

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

+ WRIT PETITION No.31956 OF 2017

% Dated 28.06.2024

Sri Dilip Kumar Tiwari, S/o.late Sri Parasuram Tiwari,
Aged: 72 years, Occ: Retired,
R/o.H.No.15-17-154/2/B12,
Sri Niliyam Apartment,
Dwarakanagar, Khammam – 507002
Khammam District and four others

....Petitioners

VERSUS

\$ State of Telangana
Represented by its Principal Secretary,
Revenue, Secretariat, Hyderabad and three others.

... Respondents

! Counsel for Petitioners : Mr.T.S.Praveen Kumar

^ Counsel for Respondents : GP for Revenue

< GIST:

> HEAD NOTE:

? CITATIONS:

1. 2024 (2) ALT 753

THE HONOURABLE SRI JUSTICE J.SREENIVAS RAO

WRIT PETITION No.31956 of 2017

ORDER:

This writ petition is filed for the following relief:

“...the issue a Writ, Order or Direction in the nature of Mandamus or otherwise declaring the inaction on the part of the Respondents in not considering the representations dated 27.12.2008, 6.6.2009, 25.06.2009, 19.8.2011, 9.1.2014 and 18.2.2015 and in identifying and allotting short fall of land parcel in Sy.No.275 of Khammam, Khammam District, to the petitioner in lieu of the land lost by them in Sy.No.123, Zaheerpura, Khammam City, is bad, illegal, unauthorized, arbitrary and colourable exercise of power and as such non est in law ...”

2. Heard Sri T.S. Praveen Kumar, learned counsel for the petitioners, and learned Assistant Government Pleader for Revenue appearing on behalf of the respondents.

3. Learned counsel for the petitioners submits that Khammam Municipality has made layout of plots in Sy.No.123 and sold the said plots in public auction to various persons on payment of costs. In the said auction, Gokul Chand Mishra, Nomula Viswanadham, Rayapudi Ramulu, Kadavendi Chakrapani and Poonam Chand have purchased plot Nos.1 to 5 respectively to an extent of each 833.33 sq. yards and Arvapally Venkateswara Rao has purchased plot No.6 to an extent of 808.11 sq. yards and paid the amounts. Pursuant to the same, Khammam Municipality had issued sale certificates to the above said persons. Subsequently, Sri Gokul Chand Mishra died and after his

death Smt. Radhabai Mishra succeeded the said property. Smt. Radhabai Mishra executed a Will deed *vide* document bearing No.25 of 1993 dated 19.03.1993 in favour of petitioner No.1 herein; Sri Nomula Viswanadham and his son Nomula Purushotham Rao expired and Nomula Parvathi, W/o.Nomula Purushotham Rao, who is petitioner No.2 herein, succeeded the property of Nomula Viswanadham; Rayapudi Ramulu sold the plot to Sri Venkatsarvaiah, who also died, and his son Venkateswara Rao-petitioner No.3 herein succeeded the property; Kadavendi Chakrapani, who is the original purchaser, and his eldest son Kadavendi Rajeswara Rao passed away and the son of Kadavendi Rajeswara Rao namely, Kadavendi Badri Prasad-petitioner No.4 herein succeeded the property; Sri Poonam Chand, original purchaser, died and in the family arrangement, the property went to his brother's son namely Shyam Prasad Tiwari-petitioner No.5 as per O.S.No.122 of 1979.

3.1. Learned counsel further submits that though Khammam Municipality has sold the land in public auction, the petitioners and their predecessors have found that the said land was in occupation of trespassers belonging to scheduled tribe community (Lambada). Since the predecessors of the petitioners were not able to enjoy the said land having purchased the same through public auction by paying amounts, they have filed various suits against the trespassers which were decreed in favour of the predecessors of the petitioners. The suit in O.S.No.122 of 1979 was decreed and thereafter the predecessors have filed E.P.No.52

of 1983 and the same was allowed. The execution Court issued warrants in the said E.P. for delivery of property in favour of the predecessors of the petitioners. He further submits that at that juncture, the then Chief Minister visited Khammam Town in the month of October 2002. The encroachers/occupiers of the subject land requested the Chief Minister to protect them from being evicted from the subject land. Basing on their request, the Chief Minister has assured that their possession would be protected and directed the concerned officials to negotiate with the land owners and construct a colony under VAMBAY Scheme for scheduled tribe community and also the owners of the land were to be allotted separate land equal in size and value to that of the land they are losing. Pursuant to the said instructions, the revenue authorities had identified the land in Sy.No.275 at Khanapuram Haveli and plots were given to the predecessors of the petitioners. Accordingly, a Deed of Exchange was executed by the Government in favour of the predecessors of petitioners *vide* registered document bearing No.2086 of 2008 to 2090 of 2008 dated 29.02.2008.

3.2. He further submits that in the Deed of Exchange, the respondent authorities have mentioned 40' wide road is only existing abutting the property allotted to the petitioners and their predecessors, though 60' wide road is existing in the master plan even before execution of the said document. The respondent authorities without disclosing the same, they have executed Deed of Exchange on 29-02-2008

3.3. He further submits that immediately, after came to know the same, the petitioners and their predecessors have approached respondent authorities and submitted representation on 27.12.2008 stating that they are losing the land to an extent of 330.33 sq. yards each and requested them to allot equal size and value of the land. Pursuant to the said representation, respondent No.2 directed respondent No.4 to get the boundaries re-fixed. Thereafter, the petitioners have submitted representations dated 06.06.2009 and 25.06.2009 to allot the equivalent land. Basing on the said representations, respondent No.4 issued Memo dated 13.07.2009 directing the Mandal Surveyor, Khammam, to identify the vacant land adjacent to the same Sy.No.275 for compensating the loss of land due to master plan and re-fixation of the boundaries and to submit report on or before 30.07.2009 positively. However, the respondent authorities have not taken any steps. Thereafter, the petitioners have submitted another representation dated 19.08.2011 to respondent No.2 requesting to allot 333.33 sq. yards of alternative land which they have lost as per master plan. Thereafter, the petitioners submitted representations dated 19.01.2012 and 18.02.2015. Pursuant to the said representations, respondent No.4 once again issued letter dated 30.06.2015 directing the Mandal Surveyor to identify the vacant land adjacent to the same survey number. However, the respondent authorities have not taken any positive steps to consider the claim of the petitioners for allotment of alternative land to an extent of 333.33 sq.

yards each, which they are entitled under law. The action of the respondent authorities in not identifying and not allotting shortfall of land to the petitioners in lieu of the land lost by them in Sy.No.123 is illegal and violative of Article 300-A of Constitution of India.

4. Learned Assistant Government Pleader submits that it is an undisputed fact that the predecessors of the petitioners have purchased the land in Sy.No.123 in public auction through Khammam Municipality and also executed Deed of Exchange and allotted alternative land in Sy.No.275. It is also undisputed fact that in the Deed of Exchange the width of road was shown as 40' and as per the master plan there is 60' wide road and the concerned authorities without verifying the records executed the Deed of Exchange and mentioned 40' wide road in the said document and by virtue of the same, the petitioners and their predecessors are losing their land. He further submits that as per the G.O.Ms.No.168 Municipal Administration and Urban Development Department, dated 07.04.2012, the subject property comes within the purview of the Municipal Corporation, Khammam, and the petitioners are entitled the benefit by making construction of extra floor with an equivalent floor with in equivalent built up for area surrendered and the petitioners are not entitled to claim equivalent land at this point of time and the claim made by them is belated one and they are not entitled the relief sought in the writ petition.

5. Learned counsel for the petitioners by way of reply submits that the respondents are not entitled to force the petitioners to make necessary applications under G.O.Ms.No.168, especially the petitioners are not having any interest to construct extra floor and the above said G.O.Ms.No.168 is not applicable to the present case on the ground that the same is came into force on 07.04.2012, whereas the Deed of Exchange executed by the respondent authorities on 29.02.2008, which is much prior to the issuance of G.O.

6. I have considered the rival submissions made by the respective parties and perused the material available on record. It is an undisputed fact that the predecessors of the petitioners have purchased the property through public auction which was conducted by the Khammam Municipality in the year 1354 Fasli i.e., 13.09.1953, by paying valuable sale consideration and concerned authorities have issued sale certificates. When the predecessors of the petitioners found that the land which was purchased by them in public auction was in occupation of the trespassers/encroachers, they filed suit against the encroachers, *vide* O.S.No.122 of 1979, and the same was decreed. Thereafter, they filed E.P.No.52 of 1983, wherein the execution Court issued warrants for delivery of possession of the property.

7. It further appears from the record that basing on the request made by the encroachers/occupiers of the subject land covered by Sy.No.123, the then Chief Minister directed the official respondents not to evict the

encroachers/occupiers and further directed them to allot alternative land to the predecessors of the petitioners and others, who have purchased the same through public auction. Pursuant to the said instructions, the revenue officials have identified the land in Sy.No.275 at Khanapuram Haveli of Khammam Town and issued proceedings vide No.E1/12/2003 dated 10.10.2007. Accordingly, the Government and the predecessors of the petitioners have entered into settlement and Government had executed Deed of Exchange *vide* Registered document Nos.2086 of 2008 to 2090 of 2008 dated 29.02.2008 in favour of the predecessors of the petitioners, wherein 40' road is existing.

8. The specific claim of the petitioners that when the petitioners have made necessary applications for construction of houses, they came to know that in the master plan which was prepared long back, even prior to execution of Deed of Exchange, dated 29.02.2008, 60' wide road existing. The respondents having got the knowledge about 60' wide road, without disclosing the said fact, executed the Deed of Exchange in favour of the predecessors of the petitioners by mentioning it as 40' wide road. By virtue of the same, the petitioners and their predecessors are foregoing 333.33 sq. yards in each plot. As soon as they came to know about the said mistake committed by the respondents, the petitioners have approached the respondent authorities and submitted representations requesting them to allot equivalent land.

9. The record further discloses that pursuant to the representation submitted by the petitioners, the District Collector directed respondent No.4 to conduct enquiry and take necessary steps. Pursuant to the same, respondent No.4 issued Memo dated 13.07.2009 directing the Mandal Surveyor, Khammam, to identify the vacant land adjacent to the very same Sy.No.275, for compensating the loss of land due to master plan and re-fixation of the boundaries and submit report by 30.07.2009. In spite of the same, the respondents have not taken any further steps. It further appears from the record that the petitioners have submitted representations and also got issued legal notice through their counsel to respondent No.2. Pursuant to the said notice, the District Collector, issued letter dated 05.03.2009 directing the Tahasildar to take necessary steps in respect of the claim of the petitioners. Accordingly, respondent No.4 issued memo once again vide Rc.No.B/1210/2002 dated 30.06.2015 directing the Mandal Revenue Inspector-I and Mandal Surveyor Khammam (U) to identify the vacant land adjacent to the same survey number for compensating the loss of land due to master plan and re-fixation of boundaries and submit report. In spite of the same, the respondents have not taken any positive steps to consider the claim of the petitioners for allotment of equivalent land.

10. It is very much relevant to place on record that the stand taken by respondent No.4 in the counter-affidavit that by virtue of G.O.Ms.No.168, dated.07.04.2012, the petitioners are entitled to

construct an extra floor within equivalent built up area for the area surrendered and they are not entitled to claim for allotment of equivalent land at this juncture, is not tenable under law on the ground that the respondent authorities even without disclosing the said factum of existing 60' wide road in master plan, they have executed the Deed of Exchange in faovur of the petitioners by mentioning it as 40' wide road. Hence, respondent No.4 is not entitled to insist or direct the petitioners to avail the benefit under G.O.Ms.No.168, especially, the said G.O. came into force on 07.04.2012, whereas the Deed of Exchange was executed on 29.02.2008 and the petitioners are not interested to construct extra floor, especially when they are claiming equivalent land.

11. It is already observed *supra* that the predecessors of the petitioners have purchased the property in Sy.No.123 through public auction conducted by the Khammam Municipality by paying valuable sale consideration and they filed comprehensive suits against the encroachers/occupiers and succeeded in the said cases. Basing upon the assurance given by the Government, the predecessors of the petitioners have entered settlement and accepted to receive the equivalent land and accordingly respondent Government had executed Deed of Exchange. Hence, the respondent authorities are not entitled to deny the claim of the petitioners on the alleged ground of efflux of time, especially the petitioners and their predecessors are pursuing their legitimate rights since 27.12.2008 by submitting representations and

also got issued legal notices through their counsel and also they are not entitled to insist the petitioners to avail the scheme introduced under G.O.Ms.No.168, dated 07.04.2012. Hence, the action of the respondents in not allotting equivalent land or paying compensation to the petitioners as per the provisions of Right to Fair Compensation in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) is liable to be declared as illegal, arbitrary and violative of Article 300-A of Constitution of India.

12. It is also very much relevant to place on record that in ITC Limited, rep. by **Pinnamraju Ashok varma, Visakhapatnam, A.P v. State of A.P.**¹, High Court of Andhra Pradesh, held that where property rights are involved, any adverse order by the authority results in infringement of right to property guaranteed under Article 300-A of the Constitution of India.

13. For the foregoing reasons, the respondents are directed to consider the representations dated 27.12.2008, 06.06.2009, 25.06.2009, 19.08.2011, 09.01.2012, 18.02.2015 and 13.04.2022 submitted by the petitioners and pass appropriate orders for allotment of shortfall of unencumbered land to an extent of 333.33 sq. yards each to the petitioners in Sy.No.275 or any other land equivalent to the value of the petitioners' property or pay the compensation as per the provisions of the

¹ 2024 (2) ALT 753

Act 30 of 2013, within a period of three (3) months from the date of receipt of a copy of this order.

14. Accordingly, the writ petition is disposed of. No costs.

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

J. SREENIVAS RAO, J

Date: 28.06.2024

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L.R.Copy to be marked [YES]