.10605/97 and the said Review petitions were dismissed.
17	08-02-2008	Aggrieved by the orders in Review Petitions 11425 & 11426 of 2006, the State had filed SLP and the same was dismissed. <i>Thus the lands covered by the suit schedule lands in C.S.No.14 of 1958 are declared as patta lands.</i>
18	18-05-2009	Memo No.59734/JA.1/2005 issued by the Government of Andhra Pradesh, Revenue (JA) Department, stating that the lands covered under Schedule –IV & IV-A of suit schedule properties of C.S.No:14/1958 have been released by the Government and further directed the District Collector to mutate the names of the Final Decree Holders in the Revenue Records. (Pages19 & 20 of Writ Paper Book)
19	21-05-2010	In compliance of the above Government Memo, the District Collector, Ranga Reddy vide Ltr.No:LC1/356/2010 directed the concerned Tahsildars to implement the Government Memo by taking necessary action for cancellation of assignment if any as per Court orders and orders of the Government on the lands

		covered by C.S.No:14/58 subject to final decree passed duly following the rules that are in force. (Page No.23 of Writ Paper Book)
		SIXTH TIME AGAINST FINAL DECREE IN SY.NO.78 & 80 OF HAFEEZPET LANDS
20	31-03-2010	Final decree was passed in respect of the subject lands in Sy.No.78 of Hafeezpet village in Appln.No.239 & 517 of 2009. (Pages 43-56 of writ paper book)
21	30-04-2013	The final decree was challenged by the State by filing O.S.A.Sr.No.3875 of 2012 & batch and the same were dismissed by the Division Bench of this Hon'ble Court. (Pages 57 – 72 of writ paper book)
22	15-09-2010	Application No.420 of 2010 was filed for passing of final decree in respect of the lands to an extent of Ac.116-00 guntas in Sy.No.80 of Hafeezpet village. The same was dismissed by the learned Single judge by holding that the lands are not available for partition in view of Inam/Jagir Abolition Regulations.
23	01-02-2011	The orders of the learned single Judge were appealed in O.S.A.No.18 of 2010. By setting aside the orders of the learned single Judge, the final decree was passed in O.S.A.No.18/2010 by a Division Bench. (Pages 73-96 of Writ Paper Book)
24	2011	Aggrieved by the final decree, the State had filed SLP.22420 of 2011 before the Supreme Court on the ground that the lands are Inam Althmagha lands as per the Inam Enquiry and the lands are not released by the Government as held in the decree and hence the lands are not available for partition. Hence, the final decree cannot be passed.
25	26-11-13	The SLP was dismissed. Thus the final decree had become final and the decree holders in the suit in C.S.No.14 of 1958 have become title holders against the Government in respect of all the items relating to the suit in C.S.No.14 of 1958. (Pages 97-100 of Writ Paper Book)

36. The Special Government Pleader appearing for the respondents does not dispute any of these facts.

37. We may also point out that any decision suffered by the State Government in the litigation in C.S.No.14 of 1958 in respect of the lands in Hafeezpet Village including Survey No.78 thereof would be binding on the Greater Hyderabad Municipal Corporation, and the said Corporation cannot espouse the cause of the State Government

and arbitrarily and illegally reject the construction permission sought by the petitioner.

38. If on six occasions, the claim of the State for the lands in Hafeezpet Village has been rejected up to Supreme Court, it is not open to the respondents to still plead that the State Government has a right in the subject land and so permission for construction can be denied to the petitioner. Such a stand of the GHMC is clearly vexatious and impermissible.

39. For the same reasons, there is also no basis for the respondents to even contend that the State Government should be made a party in the Writ Petition.

40. Also, Notification issued under Section 22-A of the Registration Act, 1908 in respect of lands in Survey No.78 of Hafeezpet Village had been admittedly set aside by the order dt.25.08.2014 passed in W.P.No.19069 of 2014 at the instance of another party; and in I.A.No.1 of 2019 in W.P.No.21799 of 2019 on 01.10.2019, this Court had directed the respondents therein (the State and the Revenue Authorities) to delete the lands in Survey No.78 of Hafeezpet from the Prohibitory List.

41. Therefore, the lands covered by Survey No.78 of Hafeezpet Village cannot be put in any prohibitory list.

42. Though the respondents herein sought to contend that this property was shown as prohibited property in the 'online Urban Prohibited Register', not only such Register is not produced before this Court, but under what statutory authority that Register is being maintained, is not explained. It is not open for the respondents to have a 'private' prohibitory register, wherein they can include any land of their choice without any legal basis for the purpose of denying permission for construction to the persons having right, title and interest therein. The respondents cannot sit in appeal over the final orders of this Court and the Supreme Court and still insist that the land in Survey No.98 of Hafeezpet Village is 'Sarkari' Government land.

43. The Special Government Pleader also did not deny that the respondents had granted construction permission for high rise buildings to M/s. Prajay Engineers Syndicate Limited for an extent of 20 acres, to M/s. Mahendra Constructions Company Limited for an extent of 10 acres, to M/s. Adithya Constructions Company Limited for an extent of 10 acres and to M/s. G.K. Constructions also in Hafeezpet village.

44. The respondents cannot discriminate against the petitioners and reject the petitioners' Applications for building permission without any valid basis, while granting such permissions to others.

45. Accordingly, the Writ Petitions are allowed; the impugned intimation letter dt.29.06.2020 passed by the 4th respondent in respect of petitioner in W.P.No.14881 of 2020, and the Shortfall letter dt.11.6.2020 issued by the 2nd respondent to the petitioner in WP.No.14885 of 2020, are both set aside; and a Writ of Mandamus is issued to the respondents to grant sanction for permission to the petitioners for making construction in their respective plots located in Survey No.78 of Hafeezpet Village. The 1st respondent shall also pay costs of Rs.10,000/- to each of petitioners.

46. As a sequel, miscellaneous petitions pending if any in these Writ Petitions, shall stand closed.

M.S.RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

Date: 27-11-2020
Svv/ndr