

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION No.23272 of 2008

ORDER:

Aggrieved by the issuance of the notice, dated 31.03.2008, by the Tahsildar, Hanamkonda Mandal, vide Rc.No.LG/B/85/2008, the present writ petition is filed.

2) The case of the petitioners, in brief, is that they have purchased various parcels of land, through separate registered sale deeds, dated 29.12.2001, and ever since the date of purchase, they are in continuous possession and enjoyment of the lands, as mentioned below:

Sl. No.	Petitioner name	Document No.	Date	Extent
1)	Smt.Ravuri Samrajyam	6752/2001	29.12.2001	144 Sq.yds.
2)	Bairi Shiva Varshini	6750/2001	29.12.2001	200 sq.yds.
3)	Bairi Anusha	6748/2001	29.12.2001	206 sq.yds.
4)	Puli Jyothi	6751/2001	29.12.2001	144 sq.yds.
5)	Potla Jyothi	6749/2001	29.12.2001	150 sq.yds

Petitioners have purchased the above parcels of land from one Mallikarjuna Rao, who is the absolute owner and possessor of the property bearing No.2/524/1 with open area admeasuring 1475 square yards in survey No.37 situated at Alipura, Subedari, Hanamkonda. Sri Mallikarjuna Rao, in turn, had purchased the above land from one Mohammed Jafar Ali S/o.Mohammad Salasuddin, through a registered sale deed bearing document No.1223/73, dated 24.08.1963. The petitioners' vendor, Sri Mohammed Jafar Ali, prior to selling the plots to the petitioners herein has obtained permission under Section 26 (1) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'ULC Act') from

the Special officer and competent authority under the ULC Act, vide proceedings in D.Dis.No.AS/99/2001, dated 12.01.2001. In the year 1981, when respondents 2 to 5 herein tried to interfere with the peaceful possession and enjoyment of the property, the vendor of the petitioners Sri Mallakarjuna Rao has filed O.S.No.56/1981 on the file of the Principal Subordinate Judge, Warangal, for declaration of title and injunction, vide judgment and decree, dated 21.04.1988, the vendor of the petitioners was declared as the absolute owner and possessor of the house bearing No.2/524/1 along with the open land admeasuring 1475 square yards in survey No.37 and a permanent injunction was granted restraining the respondents from interfering with his peaceful possession and enjoyment. Further, in the year 2008, when the respondents tried to interfere with the peaceful possession of the petitioners, based on the news published in a Daily News Paper, petitioners have issued a legal notice, dated 08.02.2008, bringing to the notice of the respondents that they are the lawful owners and possessors of the property, the permission granted under Section 26 (1) of the ULC Act and also the judgment and decree, dated 21.04.1988, rendered by the Civil Court in O.S.No.56/1981. Thereafter, the 4th respondent herein has issued the proceedings in Form-I, dated 31.03.2008, directing the petitioners to attend before him on 11.04.2008 with all relevant documents and establish their right over the land in survey No.37 (old), Waddepally, Hanamkonda. Aggrieved by the said notice, the present Writ Petition is filed mainly contending that the notice is illegal, bad, arbitrary and without jurisdiction and in view of the explanations submitted by the petitioners, the impugned notice is liable to be

set aside in view of the fact that the competent Civil Court has already declared the vendor of the petitioners herein Sri Mallikarjuna Rao to be absolute owner and possessor of the property in question and moreover, the competent authority under the ULC Act had granted exemption to the petitioners' vendor prior to the purchase by the petitioners and hence the notice issued under Form-I (Revenue summons) calling upon the petitioners to establish their right over the land is nothing but abuse of process of law, illegal, bad, arbitrary and without jurisdiction and the same is liable to be set aside.

3) In the counter filed by the 4th respondent, the respondents have taken a stand that the land in survey No.37 (old) to an extent of Acs.4.01 gts. has been classified as Abadi (Govt. Land Village site) and the same is located opposite to the Collector's office at Subedari abutting the main road leading from Hanamkonda City to Hyderabad. As per the pahanies for the year 1954-55 (khasra pahani), 1958-59, 1962-63 and 1965-66 onwards, the land in survey No.37 (old) of Waddepally Village continued to be recorded as "Poramboke", "Poramboke abadi" and "Poramboke chaman". After the Revision survey, the above said government land was changed as Abadi (village site) and no survey number was allotted. Till the revision survey was implemented, the classification of the said government land continued to be in the revenue records as "Poramboke" land. The entire Government land admeasuring Acs.4-01 guntas in survey No.37 (old) of Waddepally Village was in the exclusive possession and enjoyment of the Government. It is further averred that several government buildings viz., Red Cross Society building, District Leprosy Control Office, Social Welfare

Disabled Hostel, Krishi Bhavan, etc. were constructed over the said government land long back and the entire property is in the possession and enjoyment of the respective government departments. Further, during the inspection of S.C. Hostel, the then District Collector, Warangal, had noticed that the government land was encroached and some illegal constructions were raised. As such, he instructed the then Tahsildar, Hanamkonda, and the then Asst. Director, Survey & Land Records, Warangal, to inspect the land and find out the encroachments in the government land. It is further stated that as per the registration documents furnished by the petitioners, they purchased land in survey No.37 of Waddepally, from which, it is evident that the petitioners are in illegal possession of the government land in survey No.37 of Waddepally village. After reporting the facts, the then District Collector, Warangal, has directed to file Land Grabbing Case against the encroachers, who have illegally encroached the government land in survey No.37 (old) of Waddepally Village and to examine the legal possession of the said land under the Land Encroachment Act, 1905. It is also stated that the land covered under the judgment and decree in O.S.No.56/1981 and the subject land covered by the writ petition are different from each other. The land covered in the said schedule in single compact block and the decree holder made it into plots without approval of the Kakatiya Urban Development Authority, Warangal, or Warangal Municipal Corporation, and without forming any roads, sold the plots to the writ petitioners.

4) Heard Sri Mahmood Ali, the learned senior counsel for the petitioners, and the learned Government Pleader for Revenue for the respondents.

5) The learned senior counsel for the petitioners has vehemently argued that the issuance of the notice is *per se* illegal as the competent Civil Court has already rendered a judgment and decree in which all the respondents in the writ petition are parties in the above mentioned suit and the same has become final. The respondents without filing any appeal against the judgment and decree passed in O.S.No.56/1981, dated 21.04.1988, cannot re-agitate the question of title once again and ask the petitioners to establish their title, by issuing the impugned notice. Once the judgment of the Civil Court has attained finality, the same is binding as between the parties and they cannot resort to any other proceedings under any other law for evicting them except assailing the correctness of the judgment before a superior Court.

6) Per contra, the learned Government Pleader has contended that survey No.37 is entered in the revenue records as 'Government Poramboke land' and the entire survey number is occupied by government buildings, the petitioners' land, which is in the middle of the land of the said survey number, cannot be a private patta land. He further contends that the orders under Section 26 (1) of the ULC Act were obtained by playing fraud and as such no weightage can be given to the same.

7) Having heard the counsel for both the sides and having gone through the entire record, it is to be seen that the subject matter of the property in the writ petition was the subject matter of

O.S.No.56/1981 filed by the vendor of the petitioners to declare him as the owner and possessor and for restraining the respondents herein from interfering with the possession and occupation of the suit schedule property. The Principal Subordinate Judge, Warangal, vide judgment and decree, dated 21.04.1988, had decreed the said suit. It is seen from the record that the very same documents on which the respondents are relying on in the present writ petition were taken into consideration by the Principal Subordinate Judge, Warangal, while deciding the suit and after taking into consideration, the entire documentary and oral evidence, the said suit was decreed in favour of the vendor of the petitioners herein. In the counter filed by the respondents, there is no explanation as to on what basis, the 4th respondent has issued the notice, which is impugned in the present writ petition. Once, the competent Civil Court, after taking into consideration the documentary as well as the oral evidence, has decreed the suit filed by the plaintiff, the said judgment is binding as between the parties to the said suit. Admittedly, the respondents herein are the parties to the said suit and they have not taken any steps to get the judgment and decree, dated 21.04.1988, in O.S.No.56/1981 set aside either by way of filing an appeal in the superior court or by filing a separate suit for cancellation of the said judgment and decree.

8) In ***Government of Andhra Pradesh vs. Thummala Krishna Rao***¹, the Hon'ble Supreme Court while dealing with the question as to whether a person in long standing possession can

¹ (1982) 2 SCC 134

be summarily evicted under the provisions of the Land Encroachment Act, has held as under:

8. If there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title. In the instant case, there is unquestionably a genuine dispute between the State Government and the respondents as to whether the three plots of land were the subject-matter of acquisition proceedings taken by the then Government of Hyderabad and whether the Osmania University, for whose benefit the plots are alleged to have been acquired, had lost title to the property by operation of the law of limitation. The suit filed by the University was dismissed on the ground of limitation, inter alia, since Nawab Habibuddin was found to have encroached on the property more than 12 years before the date of the suit and the University was not in possession of the property at any time within that period. Having failed in the suit, the University activated the Government to evict the Nawab and his transferees summarily, which seems to us impermissible. The respondents have a bona fide claim to litigate and they cannot be evicted save by the due process of law. The summary remedy prescribed by Section 6 is not the kind of legal process which is suited to an adjudication of complicated questions of title. That procedure is, therefore, not the due process of law for evicting the respondents.

9. It is not the duration, short or long, of encroachment that is conclusive of the question whether the summary remedy prescribed by the Act can be put into operation for evicting a person. What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether the claim of the occupant is bona fide. Facts

which raise a bona fide dispute of title between the Government and the occupant must be adjudicated upon by the ordinary courts of law. The Government cannot decide such questions unilaterally in its own favour and evict any person summarily on the basis of such decision. But duration of occupation is relevant in the sense that a person who is in occupation of a property openly for an appreciable length of time can be taken, prima facie, to have a bona fide claim to the property requiring an impartial adjudication according to the established procedure of law.”

9) Coming to the case on hand, it is not in dispute that the petitioners through their vendor and predecessor-in-title are in occupation of the subject property for more than forty years, by virtue of registered sale deeds, to the knowledge of the respondents herein. Further, in this case, there is a Judgment and Decree of the competent Civil Court obtained by the vendor of the petitioners herein and the said judgment has become final. In the absence of any record to show that the said judgment was appealed against or set aside or that respondents have filed separate suit for cancellation of the said judgment and decree, the respondents cannot summarily evict a person who is in longstanding possession of the property in question or seek any explanation from the petitioners with regard to their title or possession.

10) In view of the above mentioned facts and circumstances and the ratio laid down by the Hon'ble Supreme Court in **Thummala Krishna Rao (supra)**, the Writ Petition is allowed by setting aside the impugned notice, dated 31.03.2008, issued by the 4th respondent.

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

