

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No.39834 OF 2017

Between:

K.Venkata Sathya Bhooshan

... Petitioner

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 30.07.2024

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

MRS. JUSTICE SUREPALLI NANDA

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**WRIT PETITION No.39834 OF 2017**

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K.Venkata Sathya Bhooshan

... **Petitioner**

And

\$ The State of Telangana and others

... **Respondents**

< **Gist:**

> **Head Note:**

! Counsel for the Petitioners : Sri Ennemsetty Akhil

^ Counsel for the Respondents: GP for Municipal Administration
Urban Development for R1.
Sri M.Ajay Kumar, learned
standing counsel for R2 & R5.
Learned standing counsel for
TSRTC for R3 & R4

? **Cases Referred:**

- 1.(2021) 6 SCC 771
- 2.(2021) SCC Online SC page 801
- 3.(1998) 8 SCC 1

HON'BLE MRS JUSTICE SUREPALLI NANDA**WRIT PETITION No.39834 OF 2017****ORDER:**

Heard Sri Ennamsetty Akhil, learned counsel appearing on behalf of the petitioner, learned Government Pleader for Municipal Administration Urban Development appearing on behalf of respondent No.1, Sri M.Ajay Kumar, learned standing counsel for KUDA appearing on behalf of respondent Nos. 2 & 5 and learned standing counsel for TSRTC appearing on behalf of respondent Nos. 3 & 4.

2. **The petitioner approached the court seeking the prayer as under:**

"...to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the impugned action of the respondents particularly respondents 3 and 4 in undertaking construction activity in the land of the petitioner admeasuring 1890 Sq.yards in Survey No.344B (old) 345D(old) with new Sruvey No.205A to D & E (New), at Waddepally Revenue Village, Hanumakonda(M), Warangal Urban District, for establishing HPCL Petrol bunk without initiating any acquisition proceedings etc., under right to fair compensation Act of under any law of acquisition as

highly illegal, arbitrary and violative of Article 14 & 300A of the Constitution of India and pass such order or orders..."

3. The case of the Petitioner, in brief, as per the averments made in the affidavit filed by the Petitioner in support of the present writ petition is as under :

a) It is the case of the petitioner that, originally subject land belongs to Mr.Gulam Mohammed Omer Khan, S/o.Md.Afzal Khan. While, Md.Afzal Khan was alive, partition of property was affected amongst late Md.Afzal Khan and his brother Md.Baquash Khan. The said partition was affected during Nizam's Government, which was acknowledged by the First Class, Talqdar, Dist.Sarfa Khas Mubarak and the subject land fell to the share of Mohd.Afzal Khan (i.e.) father of Gulam Mohammed Omer Khan, who is in continuous possession and occupation throughout. The petitioner herein has been settled with above site admeasuring 1890.00 sq.yards situated in Survey No.344B (old) 345D (old) at Waddepally Revenue village, Hanumakonda (M) of Warangal Urban District with new Survey No.205A to D & E (New).

b) It is the further case of the petitioner that since then the petitioner has been in peaceful possession and enjoyment of the

land. While so, all of a sudden the 3rd respondent corporation through the 4th respondent had straight away undertaken construction activity in a high handed manner by rising basement in the land of petitioner, thereby to construct Petrol Bunk under authorization of the HPCL. However, the Pahani Patrika reflects the name of the pattedar as Sri Gulam Mohammed Omer Khan and the petitioner name was also shown in the column of occupier of the said property, in spite of this clinching evidence, the respondent corporation out of their advantageous position being a statutory corporation high handedly had undertaken the construction of Petrol Bunk through the 6th respondent. Aggrieved by the action of the 3rd and 4th respondents, the present Writ Petition.

PERUSED THE RECORD:

4. The counter affidavit filed on behalf of respondent

No.3 and in particular para Nos. 2 and 3 read as under:-

2. In reply para No.1 of the Affidavit, it is respectfully submitted that at the time of formation of APSRTC, lands and buildings at 58 places were transferred as part and parcel of assets by Government to Corporation through G.O.Ms.No.93, dt.11.01.1958 of Home (Transport-IV) Department, out of which, Hanumakonda land to an extent of Ac.6.00 in Sy.No.344 is also one of the places. **So the**

G.O.ms.No.93, dt.11.01.1958 is the title document for all the 58 places. Since then the land is under possession of Corporation. In view of this, Corporation is the rightful owner of the said property and Corporation is not aware of the sale transaction as mentioned by the Petitioner.

3. In reply to para No.2 of the Affidavit it is respectfully submitted that the Corporation is owner of the land in Sy.No.344, it can utilize the land for its development, hence the land was allotted to HPCL Petrol Bunk on lease basis, which is not illegal.

5. The additional counter affidavit filed on behalf of respondent Nos. 3 and 4 in February, 2018 and in particular para No.3 reads as under:-

3. I respectfully submit that at the time of the formation of the APSRTC, the State Government has transferred certain properties to the APSRTC, vide G.O.Ms.No.93, dated 11.1.1958. It is relevant hereinto submit that the State Government has totally transferred 58 properties to the 3rd Respondent Corporation, which includes the present subject property. The 3rd Respondent Corporation is in possession of the subject property, since the date of transfer of the subject property by the State Government. Neither petitioner nor his predecessors, have right or title over the subject property. **The subject property is the Government property and it was transferred to the**

**3rd Respondent Corporation by way of G.O.Ms.No.93,
dated 11.1.1958**

**6. Reply affidavit filed on behalf of the petitioner and in
particular para No.6 reads as under:-**

6. I submit that the allegations made in paragraph No.3 are absolutely false and baseless. **The corporation is not the owner of the land in Sy.Nos.334B (old) 345D (old) withnew Sy.No.205A to D and E (New), at Waddepally Revenue Village, Hanumakonda Mandal, Warangal Urban District, but I am the owner of the said land** and, as such, the Corporation occupying my land without there being any authority is illegal, arbitrary, unjust apart from being violative of principles of natural justice.

DISCUSSION AND CONCLUSION:

7. A bare perusal of the record indicates that the specific case of the petitioner is that petitioner is in possession of land to an extent of 1890 Sq.yards in Survey No.344B (old) 345D(old) with new Survey No.205A to D &E (New), at Waddepally Revenue Village, Hanumakonda(M), Warangal Urban District. It is further the specific case of the petitioner that Respondent Corporation is not the owner of the subject land at any point of time and the Respondent Corporation taking advantage of the

fact that it is a public sector undertaking forcibly entered into petitioner's land and constructed petrol bunk in petitioner's land located in Waddepally Revenue village. On the contrary, the specific case of the Respondent Nos. 3 and 4 is that at the time of the formation of the APSRTC, the State Government has totally transferred 58 properties, vide G.O.Ms.No.93, dated 11.01.1958 to the 3rd Respondent Corporation i.e.,APSRTC, which includes the present subject property. The 3rd Respondent Corporation is in possession of the subject property, since the date of transfer of the subject property by the State Government. Neither the petitioner nor his predecessors have right or title over the subject property.

8. This Court opines that disputed questions of fact cannot be adjudicated under writ jurisdiction. Admittedly as borne on record the petitioner had not chosen to challenge G.O.Ms.No.93, dated 11.01.1958 till as on date.

9. The Division Bench of Apex Court in a judgment dated 20.04.2021 reported in (2021) 6 SCC 771 in M/s. Radhakrishnan Industries Vs. State of Himachal Pradesh, referred to Whirlpool Corporation Vs. Registrar of Trade Marks (reported in (1998) 8 SCC 1) and further the said

view had been reiterated by a Full Bench of the Apex Court (3 Judges) in a judgment reported in (2021) SCC Online SC page 801 in Magadh Sugar and Energy Limited Vs. State of Bihar and Others dated 24.09.2021 and in the said judgment it is observed at para No.28 as under :

28. The principles of law which emerge are that:

- (i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;*

- (ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;*

- (iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;*

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

This Court opines that the present case falls under Clause (vi) of the para No. 28 of judgment of the Apex Court reported in (2021) SCC Online SC Page 801 in Magadh Sugar and Energy Limited Vs. State of Bihar and

Others dated 24.09.2021 referred to and extracted above, to the extent that this Court declines to decide the disputed questions of fact in the present case.

10. Taking into consideration:

i) That no interim orders had been passed in favour of the petitioner till as on date though the Writ Petition is filed in the year 2017.

ii) The averments made in the counter and additional counter affidavit filed on behalf of respondent Nos. 3 & 4

iii) The observations of the Apex Court in the judgments (referred to and extracted above),

a. (2021) 6 SCC 771, b. (1998) 8 SCC 1 and

c. (2021) SCC Online SC page 801.

The Writ Petition is dismissed, since it is devoid of merits. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

MRS. JUSTICE SUREPALLI NANDA

Dated :30.07.2024

Note: L.R. copy to be marked
b/o ktm