

THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA
AND
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.19200 of 2022

ORDER: *(Per the Hon'ble the Chief Justice Satish Chandra Sharma)*

The petitioners before this Court have filed this present writ petition for quashment of the order, dated 11.04.2022 passed by the Tahsildar and Executive Magistrate, Ameerpet Tahsil, Hyderabad District in exercise of powers conferred under the Telangana State Land Encroachment Act, 1905 ('the Land Encroachment Act', for brevity).

2. The facts of the case reveal that a Writ Petition (Public Interest Litigation) No.4 of 2019 was filed before this Court stating that a large number of persons have illegally encroached the Osmania Hospital premises and Government Mental Hospital premises. The State Government in the Public Interest Litigation was directed to take appropriate action in accordance with law against the encroachers and the State Government has filed a Status Report in the Public Interest Litigation stating that the action has been initiated against the persons in unauthorised occupation inside the Government Mental Hospital premises. The said Public Interest Litigation is

pending for final adjudication. However, after the State Government initiated action under the Land Encroachment Act, 1905, the present writ petition has been filed challenging the order, dated 11.04.2022 passed by the competent authority. The facts further reveal that notices under Section 7 of the Land Encroachment Act, 1905 were issued to all the writ petitioners, who have encroached the Government land on an area inside the boundary wall of the Government Mental Hospital and a reply was filed by all the persons, to whom notices were issued and a final order has been passed on 11.04.2022, which is undisputedly an appealable order.

3. This Court has granted an interim order in the present writ petition and the State Government is not able to take further action in the matter.

4. Learned Government Advocate has argued before this Court that inside the boundary of Government Mental Hospital, which is enclosed by a high-rise boundary wall, the present writ petitioners have constructed small houses and they are encroachers and in those circumstances, the inmates of the Government Mental Hospital are forced to be locked

inside the ward and they cannot move freely in the vicinity of the Government Mental Hospital and on account of the Order of this Court to take action in accordance with law, the action was initiated.

5. The contention of the learned counsel for the petitioners is that one late Nawab Rayees Yar Jung Bahadur was the absolute owner of property admeasuring Acs.97.14 guntas in old survey No.58/1, new survey No.127/1, situated in Bahalookhanguda and the same land was taken over by the Royal Air Force Department and later on, it was handed over to the Government of Hyderabad, which paid rentals to late Nawab Rayees Yar Jung Bahadur and subsequently, to his son, Mir Fazilath Hussain Khan. It has been stated that various Departments have entered into the lease deeds with the landlords and in part of the said land, the Government Mental Hospital has been constructed with a boundary wall. The petitioners' contention is that the purchasers from Nawab Rayees Yar Jung Bahadur filed a writ petition, i.e., W.P.No.9717 of 1993, which was allowed, against which the State Government had preferred a Writ Appeal, which was

dismissed and finally, SLP preferred in the matter was also dismissed.

6. This Court has carefully gone through the order passed in W.P.No.9717 of 1993 and it nowhere deals with the title of the petitioners. There is no document on record filed by the petitioners to establish their title nor any deed executed by late Nawab Rayees Yar Jung Bahadur or his successors in favour of the petitioners is on record. *Prima facie*, the petitioners appear to be encroachers of the Government land and they are raising hue and cry even though their houses are situated inside the Government Mental Hospital restricting the movement of the inmates of the Government Mental Hospital.

7. Learned counsel for the petitioners has filed certain documents along with the application, dated 13.06.2022 and he has relied upon the Order delivered in W.P.No.9717 of 1993.

8. This Court has gone through the aforesaid order and it was a case where Mohd. Khasim and Smt. Ameena Begum, the writ petitioners, came up before this Court for issuance of a direction to the respondents therein to enter their names in

the pattadar pass books. The land, which is subject matter of W.P.No.9717 of 1993, is certainly not the land over which the alleged encroachment is in existence. The Order is binding upon the State Government only in respect of land under the ownership of Mohd. Khasim and Smt. Ameena Begum. The aforesaid land is certainly not a part of Government Mental Hospital.

9. The learned counsel for the petitioners has also brought to the notice of this Court that the Judgment passed in S.A.No.270 of 2009, Judgment passed in A.S.No.294 of 2005 and Judgment passed in O.S.No.1229 of 1993 and the writ petitioners were not parties to the aforesaid proceedings nor was the dispute in respect of the land inside the Government Mental Hospital. Reference has also been made to an Order passed in W.P.No.2927 of 1999, 20795 and 21384 of 2006. The aforesaid orders do not relate to the land, over which the Government Mental Hospital has been constructed.

10. Learned counsel for the petitioners has also placed reliance upon the Judgment delivered by the Hon'ble Supreme Court in the case of **Government of Andhra Pradesh v.**

Thummala Krishna Rao¹ and his contention is that summary proceedings under the Land Encroachment Act, 1905 can be initiated only when there is unauthorised occupation of the Government land. His contention is that the petitioners are disputing the title and therefore, in the light of the aforesaid Judgment, the proceedings initiated under Section 7 of the Land Encroachment Act, 1905 deserve to be quashed.

11. This Court has carefully gone through the Judgment of the aforesaid case. In the aforesaid case, the Osmania University claiming title has filed a suit against one Nawab Habibuddin and it was dismissed in 1959 and an Appeal was preferred in the matter in Civil Appeal No.61 of 1959 by the University and it was also dismissed on 24.01.1964. The State Government was not a party to those proceedings and therefore, the State Government took shelter of the provisions of the Land Encroachment Act, 1905 and in those circumstances, the Hon'ble Supreme Court, as the Osmania University has lost the dispute of title, has held that where the title is disputed, the summary proceedings cannot be initiated.

¹ (1982) 2 SCC 134

12. In the present case, there is no such dispute at all. The land in question is a part and parcel of the Government land, over which the Government Mental Hospital is in existence and the inmates of the said Mental Hospital are being locked inside their wards as large number of small houses have been constructed by the alleged encroachers. In those circumstances, the State Government has initiated proceedings under the Land Encroachment Act, 1905. The Order impugned which is on record, dated 11.04.2022 is reproduced as under:-

“The notice u/s 7 of TSLE Act was issued vide reference 3rd read above to Smt/Sri Afreen Banu, D/o Shaik Khaleed who encroached Government Land to an extent of 11 Sq. Mtrs. In T.S.No.1, Block-B, Ward No.3, of Bahlookhanguda Village without any valid title. As per records, the said land is classified as “G. Mental Hospital”. Further, the Hon’ble High Court for Telangana State, Hyderabad in WP PIL No.4 of 2019, dated 24.03.2022 received vide reference 1st and 2nd read above directed the District Collector, Hyderabad to protect the Government land and also land at Government Hospitals from the land grabbers in the Sate of Telangana and ensure that encroachments are removed from the Hospital by following due process and in accordance with law. The above encroacher also applied earlier under the G.O.Ms.No.58 for

Regularization within the compound wall of Mental Hospital which attests the fact of admission by the applicant that subject land is Government. However as per the Government policy decision taken in the minutes of the Meeting, i.e., dated 14.05.2015 by the Telangana State Land Management Authority (TSLMA) decided that the encroachments within the compound wall of the Government Mental Hospital should not be allowed for regularization under the G.O.Ms.No.58, as the Medical and Health Department has objection to regularize the encroachments within the compound wall of the Mental Hospital, which is under possession of Mental Hospital and retained with Medical and Health Department.

While issuing notice under section 7 of T.S.L.E. Act vide reference 3rd read above, which was served on him/her on the same day i.e., 30.03.2022, he/she was asked to show cause either in person or in writing within (7) days, why he/she should not be subjected to eviction from the said land.

Sri/Smt. Afreen Banu, D/o Shaik Khaleed submitted his/her explanation vide reference 4th read above.

In this regard vide reference 5th read above, the RDO, Secunderabad requested to take immediate further action for passing orders as per TSLE Act on completion of stipulated time given, with regard to the notices issued to the encroachers, without giving scope for any legal complications and report compliance immediately as status report is to be submitted to the Hon'ble Court.

Accordingly, on verification of the reply (common reply furnished by all applicants/encroachers without any documentary evidence) received vide reference 4th read above the encroachers are claiming that the entire land in old Sy.No.58 and new Sy.No.127/1 of Bahlookhanguda Village is private patta land and in fact Government is in illegal occupation, and contend that illegal occupant cannot term other occupant as encroachers and initiate proceedings under LE Act.

Further, it is contended that the LE Act cannot be invoked to evict the persons who were in possession of the property since decades and settled their rights, and requested to drop further action in the matter.

After careful examination of his/her reply (common reply furnished by all applicants/ encroachers without any documentary evidence) and after going through the Revenue/Survey records the details of the land under encroachment is as follows:-

The subject land is classified as Sarkari as per Sethwar which is the original settlement record and in subsequent Revenue record, i.e., Sesala Pahani and Pahanis upto 1980 as also T.S. record which proves beyond any doubt that subject land is Government. In Revenue Records, the Mental Hospital name is mentioned right from the 1950s and is under possession of Mental Hospital only, and the encroachment is in part of the Government land, under the custody of the Mental Hospital authorities, i.e., Government, and in the absence of any documentary evidence by the applicant over the subject land, it is treated as Government land

and applicant is considered as encroacher over the said subject land and hence he/she is liable for eviction.

Therefore, the possession of Smt/Sri Afreen Banu, D/o Shaik Khaleed over the subject land is illegal and as such he/she is liable to be evicted from the land in question admeasuring 11 Sq. Mtrs. In T.S.No.1, Block-B, Ward No.3. He/she shall vacate the land within 48 hours after serving of this order, failing which, he/she will be evicted and the premises will be taken into Government custody/possession.”

13. The impugned order passed by the competent authority, which has been passed after hearing the petitioners, reveals that in revenue records, the Mental Hospital name is mentioned right from 1950s and is under possession of Mental Hospital only and the encroachment is in part of the Government land and no document was brought to the notice of the competent authority in respect of the title by the writ petitioners. Before this Court also, not a single document of any kind has been brought to the notice in respect of title and therefore, this Court is of the opinion that the proceedings initiated by the State Government are in consonance with the statutory provisions as contained in the Land Encroachment Act, 1905.

14. In the considered opinion of this Court, the petitioners, as they do not have title over the property in question, as they have not produced any document establishing their title to the property and as they have not furnished any Judgment and decree passed in their favour, are not entitled to any relief whatsoever kind.

15. Resultantly, the writ petition is dismissed. Miscellaneous applications, pending if any, shall stand dismissed. There shall be no order as to costs.

SATISH CHANDRA SHARMA, CJ

ABHINAND KUMAR SHAVILI, J

14.06.2022
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