

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION No.1884 of 2021

ORDER:

Heard the learned counsel for the petitioners, the learned Government Pleader for Revenue for respondents 1 to 5, Sri Bhaskar Gandham, learned counsel for respondents 6, 11, Sri T.Bala Mohan Reddy, learned counsel for respondent No.12, Sri Zeeshan Adan Mahamood, learned counsel for respondent No.24, Sri D.Prakash Reddy, learned senior counsel appearing on behalf of Sri Avinash Desai, learned counsel for respondent No.25.

This writ petition is filed seeking to declare the endorsement dated 22.01.2021 made by respondent No.4 in the Statement of Encumbrance on property in respect of the lands situated in survey Nos.1003, 1004, 1005 and 1006 of Kukatpally Village admeasuring Acs.13-17 guntas cancelling the Development Agreement-cum-General Power of Attorney bearing document No.8863 of 2005 dated 01.09.2005 executed in respect of the subject land, as illegal and arbitrary.

It is the case of the petitioners that petitioner No.1 is the wife and petitioner Nos.2 and 3 are the daughters of late Sri K. Chandra Sekhar Reddy. During the life time of late Sri K. Chandra Sekhar Reddy, he along with others entered into a Development Agreement-cum-General Power of Attorney dated 01.09.2005 in respect of the subject property. That said K. Chandra Sekhar Reddy died on 28.03.2012 and the petitioners had no idea about the Development Agreement entered by Sri K. Chandra Sekhar Reddy during his life time. After his demise, the petitioners recently came to know about the execution of the Development Agreement-cum-General Power of Attorney and also the

impugned endorsement. Hence, challenging the impugned endorsement, they have filed the present writ petition.

Learned counsel for the petitioners has stated that even though the petitioners tried to obtain the proceedings which are mentioned in the Encumbrance Certificate (in short 'EC'), by making an application under Right to Information Act, the same was not furnished to the petitioners till date. That left with no other option, the petitioners have filed the present writ petition. Learned counsel has further stated that without putting the petitioners or Sri K. Chandra Sekhar Reddy on notice, the unilateral cancellation of the said Development Agreement is not only arbitrary, bad, illegal but also contrary to the principles of natural justice, and the provisions of the Registration Act, 1908, more specifically, Rule 26 (i)(k) of the Rules under the Registration Act, 1908. Therefore, he seeks to set aside the impugned endorsement made in the EC.

Per contra, the learned Senior Counsel appearing on behalf of respondent No.25 has stated that the endorsement made in the EC neither takes away the right of the party to the property nor vests any right in other person. Without challenging the proceedings under which the Development Agreement is cancelled, the present writ petition filed by the petitioners challenging the endorsement made in the EC is not maintainable. That the other parties to the Development Agreement have already challenged the said endorsement way back in the year 2019 itself but the petitioners have kept quiet for more than two years for reasons best known to them. Now, after the lapse of more than two years, the writ petitioners have filed the present writ petition and that the cause of action for filing the present writ petition, challenging the endorsement in EC cannot keep changing with the parties. That

when the other partners of K. Chandra Sekhar Reddy have already filed writ petition in the year 2019, the question of the petitioners filing another writ petition for the very same relief after a lapse of more than two years does not arise, more so, when there is no averment in the writ affidavit that the other partners are acting against the interest of Sri K. Chandra Sekhar Reddy or that of the petitioners therein.

Learned Senior counsel has further stated that the Development Agreement entered by the parties itself is contrary to Section 5 (3) of the Urban Land (Ceiling and Regulation) Act, 1976 (in short 'ULC Act'). The Development Agreement, being a void document, no rights would accrue to the parties. Even though the learned counsel for the unofficial respondents have elaborately argued and supported the Cancellation order *vide* No.F1/3912/76, dated 18.12.2007 and sought to sustain the cancellation order and also the consequential endorsement made in the EC, this Court is not inclined to go into the merits or demerits of the same as the same is not the subject matter under challenge in the present Writ Petition. That following the procedure contemplated under the ULC Act, the Government took possession and thereafter they have taken a decision to regularize the land in favour of the unofficial respondents under GO Ms.No.469 dated 26.03.2008. That the unofficial respondents have paid huge amounts for getting the land regularized and only after the payment of the entire amount, as stipulated under the above mentioned GO, the unofficial respondents were put in possession of the subject lands and a GO has been issued in their favour. Learned Senior Counsel has stated that the EC is only for the purpose of alerting the citizens about the previous transactions that have taken place in respect of a particular plot/land in a particular

survey number and any endorsement made in the EC will not take away the rights of the parties, if any, and the said endorsement cannot be the basis for the petitioners to file the present writ petition. If the petitioners are really aggrieved by the said endorsement, their remedy is to challenge the original proceedings basing on which the Development Agreement is cancelled, but not the endorsement in the EC. That neither the petitioners nor Sri K. Chandra Sekhar Reddy during his life time has done anything pursuant to the Development Agreement and therefore they do not have any *locus* to challenge the same, more particularly, when the Government has taken possession of the land and regularized the same *vide* G.O. Ms.No.469 dated 26.03.2008. Besides paying the amount to the government, the unofficial respondents have spent huge amounts to settle the matter with various plot owners and also to settle the matter with some of the family members of the original pattadars in a partition suit. That the present writ petition is filed only for the purpose of blackmailing the respondents and, therefore, liable to be dismissed.

Learned counsel appearing for respondent No.24 while adopting the arguments advanced by Sri D.Prakash Reddy, learned Senior Counsel, has stated that when the document itself is void as per the provisions of Section 5 (3) of the ULC Act, the question of putting the petitioners or Sri K. Chandra Sekhar Reddy on notice does not arise. That no rights accrue to the petitioners under a document which is void *ab initio* as per the provisions of the ULC Act. Learned counsel has further argued that pursuant to the orders of regularization, the respondent Nos.24 and 25 were put in physical possession of the subject lands and as on date they are in physical possession and enjoyment of the same. If the petitioners are aggrieved, their remedy is to approach the Civil Court or challenge

the original proceedings cancelling the Development Agreement but not the endorsement made in the E.C. That the present writ petition filed under Article 226 of the Constitution of India questioning the endorsement in the EC is not maintainable and has to be dismissed in *limine*.

In reply, the learned counsel for the petitioners has stated that till date, the cancellation orders are not made available to the petitioners. Even though an application dated 23.01.2021 was filed under the Right To Information Act, the authorities are yet to comply with the same and till date the order of cancellation is not furnished to the petitioners. Therefore, left with no other option, the writ petitioners have filed the present writ petition.

A perusal of the impugned endorsement made in the EC shows that the Development Agreement entered between the parties was cancelled based on the proceeding No.C&IG DO.LR.NO.G1/19131/05 & SO & CA.ULC PROCDS NO.F1/3912/76 DT:18.12.2007 DATED 24/09/2007 DATED 19/10/2019. Admittedly, the petitioners have not challenged the cancellation proceedings, but they are only challenging the endorsement made in the EC which was made consequent to the passing of the cancellation proceedings. Even for the sake of arguments, if the said endorsement in the E.C. is set aside and the writ petition is allowed, no useful purpose would be served to the petitioners as the original proceedings cancelling the Development Agreement will subsist and would still hold good. Unless and until the petitioners challenge the original proceedings cancelling the Development Agreement, the present writ petition challenging the endorsement made in the EC is not maintainable. The endorsement made in the EC is a mere consequential ministerial act done pursuant to the cancellation order being passed, which

order has become final as there is no challenge to the same till date by the petitioners. Moreover, there is no averment in the writ petition as to why the petitioners or late Sri K. Chandra Sekhar Reddy while he was alive till 2012, have kept quiet for so many years, when the cancellation orders were passed in the year 2007 itself. The Writ Petition is liable to be dismissed on the ground of laches also, as there is no convincing or plausible explanation given for the long delay of almost more than 13 years in approaching the Court. Except making a bald averment that the petitioners came to know about the endorsement/cancellation orders from a family friend, no material is placed to substantiate the same, much less, the name of the common family friend has been stated in the writ petition affidavit or a third party affidavit of that person is filed. In the absence of any satisfactory explanation, the Writ Petition has to fail on the ground of laches, besides the other grounds discussed and the law laid down by the Hon'ble Supreme Court in the below mentioned judgments.

The Hon'ble Supreme Court of India in **Karnataka Power Corpn. Ltd., v. K.Thangappan**¹, at para 6, held as follows:

“6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case, the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party.”

The Hon'ble Supreme Court in **State of M.P. v. Nandlal Jaiswal**², at para 24, has reiterated the principle articulated in earlier pronouncements to the following effect:

“24. ... **the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on**

¹ (2006) 4 SCC 322

² (1986) 4 SCC 566

the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.”

(emphasis supplied)

The Hon'ble Supreme Court of India in **Chennai Metropolitan Water Supply and Sewerage Board v. T.T.Murali Bau**³, at para 16, held as under:-

“16. Thus, **the doctrine of delay and laches should not be lightly brushed aside.** A writ Court is required to weigh the explanation offered and the acceptability of the same. **The Court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the *lis* at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity.** In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, ‘procrastination is the greatest thief of time’ and second, **law does not permit one to sleep and rise like a phoenix.** Delay does bring in hazard and causes injury to the *lis*.”

(emphasis supplied)

That the endorsement made in the EC is purely a ministerial act done by the registration department pursuant to the cancellation orders passed in file No.F1/3912/76 DT:18.12.2007. Unless and

³ (2014) 4 SCC 108

until the petitioners challenge the cancellation order passed by the authorities cancelling the Development Agreement, the prayer sought for in the present writ petition challenging only the endorsement in EC, which is consequential and ministerial act, cannot be granted. The endorsement made in the EC cannot be the cause of action for filing the present writ petition. If the petitioners are so advised their remedy is to challenge the cancellation orders but not the endorsement in the EC. As rightly pointed out by the learned counsel for the respondents, the petitioners are not even aware as to who are in physical possession of the subject land as on date. Not even a scrap of paper has been filed to show that the petitioners are in physical possession of the land, while on the other hand, there is plenty of evidence to show that the Government has taken physical possession of the land, regularized the same in favour of the unofficial respondents, the unofficial respondents have paid requisite fee levied by the Government and they were put in physical possession and that they have also developed the land. Nothing is stated in their affidavit as to what steps have been taken either by the petitioners or by Sri K. Chandra Sekhar Reddy pursuant to the Development Agreement entered by Sri K. Chandra Sekhar Reddy in the year 2005.

For the foregoing reasons, this Court does not find any reasons to entertain the present writ petition and the same is accordingly dismissed.

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

A.ABHISHEK REDDY, J

Date : 29.11.2021.
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