

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND**

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

+ W.P. (PIL) No.74 of 2016 AND W.P.No.17053 of 2016

% Dated 23.08.2024

W.P.(PIL) No.74 of 2016

Swachh Telangana Youth Association
Regd.No.651/2015 Rep. by its working President
A.Vinod Kumar S/o.A. Manohar,
Age: 33 years, Occ: Private Employee,
H.No.134/SRT, Sanjeev Reddy Nagar, Hyderabad

....Petitioners

VERSUS

\$ The State of Telangana
Rep. by Principle Secretary, (Municipal administration)
Secretariat, Hyderabad and eight others.

... Respondents

W.P.No.17053 of 2016

Ashok Kumar Agarwal
S/o.Hari Kishan Agarwal,
Aged: 58 years, Occ: Business and three others
All are residing at H.No.1-5-6/33,
1st Floor, Sri Krishna Colony, Musheerabad

....Petitioners

VERSUS

\$ State of Telangana
Rep. through its District Collector,
Hyderabad District,
Station Road, Nampally, Hyderabad and another

... Respondents

W.P.(PIL) No.74 of 2016

! Counsel for Petitioners : M.Vijay Kumar Goud,

^ Counsel for Respondent Nos.1, 2 & 5:

Sri Pottigari Sridhar Reddy,
learned Special Government
Pleader,

Counsel for Respondent No.3. : K.Ravinder Reddy

Counsel for Respondent No.4. : Sri K.Buchi Babu

Counsel for respondent Nos.6 to 9 : J.Venkateshwar Reddy

W.P.No.17053 of 2016

! Counsel for Petitioners : J.Venkateswara Reddy

^ Counsel for Respondent Nos.1 & 2 : Sri Pottigari Sridhar Reddy,
learned Special Government Pleader.

< GIST:

> HEAD NOTE:

? CITATIONS:

1. (2011) 7 SCC 69
2. (2008)12 SCC 481

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE J. SREENIVAS RAO

W.P.(PIL) No.74 OF 2016

AND

W.P. No. 17053 OF 2016

COMMON ORDER: *(Per the Hon'ble Sri Justice J.Sreenivas Rao)*

W.P.(PIL) No.74 OF 2016

The writ petition (PIL) is filed seeking the following relief:

“to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus, (a) to declare the action of the Respondent Nos.1 to 5 for not protecting the land of the playground admeasuring 1537 sq. yards in Sy.No.102/2 and 102/3, Bahlookhan Guda, Sanjeev Reddy Nagar, Hyderabad by withdrawing CCCA No.87 of 2013 on 02.09.2013 before this High Court at Hyderabad preferred by the then A.P. housing Board against Judgment passed by XIV Addl. Chief Judge, CCC, Hyderabad, in O.S.No.136 of 2005 on 02.09.2013 without any valid reasons by colluding with unofficial respondent Nos.6 to 9 and to initiate action against erring officials of the Respondent Nos.1 to 5, (b) consequently develop the playground land admeasuring 1537 sq. yards in Sy.No.102/2 and 102/3, Bahlookhan Guda, Sanjeev Reddy Nagar, Hyderabad, by providing all amenities to the residents of the locality, (c) and to grant such other relief ...”

W.P. No. 17053 OF 2016

The writ petition is filed seeking the following relief:

“to issue appropriate Writ, Order or Direction particularly a Writ of Mandamus declaring the action of the Respondents in seeking to interfere with the possession and enjoyment of the property admeasuring 1537.5 square yards in Sy.No.102/2 and 102/3 situated at B.K.Guda, Balkampet, S.R.Nagar, Hyderabad as illegal, arbitrary, violative of principles of natural justice

contrary to Article 19, 21 and 300A of the Constitution of India and issue a consequential direction directing the Respondents not to interfere with the peaceful possession and enjoyment of the Petitioners in and over the property referred to above.”

3. The subject property involved in both the cases is one and the same and therefore, both the cases are clubbed together and are being disposed of by this common order.

4. Heard Sri M.Vijay Kumar Goud, learned counsel for the writ petitioner in W.P. (PIL) No.74 of 2016, Sri B.Mohan, learned Counsel, representing Sri J.Venkateshwar Reddy, learned counsel for the respondent Nos.6 to 9 who are the writ petitioners in W.P.No.17053 of 2016, Sri Pottigari Sridhar Reddy, learned Special Government Pleader, representing learned Advocate General, appearing on behalf of respondent Nos.1 and 2 in both cases and respondent No.5 in W.P(PIL).No.74 of 2016, Sri Ch.Jaya Krishna, learned counsel representing Sri K.Ravinder Reddy, learned Standing Counsel appearing on behalf of respondent No.3 Corporation and Sri K.Buchi Babu, learned Standing Counsel appearing on behalf of respondent No.4 in W.P(PIL).No.74 of 2016.

5. **Brief facts of the case:**

5.1 Unofficial respondent Nos.6 to 9 in W.P.(PIL) No.74 of 2016 are the writ petitioners in W.P.No.17053 of 2016 and are claiming that they are owners and possessors of open land admeasuring

2,000 square yards in Sy.Nos.102/2 and 102/3 situated at Bahloul Khan Guda, Balkampet, Sanjeevareddy Nagar, Hyderabad. It is further stated that originally one B.Kanakaiah owned the entire property in Sy.No.102. Subsequently, it was divided into parts and given sub-division numbers at the time of acquisition and their mother Shanthi Agarwal had purchased the above said property from Kanakaiah through registered sale deed *vide* document bearing No.30 of 1963, dated 07.01.1963 and since then she has been in possession and enjoyment of the subject property.

5.2 It is further stated that Andhra Pradesh Housing Board (hereinafter called as 'APHB' for short) acquired a portion of the property i.e., 17,240 square yards out of 30,855 square yards in Sy.No.102. The said portion of acquired land was assigned Sy.No.102/2 and unacquired land was given Sy.Nos.102/3 and 102/4. The land claimed by respondent Nos.6 to 9 in an extent of 1537 square yards falls in Sy.No.102/3 and the rest in Sy.No.102/2. When the APHB as well as Municipal Corporation, Hyderabad and the revenue officials are trying to dispossess them, they have filed suit in O.S.No.136 of 2005 on the file of XIV Additional Chief Judge (FTC), City Civil Court, Hyderabad, seeking mandatory injunction and recovery of damages in respect of the suit schedule property, against the Municipal Corporation of Hyderabad, District Collector, Hyderabad, APHB and others. The

said suit *vide* judgement and decree dated 05.11.2012, after full-fledged trial was decreed in their favour.

5.3 Aggrieved by the above said judgment and decree, APHB has filed C.C.C.A.No.87 of 2013 before the erstwhile High Court of Andhra Pradesh, Hyderabad and the said appeal was dismissed as withdrawn, at the instance of APHB on 02.09.2013. They further stated that during pendency of the suit in O.S.No.136 of 2005, respondent Nos.6 to 9 have filed another suit in O.S.No.148 of 2005 on the file of III Additional Chief Judge, City Civil Court, Hyderabad, seeking delivery of possession of the remaining land to an extent of 462.5 square yards (out of 2000 square yards) or payment of compensation of an amount of Rs. 62,90,000/- together with future interest and costs and the said suit was dismissed by its judgment and decree dated 03.07.2008.

5.4 Aggrieved by the same, respondent Nos.6 to 9 filed appeal in C.C.C.A. No.258 of 2008 before the erstwhile High Court of Andhra Pradesh, Hyderabad and they have withdrawn the same on 02-09-2013. When the revenue officials, i.e., District Collector, Hyderabad and Tahsildar, Ameerpet Mandal are trying to interfere with the subject property to an extent of 1537 square yards in Sy.Nos.102/2 and 102/3, respondent Nos.6 to 9 filed W.P.No.17053 of 2016. They further stated that they have filed

suit in O.S.No.1026 of 2016 against Greater Hyderabad Municipal Corporation seeking perpetual injunction wherein the Court below granted '*status quo*'.

5.5 Petitioner namely Swachh Telangana Youth Association filed W.P.(PIL) No.74 of 2016 questioning the action of respondent Nos.1 to 5 in not protecting the land of playground admeasuring 1,537 square yards in Sy.Nos.102/2 and 102/3, Bahlookhanguda, Balkampet, Sanjeev Reddy Nagar, Hyderabad by withdrawing the C.C.C.A.No.87 of 2013 on 02.09.2013 by the APHB without any valid reasons by colluding with unofficial respondent Nos.6 to 9 and to initiate the action against the official respondents and consequently, sought relief to develop the playground in the subject property by providing all amenities to the residents of the locality.

6. Submissions of the learned counsel for the petitioner in W.P.(PIL) No.74 of 2016:

6.1. Learned counsel contended that APHB had constructed the houses for economically weaker section people and allotted the same to the individuals on EMI basis in the year 1977 over the land admeasuring around Acs.6-00 in Sy.Nos.102 and 103 of Bahlookhanguda, Ameerpet Mandal, Hyderabad and subject property i.e. an extent of 1,537 square yards is kept open for the

purpose of playground. He further contended that when respondent Nos.6 to 9 without having any right trying to encroach the said property, the members of Petitioner Association prevented them. At that time, respondent Nos.6 to 9 have placed the copy of order in E.P.No.215 of 2014 in O.S.No.136 of 2005 and copy of the Judgment and Decree in O.S.No.136 of 2005 passed by the learned XIV Additional Chief Judge (FTC), City Civil Court, Hyderabad, dated 05.11.2012 before them.

6.2 He further contended that the subject property is an evacuee property and the Civil Court is not having jurisdiction to entertain the suit O.S.No.136 of 2005 and pass the decree on 05.11.2012. He also contended that APHB filed appeal in C.C.C.A.No.87 of 2013 before this Court and they have withdrawn said appeal on 02.09.2013 in collusion with respondent Nos.6 to 9. He further contended that respondent No.2 in his counter specifically stated that the subject property is an evacuee property and respondent Nos.6 to 9 are not having any right to claim the same.

7. Submissions of the learned Special Government Pleader:

7.1 Learned Special Government Pleader contended that as per Sethwar 1953, the land in Sy.No.102 of Bahlookhanguda Village admeasuring Acs.6-15 guntas is recorded in the name of Miss Mariyam Kareem and as per the pahani of 1955-58, the name of

Miss Mariam Kareem is recorded as pattedar and one Goundla Kanakaiah as possessor for an extent of Ac.6-04 guntas and one Narsingam as possessor over an extent of Ac.0-11 guntas. He further submits that the land was originally held by Miss Mariyam Kareem who migrated to Pakistan and various correspondence available in the concerned file reveal that the said land was declared as evacuee property. The subject property is recorded in Town Survey Land Records (for short 'TSLR') as part of TS.No.42, Block-J, Ward-4, correlated to old Sy.No.102/p of Bahlookhanguda Village. T.S.No.42 admeasuring to total extent of 7888.50 square meters recorded as Miss. Mariyam Kareem in column No.10 and Manikya Rao and four others in column No.20 of TSLR.

7.2 He further submits that respondent Nos.6 to 9 have filed suit in O.S.No.136 of 2005 on the file of XIV Additional Chief Judge (FTC), City Civil Court, Hyderabad seeking declaration and other reliefs to an extent of 1537 square yards in Sy.Nos.102/2 and 102/3 without impleading the Union of India or the State Government as party defendants and obtained the decree on 05.11.2012. He also contended that the subject property is an evacuee property and as per the provisions of Section 46 of Administration of Evacuee Property Act, 1950, Civil Court or Revenue Court has no jurisdiction to deal with the evacuee

property. Hence the judgment and decree passed in O.S.No.136 of 2005 dated 05.11.2012 is without jurisdiction, null and void and basing on the said decree, respondent Nos.6 to 9 are not entitled to claim any rights over the subject property.

8. Submissions of Learned Standing Counsel for GHMC:

8.1 Learned Standing Counsel submits that on 18.06.2016 APHB addressed a letter No.3324/J2/LAO/APHB/2007 to the respondent No.3 Corporation stating that aggrieved by the judgment and decree passed in O.S.No.136 of 2005, APHB preferred an appeal in C.C.C.A.No.87 of 2013 before the erstwhile High Court and also stated that respondent Nos.6 to 9 have also filed C.C.C.A.No.258 of 2008 aggrieved by the judgment and decree passed in O.S.No.148 of 2005 claiming compensation and damages from APHB for the land utilized for laying approach road in the subject property. The then V.C and other officials have taken a decision to withdraw C.C.C.A. No.258 of 2008 on the ground that the open space was already transferred to Municipal Corporation, Hyderabad including the suit schedule property and vested with the Municipal Corporation, Hyderabad and further informed the respondent No.3 to file an appeal in High Court as the land is vested with GHMC. Immediately, after receipt of the said letter, respondent No.3 Corporation addressed a letter dated 15.11.2016 *vide* bearing No.6607/C-10A/CZ/TPS/GHMC/2015-16 requesting

respondent No.4 to furnish copy of layout and the relevant records regarding handing over the subject property to respondent No.3 for taking further legal action. Subsequently, issued reminder on 16.02.2017 but respondent No.4 has not provided the requisite documents. Respondent No.3 has prevented respondent Nos.6 to 9 from erecting temporary shed in the schedule property. Aggrieved by the same, respondent Nos.6 to 9 have filed suit in O.S.No.1026 of 2016 against the respondent No.3 Corporation and obtained '*status quo*' order.

9. Submissions of the Learned Standing Counsel for Respondent No.4:

9.1 Learned Standing counsel for respondent No.4 submits that the respondent No.4 has contested the suit in O.S.No.136 of 2005 and also filed appeal C.C.C.A.No.87 of 2013 questioning the judgment and decree dated 05-11-2012 passed in O.S.No.136 of 2005 and after following due procedure, on being satisfied that the suit schedule property is situated outside the acquired land of APHB and also with a view to put an end to the litigation and to protect the APHB from the risk of paying compensation of Rs.62,90,000/- with future interest in C.C.C.A.No.258 of 2008, respondent No.4 has taken a decision to accept the proposals made by respondent Nos.6 to 9 to withdraw C.C.C.A.No.87 of 2013 subject to withdrawal of C.C.C.A.No.258 of 2008 filed by them and

accordingly they withdrawn the said appeal and respondent No.4 also withdrawn the CCCA.No.87 of 2013 on 02.09.2013.

9.2 He further submits that respondent No.4 had utilized the entire acquired land for construction of the housing scheme and there is no left over land in 1537 square yards and further stated that the subject property was already handed over to respondent No.3 Corporation and they have to protect the said property and respondent No.4 is no way concerned.

10. Submissions of learned counsel appearing for respondents 6 to 9.

10.1 Learned counsel contended that the subject property i.e., 1537 square yards out of an extent of 2,000 square yards was purchased by Shanthi Agarwal, who is none other than the mother of the respondent Nos.6 to 9 through registered sale deed dated 07.1.1963 from its original owner by paying valuable sale consideration and since then she has been in possession and enjoyment of the same with absolute rights and they acquired the same from their mother as successors and they are in possession and enjoyment of the said property.

10.2 He further submits that when respondent No.4 in collusion with respondent No.3 illegally laid road towards eastern side of the land to an extent of 462.5 square yards out of 2000 square yards,

without acquiring and without paying compensation under law and also trying to interfere with the remaining extent of 1537 square yards, respondent Nos.6 to 9 have filed suit in O.S.No.136 of 2005 seeking declaration, mandatory injunction, recovery of damages and other reliefs in respect of 1537 square yards on the file of XIV Additional Chief Judge (FTC), City Civil Court, Hyderabad. Similarly they filed another suit in O.S.No.148 of 2005 on the file of III Additional Chief Judge, City Civil Court, Hyderabad claiming recovery of possession against respondent Nos.3 and 4 to an extent of 462.5 square yards or alternative for payment of compensation of Rs.62,90,000/- and the said suit was dismissed on 03.07.2008. Aggrieved by the same they have filed CCCA.No.258 of 2008 before this Court and subsequently they had withdrawn the said appeal on 02.09.2013.

10.3 He further submits that in O.S.No.136 of 2005, the Court below after taking into consideration the oral and documentary evidence on record and after considering the contentions of respective parties, decreed the suit in part on 05.11.2012 by giving specific findings holding that the subject property is not an evacuee property and declared that respondent Nos.6 to 9 are owners of the suit schedule property and also granted mandatory injunction against the respondent No.3 to remove the dust bins from the suit scheduled property within a period of three months

from the date of judgment and in so far as the relief of mandatory injunction and recovery of damages is concerned, the suit was rejected. Pursuant to the said decree, respondent Nos.6 to 9 have filed E.P.No.215 of 2014 for execution of the decree against respondent No.3. Accordingly, respondent No.3 has removed the garbage. Aggrieved by the judgment and decree passed in O.S.No.136 of 2005 dated 05.11.2012, respondent No.4 filed appeal in C.C.C.A.No.87 of 2013 and they have withdrawn the said appeal on 02.09.2013.

10.4 Learned Counsel vehemently contended that the contentions raised by the writ petitioner as well as respondent Nos.1, 2 and 5 that the subject property is evacuee property and the Civil Court is not having jurisdiction to pass the decree and judgment in O.S.No.136 of 2005 dated 05.11.2012 and the same is not binding upon them is absolutely not true and correct. The Court below while decreeing the suit has given specific finding that the suit schedule property is not evacuee property and also held that said Court is having jurisdiction and the findings given by the Court below has become final and binding upon the official respondents and the WP (PIL) filed by the petitioner is liable to be dismissed with costs and the relief sought by the respondent Nos.6 to 9 in W.P.No.17053 of 2016 to be allowed.

10.5 Learned counsel further submits that during the pendency of the suit, learned XIV Additional Chief Judge, City Civil Court, Hyderabad appointed Advocate Commissioner in I.A.No.601 of 2007. The Advocate Commissioner with the help of Deputy Inspector of Survey and Settlements Department, Revenue Divisional Officer, Secunderabad demarcated the land and submitted report on 07.10.2010 and the defendants therein have not filed any objections to the said report and the same has become final. He further contended that prior to filing of the W.P.(PIL) No.74 of 2016, similar W.P.No.14085 of 2016 is filed by Economic Weaker Section and Private Houses Welfare Association represented by Sri S.L.N. Prasad with same relief and the said writ petition was dismissed as withdrawn on 25.04.2016. The said Sri S.L.N. Prasad is also a member of petitioner association and the petitioner association filed W.P.(PIL) No.74 of 2016 without disclosing the above said facts and the same is liable to be dismissed.

Analysis of the case:

11. Having considered the rival submissions made by the respective parties and after perusal of the material available on record, the following points arise for consideration:

(i) Whether this Court is having jurisdiction to set aside the judgment and decree passed in O.S.No.136 of 2005 dated 05.11.2012 on the file of XIV Additional Chief Judge, City Civil Courts, Hyderabad, by holding that the subject property to an extent of 1537.50 square yards in Sy.Nos.102/2 and 102/3 is an Evacuee property, while exercising the powers conferred under Article 226 of the Constitution of India ?

(ii) Whether this Court is having jurisdiction to declare that learned XIV Additional Chief Judge, City Civil Courts, Hyderabad is not having jurisdiction to entertain the suit *vide* O.S.No.136 of 2005 and pass judgment and decree dated 5.11.2012?

(iii) Whether respondent No.2 is entitled to contend that the judgment and decree passed in O.S.No.136 of 2005 is not binding upon him, especially when respondent No.2 is a party defendant in O.S.No.136 of 2005?

(iv). Whether the petitioner or respondents 1 to 3 are entitled to the relief sought in the Writ Petition (PIL) in the absence of questioning the decree and judgment passed in O.S.No.136 of 2005 dated 05.11.2012 under law ?

(v) Whether the respondent Nos.6 to 9 who are the Petitioners in W.P.No.17053 of 2016 are entitled the relief sought in the Writ Petition ?

Point Nos.(i) to (v)

12. Admittedly, respondent Nos.6 to 9 are claiming rights over the property to an extent of 1537 square yards in Sy.Nos.102/2 and 102/3 through their mother namely Shanthi Agarwal, who had purchased the open land admeasuring 2,000 square yards through registered sale deed bearing document No.30 of 1963 dated 07.01.1963. Out of the said property, when respondent Nos.3 and 4 illegally laid a road in an extent of 462.05 square

yards (out of 2,000 Sq.yds) without acquiring the land and without paying compensation and also trying to interfere with the remaining extent of land i.e. 1537 square yards, they have filed suit in O.S.No.136 of 2005 on the file of XIV Additional Chief Judge, City Civil Court, Hyderabad claiming declaration of title, mandatory injunction against respondent No.3 to remove the dustbins from the property and also for recovery of damages and other reliefs. Respondent Nos.6 to 9 have also filed another suit in O.S.No.148 of 2005 on the file of III Additional Chief Judge, City Civil Court, Hyderabad seeking recovery of possession in respect of 462.05 square yards or alternative payment of compensation and the said suit was dismissed on 03.7.2008. Aggrieved by the same, they filed C.C.C.A.No.258 of 2008 before the erstwhile High Court of Andhra Pradesh, Hyderabad.

13. In so far as other suit in O.S.No.136 of 2005, the learned XIV Additional Chief Judge, City Civil Courts, Hyderabad after considering the oral and documentary evidence on record i.e. PW1 to PW3 on behalf of plaintiff and DW1 to DW4 on behalf of defendants and Ex.A-1 to A-71 and Ex.B-1 to B-15 decreed the suit declaring that respondent Nos.6 to 9 are the title holders of the schedule property i.e. 1537 square yards and also granted mandatory injunction against respondent No.3 for removal of dust bins from the suit schedule property within a period of three

months from the date of decree and rest of the reliefs were dismissed by its judgment and decree dated 05.11.2012. Aggrieved by the same, respondent No.4 had filed appeal *vide* C.C.C.A.No.87 of 2013 and the same was withdrawn on 02.09.2013. Similarly respondent Nos.6 to 9 also have withdrawn their appeal C.C.C.A.No.258 of 2008 on 02.09.2013. It further reveals that pursuant to the decree passed in O.S.No.136 of 2005, respondent Nos.6 to 9 have filed E.P. No.215 of 2014 and respondent No.3 removed the garbage in the schedule property.

14. The main contention raised by the learned counsel for the writ petitioner and the learned Special Government Pleader is that the subject property is evacuee property and the XIV Additional Chief Judge (FTC), City Civil Court, Hyderabad is not having jurisdiction to entertain the suit and pass the decree and judgment dated 05.11.2012, hence the judgment and decree passed in the above suit is without jurisdiction and the same is nullity and respondent Nos.6 to 9 without impleading the Union of India and the State Government as party defendants, obtained the decree and the same is not binding upon the respondent Nos.1, 2, 4 and 5 is not tenable under law, on the ground that, respondent No.2 is a party defendant in O.S.No.136 of 2005 and he filed written statement denying the averments made in the plaint including aspect of jurisdiction to adjudicate the dispute between the parties,

stating that the suit schedule property is an evacuee property and basing upon the pleadings of the respective parties, the learned XIV Additional Chief Judge (FTC), City Civil Court, Hyderabad has framed nine (9) issues. It is relevant to extract the issue Nos.3 and 4 which reads as follows:

“(3) Whether the plaint scheduled property is evacuee property?”

“(4) Whether the Court has jurisdiction to try the suit?”

15. That the learned XIV Additional Chief Judge (FTC), after considering the oral evidence of PW1 to PW3 on behalf of plaintiff and DW1 to DW4 on behalf of defendants and Ex.A-1 to A-71 and Ex.B-1 to B-15, passed the judgment and decree dated 05.11.2012 in favour of respondent Nos.6 to 9, partly, by giving specific findings in respect of issue Nos.3 and 4 holding that suit schedule property is not an evacuee property and the said Court is having jurisdiction to try the suit. Hence the stand taken by the respondent No.2 in the counter affidavit that the judgment and decree passed in O.S.No.136 of 2005 is not binding upon him and the said Court is not having jurisdiction to pass the decree dated 05.11.2012 is not permissible under law, on the ground that the respondent No.2 had contested the suit proceedings and has not taken any steps to question the above said decree and judgment.

16. It further reveals that respondent No.3 Corporation, after receiving summons has not chosen to contest the suit O.S.No.136 of 2005 and they were set *ex parte*. Respondent No.4, though filed appeal C.C.C.A. No.87 of 2013 before the erstwhile High Court of Andhra Pradesh, Hyderabad, they have withdrawn the said appeal on 02.09.2013.

17. It is pertinent to mention here that respondent Nos.2 and 3 come within the meaning of 'State' as enshrined under Article 12 of the Constitution of India and they are simply throwing the blame against respondent No.4 only, stating that they have not taken proper steps to protect the subject property and also not taken steps to question the decree passed in O.S.No.136 of 2005 dated 05.11.2012, hence, the stand taken by the respondent No.3 that due to non-furnishing of the information and documents by respondent No.4 only, respondent No.3 has not taken steps to file appeal, is not tenable under law, unless and until the judgment and decree passed in O.S.No.136 of 2005, was set aside, reviewed or modified through appropriate proceedings, this Court while adjudicating the proceedings under Article 226 of the Constitution of India is not having jurisdiction to declare the subject property as an evacuee property and the Court below is not having jurisdiction to entertain the suit O.S.No.136 of 2005 and pass the judgment

and decree dated 5.11.2012 and also to grant the relief as in W.P.(PIL) No.74 of 2016.

18. It is also pertinent to mention here that the prior to filing of the present writ petition one Economic Weaker Section Private Housing Welfare Association filed W.P.No.14085 of 2016 against respondent Nos.1 to 4 questioning the inaction of respondents Nos.2 to 4 therein in not preventing the respondent Nos.5 to 8 therein from encroaching the land about 1,550 square yards in Survey Nos.102, 103, 102/2 and 102/3 as illegal, arbitrary and the said writ petition was dismissed as withdrawn on 25.04.2016. The present W.P.(PIL) No.74 of 2016, is filed by the petitioner association, without disclosing the factum of filing earlier writ petition including dismissal of the said writ petition and the petitioner association had not approached the Court with clean hands.

19. It is very much relevant to place on record that in ***Amar Singh v. Union of India and others***¹, the Hon'ble Apex Court held that litigant, who comes to Court and invokes writ jurisdiction, must come with clean hands and he cannot prevaricate and take inconsistent stands, because law is not a game of chess and equitable nature of remedy must be governed by

¹ (2011) 7 SCC 69

principle of *uberrima fides*. The Court highlighted that such suppression of material facts undermines the integrity of the judicial process, emphasizing the importance of transparency and truthfulness in all interactions with the Court.

20. In ***K.D. Sharma v. Steel Authority of India Limited and ors***,² the Hon'ble Apex Court held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

21. In so far as the relief sought by respondent Nos.6 to 9 in W.P.No.17053 of 2016 seeking direction declaring the action of respondent Nos.1 and 2 therein from interfering with the possession and enjoyment of the subject property is concerned,

² (2008)12 SCC 481

this Court is not inclined to grant the said relief, while exercising the powers conferred under Article 226 of Constitution of India. Whether the respondent Nos.6 to 9 are in physical possession of the subject property or official respondents or any other persons are in possession of the subject property is disputed question of fact and the same cannot be adjudicated in the Writ Petition and they are having remedy to approach the competent Civil Court. The record discloses that the respondent Nos.6 to 9 have filed suit in O.S.No.1026 of 2016 against the respondent No.3 for grant of perpetual injunction, subsequently they withdrawn the said suit. Hence, this Court is of the considered view that respondent Nos.6 to 9 are entitled to avail the common law remedy by approaching the competent Civil Court seeking appropriate relief, if so they are aggrieved.

22. It is already stated *supra* that unless and until the judgment and decree dated 05.11.2012, passed in O.S.No.136 of 2005, was set aside, reviewed or modified through appropriate proceedings, this Court while adjudicating the proceedings under Article 226 of the Constitution of India is not having jurisdiction to declare that the subject property as evacuee/ Government property and the respondent Nos.6 to 9 are not entitled to claim any rights over the said property. Hence this Court does not find any grounds to grant

the relief sought in the Writ Petition (PIL) No.74 of 2016. Point Nos (i) to (v) are answered accordingly.

23. In the result, both the writ petitions, (i) W.P. (PIL) No.74 of 2016 and (ii) W.P.No.17053 of 2016 are dismissed without costs. However, it is left open to the parties to take appropriate steps to ascertain their claims over the subject property by availing the remedies as available under law, if so they are aggrieved.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

ALOK ARADHE, CJ

J. SREENIVAS RAO, J

23rd August, 2024

L.R. Copy to be marked: 'Yes'
PSW/PGP