

**THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR**

**WRIT PETITION Nos.2438 AND 8240 OF 2016**

**COMMON ORDER:**

The subject matter of these two Writ Petitions is the very same premises, between the same parties and under similar fact situation and hence, both the Writ Petitions are being disposed of by this common order.

2. W.P.No.2438 of 2016 was filed by the petitioner seeking a Writ of Certiorari calling for the records relating to the order passed by respondent No.4 in proceedings No.B/2281/2015, dated 13.01.2016, under Section 6 of the Telangana Land Encroachment Act, 1905 (for short 'the Act, 1905'), in respect of the premises bearing Nos.21-2-290 and 21-2-291 situated at Kabutar Khana, Lad Bazar, Hyderabad to an extent of 167.2 Sq. Mts and to quash the same as illegal and arbitrary.

3. At the time of admission of the Writ Petition, this Court passed an order, dated 28.01.2016, staying operation of impugned order.

4. A perusal of the said impugned order in this Writ Petition shows that the petitioner is alleged to have encroached an extent of 167.2 Sq.Mts out of the entire extent of 755 Sq. Mts in

TS.No.164, Block 'Q', Ward 228 of Shaher-E-Hyderabad Village, Bahadurpura Mandal, Hyderabad District. While this Writ Petition is pending and the stay of operation of the impugned order is in force, respondent No.4 herein issued another notice under Section 7 of the Act, 1905, in respect of the very same premises. Aggrieved thereby, the petitioner filed W.P.No.8240 of 2016 and this Court having taken note of interim order, dated 28.01.2016, passed in W.P.No.2438 of 2016, suspended the operation of the notice, dated 03.03.2016.

5. It is the case of the petitioner that the petitioner along with his two other brothers purchased an extent of 1182 Sq.Yds bearing premises Nos.21-2-290 and 21-2-291 situated at Kabutar Khana, Lad Bazar, Hyderabad under a registered Sale Deed, dated 09.05.1968, vide Doc.No.578 of 1968 from one Mr. Mohammad Hasan and another, and thereafter, the petitioner herein became the absolute owner of the above said property by virtue of a registered gift settlement deed executed by his two other brothers vide Doc.No.2348 of 2005, dated 25.04.2005. The petitioner also claims to have been in peaceful possession and enjoyment of the said property since the date of purchase in the year 1968. It is the further case of the petitioner that the vendor under Doc.No.578 of 1968 acquired the said

property under a registered Sale Deed, dated 29.11.1967, vide Doc.No.1613 of 1967. It is also the further case of the petitioner that his predecessor-in-title have succeeded to the said property under various registered Sale Deeds that relate back to the year 1921 vide Doc.No.1758 of 1331 Fasli, dated 27<sup>th</sup> Abaan, 1331 Fasli, and Doc.No.1812 of 1355 Fasli, dated 11<sup>th</sup> Meher, 1355 Fasli. It is the further case of the petitioner that after acquiring the said property in the year 1968, the existing building was demolished and a new building was constructed in the year 1977.

6. It is the further case of the petitioner that in view of certain eviction proceedings initiated under the Telangana Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short (the Act, 1960'), the tenants who suffered the order of eviction before the rent controller, with a *mala fide* intention approached respondent No.2 herein by making a false complaint against the petitioner herein and pursuant thereto, the impugned proceedings were initiated by respondent No.4 at the instance of respondent Nos.2 and 3. It is the further case of the petitioner that, in furtherance of the complaint made by the tenants of the petitioner, respondent No.4 herein issued revenue summons and at that stage, aggrieved by the orders issued by respondent

No.2 directing for taking action against the petitioner herein, the petitioner herein approached this Court by filing W.P.No.15010 of 2015 and also filed W.P.No.18869 of 2015 questioning the notice issued under Section 7 of the Act, 1905. But the said Writ Petitions were disposed of by this Court directing the petitioner to submit explanation to the notice under Section 7 of the Act, 1905, and accordingly the petitioner submitted his explanation resulting in passing of the impugned order, dated 13.01.2016.

7. A perusal of the explanation submitted by the petitioner, dated 06.07.2015, shows that the petitioner, while bringing to the notice of respondent No.4 about the flow of title and the manner in which the petitioner acquired the title over the subject property as already noted above, which relates back to the year 1921, also made detailed submissions on the legal position relating to the proceedings under the Act, 1905. Respondent No.4 having received the said explanation, passed the impugned order, which on the face of it appears to be a cryptic order.

8. A perusal of the impugned order shows that the whole basis for claiming the subject property i.e., 167.2 Sq. Mts as Government property is an entry made in the Town Survey and

Land Records showing the same as "G-Abadi". The relevant portion of the impugned order reads as under:-

“After verification of such documents and records available with this office, it is noticed that as per the T.S.L.R entries the said land falls in T.S.No.164, Block-Q, Ward No.228 of Shaher-E-Hyderabad Village of Bahadurpura Mandal, which is classified as “G-Abadi”. Thus Sri Mahavir Pershad is in illegal possession of the Govt. land to an extent of 167.2 Sq. Mts.

**ORDER:-**

The sale transaction took place as defined by Sri Mahavir Pershad is not valid and does not confirm any title over the land in question favouring to him, since it is a Government Land as per T.S.L.R. Hence, the land which is in his possession is confirmed as encroached one. Therefore, it is hereby directed to vacate from the said Government land immediately and to handover Sri Madhava Rao, M.R.I & Geetha Rani, V.R.O. of this office.

Sri Madhava Rao, M.R.I & Smt. Geeta Rani, V.R.O of this office is hereby directed to evict the encroachments and report compliance.”

9. From a perusal of the counter affidavit filed by respondent No.4, it is noticed that a Town Survey was conducted during the years 1964-69 under the provisions of Andhra Pradesh Survey and Boundaries Act, 1923 (for short 'the Act, 1923'), and a notification under Section 13 of the Act, 1923, was published in the Gazette on 12.07.1977 showing the subject property as "G-Abadi" and that the said entries have become final as no suit is filed questioning the said entries within a period of three years as provided under Section 14 of the Act, 1923. Thus, it is contended that the subject property is a Government property and that the petitioner has encroached into the same. Except the said entry made in the TSLR, there is no other basis for the respondent to claim the subject property as Government land.

10. The issue as to the value that can be attached to the entries made in the TSLR has fallen for consideration before this Court on number of occasions and this Court has been pleased to hold that mere entries in TSLR is not the conclusive proof of title of property and that such entries cannot create any doubt or cloud on right, title and interest of any person and that such entries are only one of the factors to be considered along with other factors available on record.

11. In the case of **Hyderabad Potteries Private Limited v. Collector, Hyderabad**<sup>1</sup>, this Court held as under:-

“It is thus clear that an entry in TSLR itself cannot be the conclusive proof of title or lack of it, and the decision either to grant or refuse permission cannot be taken solely on the basis of an entry made in the TSLR. It may be one of the factors that may have to be taken into consideration along with the other material available on record. An entry made in TSLR *per se* could not create any doubt or cloud on the right, title and interest of a person in respect of any land.”

12. This aspect of the matter is also considered by a learned Single Judge of this Court in the case of **B.N.Manga Devi v. State of Andhra Pradesh**<sup>2</sup>, wherein it was held as under:-

“Now, it is put beyond any pale of doubt by this Court that entries contained in Town Survey Land Record cannot be the fountainhead for doubting the right, title and interest of any person in respect of any land. In spite of this clear pronouncement, I am not surprised in the least that the State Government, in its Revenue Establishment, is still raising the very same contentions, based upon the entries in the Town Survey Land Record, which did not find favour with this Court.”

---

<sup>1</sup> 2001 (3) ALD 600

<sup>2</sup> 2011 (6) ALT 34

13. In the light of the said settled legal position with regard to the value that can be attached to the entries in the TSLR, the case on hand is required to be considered by this Court.

14. The Hon'ble Apex Court in the case of **Government of A.P. v. Tummala Krishna Rao**<sup>3</sup>, has been pleased to acknowledge and accept the view taken by a Division Bench of this Court holding that the summary remedy under Section 7 of the Act, 1905 cannot be resorted to unless there is an admitted encroachment or encroachment of a very recent origin and that such a provision cannot be availed in cases where the complicated questions arise for decision and relevant portion from the said Judgement at para-7 reads as under:-

"It seems to us clear from these provisions that the summary remedy for eviction which is provided for by Section 6 of the act can be resorted to by the Government only against persons who are in unauthorised occupation of any land which is "the property of Government". In regard to property described in sub-sections (1) and (2) of Section 2, there can be no doubt, difficulty or dispute as to the title of the Government and, therefore, in respect of such property, the Government would be free to take recourse to the summary remedy of eviction provided for in Section 6. A person who occupies a part of a public road, street, bridge, the bed of the sea and the like, is in Unauthorised occupation of property which is declared by Sec.2 to be the property of the Government and, therefore, it is in public interest to evict him expeditiously, which can only be done by resorting to the summary remedy provided by the Act. But Section 6(1) which confers the power of summary eviction on the Government limits that power to cases in which a person is in unauthorised occupation of a land "for which he is liable to pay assessment under Section 3." Section 3, in turn, refers to unauthorised occupation of any land "which is the property of Government". If there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral

---

<sup>3</sup> AIR 1982 SC 1081

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 twelve 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.”

15. In the said judgment, the Hon’ble Apex Court at para-8 also held as under:-

“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.”

16. Further, a Division Bench of erstwhile High Court of Andhra Pradesh also while dealing with similar situation, after having taken note the judgment of the Hon’ble Apex Court (1

supra) has been pleased to hold in **District Collector,**

**Hyderabad v. K.Narasing Rao**<sup>4</sup> as under:-

“What thus flows from the above, in our considered view, is that primary concern will be to see whether there is a bona fide claim of title and there are reasonable grounds to prima facie hold that the title to the property is in dispute and as such that a primary (sic. summary) procedure for eviction should be avoided. Adverting to the facts of the case, what is seen is, a series of transactions in respect of the property without, however, any dispute as to the property being under the Court of wards and an agreement for sale, which has taken to the Civil Court for a specific performance and allegedly decreed by the Court against the alleged vendor of the petitioner-respondents. Constructions are said to have come up, but there is no claim on behalf of the petitioner-respondents that they complied with the requirements of the various provisions of the Hyderabad Municipal Corporation Act. Unauthorised character of the occupation of the land is not displaced by the materials which are brought on the record of the instant proceeding and unauthorised construction is writ large, because provisions of the Hyderabad Municipal Corporation Act are not complied with. Relief, which this Court at such a juncture can grant will be only in the nature of interim injunction leaving the parties to seek their remedy before the appropriate civil Court. Learned single Judge, on the facts as stated above, has chosen to restrain the Government from evicting the petitioner-respondents and/or demolishing constructions by resorting to the summary procedure under Section 6 of the Act and asked the Government to seek adjudication of title and eviction in the Civil Court. The order, thus, has the effect of making the appellants to resign to the legal acts of the petitioner-respondents of coming up with the constructions upon the land, for which the appellants have a definite and bona fide claim. In our considered view, the best course, on the facts and in the circumstances of the case, would be to leave the dispute for adjudication by the Civil Court without there being any such condition of injunction in favour of the petitioner-respondents, as injunction, if any, can always be granted by the Civil Court if the petitioner-respondents establish a prima facie case and show balance of convenience in their favour.”

17. The law as declared in the case of **Government of A.P. v.**

**Tummala Krishna Rao** (3 supra) is followed by the Hon’ble

Apex Court in **State of Rajasthan v. Padmavathi Devi**<sup>5</sup>. In the

---

<sup>4</sup> 1997(4) ALD 649

<sup>5</sup> 1995 Supp (2) SCC 290

light of the settled legal position in the matter of application of the provisions of the Act, 1905 and the value that can be attached to the entries in TSLR, the case on hand is required to be considered.

18. In the instant case, the claim of the petitioner is basing upon a registered Sale Deed of the year 1968 and the title of the predecessor-in-title of the petitioner relates back to the year 1921. In spite of explaining these aspects in detail in the explanation dated 06.07.2015 and placing the copies of the same before respondent No.4, respondent No.4 herein instead of considering the said documents in proper perspective and considering the long possession of the petitioner over the subject property by constructing a permanent building thereon, which was also assessed to property tax by the municipal authorities, respondent No.4 simply placed reliance on a entry made in the Town Survey and Land Records and declared the sale transaction took place in favour of the petitioner herein as not valid. Even the said entries in TSLR are pursuant to the publication of the same in the Gazette on 12-07-1977, as against the claim of title of the petitioner that relates back to the year 1921.

19. In the light of the settled legal position as declared by this Court as well as the Hon'ble Apex Court the provisions of the Act, 1905, are not available to be invoked to the respondent authorities when the possession over the alleged encroachment is of a long standing and when the claim is based upon registered documents. In the instant case, there is no dispute that the possession of the petitioner over the subject land is of a long standing and as such the dispute with regard to title over the subject property is bound to be considered as a *bona fide* dispute. In the light of the law laid down by the Hon'ble Apex Court in the case **Government of A.P. v. Tummala Krishna Rao** (3 supra), the very action of respondent No.4 in initiating proceedings under the provisions of the Act, 1905, are totally impermissible and contrary to the law laid down by the Hon'ble Apex Court especially in the context of undisputed fact situation.

20. In the light of the above, the impugned order, dated 13.01.2016 is set aside and the Writ Petition in W.P.No.2438 of 2016 is allowed. Consequently, the Writ Petition No.8240 of 2016 is also allowed and the impugned notice, dated 03.03.2016 in proceeding No.B/2281/2115 is also set aside.

21. Though learned counsel for the petitioner raised several other grounds including violative of principles of natural justice etc., in the matter of passing impugned order, in view of the findings recorded above and the conclusion arrived at, this Court does not deem it necessary to refer to such contentions raised by the learned counsel for the petitioner.

As a sequel, miscellaneous petitions, pending if any in this Writ Petition, shall stand closed.

---

**MUMMINENI SUDHEER KUMAR, J**

Date:14.02.2023

NDS

**THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR**

**WRIT PETITION Nos.2438 AND 8240 OF 2016**

Date :14.02.2023

NDS