

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION No.9871 of 2011

ORDER:

The present Writ Petition is filed seeking the following reliefs:

“..... to issue an order or direction, more particularly, one in the nature of writ of Certiorarified Mandamus

- i) calling for the connected records, including declaration filed by the respondents No.4 and 5 through Form.I under Section 6(1) of Urban Land (Ceiling & Regulation) Act, 1976, vide CC.202/77 and CC.203/77, dated 29.04.1977; Draft statement under Section 8(1) along with notice under Section 8(5) of the Act issued on 11.10.1994; notice under Section 8(4) vide proceedings No.B2/202 to 203/77, dated 10.02.1995; Notices issued under Section 10(1) and (3), dated 23.03.1995; notice under Section 10(5), dated 25.09.1995, and proceedings No.B1/202/203/77, dated 13.11.1995, issued under Section 10(6) of the ULC Act and declare them, as illegal, void, inoperative and contrary to law, more particularly the Urban Land (Ceiling & Regulation) Act, 1976.
- ii) and further declare that the 4th and 5th respondents played fraud in making false declaration under Section 6(1) of ULC Act on 29.04.1977 showing the property of the petitioners in Sy.No.30 of Renukapur village, Saroornagar Mandal, R.R.District, as their lands, and hence to initiate action against them;
- iii) and declare that the action of the 3rd respondent in failing to take notice to the enquiry report, dated 17.09.1994, which indicate that the 4th and 5th respondents has no valid title to the lands in Sy.No.30 of Renukapur village, Saroornagar Mandal, R.R.District, and proceeding blindly on the alleged declaration of R4 and R5 as illegal, contrary to law and unsustainable;
- iv) and pass such other order or orders as this Hon'ble Court deem fit and proper.”

2) The brief facts of the case are that originally the land admeasuring Acs.16.38 guntas in survey No.30 of Renukapur (V), Saroornagar (M), Ranga Reddy District, belonged to one Ghulam

Gouse, who sold the said land along with other lands to one K.Krishna Reddy & others under registered sale deeds in the year 1965. Thereafter, the writ petitioner Nos.1 and 2 herein have purchased the land admeasuring Acs.2-00 guntas and Acs.6-28 guntas through registered sale deed No.5694/1978, dated 08.09.1978 and No.5163/1979, respectively from K.Krishna Reddy and others. In a partition between writ petitioner Nos.1 and 2, the land to an extent of Acs.6-33 gts fell to the share of the petitioner No.1 and land to an extent of Ac.1-35 guntas fell to the share of 2nd petitioner. Petitioner No.1 gifted an extent of Ac.1-00 gts. to his daughter i.e. 3rd petitioner herein out of the land which fell to his share. That the pattedar, out of the total area of Acs.16.38 guntas in survey No.30, sold an extent of Acs.8.10 guntas to one Kolanu Narayan Reddy and his brother Penta Reddy through registered sale deed bearing No.5600/78, dated 29.09.1978. Subsequently, in the family partition between Kolanu Narayan Reddy and his brother Penta Reddy, land to an extent of Acs.8-10 gts. fell to the share of Kolanu Narayan Reddy and his name was mutated in the revenue records. Sri Kolanu Narayan Reddy sold an extent of Ac.0.30 gts. and Ac.0.23 guntas to the 4th petitioner through two registered sale deeds bearing Nos.3471/1998 and 5056/2002, dated 10.07.1998 and 15.07.2002, respectively. The 5th petitioner purchased an area of Ac.0.30 guntas and Ac.0.23 guntas under two registered sale deeds bearing Nos.3472/1996 and 5057/2002, dated 10.07.1998 and 15.07.2002, respectively, from Narayana Reddy and his legal representatives. The writ petitioner Nos.6 to 8, who are the legal heirs of K.Narayan Reddy, inherited the land to an extent of Acs.3-24 guntas, Ac.0-02 guntas and Ac.0-02 guntas

each after the demise of Kolan Narayan Reddy. The 9th petitioner purchased the land to an extent of Ac.0.39 guntas from the elder son of Kolanu Narayan Reddy i.e. Shiva Reddy. The 10th petitioner got the land to an extent of Ac.0.37 guntas under the partition suit vide decree, dated 18.12.1987, passed in O.S.No.501/1987 by the Additional Subordinate Judge, Ranga Reddy.

3) The case of the petitioners is that after the acquisition of the subject lands through various modes, detailed above, their names were mutated in the revenue records, they were issued pattadar passbooks and title deeds and they are in physical possession and enjoyment of the subject lands without any interruption from any quarter, much less, the revenue authorities. Thereafter, in the month of February, 2011, when the second petitioner approached the Panchayat Secretary for issuance of pahani, he was informed that the same could not be given as the subject land for which pahany was sought i.e. survey No.30 is entered as “government land” in the revenue records and as such the pahany could not be issued. On enquiry, the petitioners came to know that the entire land in survey No.30 was declared as surplus ceiling land in the declarations made by one Somireddy Venkat Reddy and Somireddy Balwant Reddy and after duly following the procedure contemplated under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 (for short, ‘ULC Act’), the lands which were declared as ceiling surplus land were taken possession by the authorities under a cover of panchanama.

4) The present writ petition is filed assailing the correctness of all these proceedings mainly on the ground that the declarants

namely Sri Somireddy Venkat Reddy and Somireddy Balwant Reddy were not the owners and had nothing to do with the subject matter of the lands. The petitioners are the real owners and possessors of the subject lands and the said two persons do not have any right, title or interest in survey No.30 and as such the authorities without verifying as to the genuineness, correctness or otherwise of the declarations made by the said two persons, without there being any legal basis, without any verification have mechanically computed the lands in survey No.30 to the holdings of the said two persons and as such the entire proceedings right from 8 (1) of the Act are vitiated and are liable to be set aside. Moreover, even as on the date of filing of the writ petition, the physical possession of the subject lands are with the petitioners, as evident from the pahanies filed by the petitioners herein.

5) At the time of admission of the writ petition, this Court vide, dated 13.04.2011, passed in WPMP No.12193 of 2011 has granted *status quo* and by virtue of the same the petitioners continued to remain in possession.

6) Even though the matter is listed under the caption 'interlocutory' on the basis of the vacate stay petition filed by the official respondents, with the consent of both the parties, the main writ petition itself is disposed of.

7) Heard Ms.G.Bhanu Priya, the learned counsel for the petitioners, and the learned Government for Revenue and Assignment, for the respondents Nos.1 to 3 and 6.

8) It is the contention of the learned counsel for the petitioners that Somireddy Venkat Reddy and Somireddy Balwant Reddy are neither the owners nor the pattadars of the land and had nothing to do with the lands in survey No.30 admeasuring Acs.16.38 guntas of Renukapur (V), Saroornagar (M) of Ranga Reddy District, and it is not understandable as to on what basis the above two persons have made declarations to the effect that the land in survey No.30 belongs to them. Without an iota of evidence produced by the above two declarants, the respondent authorities have computed the land in survey No.30 to the holdings of the said two persons without verification of the revenue records and application of mind. Furthermore, the learned counsel contends that right from inception, the petitioners are in physical possession and enjoyment of their respective parcels of lands in question without any interruption from any quarter by virtue of the registered sale deeds, which were executed in their names by the original pattadars, their names are mutated in the revenue records by the authorities and pattadar passbooks and title deeds were also issued in their favour.

9) Per contra, the learned Government Pleader has strenuously argued that the computation of the holdings of the declarants was done long back and physical possession of the lands was also taken by virtue of the panchanama conducted by the authorities and the petitioners cannot assail the same after lapse of nearly 40 years; that taking advantage of the repeal of the ULC Act, the petitioners have come up with this writ petition only to defeat the provisions of the ULC Act and the subsequent taking

over the possession of the land; and as such requested this Court to dismiss the writ petition.

10) A bare perusal of the record will reveal that the declarations under the provisions of the ULC Act were made by Sri Somireddy Venkat Reddy for an extent of Acs.8-10 guntas and by Sri Somireddy Balwant Reddy for an extent of Acs.8-28 guntas in survey No.30 of Renukapur Village, totally admeasuring Acs.16-38 guntas vide File Nos.B1/202/77 and B1/203/77 respectively. The record does not reveal as to under what circumstances, the Ceiling authorities have computed the land in survey No.30 to the holdings of Somireddy Venkat Reddy and Somireddy Balwant Reddy. All the documents i.e. the registered sale deeds relied by the writ petitioners, pattadar passbooks and title deeds, pahanies from the year 1987 to 2009, point to the fact that the writ petitioners are the pattadars and are in possession and enjoyment of the lands in question.

11) The declarations made by Somireddy Venkat Reddy and Somireddy Balwant Reddy to the effect that they are the owners of the land in survey No.30 of Renukapur (Village), the computation of holdings undertaken by the authorities blindly has to be declared not only as illegal, but without jurisdiction, *non est* and void for the simple reason that the said two persons were not the owners or possessors of the said land in survey No.30. Even if the declarations were made by mistake, the authorities were duty bound to verify the ownership and in the absence of any proof ought to have deleted the said survey number from their holding. That apart, in the enquiry report submitted on 17.09.1994 by the

Executive Officer, B-Section, to The Special Officer, C.A., U.L.C., Hyderabad, it is clearly stated that the declarants have not filed any sale deeds. But, the said report was not taken note of by the Ceiling authorities, for the reasons best known to them. Therefore, computation by the authorities by including survey No.30 in the holdings of Somireddy Venkat Reddy and Somireddy Balwant Reddy without verifying as to whether they are the actual owners or not, is not only bad but without jurisdiction. Therefore, the proceedings subsequent to the computation of the holdings by Somireddy Venkat Reddy and Somireddy Balwant Reddy have to be declared as illegal. Admittedly, the petitioners are in physical possession and enjoyment of the lands in survey No.30 as evidenced by the registered sale deeds, pattadar passbooks and pahanies, but were never put on notice before finalizing the said computation to the holdings of Sri Somireddy Venkat Reddy and Somireddy Balwant Reddy and as such the same is liable to be set aside.

12) The Urban Land (Ceiling and Regulation) Act has been repealed in the year 1999 and subsequently, the State of Andhra Pradesh has also adopted the same. In ***State of Uttar Pradesh vs. Hari Ram***¹, the Hon'ble Supreme Court while dealing with the effect of the Repealing of Act, has held as under:

“34. Requirement of giving notice under sub-sections (5) and (6) of Section 10 is mandatory. Though the word ‘may’ has been used therein, the word ‘may, in both the sub-sections has to be understood as “shall” because a court charged with the task of enforcing the statute needs to decide the consequences that the legislature intended to follow from failure to implement the requirement. Effect of non-issue of notice under sub-

¹ 2013 (4) SCC 280

section (5) or sub-section (6) of Section 11 is that it might result the land holder being dispossessed without notice, therefore, the word 'may' has to be read as 'shall'.

39. The mere vesting of the land under sub-section (3) of Section 10 would not confer any right on the State Government to have de facto possession of the vacant land unless there has been a voluntary surrender of vacant land before 18.3.1999. State has to establish that there has been a voluntary surrender of vacant land or surrender and delivery of peaceful possession under sub-section (5) of Section 10 or forceful dispossession under sub-section (6) of Section 10. On failure to establish any of those situations, the land owners or holder can claim the benefit of Section 3 of the Repeal Act. The State Government in this appeal could not establish any of those situations and hence the High Court is right in holding that the respondent is entitled to get the benefit of Section 3 of the Repeal Act."

13) In view of the aforementioned law laid down by the Hon'ble Supreme Court, the benefit of the Repealing of the Act has to be given effect to the petitioners herein.

14) In view of the abovementioned facts and circumstances, the Writ Petition is allowed declaring the ceiling declaration made by respondent Nos.4 and 5 herein under Section 6 (1) of the ULC Act showing the property admeasuring Acs.16.38 gts., in Sy.No.30 of Renukapur Village, Saroornagar Mandal, Ranga Reddy District, as a false declaration, as the respondent Nos.4 and 5 had no valid title or right to the said survey number, and consequently, the draft statement made u/s.8(1) along with notice u/s.8(5), dated 11.10.1994; notice u/s.8(4), dated 10.02.1995; notice u/s.10(1) and (3) dated 23.03.1995; notice u/s.10(5), dated 25.09.1995; and proceedings No.B1/202/2003/77, dated 13.11.1995, issued under Section 10(6) of the ULC Act in respect of the land admeasuring

Acs.16.38 gts., in Sy.No.30 of Renukapur Village, Saroornagar Mandal, Ranga Reddy District, are also set aside.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

A.ABHISHEK REDDY, J

Date : 10-01-2020.
smr/sur

