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**(1997) 06 AP CK 0040**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No's. 4632, 6742, 6772, 6773, 6774, 7101, 8162 and 9804 of 1997

G. Devendranath and Others

APPELLANT

Vs

Executive Officer, Secunderabad Cantonment Board and Others

RESPONDENT

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**Date of Decision :** 13-06-1997

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** AIR 1998 AP 72 : (1998) 1 AnWR 681

**Hon'ble Judges :** P.S. Mishra, C.J.; P. Ramakrishnam Raju, J

**Bench :** Division Bench

**Advocate :** N. Vijaysree, for the Appellant; Deepak Bhattacharji, S.C. for Cantonment Board for Respondent No. 1, A. Chaya Devi, S.C. for Central Government for Respondents No. 2, V. Ajay Kumar, S.C. for Insurance Company, for Respondents No. 3 and G. Pradeep Kumar, S.C. for Indian Bank, for Respondents No. 4, for the Respondent

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**Judgement**

P.S. Mishra, C.J.—This litigation has a long and chequered history of several petitioners coming to this Court, the main thrust being that several persons occupied or grabbed lands belonging to the Government of the State and/or the Union of India and in particular in the case of at the first instance by one T. K. Kodanda Ram, who claimed/claims to be the Chairman of the Weavers Educational Advancement Vocational Economic Rehabilitation Society, in Writ Petitioner No. 15144 of 1985 this Court ordered in W. P. M. P. No. 21049 of 1985 on 31-12-1995 that the Station House Officer, Maredpalli Police Station, Secunderabad and the Executive Officer, Cantonment. Board, Secunderabad, would take action according to law. While so there have been civil suits filed and contested by various parties and if the events in this behalf are recapitulated, finally in a batch of Writ Petitions in Writ Petition No. 13352 of 1993 and other cases, Justice N. Y. Hanumanthappa ordered on 10-2-1995 that all unauthorised constructions which were reflected in the report of the Executive Officer of the

Cantonment Board should be removed. Directions in Writ Petition No. 13352 of 1993 and other cases were affirmed by a Bench of this Court in Writ Appeal No. 659 of 1995 and it is not in dispute, pursuant to the said directions, all other encroachments have been removed except insofar as the building in Picket, Secunderabad in respect of which building the petitioners in Writ Petition Nos. 6742, 6772, 6773, 6774, 7101 and 9804 of 1997 have filed petitions seeking Court's intervention to stop demolition on various grounds. Mr. T. K. Kodanda Ram, however, filed Writ Petition No. 8162 of 1997 reiterating, inter alia, that the direction for the enquiry and consequent direction for removal of encroachments are valid to the extent of removal of encroachers and/or the land grabbers, but not in respect in the ownership of the land in question, as the Society which he purportedly represents, according to him, is the real owner of the property and restoration, therefore, of the property pursuant to the enquiry report to the Cantonment Board shall adversely affect the Society's right to the property. He has filed Writ Petition No. 4632 of 1997 alleging that the Andhra Pradesh State Electricity Board has installed a transformer almost encroaching the road leading to his house and obstructed thus the free flow of traffic on a public path way by an unauthorised act.

2. Implementation of the directions issued by this Court in Writ Petition No. 13352 of 1993 and other cases as affirmed by Writ Appeal No. 659 of 1995, is complete, we are informed, except insofar as the Picket Castle is concerned in respect of which in the instant proceedings, after hearing learned counsel for the parties, the Court has directed for maintaining status quo.

3. We are spared, however, of a detailed and serious predication of either the facts or the laws except insofar as they are necessary for the directions, which, by consensus at the Bar, are decided to be issued. The apartments called "Picket Castle" are constructed by a Builder -- M/s. M.R.N. Constructions, which incidentally also represent the alleged owner of the land having Power of Attorney on their behalf. They have sold apartments to as many as 54 persons. When orders were issued to remove encroachments and the Cantonment Board started action to occupy vacant areas including vacant apartments in the Picket Castle before actual removal of encroachments, it came in occupation of one apartment which was vacant and took possession of some shops which were not yet been transferred to any person by the Builder.

4. Controversy, however, centered in the instant proceedings on the facts as follows : Whether the alleged ownership of the building was with the principal who gave Power of Attorney to the builder or not; Whether the building was constructed upon a land which belonged to the Society which Mr. Kodanda Ram claims to represent, or to the Cantonment Board, as the Executive Officer's report reveals; and whether, in the absence of any semblance of legal right in the land upon which the building is constructed, transfer of ownership to as many as 54 persons of apartments in the building by the Builder is valid or not.

5. Builder's petition introducing the claim of title for adjudication by this Court

has been rejected with the observation that, if so advised, he can file a title suit and get the title adjudicated by a Court of competent jurisdiction. We are informed that title suits have already been filed by the Builder -- O.S. Nos. 125 and 126 of 1997, on the file of III Additional Judge, City Civil Court, Secunderabad, in which suits, it is said, however, neither the Cantonment Board, Secunderabad, nor Mr. Kodanda Ram have been impleaded as party-defendants. What has, however, been most disturbing in the instant proceedings is that pending proceedings before this Court, the Builder completed construction of the building and negotiated and sold the apartments only to leave the purchasers of the apartments in lurch and no title situation although they have, it is said, in almost all the cases paid the price claimed by the Builder in full and in the process taken loan from the public financing institutions like L.I.C. Housing Finance Limited and M/s. Ind. Bank Housing Limited. We advisedly avoid, however, any observations in respect of the conduct of any of the parties as any observations by us may cause prejudice to the case of the parties in the Civil Court where issue of title and ownership of the land will be determined. We cannot lose sight, however, of two outstanding facts i.e., (1) eviction of the 54 purchasers of the apartments would put 54 families on the streets; and (2) concession to the Builder to go scot free, if he has no title in the land upon which the building is constructed, would not only defeat the directions of the Court in the aforesaid writ petitions but would sanction serious encroachment of the right of a public authority, if the enquiry report is believed i.e. the Cantonment Board and in case the enquiry report is not believed and Mr. Kodanda Ram's case has any merit, of a Society which he is claiming to represent.

6. Efforts of the Court to create some consensus so that all equities are taken care of, have yielded dividends inasmuch as learned counsel for the parties have, by agreement, arrived at the following consensus.

7. Mr. Kodanda Ram, who has appeared in-person, however, has shown serious reservations to the consensus. But we have no reasons to, entertain his plea at this stage because the enquiry report, pursuant to the directions of this Court in writ petitions filed by him, has not gone in his favour inasmuch as the Executive Officer of the Cantonment Board has not accepted his claim of title of the Society to the land in question. If at all he has any claim to establish in the land, he has to do so by instituting a suit for declaration of title or by intervening in the suit which has already been filed in the Civil Court by the Builder--M/s. M.R.N. Constructions.

8. We are of the opinion that the best in equity at this stage, until the dispute of title is decided by the Civil Court, is in preserving on the one hand the right of the purchasers of various apartments in the Picket Castle subject to the right of the owner of the land and on the other hand in case the ownership in the land upon which the building is construction is found with the Cantonment Board or any other person, to settle the controversy by payment of the price of the land out of the price paid by the purchasers of the apartments to the owner of the

land. 9, Consensus proceeds as follows :

(1) Builder -- M/s. M.R.N. Constructions (Respondent No. 2 in Writ Petition No. 6772 of 1997) shall give in security by way of bank guarantee of a Nationalised Bank to the Cantonment Board, of Rupees Forty lakhs, which guarantee shall continue and be valid until the determination of the title in the civil suits and the successful party in the civil suits in whose favour title would be declared shall be entitled to encash the same towards the price of the land minus the cost of construction of the building which is included in the payment by the purchasers of the apartments to the Builder.

(2) In case, however, the ownership is found with the Builder and/or the person who has given the Power of Attorney to it, or in any other person, the Cantonment Board shall be entitled to hold back or deduct out of the said bank guarantee of Rupees Forty lakhs, such amount of money which is realisable from the Builder towards compounding fee for regularisation of the construction.

(3) There are some deposits by the petitioners and others, who had taken loan from financial institutions, pursuant to the interim order of the Court, with the Cantonment Board, which are referable to the instalments payable by them to the financial institutions.

The Cantonment Board shall remit the said deposits, after receiving the bank guarantee as above, to the financial institutions concerned in respect of which financial institutions shall issue appropriate and proper receipts and accordingly inform the persons who have made such deposits with the Cantonment Board.

Persons who have borrowed money from the financial institutions, however, shall continue to discharge their respective debts in accordance with the agreement with the financial institutions.

(4) Cantonment Board and Mr. Kodanda Ram, if so advised, can intervene to the aforementioned suits and/or institute independent actions in the Civil Court for declaration of their title in the land or any other relief in accordance with law.

10. The issue as to the value of the land, however, is not finally decided by this order and parties in the Civil Court shall be entitled to seek adjudication as to the price of the land, and in case the Civil Court would decide that the price of the land would be higher than Rupees Forty lakhs in respect of which bank guarantee is given, it would make necessary decree and pass necessary order for realisation of any amount in excess of Rupees Forty lakhs from M/s. M.R.N. Constructions"--the Builder. Any decision in the civil suits, however, shall not affect the right of the persons who have purchased the apartments from the Builder -- M/s. M.R.N. Constructions, and paid full price of the apartments to it, except that the Court in such a situation, after recognising the right of ownership of the party concerned, would direct for payment of the price of the land to it or him out of the money paid to M/s. M.R.N. Constructions, including the amount covered by the bank guarantee of Rupees Forty lakhs, by the purchasers of the

apartments from M/s. M.R.N. Constructions.

11. We are informed that the petitioner in Writ Petition No. 9804 of 1997 has paid to M/s. M.R.N. Constructions the price except Rupees One Lakh, which money he is willing to pay to it. We see no difference, however, in the case of the petitioner in Writ Petition No. 9804 of 1997 and purchasers of other apartments. However, the Cantonment Board, which is in possession of the apartment allegedly purchased by the petitioner in Writ Petition No. 9804 of 1997, shall not deliver possession of the apartment to the petitioner until the bank guarantee aforementioned is furnished by M/s. M.R.N. Constructions and it (M/s. M.R.N. Constructions) informs the Cantonment Board that it has received full payment of the apartment.

12. Cantonment Board has assumed possession of the vacant portions of the building and it, being, in possession of the same, is in a position to lease out or let on rent such portions of the building which are fit either for residential purposes or, for commercial purposes. To avoid any loss to the owner of the building, subject to the final adjudication in the suits, the Cantonment Board can either lease out or let on rent such portions of the Building which are in its possession but shall keep the income in deposit, which income shall accrue finally to the benefit of the successful party in the suits.

13. A Court of law is always expected to act decisively and incisively whenever any unlawful activity is brought to its notice. This Court has done so by directing for removal of all encroachments and as noticed above, all other encroachments have been removed except the Picket Castle. Demolition of Picket Castle, if it was not occupied by innocent persons, who obviously are not responsible for grabbing the land, which; according to the enquiry report, belongs to the Cantonment Board and in respect of which Mr. Kodanda Ram has asserted that it belongs to the Society which he represents, would have been ordered by the Court. Their innocence is proved by the fact that they have paid the price of their respective apartments to the Builder --M/s. M.R.N, Constructions, and quite a few of them have borrowed for making payment of the price of their apartments from financial institutions and others. The Court in such a situation cannot ignore the plight of the purchasers of the apartments and we have accordingly been persuaded to soften the edges of law by human compassion. We have good reasons thus to accept the above consensus and make the same the rule of the Court. Mr. Kodanda Ram objections to the above, we have already noticed, do not need any scrutiny at this stage, as his right to the property is yet to be determined and as observed by us earlier, if so advised, he can seek remedy in the Civil Court.

14. The other objection by Mr. Kodanda Ram in Writ Petition No. 4632 of 1997 has highlighted the public interest of having a free flow of traffic upon a public path way, Mr. K. N. Jwala, learned counsel for the Electricity Board, has stated that the transformer, as alleged by the petitioner --Mr. Kodanda Ram, if found interfering with the free flow of traffic, would be removed and installed for the

benefit of the residents of the locality strictly in accordance with the direction of this Court, namely, without in any manner encroaching upon the public road except some portions of foot-path, which is absolutely necessary for installation of the transformer, but in such a manner that it is kept at a reasonable height and properly insulated and covered so that it causes no accidents or damage. We have good reasons to take the statements of the learned counsel for the Electricity Board as one made with full sincerity and responsibility and we hope and trust all necessary formalities of ensuring the above shall be completed by the Electricity Board and its Officers within a reasonable time not later than three months from today. Further allegations of the petitioner, Mr. Kodanda Ram, that the Picket Castle has encroached upon the path-way, however, will require enquiry into the factum of encroachment, which enquiry, in our view, is not advisable in the extraordinary proceeding under Article 226 of the Constitution of India. Since we have already observed that in case Mr. Kodanda Ram is advised to seek remedy in the Civil Court for the claim of title in the land upon which Picket Castle is constructed, he, independently or along with the said relief, can always ask for removal of encroachment.

15. We are informed that treating the Picket Castle as an unauthorised construction, Cantonment Board has assessed it for revenue purposes. We see no reason why revenue collection be interfered with even though the issue of title is yet to be determined in the Civil Court.

16. M/s. M.R.N. Construction is directed to furnish bank guarantee within four weeks,

17. The writ petitions shall be deemed to have been disposed of after compliance of the above directions by M/s. M.R.N. Constructions, the Cantonment Board and the writ petitioners. Rest of the proceedings shall be in the Civil Court, as directed above.