

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR

WRIT PETITION No.31282 OF 2015

ORDER:

This Writ Petition is filed seeking a Writ of Mandamus to declare the orders passed by respondent No.5 in proceedings No.B/2511/2013, dated 05.09.2015, under Section 10 of the Telangana Land Encroachment Act, 1905 (for short 'the Act, 1905'), confirming the orders passed by respondent No.4 in proceedings No.C/1747/2001, dated 27.05.2013, under Section 6 of the Act, 1905, as illegal, arbitrary and violative of Articles 14, 19 and 300A of the Constitution of India.

2. The facts of the case that lead to filing of the present Writ Petition are as under:-

Respondent No.4 initiated proceedings and issued a notice of encroachment, dated 27.05.2013, under Section 7 of the Act, 1905, to the petitioner and another stating that the petitioner is in unauthorized occupation of the land admeasuring 152 Sq. Mts out of 6512 Sq. Mts situated in Bakaram Village, TS No.7, Block-A, Ward No.67 of Bakaram Village with a residential structure and the petitioner was required to show cause as to why petitioner should not be charged a penalty for such occupation under Section 5 of the

Act, 1905 and be subjected to eviction from such land and forfeiture of the buildings etc., under Section 6 of the Act, 1905. In response there to, the petitioner submitted its explanation, dated 03.06.2013 and thereafter respondent No.4 passed an order in proceedings NO.C/1747/2001, dated 27.05.2013, under Section 6 of the Act, 1905, directing the petitioner to vacate the land in its possession by way of residential structure.

3. A perusal of the said order shows that according to respondent No.4, the subject land is a Government land, as the same is recorded as such in the Town Survey and Land Records under column No.20. Aggrieved by the said order, the petitioner herein filed an appeal under Section 10 of the Act, 1905, before respondent No.5 herein and respondent No.5 herein refused to interfere with the order passed by respondent No.4 and dismissed the appeal by an order, dated 05.09.2015, in proceedings No.B/2511/2013. Aggrieved by the said order passed by respondent No.5, confirming the order passed by respondent No.4, the present Writ Petition is filed.

4. This Court while ordering notice before admission, directed maintenance of the *status quo* existing as on that day and the same is in operation till date.

5. It is the case of the petitioner that the predecessor-in-title of the petitioner namely Mr.Abdul Razaq, S/o Syed Ahmed, purchased the land admeasuring Ac.1.34 ½ gts., equivalent to 8670 Sq. Yds forming part of Sy.Nos.8, 9 and 10 of Musheerabad Village through registered Sale Deed, dated 18th, Aban 1355 Fasli corresponding to 14.01.1946, *vide* document No.1982 of 1355 Fasli, registered in the office of Sub-Registrar, Hyderabad from Sri Panduranga Vittal Rao Hardikar S/o Sri Vital Rao. It is the further case of the petitioner that the said Mr.Abdul Razaq, in turn gifted the said property in favour of seven individuals on 09.02.1972 and in turn, the said seven person's i.e. donees along with some others formed into a partnership firm in the name of the petitioner herein with registration No.59/2001, dated 31.12.2000 and transferred the subject property in the name of the petitioner herein. It is also the case of the petitioner that, right from the year 1955 onwards, the Hyderabad Municipal Corporation, collected the non-agricultural land tax in respect of the said extent of the land from the said Mr.Abdul Razaq, and his successors-in-interest till the year 1993. It is the further case of the petitioner that during the Town Survey conducted, the respondents erroneously recorded the subject land as gap area and recorded the same as Government land in column Nos.10 and 20

respectively. Though, the name of Mr.Abdul Razaq, was very much reflected in the possessor column i.e., column No.23 and the said Mr.Abdul Razaq stated to have submitted various representations requesting for rectification of the said mistake in recording the subject land as Government land in the Town Survey and Land Records. While the matter stood as such, when the respondents tried to interfere with the possession of the petitioner over the subject land, the petitioner herein approached this Court by filing W.P.No.12061 of 2013, and a learned Single Judge of this Court, having taken note of the submissions made by the learned Government Pleader, passed an interim order, dated 22.04.2013, which reads as under: -

“The Tahsildar, Musheerabad Mandal, who is present in the Court, would submit that there exists a single storied house in the subject land over an extent of 152 Sq. Mts; in addition, there are four small sheds where nobody is residing; the remaining extent, which is covered by a compound wall, is vacant on ground; and the Government had only erected sign boards threat indicating that the subject land is Government land.

Status quo in all respects including possession, construction, alienation, creating of third party rights, changing the nature of the land etc., shall be maintained until further orders.

It is made clear that this order shall not preclude the respondents, if they so choose, from taking action in accordance with law after putting the petitioner on notice and giving them an opportunity of being heard.”

6. In view of the liberty granted by this Court, by an order, dated 22.04.2013, respondent No.4 herein initiated the proceedings under Section 7 of the Act, 1905, against the petitioner.

7. From a perusal of the relief sought for in W.P.No.12061 of 2013 and an order, dated 22.04.2013 passed by this Court, it is evident that there is a single storied house in the subject land over an extent of 152 Sq. Mts and in addition to the same, there are four small sheds and the entire extent of land admeasuring 8670 Sq. Yds is covered by a compound wall and an order of *status quo* in all respects was directed to be maintained by this Court through the above said order. The said Writ Petition is still pending and interim order passed therein is also operating.

8. Respondent No.4 filed counter affidavit reiterating the reasons given by respondent Nos.4 and 5 under the impugned orders. From a perusal of the counter affidavit and impugned orders, it is noticed that the basis for the respondents to claim the subject property as Government land is only the entries that are made in the Town Survey and Land Records. Pursuant to the Town Survey that was conducted during the years 1964-69, under the provisions of the Andhra Pradesh Survey and Boundaries Act, 1923 (for short 'the Act, 1923'), and the consequential Gazette Notification issued under Section 13 of the Act, 1923, on 29.06.1976, as already noted above, the claim of the petitioner is that the predecessor-in-title of the petitioner namely Mr.Abdul Razaq, purchased the subject property under

a registered Sale Deed, dated 14.01.1946, *vide* document No.1982 of 1355 Fasli and constructed a residential building and other sheds and the entire extent of land is covered by a compound wall. From a perusal of the order passed by respondent No.5, dated 05.09.2015, it is evident that there is no dispute about the existence of a registered document No.1982 of 1355 Fasli and the same was confirmed by the Joint Sub-Registrar through his letter No.201/RO(OB)/Hyd/2015, dated 24.07.2015. Thus, the claim of the petitioner over the land admeasuring 8670 Sq. Yds relates back to the year 1946 and the petitioner is claiming to have succeeded to the same and the petitioner has been in possession over the land admeasuring 8670 Sq. Yds is admitted by respondent No.4 before this Court and the same was taken note of by this Court and recorded the same in an order passed in W.P.M.P.No.14915 of 2013 in W.P.No.12061 of 2013, dated 22.04.2013. But, for the reasons best known, respondent No.4 had initiated proceedings under Section 7 of the Act, 1905, only in respect of an extent of land 152 Sq. Yds wherein a structure was existing leaving the balance extent of land. Though, admittedly the petitioner is in possession over the subject property, which relates back to the year 1946, the basis for the respondents to claim the subject land as Government land is only the Town Survey that was

conducted during the years 1964-69 as notified in the Gazette on 29.06.1976.

9. The affect of the Town Survey that was conducted under the provisions of the Act, 1923, has come up for consideration before this Court in various cases and the law in this regard is well settled.

10. In the case of **Hyderabad Potteries Private Limited v. Collector, Hyderabad**¹, 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.”

11. 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**², 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.”

¹ 2001 (3) ALD 600

² 2011 (6) ALT 34

12. In the light of the above 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.

13. The scope and ambit of the provisions of the Act, 1905, also has fallen for consideration before this Court (erstwhile High Court of Andhra Pradesh) and the Hon'ble Apex Court in the case of **Government of A.P. v. Tummala Krishna Rao**³, 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

³ AIR 1982 SC 1081

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 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.”

14. 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.”

15. 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.Narasim Rao**⁴ 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

⁴ 1997(4) ALD 649

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.”

16. 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**⁵.”

17. In the light of the settled legal position, it is clear that the mere entries that are made either in the revenue records or in the Town Survey and Land Records cannot be the sole basis for claiming right and title over any landed property. It is not the case of the respondents either in the impugned orders or in the counter affidavit filed in the present Writ Petition that they have got any semblance of claim of right and title or possession over the subject property prior to the Gazette Notification that was published in the year 1976, under Section 13 of the Act, 1923.

18. From a perusal of the Town Survey and Land Records pertaining to TS No.7, Mr.Abdul Razaq, through whom the petitioner herein is claiming the right and title was in possession of the subject land relates back to the year 1964. Thus, the possession over the subject property is not with the respondents’ at least from the year 1964 onwards. In fact the

⁵ 1995 Supp (2) SCC 290

claim of the petitioner is that the predecessor-in-title of the petitioner and the petitioner have been paying the non-agricultural land tax to the Hyderabad Municipal Corporation right from the year 1955 onwards and the material evidencing payment of such tax are also placed on record by the petitioner, which are voluminous. The genuineness of such receipts is not disputed by the respondents in the counter affidavit filed before this Court nor disputed the genuineness of the said material.

19. Thus, the possession of the petitioner through its predecessor-in-title over the subject property relates back to the year 1946, 1955 and 1964. At any rate, the possession of the petitioner or its predecessor-in-title is not of a recent origin and the right title and possession is also based upon a registered document of the year 1946. Thus, under no circumstance, the possession of the petitioner over the subject property can be said to be of a recent origin.

20. In the light of the law laid down by this Court, as well as the Hon'ble Apex Court as noted above, the provisions of the Act, 1905, can be invoked only in respect of encroachment of a recent origin and in case of long possession over the subject property, the same would not fall within the purview and ambit

of the Act, 1905 and such a claim of title and possession is bound to be treated as a *bona fide* claim. Once the claim of the petitioner falls within the four corners of a *bona fide* claim, in terms of the law laid down by the Hon'ble Apex Court, the jurisdiction and power of the authorities under the Act, 1905, is not available, to the respondent Nos.4 and 5.

21. In view of the law declared by this Court, as noted above, with regard to the value that can be attached to the entries made in the Town Survey and Land Records, the efforts that are made by the petitioner for rectification of the entries in the Town Survey and Land Records and the rejection of such request by the respondent-authorities is of no consequence as taking the entries that are made in the Town Survey and Land Records on their face value also does not have any effect on the conclusion arrived at by this Court. Therefore, this Court is not inclined to consider the said aspect in detail.

22. The dispute that is raised in the impugned orders with regard to the validity of the gift through which the partners of the petitioner firm are claiming title etc., is of no consequence as admittedly the petitioner herein is in possession of the subject property and the proceedings for eviction are initiated against the petitioner herein alone by the respondents. If at all

there is any dispute with regard to flow of title etc., in favour of the petitioner herein that is not a matter of concern for the respondents herein. As there is no dispute nor there is any other claim from any third party over the subject property, conflicting the claim of the petitioner herein, and the present Writ Petition is arising out of a proceeding initiated under the provisions of the Act, 1905, the title of the petitioner need not be gone into in depth in this Writ Petition. Therefore, this Court is of the considered view that in the light of the conclusion arrived at by this Court on the scope of application of the provisions of the Act, 1905, to the case on hand, any attempt by the respondents to sustain the impugned proceedings basing upon the dispute raised on validity or otherwise of the gift claimed by the partners of the petitioner is not required to be considered in this case.

23. In the light of the above and the conclusion arrived at by this Court, the claim of the title and possession over the subject property by the petitioner is considerably long for several decades and as such the petitioner cannot be subjected to the summary procedure under the provisions of the Act, 1905, for evicting the petitioner from the subject land. In the light of the above, this Writ Petition is allowed and the impugned orders

passed by respondent No.4 in proceedings No.C/1747/2001, dated 27.05.2013, as confirmed by respondent No.5 through proceedings No.B/2511/2013, dated 05.09.2015, are set aside and the Writ Petition is allowed. However, if the respondents have got any claim of title over the subject property, it is always open for the respondents to initiate appropriate proceedings before a common law Court, if they are so advised, in accordance with law.

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 No.31282 OF 2015

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NDS