

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WRIT PETITION NO.39198 OF 2014

Between:

1. Komaravally Venkatesham, S/o. Veeresham
2. Yellu Ravinder Reddy, S/o. Bapu Reddy

...Petitioners

AND

1. State of Telangana, Revenue Department, Secretariat Buildings, Secretariat, Hyderabad, Rep.by its Principal Secretary and three others.

...Respondents

JUDGMENT PRONOUNCED ON: 15.02.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR

1. Whether Reporters of Local newspapers may be allowed to see the Judgment ? : Yes/No
2. Whether the copies of judgment may be marked to Law Reports/Journals : Yes/No
3. Whether Their Lordship/Ladyship wish to see the fair copy of judgment : Yes/No

MUMMINENI SUDHEER KUMAR, J

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR**+WRIT PETITION NO.39198 OF 2014**

%Dated 15.02.2023

- # 1. Komaravally Venkatesham, S/o. Veeresham.
2. Yellu Ravinder Reddy, S/o. Bapu Reddy.

...Petitioners

AND

\$ 1. State of Telangana, Revenue Department, Secretariat Buildings, Secretariat, Hyderabad, Rep.by its Principal Secretary and three others.

...Respondents

! Counsel for Petitioners : Mr. P.Sri Raghuram, Senior Counsel representing Mr. V.V.N.Narayana Rao

^ Counsel for Respondent Nos.1 to 4 : G.P. for Revenue

< GIST :

> HEAD NOTE :

? Cases referred :

1. 2001(3) ALD 600
2. 2011(6) ALT 34
3. AIR 1982 SC 1081
4. 1997(4) ALD 649
5. 1995 Supp (2) SCC 290

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMARWRIT PETITION NO.39198 OF 2014**ORDER:**

This Writ Petition is filed seeking a Writ of Certiorari calling for the records relating to proceedings No.E7/2504/2013 dated 05.12.2014 passed by the second respondent confirming the orders passed by the respondents 3 and 4 dated 06.04.2013 and 11.05.2012 respectively under the provisions of the A.P. Land Encroachment Act, 1905 ("the Act, 1905" for brevity) and to declare the same as illegal, arbitrary and contrary to law.

2. The facts of the case are that the petitioners herein claim to be the absolute owners and possessors of the residential house bearing municipal No.9-1-176, 9-1-176/A, 9-1-170 and 9-1-171, (popularly known as ABN compound) with an extent of land admeasuring 3150 square yards situated at S.D.Road opposite to Clock Tower, Secunderabad, forming part of Survey No.51 having purchased the same under a registered sale deed dated 30.03.99 vide document No.1827/2006 and claiming to have been in possession and enjoyment of the said property since the date of its purchase.

3. It is also the case of the petitioners that the vendor of the petitioners namely M/s. Property Association of Baptist

Churches Private Limited acquired the said property by virtue of amalgamation of all American Baptist Foreign Mission Society in terms of the order passed by the High Court of Madras in Company Petition Nos.109 and 110 of 1973 and in turn the said American Baptist Foreign Mission Society is stated to have acquired the said property under a registered sale deed vide document No.176/1885. The petitioners also claiming to have been paying the property tax in respect of the subject property since the date of their purchase in the year 1999. When the petitioners intended to construct a house in the subject property and approached the Greater Hyderabad Municipal Corporation ("GHMC" for brevity) for obtaining approval for such construction permission, the GHMC insisted for obtaining NOC from the District Collector concerned and the petitioners approached the District Collector, Hyderabad District for obtaining NOC but same was refused by the District Collector on the ground that the subject property is classified as Government land in the records of the Government.

4. Thereafter, the fourth respondent herein issued a notice under Section 7 of the A.P. Land Encroachment Act, 1905 ("the Act, 1905" for brevity) vide letter No.B/518/2012 dated 11.05.2012 and in response thereto, the petitioners submitted

their explanation contending that they have acquired the subject property under a registered sale deed of the year 1999 and the title of their predecessor-in-title relates back to the year 1885 etc. The fourth respondent herein, having received the explanation from the petitioners, rejected the case of the petitioners by passing an order dated 11.05.2012 on the ground that the subject property is recorded in the Town Survey Land Records ("TSLR" for short) as Abadi and in Column No.20, it is recorded as 'G' and contending that the subject property is a Government land and that the petitioners have encroached into the same. Aggrieved thereby, the petitioners filed an appeal under Section 10(1) of the Act, 1905 before the third respondent herein and the said appeal was dismissed by the third respondent by passing a cryptic order dated 06.04.2013, which reads as under:-

"On verification of documents furnished by the appellants and the office record of the Tahsildar, Secunderabad Mandal, as seen from the TSLR extract in Column No.20 it is recorded as "G". Hence, it is a Government Land and also the suit schedule land is an NOC rejected case.

In view of the above, I do not find any reason to interfere with the orders passed by the Tahsildar, Secunderabad Mandal in Proceedings No.B/518/2012, dated 11.05.2012 and the same is upheld.

Hence, the appeal is dismissed."

Aggrieved thereby, the petitioners herein filed a revision petitioner under Section 10(1)(c) of the Act, 1905 before the second respondent and the said revision came to be disposed of

by the second respondent by passing the impugned order dated 05.12.2014 in proceedings No.E7/2504/2013 dismissing the revision petition and confirming the order passed by the third respondent.

5. A perusal of the impugned order passed by the second respondent shows that the petitioners have raised several grounds, both factual as well as on legal aspects and they have also filed written arguments before the second respondent. Though the second respondent taken note of the grounds raised by the petitioners as well as the written arguments submitted by the petitioners and extracted the same in extenso in the impugned order, the second respondent instead of considering the various contentions raised by the petitioners, passed a cryptic order, which reads as under:-

“In view of the above, I am of the opinion that it is clear that the Revision Petitioner are illegally claiming rights of title and possession over the Government Land and the revision petition is liable to be dismissed. As such, I do not find any valid reason/reasons to interfere in the orders of the Revenue Divisional Officer, Secunderabad in case No.B/1196/2012 dt:06.04.2013.

Hence, the Revision Petition is dismissed. The orders of the Revenue Divisional Officer, Secunderabad Division in case No.B/1196/2012 dt:06.04.2013 is hereby confirmed. The Tahsildar Secunderabad is directed to protect the subject land by removing the encroachers, if any and to propose the land for inclusion in the Government's Land Bank.”

Aggrieved thereby, the present Writ Petition is filed.

6. From the facts, as noted above, it is evident that the claim of the petitioners is based upon a registered sale deed of the year 1999 and the title of the predecessor-in-title of the petitioners relates back to the year 1885. The genuineness or otherwise of these registered documents of the year 1885 and 1999 are not disputed by the respondents at any stage. So also the possession of the petitioners over the subject property tracing their title under the above referred registered documents. However, as is evident from the order passed by the respondents 2 to 4, the basis for claiming title of the Government over the subject property is the entry made in the TSLR as mentioning the same as Abadi and showing the same as 'G' under Column No.20.

7. The serious contentions raised by the petitioners before the second respondent contending that the entries in the TSLR cannot form basis for setting up a title over the subject property and that the entries made in the TSLR without putting the petitioners or their predecessors-in-title on notice are not binding on the petitioners etc. by placing reliance on various judgments passed by this Court are not considered by the second respondent while passing the impugned order. Except placing reliance on the entries in the TSLR, there is no other

material that is coming forth to claim title of the Government over the subject property.

8. 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.

9. 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.”

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

¹ 2001 (3) ALD 600

² 2011 (6) ALT 34

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.”

In the light of the said 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.

10. Mr. P.Sri Raghu Ram, learned Senior Counsel appearing for Mr. V.V.N.Narayan Rao, placed heavy reliance on a judgment of the Hon’ble Apex Court in the case of **Government of A.P. v. Tummala Krishna Rao**³. In the said case, the Hon’ble Apex Court 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

³ AIR 1982 SC 1081

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 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."

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."

11. 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**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 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.”

⁴ 1997(4) ALD 649

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.

12. In the 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, if the facts of the case are considered, the only irresistible conclusion that can be arrived at is that the claim of the petitioners is a bona fide claim to title and possession over the subject property, as the same is based upon registered documents of considerable age and the cloud that is sought to be created on the title of the petitioners by initiating proceedings under the Act, 1905 is only basing upon the entries that are made in the TSLR. Even in the counter affidavit filed by the respondents, the whole basis for claiming title over the property in question by the Government is only the entries that are made in TSLR, after preparation and publishing the same in the year 1976. Whereas the claim for title of the petitioners relates back to the year 1885 basing upon a Registered Document. There is nothing on record to show that the Government has got any claim de horse the TSLR much less prior to the year 1976. Further, in spite of the specific

⁵ 1995 Supp (2) SCC 290

stand on title by the petitioners, though the same was noted by the second respondent in his order, the second respondent failed to address the same in the impugned order. In the light of the above, this Court has no hesitation to hold that the respondents are not entitled to initiate the summary proceedings by invoking the provisions of the Act, 1905 to effect or disturb the possession of the petitioners over the subject property.

11. Accordingly, the Writ Petition is allowed and the impugned order passed by the second respondent dated 05.12.2014, confirming the orders passed by the respondents 3 and 4 dated 06.04.2013 and 11.05.2012 respectively, is hereby set aside.

However, it is left open to the respondents if they are so advised to initiate appropriate proceedings by approaching a common law Courts.

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

(MUMMINENI SUDHEER KUMAR, J)

15th February 2023

NOTE: LR Copy be marked

B/O

RRB