
(2011) 08 AP CK 0074
In the Andhra Pradesh High Court
Case No : W.A. No. 309 of 2002

Fazal Ali

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Andhra Pradesh Land Encroachment Act, 1905 — Section 7
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 17(4)

Citation : (2011) 6 ALD 76 : (2011) 6 ALT 13

Hon'ble Judges : V.V.S. Rao, J;K.G. Shankar, J

Bench : Division Bench

Advocate : Manjiri S. Ganu, for the Appellant; N. Sridhar Reddy, Spl. G.P., for the Respondent

Final Decision : Dismissed

Judgement

K.G. Shankar, J.—Considering that the learned single Judge erred in dismissing the writ petition seeking for a Writ of Mandamus, the writ Petitioner preferred the present appeal. The fundamental question in this case is whether the premises sought to be occupied by the third Respondent-Hyderabad Metro Water Supply and Sewerage Board is premises bearing No. 3-5-784/1, King Koti or is 3-5-784/1/A, King Koti. Incidentally, a question arises whether the Court can go into such a question of fact in its special original jurisdiction.

2. We may advert to the facts at the outset. HEH the Nizam VII had several wives, several daughters and several sons. It would appear that he fostered several persons as his sons, apart from his natural sons. The fostered sons are known as Khanazads.

3. HEH the Nizam owned Ac.61.63 cents in and around King Koti. The Government had recognized the same as the private property of the Nizam. These properties were entered as items 3 to 14 in the Blue Book. The disputed property is claimed by the writ Petitioner to be premises bearing No. 3-5-784/1

and as part of the properties owned by HEH the Nizam. The total extent of the premises bearing No. 3-5-784/1 is 2426 square yards. This property is said to have been gifted to the Petitioner, one of the Khanazads, by HEH the Nizam.

4. The writ Petitioner went on selling parts of the same. After the sale of several properties, the writ Petitioner has remained in possession of a small piece of land in 3-5-784/1. It is the claim of the writ Petitioner that his title to this property was recognized by the office of the HEH the Nizam Trust, through a certificate dated 05.05.1981 issued by the Financial Advisor to HEH the Nizam.

5. While things stood thus, disputes arose between the Municipal Corporation of Hyderabad and the writ Petitioner regarding the title of the petition schedule property forcing the Petitioner to file O.S. No. 123 of 1987 on the file of the I Additional Judge, City Civil Court, Hyderabad. An ex parte decree was passed on 09.06.1987 by the learned I Additional Judge, City Civil Court, Hyderabad, decreeing the suit of the writ Petitioner, confirming the title of the writ Petitioner over premises bearing No. 3-5-784/1, King Koti. The total extent of 2426 square yards covered by 3-5-784/1 was divided into various sub-divisions, such as 3-5-784/1/2, 3-5-784/1/3, 3-5-784/1/4 so on and so forth. The property covered by premises bearing No. 3-5-784/1/A was sold by the Petitioner to Sarojini Devi in January, 1978. It changed hands thereafter and one Habeeb Mohammed is the present occupier of the premises bearing No. 3-5-784/1/A. However, the revenue records are still in the name of the writ Petitioner and his wife Mariam Begum. The writ Petitioner has been paying municipal tax in respect of the premises bearing No. 3-5-784/1 to the extent of the property still owned and possessed by the writ Petitioner.

6. The controversy primarily is with reference to a residential portion in about 125 square yards of site. The third Respondent contends that the same forms part of premises bearing No. 3-5-784/1/A, whereas the Petitioner contends that the same is part of premises bearing No. 3-5-784/1. The controversy became crystallized with the tenancy of one L. Sriramulu. L. Sriramulu was an employee of the third Respondent. He was working as a U.D.C. with the office of the Superintending Engineer, Water Works Circle, Hyderabad. Through proceedings in the March, 1974, L. Sriramulu was allotted a quarter near King Koti Pump House. It is the case of the Respondents 1 to 3 that the quarter allotted to L. Sriramulu is in premises bearing No. 3-5-784/1/A. On the other hand, it is the contention of the writ Petitioner that L. Sriramulu was his tenant and was in occupation of the premises belonging to the writ Petitioner. This is the real controversy. The conspectus of the conflict is whether L. Sriramulu was in occupation of the premises bearing No. 3-5-784/1 or 3-5-784/1/A. The incidental corollary would be whether L. Sriramulu was a tenant of the writ Petitioner or was an allottee of the premises by the third Respondent.

7. L. Sriramulu, who was the catalyst of the conflict, was working as U.D.C. with the third Respondent. He ultimately retired as the General Manager (P and A) of the third Respondent. While he was still U.D.C. the Executive Engineer, R and B

allotted a quarter to L. Sriramulu in March 1974. The quarter was initially constructed to station a watchman. However, it would appear to have been remodelled to cater to the needs of a clerk and was thereafter allotted to L. Sriramulu. It is situate beside King Koti Pump House. Usually, electricity connection for Government accommodation continues to be in the name of Government. However, in the present case, the electricity connection was transferred in the name of L. Sriramulu. L. Sriramulu went on paying electricity charges for the premises under his occupation.

8. Fortunately, L. Sriramulu did not make any claim over the premises under his occupation. On the other hand, when he retired as a General Manager on attaining the age of superannuation and it became necessary for him to vacate the premises, he made a request to the third Respondent to allot the premises to his son, L. Srinivasa Rao, who was working in the same Department as a Grade-II technician facilitating L. Sriramulu to continue to reside in the premises. Through orders dated 03.07.1999, the third Respondent passed orders allotting the premises temporarily to L. Srinivasa Rao, S/o. L. Sriramulu.

9. When L. Sriramulu was allotted the quarter in March 1974, the orders did not contain any door number. Similarly, when the quarter was temporarily allotted to L. Srinivasa Rao on 03.07.1999, there was no reference to the quarter number. However, in the letter by the Deputy Chief Accountant of the State Electricity Board, dated 08.11.1974 offering to transfer the electricity connection in the name of L. Sriramulu, the premises was described as 3-5-784/1/A, King Koti, Hyderabad.

10. The writ Petitioner produced some of the copies of electricity bills for the year 1974. They do not show the door number of the premises. The order dated 17.09.1974 of the State Electricity Board transferring the electricity service connection in the name of L. Sriramulu also does not contain the door number of the premises in respect of which the order was passed. The writ Petitioner produced telephone bill for June, 1998 in the name of L. Sriramulu which refers the door number as 3-5-784/1/A. Evidently, some of these documents refer to premises as bearing Municipal No. 3-5-784/1/A.

11. On the other hand, it is the case of the writ Petitioner that no premises exist with the municipal No. 3-5-784/1/A and that L. Sriramulu was a tenant of the writ Petitioner. It may be noticed that the writ Petitioner has not produced any record to show how L. Sriramulu become a tenant of the writ Petitioner. Smt. Manjiri Ganu, learned Counsel for the Appellant/writ Petitioner referred to the sale deed dated 09.01.1978 as proof that the writ Petitioner owned and possessed premises bearing No. 3-5-784/1/A. She has also pointed out that the Petitioner claimed that he sold premises bearing No. 3-5-784/1/A to Sarojini Devi. The copy of the sale deed discloses that the property sold is the premises bearing Door No. 3-5-784/1/A and B. The property has not been described as 3-5-784/1/A and 3-5-784/1/B. The learned Standing Counsel for the third Respondent pointed out that the Petitioner perhaps sold 3-5-784/1/A and B and

that the premises which was under the occupation of L. Sriramulu bears municipal No. 3-5-784/1/A.

12. The writ Petitioner obtained ex parte decree referred to already from the Court of I Additional Judge, City Civil Court, Hyderabad. O.S. No. 123 of 1987 refers to 3-5-784/1 and does not refer to 3-5-784/1/A. Thus, there does not appear to be enough material to establish the indisputable title of the Petitioner in respect of the premises, which was occupied by L. Sriramulu. In view of the third party affidavit filed by L. Sriramulu, it is for the writ Petitioner to establish his title to the property, which was under the occupation of L. Sriramulu. There is no confusion as to the property in respect of which the writ Petitioner makes the claim. It is the property, which was under the occupation of L. Sriramulu. The writ Petitioner refers to letter dated 28.02.2000 executed by L. Sriramulu and his son L. Srinivasa Rao to the third Respondent that quarter bearing No. 3-5-784/1/A was handed over to Aswani Kumar, the Deputy General Manager of the third Respondent. It is this assertion of the third Respondent that he is the owner of the property, which forces the writ Petitioner to come up with the writ petition from which the present appeal arose.

13. We consider that there is a considerable amount of confusion as to the identity of the property in dispute. Whether the premises was leased out by the writ Petitioner to L. Sriramulu or whether the premises was allotted to L. Sriramulu by the third Respondent? Whether the premises in 3-5-784/1/A exists or does not exist? Whether the Petitioner is being dispossessed high-handedly by the third Respondent in respect of the property owned by the writ Petitioner himself? These are pure questions of fact. Can they be entertained in a writ petition is the pertinent question.

14. The learned Counsel for the Appellant/writ Petitioner submitted that it is not as though whenever there is involvement of a question of fact, a writ would not lie automatically on the ground that a question of fact is involved. Her contention is that it should be examined whether the contention of the Petitioner is bona fide or not and that in the event the controversy is considered as a bona fide dispute, the High Court would be entitled to entertain the dispute in its special original jurisdiction.

15. In *Bishan Das and Others Vs. The State of Punjab and Others*, with reference to the interference by the executive authority with the fundamental rights, a five-judges bench of the Supreme Court considered that it would be appropriate to interfere with the executive action where infringement of fundamental rights of the writ Petitioner had occasioned by the executive action.

16. In *Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others*, a notification was issued seeking to acquire lands without proper demarcation. An objection was raised that the notification did not show the correct demarcation of the land sought to be acquired and that different landlords had no opportunity to file objections to the proposed acquisition. The

Collector ordered that he was satisfied that the land demarcated corresponded to the area notified. However, order envisaged by Section 17(4) of the Land Acquisition Act was not passed. The High Court dismissed the writ petition in limine on the ground that the High Court could not go into disputed question of fact in its special original jurisdiction. The Supreme Court considered that the High Court may consider question of fact in an appropriate case. The Supreme Court inter alia held in para 14:

In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition.

The Supreme Court considered that when a complicated question of fact requiring recording the evidence, it would be justified by the High Court to decline to exercise its special original jurisdiction and not otherwise.

The Supreme Court also observed:

Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made, dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

17. In *Century Spg. and Mfg. Company v. Ulhasnagar Municipal Council* 1971 (SC) 1021 the Supreme Court pointed out that where alternative remedy of a civil suit is open, the Petitioner should not be relegated to the remedy of a suit on the ground that questions of fact are raised in the case. It cautioned the courts that any Petitioner would prima facie be entitled to have his grievance tried and that the High Courts in this context should exercise their discretion judiciously.

18. In *Exen Industries Vs. The Chief Controller of Imports and Exports and Others*, a writ petition was filed against the order refusing to grant licence under the Imports (Control) Order. Albeit a prima facie case for investigation was made out, the High Court rejected the writ petition in limine on the ground that the High Court could not go into determination of complicated questions of fact. The Supreme Court held that the High Court could reject a petition in limine where it is satisfied that the authorities whose acts are impugned have acted properly or where the petition raises complicated questions of fact for determination and that it cannot reject such a writ petition where prima facie case was made out in the investigation.

19. H.R. Khanna, J was more explicit in *Babulal v. Nandlal* AIR 1974 SC 2015 . He pointed out that in a petition under Article 226 of the Indian Constitution, the High Court has power to try issues of facts as well as of law and that when the petition raises complex questions of fact which require oral evidence, the High Court might decline to try such a petition. After considerable water has flown down the bridge, the Supreme Court once again had occasion to consider the question about the maintainability of a writ petition involving a question of fact in its short decision in *State of A.P. and Others Vs. Merit Enterprises and Others*, It was a case where the Respondent allegedly unauthorizedly occupying the government land. The High Court considered that the land in dispute was not owned by the Government and held that initiation of proceedings u/s 7 of the A.P. Land Encroachment Act was not called for. The State Government participated in the proceedings before the High Court without any demur or protest. When the matter went before the Supreme Court, the Government raised a fundamental question that the High Court ought not to have undertaken a fact finding exercise as to whether the land belonged to Government or otherwise. The Supreme Court held that the High Court was justified in going into the question of ownership, as it was a jurisdictional question on the basis of which alone proceedings u/s 7 of the A.P. Land Encroachment Act could be initiated.

20. Finally, in *M.S. Grewal and Another Vs. Deep Chand Sood and Others*, compensation was claimed by various injured and the dependents of the deceased in a motor vehicle accident. A writ petition was filed by the children of the deceased children claiming compensation. The Supreme Court considered that Courts have social obligation to respond to the needs of the people and technicalities should not outweigh the course of justice. On the strength of these decisions, the learned Counsel for the writ Petitioner primarily contends that albeit the question of fact arises in this case, a writ petition would nevertheless lie.

21. It may be noticed that the Supreme Court has repeatedly pointed out that a writ petition cannot be rejected on the mere ground that a question of fact is involved in the case and that it would be justified for a writ court to decline to interfere when the question of fact is complex and requires oral evidence. We, therefore, considered that merely because a question of fact whether the disputed property bears municipal No. 3-5-784/1 or 3-5-784/1/A cannot be rejected on the ground that it is a question of fact, so long as a decision can be reached on a reasonably plain examination of the circumstances of the case.

22. The writ Petitioner asserted that L. Sriramulu was his tenant. He placed no material before the Court. On the other hand, L. Sriramulu filed a third party affidavit that he was not a tenant under the writ Petitioner. Unless the writ Petitioner cross-examines L. Sriramulu, the truth of the third party affidavit filed by L. Sriramulu cannot be ascertained. Further, it is to be ascertained whether the electricity bills relate to premises bearing No. 3-5-784/1 or the other

premises. Finally, the important question whether L. Sriramulu occupied the premises as a tenant of the writ Petitioner or as an allottee of the premises by the third Respondent is a question of fact, which cannot be answered without oral evidence and cross-examination of L. Sriramulu. Thus, evidently this is a case where a question of fact is involved, although it cannot be said that it is a complicated question of fact, requiring oral evidence. In *Gunwant Kaur, Exen Industries and Babulal* (supra), the Supreme Court was explicit in pointing out that the High Court would be justified in declining to exercise its court special jurisdiction when question of fact involving the process of recording evidence is necessary. We have already concluded in the present case that the question of fact is such that it requires recording of evidence. We, therefore, are in agreement with the finding of the learned single Judge that the writ petition is not maintainable, as it involves a question of fact. Added to it, we have also concluded that prima facie the writ Petitioner failed to show that the property involved is the estate of the writ Petitioner. Viewed in either angle, the writ petition is not maintainable. We, therefore, see no merits in this writ appeal.

23. The writ appeal, accordingly, is dismissed, however without costs.