

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

+ WRIT PETITION No.15314 OF 2017

% Dated 21.03.2024

Syed Abdul Gafoor Saab chisti Darga, Kosgi,
Represented by its Mutawalis
Sri Sandal Yougender Goud
Son of S.Yellaiah Goud,
Aged about 53 years, Occupation: Business,
Resident of H.No.3-1-133, IB Road,
Tandur, Vikarabad District.

....Petitioner

VERSUS

\$ The State of Telangana,
Rep. by its Principal Secretary (Revenue) Department,
Secretariat, Hyderabad-22,
and four others

... Respondents

! Counsel for Petitioners : Mr.Govardhana Venu

^ Counsel for Respondents : GP for Revenue
AGP for Home

< GIST:

> HEAD NOTE:

? CITATIONS:

1. 1982 LawSuit (SC) 81 = 1982 (2) SCC 134
2. 2011 (6) ALD 283
3. 2012 (3) ALD 586
4. 2003 (5) ALD 421
5. (2014) 1 SCC 603
6. (2022) 6 ALT 529

THE HONOURABLE SRI JUSTICE J.SREENIVAS RAO
WRIT PETITION No.15314 of 2017

ORDER:

This writ petition is filed seeking the following relief:

“... to issue a writ, order or direction more particularly one in the nature of Writ of mandamus declaring the action of the Respondents in issuing proceedings dated 12.04.2017, in reference No.A/1870/ 2012 in attempting to take possession of land admeasuring Acres 6.00 in Survey No.1665/E under the pretext that the land is ceiling surplus Government land without any basis, is arbitrary, illegal and violative of principles of natural justice and article 300-A of Constitution of India and consequently direct the Respondents to not to dispossess the petitioner Dargha from the land admeasuring Ac.6-00 Gunts in SY.No.1665/E in the interest of justice...”

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

2.1. Petitioner namely “**Syed Abdul Gafoor Saab Chisti Darga**” (hereinafter called ‘petitioner’) is claiming rights over the property to an extent of Ac.6.00 in Sy.No.1665/E situated at Kosgi Village and Mandal, Mahabubnagar District. It is stated that petitioner is in possession of the said land more than 80 years within the knowledge of the Government and all the concerned and more particularly petitioner is shown as pattadar and the nature of the land is shown as patta land in revenue records.

2.2. It is further stated that father of petitioner Muthawali’s, namely, Sandal Yellaiah Goud, has become the only disciple of petitioner and he had purchased the subject land from its pattadar namely, Smt.Rani Ramchandramma, even before the formation of State of Andhra

Pradesh. In Kasra Pahani and Chesela Pahani also the name of Smt.Rani Ramachndramma is shown as pattadar. It is further stated that petitioner name is shown as pattadar in old and new revenue records and it is not a 'ceiling land'. After Samadhi of Late Abdul Gaffoor Saab, his disciple, Sandal Yellaiah Goud, who is the Muthawali of petitioner, was in possession and enjoyment of the said land and he constructed prayer halls (Samakhana), other houses and also constructed compound wall around Ac.6.13 gts., covered by both survey numbers 1664 and 1665/E about more than 80 years back. It is also stated that Sandal Yellaiah Goud died in the year 2004 and since then the deponent of this writ petition, namely, Sandal Yougander Goud is continuing as Muthawali of petitioner.

2.3. It is further stated that petitioner has been performing URS (urusu) every year. The Gurus have planted innumerable fruit bearing trees i.e., Mango trees, Tamarind Trees and Neem Trees, in the subject property and all the trees are more than 80 years age and religious importance and emotional value to the local people.

2.4. While things stood thus, respondent No.3 issued notice *vide* No.A3/148/2014 dated 13.05.2015 directing petitioner to submit explanation along with documents how the government land to an extent of Ac.5.00 in Sy.No./1665 is in your possession, otherwise action will be taken as per revenue records. Pursuant to the same, muthawali/petitioner submitted explanation on 26.05.2015 stating

that subject land is not a government land and it is a private patta land and his father Sandal Yellaiah Goud had purchased the land from original pattadar Smt.Rani Ramachandramma before 1954-55 and since then petitioner is in possession of the subject property and requested respondent No.3 to drop the proceedings.

2.5. Thereafter, respondent No.3 had issued another notice *vide* No.A/1870/2012 dated 16.01.2017 directing the petitioner to submit explanation along with document pertaining to land to an extent of Ac.1.13 gts. in Sy.No.1664 and Ac.5.00 in Sy.No.1665. Pursuant to the same, petitioner submitted reply on 31.01.2017 denying the allegations made by respondent No.3 and stated that the documents of purchase of subject property are not traceable, as and when found the same will submit.

2.6. Thereafter, respondent No.3 had issued another notice under Form No.7 exercising the powers conferred under Section 7 of the Land Encroachment Act, 1905 (hereinafter called brevity 'Act') *vide* Rc.No.A/1870/2015 dated 15.03.2017 alleging that petitioner had encroached the land to an extent of Ac.6.00 in Sy.No.1665 of Government land and constructed a compound wall illegally and directed petitioner to submit explanation within 15 days as to why the petitioner should not be evicted from the subject property. Pursuant to the same, petitioner submitted explanation/reply on 30.03.2017 denying the allegations made thereunder and requested respondent

No.3 to drop the proceedings. Respondent No.3 without properly considering the same passed the impugned order *vide* proceedings No.A/1870/2012 dated 12.04.2017.

3. Respondent No.3 filed counter-affidavit stating that as per the revenue records, an extent of Ac.19.13 gts. covered by Sy.No.1665/E is originally belonging to one Smt.Rani Ramachandramma and under the land ceiling proceedings, she was declared surplus land holder *vide* Proceedings No.2237/1975 dated 03.03.1980 and as such, the above said extent of land was surrendered to the Government and the same was taken over by the Deputy Tahasildar (Land Reforms) under Section 10 of the A.P. Land Reforms (Ceiling on Agricultural Holding) Act, 1973, (hereinafter called brevity, 'Act, 1973') through proceedings C.C.No.2237/1975 dated 03.03.1980 after conducting panchanama and since then the subject property vested upon the government.

3.1. It is further stated that neither original declarant nor any other person including petitioner has questioned the said land ceiling proceedings and the same has become final. Hence, petitioner is not entitled to claim that the subject property is a private patta land and petitioner illegally encroached the government land. Respondent No.3 had rightly initiated the proceedings exercising the powers conferred under the Act and after following due procedure passed the impugned order dated 12.04.2017.

4. Heard Sri Govardhana Venu, learned counsel for the petitioner, and learned Government Pleader for Revenue appearing on behalf of respondent Nos.1 to 4 and learned Assistant Government Pleader for Home appearing on behalf of respondent No.5.

5. Learned counsel for the petitioner contended that the subject property is a private patta land, but not a government land and petitioner had purchased the same from Smt.Rani Ramachandramma, who is the original pattadar, and petitioner is in peaceful possession and enjoyment of the said property more than 80 years within the knowledge of respondent authorities. He further contended that petitioner's vendor and petitioner name was mutated in the revenue records including kasra pahani and chesela pahani, wherein specifically mentioned that the subject land is private patta land. He further contended that Muthawali's of petitioner constructed Darga planted Mango, Tamarind and Neem trees, which are also more than 80 years old and entire land is covered by a compound wall.

5.1. He vehemently contended that respondent No.3 is not having authority or jurisdiction to initiate summary proceedings and pass the impugned eviction order dated 12.04.2017 by exercising the powers conferred under the provisions of the Act. Unless and until, respondent Nos.1 to 4 established their title over the subject property by approaching the competent Civil Court, respondent No.3 is not entitled to initiate proceedings under the provisions of the Act. Hence,

the impugned order passed by respondent No.3 is contrary to law and without jurisdiction.

5.2. He further contended that respondent No.3 has not filed any documents pertaining to the land ceiling proceedings to establish that Smt. Rani Ramachandramma was declared as surplus land holder and she surrendered the excess land to government and government has taken possession of the said property including the property of the petitioner, especially petitioner is in possession of the subject property since 1948 to till date and respondent No.3 has also admitted the possession of the petitioner. He also contended that when the bonafide dispute and complicated questions of title involved, respondent No.3 is not entitled to initiate summary proceedings under the provisions of Act and the same is not permissible under law.

5.3. In support of his contention, he relied upon the following judgments:

1. **Government of Andhra Pradesh v. Thummala Krishna Rao**¹,
2. **B.N.Manga Devi and another v. State of Andhra Pradesh**², and
3. **Telangana N.G.Os. Co-operative House Building Society Ltd. v. State of Andhra Pradesh**³

¹ 1982 LawSuit (SC) 81 = 1982 (2) SCC 134

² 2011 (6) ALD 283

³ 2012 (3) ALD 586

6. Learned Government Pleader contended that the land to an extent of Ac.19.13 gts. covered by Sy.Nos.1664 and 1665 belonging to Smt. Rani Ramachandramma and she filed declaration in land ceiling proceedings under the Act, 1973, wherein she was declared as surplus land holder and government has taken possession of the above said land under Section 10 of the Act after conducting panchanama *vide* Proceedings No.2237 of 1975 dated 03.03.1980 and since then Government has been in possession of the said property. Petitioner is not entitled to claim the property through Smt.Rani Ramachandramma and she is also not having any right to alienate the said property in favour of petitioner and further petitioner has not filed any piece of evidence to that effect nor filed any objections before the concerned authorities during the course of land ceiling proceedings nor questioned the said proceedings and the said proceedings has become final.

6.1. He further contended that petitioner had encroached Ac.5.00 of land in Sy.No.1665 and also Ac.1.13 gts. in Sy.No.1664. Admittedly, the said land is government land. Respondent No.3 has rightly exercised the powers conferred under the Act and issued notice dated 15.03.2017 and after considering the explanation dated 30.03.2017 and by duly verifying the records passed the impugned order dated 12.04.2017 by giving cogent reasons. He further submits that Darga was constructed in an extent of Ac.1.13 gts. covered by Sy.No.1664

and the respondent authorities are not interfering with the same. He further contended that petitioner without availing the remedy of appeal filed the writ petition and the same is not maintainable under law. He further submitted that the subject land was allotted to Government Polytechnic Collage and petitioner is not entitled any relief, much less the relief sought in the writ petition.

7. Having considered the rival submissions made by the respective parties and after perusal of the material available on record, it reveals that petitioner Darga is claiming rights over the property through Smt.Rani Ramachandramma as well as basing upon longstanding possession. Petitioner in the sworn affidavit stated that petitioner had purchased the subject property from Smt. Rani Ramachandramma, however, petitioner has not placed any evidence to that extent before respondent No.3 nor before this Court. Petitioner himself in reply dated 31.01.2017 to the notice dated 16.01.2017 stated as follows:

“That the documents of purchase of the said land area are not traceable at present, as when we found the same, we submit to this authority”

8. Similarly, petitioner is claiming rights over the property basing on the longstanding possession, contending that petitioner is in possession of the subject property more than 80 years and respondent No.3 is not having authority or jurisdiction to initiate summary

proceedings by exercising the powers conferred under the Act. The specific claim of respondent authorities is that the subject land originally belongs to Smt. Rani Ramachandramma and she filed declaration in land ceiling proceedings and she was declared as surplus holder for an extent of Ac.19.13 gts in Sy.No.1665/E and the Government has taken possession of the said property into their custody after conducting panchanama through proceedings dated 03.03.1980.

9. It is relevant to place on record that Smt. Rani Ramachandramma or petitioner or any other persons have not questioned the land ceiling proceedings before any authority. However, petitioner's claim is that the subject land is covered with compound wall and constructed Darga and also covered with 80 years age old trees. Whereas, respondent No.3 pleaded that the subject property was taken into government custody. Whether the respondent authorities have taken physical possession, whether petitioner is in physical possession of the subject property i.e., to an extent of Ac.5.00 gts. in Sy.No.1665 since, 80 years and basing upon the longstanding possession and basing upon revenue entries whether petitioner is entitled to claim title over the property are disputed questions of facts and this Court is not inclined to go into those aspects in the writ petition on the sole ground that aggrieved by the impugned order dated 12.04.2017, statutory remedy of appeal is provided under

Section 10 of the Act. The petitioner without availing the said remedy straight away approached this Court and filed the present writ petition. The appellate Authority is having power to adjudicate all the grounds raised in the writ petition by examining the entire records.

10. It is an undisputed fact that as per the provisions of the Act, respondent No.3 is having authority and jurisdiction to initiate the proceedings to protect the government property. The contention of learned counsel for the petitioner is that basing on the longstanding possession, petitioner can acquire the title over the subject property and unless and until respondent Government established their title by approaching the competent Civil Court, respondent No.3 is not entitled to initiate the proceedings under Act is not tenable under law on the sole ground that petitioner has taken divergent stands one way petitioner is claiming rights and title over the subject property from Smt. Rani Ramchandramma and on the other hand basing upon longstanding possession against government.

11. In the case of **Thummala Krishna Rao** (1 supra), held that the Sections 6(1) and 7 states that the initiation of summary proceedings, which can only be done where unauthorized occupation of government property is not disputed. However, if the title to the land is genuinely disputed by the occupant, such disputes must be adjudicated through civil suits. The bona fides of the occupant's claim can be inferred from their occupation over a long period. Initially, the Single Judge

recommended pursuing civil suits to establish title, but the Division Bench overturned this decision, highlighting the Act's inadequacy in resolving complex ownership disputes. The Supreme Court upheld this decision, emphasizing the necessity of due process and the inappropriate use of summary eviction in genuine disputes over land ownership. The main principle elucidated was that summary eviction under the Act is only applicable when the land unambiguously belongs to the government, stressing the importance of impartial adjudication and established legal procedures to ensure fairness in resolving disputes between government and occupants.

12. In the case of **B.N. Manga Devi**, (2 supra) the court emphasized the importance of adjudicating disputes of title between the government and occupants of land through ordinary court proceedings rather than summary procedures, especially when complicated questions of title arise. The court cited precedents such as *Government of Andhra Pradesh v. Thummala Krishna Rao* and *State of Rajasthan v. Padmavati Devi*, where it was held that summary eviction remedies should not be applied when there is a bona fide dispute over possession. The court also highlighted the principles of settled possession, emphasizing that mere possession does not confer absolute rights and that possession must be effective, undisturbed, and to the knowledge of the owner or without concealment by the possessor to be considered settled possession. Therefore, until the

government establishes its title through legal proceedings, occupants cannot be summarily evicted, and any actions taken by authorities in contravention of this principle should be deemed ineffective.

13. In the case of **Telangana NGO's Co-operative House Building Society Ltd.** (3 supra), the court referenced *Government of Andhra Pradesh v. Thummala Krishna Rao*, highlighting that the summary remedy provided under the A.P. Land Encroachment Act cannot be utilized when complicated questions of title arise for decision. The court emphasized that duration of occupation is not conclusive, but rather the nature of the property and the bona fide nature of the claim of the occupant are essential considerations. The court found that there was a bona fide dispute of title between the petitioner society and the government regarding the land in question, thus the summary remedy under the A.P. Land Encroachment Act was deemed inappropriate. Despite an earlier order leaving open the possibility for the state to take action for recovery of possession, the court ruled that due process of law must be followed for eviction, and the government cannot unilaterally claim possession based on the summary remedy. The court set aside the impugned order and subsequent notice, allowing the respondents to establish their title and seek recovery of possession through a properly constituted suit.

14. The judgments which are relied upon by the learned counsel for the petitioner are not applicable to the facts and circumstances of the

case, on the sole ground that in those cases the parties are claiming rights basing upon uninterrupted longstanding possession of the government land and they are not claiming any other rights. Whereas, in the case on hand, petitioner one way claiming rights from Smt. Rani Ramachandramma through sale and on the other way claiming rights basing on the longstanding possession against the government.

15. It is also relevant to place on record that this Court in **R.Jayasimha Reddy v. Government of Andhra Pradesh and another⁴**, while considering the judgment of the Hon'ble Apex Court and Division Bench of this Court including the judgment of Thummala Krishna Rao (*1 supra*), specifically held that the person who is in possession of the government land and claiming longstanding occupation can never be allowed to urge that the revenue authorities cannot exercise the powers under Land Encroachment Act after long lapse of time and it is further held in para Nos.8 and 9 that:

8. It is the case of the petitioner that for the last 60 years, his family is in possession of the land and that the sethwar for the year 1330-F also proves the occupation and possession of his grandfather late Venkatarama Reddy. Though the Government denied that the petitioner's family had been in possession of the property, they admit that the petitioner encroached the Government land and constructed a house without any permission. In the background of this, is it permissible for this Court in exercise of jurisdiction under Article 226 of the Constitution to grant the prayer that the petitioner be declared

⁴ 2003 (5) ALD 421

as absolute owner in respect of the disputed land. It is well settled and indeed axiomatic that ordinarily while exercising the power of judicial review under Article 226 of the Constitution, this Court would not decide disputed questions of title (See *State of Rajasthan v. Bhawani Singh*, , *Mohan Pandey v. Usha Rani Rajgaria*, , and *Parvatibai Subhanrao Nalawada v. Anwarali Hasanali Makani*, .

9. In *State of Rajasthan v. Bhawani Singh* (supra), the Supreme Court observed thus:

Having heard the Counsel for the parties, we are of the opinion that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition.

16. It is also relevant to place on record that in **Commissioner of Income Tax and others v. Chhabil Dass Agarwal**⁵, the Hon'ble Apex Court held at paras 15 and 16 that:

15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal case*, *Titaghur Paper Mills case* and other similar judgments that the High Court will

⁵ (2014) 1 SCC 603

not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

16. In the instant case, the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In *Ram and Shyam Co. v. State of Haryana* [(1985) 3 SCC 267] this Court has noticed that if an appeal is from “Caesar to Caesar's wife” the existence of alternative remedy would be a mirage and an exercise in futility.

17. It is also very much relevant to place on record the Hon'ble Division Bench of this Court in **Gaurav Lubricants (P) Ltd. v. T.N. Mercantile Bank Ltd**⁶, where it is held that:

37. In *Union Bank of India v. Satyawati Tandon* Hon'ble Supreme Court cautioned High Courts from entertaining writ petitions when statute prescribes detailed mechanism. It has also cautioned against passing interim orders. Hon'ble Supreme Court said as under:

⁶ (2022) 6 ALT 529

“43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

18. It is already stated supra that aggrieved by the orders passed by respondent No.3, petitioner is having alternative statutorily engrafted and efficacious remedy of appeal under Section 10 of the Act, 1905. When a person has a statutorily engrafted remedy available to redress his grievance, the writ Court does not entertain the writ petition and relegates him to avail the said remedy. Hence, petitioner is not entitled to invoke the jurisdiction of this Court under Article 226 of Constitution of India.

19. The petitioner filed this writ petition questioning the order passed by respondent No.3 dated 12.04.2017 and this Court, while ordering notice before admission on 26.04.2017, posted to 13.06.2017 and till such time granted interim order which reads as follows: “*status quo* obtaining as on today shall be maintained regarding possession” and the said order was not extended. However, both the counsel during the course of hearing submit that respondents have not taken any coercive steps against the subject property pursuant to the impugned order dated 12.04.2017.

20. For the foregoing reasons as well as precedent decisions, the writ petition is dismissed. However, petitioner is granted liberty to file appeal before appellate authority within a period of thirty (30) days from the date of receipt of a copy of this order, in such event, the appellate authority is directed to receive the same without insisting delay and consider the same on merits and pass appropriate orders in accordance with law uninfluenced by any of the observations made in this order. Till filing of the appeal, the parties are directed to maintain *status quo* with regard to possession of the subject property. It is needless to observe that both the parties are entitled to raise all the grounds which are available under law.

21. With the above direction, the writ petition is dismissed accordingly. No costs.

In view of dismissal of main writ petition, interlocutory applications pending, if any, in this writ petition shall stand closed.

J.SREENIVAS RAO, J

Date: 21.03.2024

L.R. copy to be marked – Yes

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