

(2022) 07 TEL CK 0066

In the Telangana High Court

Case No : Civil Revision Petition No. 2053, 2069, 2070 Of 2016

554 ASC Battalion

APPELLANT

Vs

Chander

RESPONDENT

Date of Decision : 27-07-2022

Acts Referred:

Secunderabad Contonment And Cantonment Administration Rules, 1930 — Rule 6
Public Premises (Eviction Of Unauthorised Occupants) Act, 1971 — Section 4
Cantonment Act, 1924 — Section 280

Citation : (2022) 07 TEL CK 0066

Hon'ble Judges : P.Sree Sudha, J

Bench : Single Bench

Advocate : N Rajeshwar Rao

Final Decision : Allowed

Judgement

1. This Civil Revision Petition is directed against the order dated 02.06.2015 passed in C.M.A.No.42 of 2011 on the file of the learned I Additional Chief Judge, City Civil Court, Secunderabad, whereby the learned Judge set aside the order dated 16.07.2011 passed in Case No.3995/01/554/N/Q3L of 2003 on the file of the Estate Officer-cum-Station Commander Andhra Sub Area at Bolaram, Secunderabad.
2. 554 ASC Battalion, Andhra Sub Area is the revision petitioner-respondent and Smt.Nagamani is the respondent-petitioner herein.
3. The Estate Officer in his order dated 16.07.2011 declared the respondent herein as an encroacher of A1 defence land under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, 'the Act of 1971' and given thirty days (30) time to remove the encroachment. The complainant-petitioner herein was directed to take steps to issue notice in Form-B to remove structures and handover physical possession. If the respondent fails to handover physical possession of the property to the complainant within thirty days from the date of service of notice, it shall be entitled to remove the encroachments by using force

and the entire expenditure incurred shall be recovered from the respondent.

4. Aggrieved by the said order the respondent herein preferred an appeal vide C.M.A.No.42 of 2011 before the trial Court in which the trial Court remanded the matter to the Estate Officer with a direction to get the land covered by GLR Sy.No.336 of Andhra Sub Area at Bollaram as well as private land claimed by the petitioner as private patta land surveyed through Assistant Director of Survey Land Records and also to consider the said survey report and sketch by permitting both parties to adduce additional documentary evidence relied upon by them and in the event if the Estate Officer found that the respondent is an encroacher of small portion of her residence, consider and see that she has been provided with alternative residential accommodation. Aggrieved by the said remand order, the petitioner preferred this revision petition.

5. The Estate Officer in his order stated that the respondent encroached the land admeasuring 165 square feet of A1 deference land in GLR Sy.No.336 with corresponding Revenue Sy.Nos.195/1 (Part), 196/1 (Part), 198/1 (Part) and 199 (Part) situated at R.K.Puram, Secunderabad. The petitioner after detection of encroachment, gave notice in Form A under Section 4 of the Act of 1971 to the respondent on 20.12.2003 and upon receiving the said notice, the respondent filed vakalath. The Presenting Officer representing the petitioner brought to the notice of the Estate Officer that a joint survey carried out on 27.01.2004 in the presence of the representatives of Mandal Revenue Officer, Malkajgiri, the Assistant Director, Survey and Land Records, Ranga Reddy District, Defence Estate Officer and the petitioner. The extract of General Land Register (GLR) clearly manifests that the total extent in GLR Sy.No.336 is Ac.47.13 guntas classified as A1 and the owner of the property is Central Government and the GLR is maintained by the Defence Estate Officer under the Cantonment Land Administration Rules under the Cantonment Act, 1924. The entry in the GLR is prima facie evidence of title of Government as per the law laid down by the Hon'ble Apex Court in SURENDRA KUMAR VAKIL V/s. SAGAR CONTONMENT 1993 (3) SCC 555, and thus, the Presenting Officer stated that it is a clear case of encroachment of defence land and the respondent is liable to be evicted from the public premises.

6. The respondent appeared before the Court through her counsel and filed her counter. He has not filed any documents or adduced any oral evidence. She simply filed the photocopy of the ration card, copy of electricity bill and property tax receipt which are marked as Exs.B1 to B3 and those documents did not confer any title or interest. The joint survey conducted between the revenue authorities and the Defence Estate Officer, after giving due notice to the public, clearly establishes that the schedule property is part of GLR Sy.No.336 and the said property belongs to Government of India as per the entry in GLR and it was held that possession did not confer title to the respondent. In Ex.A1 the area of encroachment surveyed under joint survey by the representatives of the Defence Estate Office and the Mandal Revenue Officer, Malkajgiri, in GLR Sy.No.336 in

which the name of the respondent is mentioned. Ex.A2 is the joint survey report dated 31.10.2004. Ex.A3 is the letter addressed by the petitioner on 23.02.2003 to the District Collector for arranging joint survey. Ex.A4 is the extract of GLR Sy.No.336. As per the extract of GLR Sy.No.336 the land comprises an extent of Ac.47.13 guntas and it is classified as A1 Defence Land under the Cantonment Land Administrative Rules, 1937, managed by Quarter Master General, and the landlord is recorded as Central Government. The holder of occupancy rights is recorded as Ministry of Defence. The respondent claimed that the property in question is a private property in Revenue Survey Nos.191/1 and 196/1 and was originally belongs to one Sri Madahusudhan Reddy. She stated that she is in physical possession of the property and it is not the defence land. It was observed that the respondent herein has not filed any documents except the above exhibits. The Presenting Officer stated before the Estate Officer that the said land was allotted by erstwhile Nizam's Government for occupation of British Troops stationed within territory as per Lr.No.276 dated 08.02.1904. The control of said lands which required for use by or on behalf of the Military use vested in the Government of India and the resident administered these lands. The extent of the land in occupation of the Government of India were changed from time to time and the land is no longer required was taken over. Several attempts were made to demarcate the land in the occupation of the British Troops. The delimitation boundary was finally approved by HEH the Nizam's Government in the year 1912. It was demarcated with stone pillars and shown in the Survey of India Maps of 1918-19 and 1973 and they are in the direct management and control of the resident who administered them. Only criminal and police jurisdiction was conferred to the State, Sarf-i-khas, Paigah or privately owned lands or to the land in the 13 Moglai Villages referred in Residency Order Notification No.41 dated 28.08.1906, later it was superseded by SRO No.451 dated 12.12.1956 and full control was passed on to the Secunderabad Contonment Board. It was also confirmed by Division Bench in P.V.JAYA RAO V/s. CANTONMENT BOARD AIR 1961 AP 113. The GLR of Cantonment of Secunderabad was prepared for the first time in the year 1933 by Special Land Officer and it was approved by the Secretary to the Resident at Hyderabad vide letter No.166-P/F, 257/1934 dated 05.03.1934. At the time of preparing GLR, the cantonment was divided into Class-A, Class-B and Class-C as per Rule 6 of the Secunderabad Contonment and Cantonment Administration Rules, 1930 and those lands covered under the Residency Orders by Notification No.41 dated 12.08.1906 were not included in any of the above three classifications.

7. The liberation of Hyderabad State from the provincial Princely Regime of the Nizam enacted under Section 280 of the Act of 1924 was made applicable to all the cantonments including Secunderabad. The revised limits or boundaries were defined and published vide SRO No.95 and notified in the Gazette of India, Part-II, Section 4 dated 08.07.1950. The GLR was rewritten during 1956 as per CLA Rules, 1937. The Estate Officer observed that as per the legal submissions made on behalf of the opposite party-respondent herein there are substantial grounds

available to him to dispute the ownership right of the Government of India and as per the joint survey report, schedule property pertains to Government of India, which was encroached by her and accordingly directed the petitioner to take steps to remove the encroachments.

8. On appeal in C.M.A.No.42 of 2011 the Appellate Court observed that the respondent herein is residing in her house for more than 40 years without any interruption but she received notice that she is an unauthorised encroacher as per survey report dated 02.12.2004. A sketch was drawn and the Defence Officer was present at the time of survey and the respondent has also signed on the survey report and the sketch in which the land portion in occupation of the respondent herein is purely patta land i.e., private land and the phani revenue records stands in the name of Sri Vangaveeti Veeraiah and Sanganti Jayachander in which Sy.Nos.196/3, 197/1, 197/6, 198/1 to 5, 199/1 to 3, 200, 201, 202 and 203 are covered. The said survey report was submitted by the Assistant Director of Survey and Land Records to the District Collector in the year 2005. As per the said survey report, the respondent herein has not encroached any land or the land covered by GLR Sy.No.336 and that the survey report dated 03.11.2001 has not seen the light of the day and thus it is not legally binding on the respondent herein. The copy of the survey report dated 07.02.2011, renumbered as 2596/336/Q, is served on her counsel as the said survey report is unilateral and it is not binding on the respondent. The respondent herein filed original phani patrika for the year 1999-2000 issued by the Revenue Division Officer, Malkajgiri, and also a copy of the representation dated 03.04.2004 submitted to the CMO, copy of the joint survey report along with sketch prepared in the year 2005, but the Estate Officer without considering the same declared the respondent herein as encroacher.

9. The respondent herein before the Appellate Court stated that one Mr. Madhusudhan Reddy executed the registered sale deeds in respect of Plot Nos.33/A admeasuring 333 square yards vide document No.2833 of 1966 dated 26.10.1966 in favour of Mr. Y.Chandramouli and he in turn sold the land to Smt. Amrutham Laxmamma vide registered sale deed No.602 of 1975 dated 07.03.1975 admeasuring 335 square yards. After the demise of Mr. Y.Chandramouli, a trust was formed by Madhavadas and others and they sold the land to Ch.V.Surya Prakash Rao vide registered Sale Deed No.364 of 1984 dated 02.12.1983 for 354 square yards. He constructed a residential house in 100 square yards and sold the remaining land to Moka Krishna Prasad vide Sale Deed No.5515 of 1992 dated 07.12.1992 and he in turn sold the said house to Dr.Jyothi Bipin Chandra vide Sale Deed No.859 of 1994 dated 17.02.1994 and she also obtained permission for construction of a house from Malkajgiri Municipality on 05.08.1994. The petitioner in C.M.A.No.52 of 2011 purchased house bearing No.33-74/1 with Plot No.33 vide sale deed No.5460 of 2007 dated 28.07.2007. Then onwards she is in exclusive possession and enjoyment of the property and paying the property tax and electricity bills. But the Estate Officer simply observed that the respondent did not file any documents.

10. In the counter filed by the petitioner herein in C.M.A.No.42 of 2011, Col.Q in the Office of Station Commander, Secunderabad, submitted that in spite of giving ample opportunity to the respondent herein to produce the documents, she had produced only the above exhibits. He further stated that the land in GLR Sy.Nos.195/1 and 196/1 are situated at Malkajgiri Village, Secunderabad Cantonment, and as such in the phani patrikas of 1984-85, 1990-91, 1991-92, 1992-93 and 2000-01 it was recorded as 'Military' which means it belongs to the Central Government, Ministry of Defence, and the Revenue Record clearly shows that the petition schedule land is owned by the Government of India, Ministry of Defence. The entries in the GLR are inconformity with the Revenue Records. It was also held that the respondent is claiming title to an extent of 165 square feet out of Revenue Sy.Nos.195/1 and 196/1 basing on the sale deed. In fact, the sale deed is an instrument which did not transfer title from one individual to another individual and does not confer any title. Only records of the rights or survey settlement records confirm title but the respondent herein failed to furnish the same. He further asserted that the survey report will not confirm any title or ownership and it will only identify the exact boundary of the land to ascertain whether any encroachment is there or otherwise. The Assistant Director, Survey and Land Records, conducted joint survey in November, 2007 and in Lr.No.A5/992/2007 dated 15.11.2007 clearly marked the line of encroachment and its measurements in between CBP Nos.50, 51 and 52 but the respondent has suppressed and mislead the Court. The Ministry of Defence is the owner and possessor of GLR Sy.No.336 since decades and the Hon'ble Apex Court also confirmed that the GLR maintained by the Defence Estate Officer is the statutory document and proof of title and as such the respondent herein is not having any claim for ownership over the land measuring 165 square feet and she is only an encroacher. He again reiterated that the sale deed is an instrument which shows only transaction between two individuals and will not confirm any title or ownership. Since the land is situated in the Secunderabad Cantonment Limits, any building application has to be submitted to the Cantonment Board but not to the Municipality.

11. The Appellate Court without considering the contentions of the petitioner-respondent, mostly relying upon the submissions made by the respondent-appellant, remanded the matter with the directions already mentioned above.

12. Now it is for the Court to see whether the order of the Appellate Court is just and proper.

13. The revision petitioner herein contended that it has no right or authority to provide an alternative land and it is for the State Government. Moreover, the respondent was already declared as an encroacher and failed to vacate the land and handover the same. He also stated that no portion of the land belongs to the private land as GLR Sy.No.366 is a Government land and the respondent is in illegal occupation for the past thirty years, and thus, she was rightly declared as encroacher. The GLR was maintained by the Defence Estate Officer in the

prescribed form in respect of the lands within the cantonment limits and that the Supreme Court already held that it is statutory document and proof of title. Moreover, in pahani patrikas of 1984-85, 1990-91, 1991-92, 1992-93, 2000-01 Sy. Nos.195/1 and 196/1 is recorded as Military land.

14. When the matter is taken up today, learned counsel for the revision petitioner is present. In spite of service of notice, the respondent did not turn up nor there was no representation on her behalf. Hence heard the arguments of the learned counsel for the petitioner and the matter is reserved for orders.

15. No doubt, the respondent herein referred to several sale deeds to prove her title and possession over the property since more than thirty years. She mainly contended that she is residing in a private land which will fall within the ambit of cantonment and as such she is not an encroacher and liable for vacation. GLR survey report is filed along with sketch and also joint survey dated 23.12.2003 in which it was specifically held that as it is mandatory to conduct joint survey in the presence of the opposite party-respondent herein to avoid legal complications and delay at later stage, the District Collector is requested to once again carry out joint survey in GLR Sy.No.336 in R.K. Puram, Secunderabad, on 21.01.2004 in the presence of respondent. Accordingly a joint survey was conducted on 27.01.2004 but in the report it was specifically mentioned that encroachers have denied to sign on the joint survey report. They also disclosed a list of unauthorised constructions made by the private individuals in Appendix-A to the report along with the sketch. Extract from GLR of 1956 is also filed to show that the area of Ac.47.13 guntas which is described as recreation and parade ground in Class A-1 belongs to Ministry of Defence. The Estate Officer issued notice to the encroacher under form-A and directed him to appear in person along with her representative. Accordingly, the respondent along with her counsel appeared before the Estate Officer and made representation and after considering the same and also the documents filed by her declared her as an encroacher. In the order of Estate Officer it was clearly held that she filed only Exs.B1 to B3 which will not confer any title or interest, whereas the Appellate Court held that the respondent herein filed several sale deeds but they are not considered by the Estate Officer and as such the Appellate Court remanded the matter to the Estate Officer with a direction to consider the same and pass orders afresh. But in a counter filed by the petitioner herein it was specifically stated that the respondent have no title over the property. When she herself has no right of title over the property, she cannot confer better title upon the purchasers. In this case admittedly the land belongs to the Ministry of Defence and even in the phani patrikas it was mentioned as military land and there is no private land as per the joint survey report. Though, already a joint survey was conducted before the concerned Officers, in order to give an opportunity to the respondent herein, another survey was ordered and conducted on 27.01.2004 but she has not signed on it. The mandatory requirement of conducting joint survey before the respondent was also complied with by the Government. The Estate Officer after considering the documents filed by the respondent herein and

also considering the fact that the entire land in GLR Sy.No.336 belongs to the Government and there is no private land, rightly declared that the respondent herein is an encroacher and directed her to handover the possession. But the Appellate Court remanded the matter and also directed the petitioner herein to provide an alternate accommodation to the encroacher, if it is a case of acquisition of the land by the Government for development purpose, then the landlord who gave his land is entitled for payment of compensation. As the respondent herein is an encroacher, the direction of the Appellate Court is patently absurd and thus, the same is liable to be set aside by confirming the order of the Estate Officer.

16. In the result, this civil revision petition is allowed and set aside the order dated 02.06.2015 passed in C.M.A.No.42 of 2011 on the file of the learned I Additional Chief Judge, City Civil Court, Secunderabad, and confirmed the order dated 16.07.2011 passed in Case No.3995/01/554/N/Q3L of 2003 on the file of the Estate Officer-cum-STN Commander Andhra Sub Area at Bolaram, Secunderabad.

17. Miscellaneous Petitions, if any, pending in this revision shall stand closed in the light of this final order.