

East City Defence Personnel Welfare Association

Vs

State of A.P.

Civil Appeal No. 4012 of 1999

(CJI M. Jagannadha Rao, N. Santosh Hegde JJ)

27.07.1999

JUDGMENT

M. Jagannadha Rao, J. –

1. Leave granted.

2. This appeal has been preferred by the appellant-association - which consists of defence personnel - against the judgment of the Division Bench of Andhra Pradesh High Court in W.A. No. 1251/97 dated 2.3.1998 whereby the judgment of the learned Single Judge in W.P. No. 6468/97 dated 29.7.1997 was affirmed. In this appeal, the appellant - association is aggrieved by the judgment of the learned Single Judge as affirmed by the Division Bench to the extent that the court enabled 5th respondent (Andhra Pradesh Bhoodan Board) to act as receiver in regard to the properties which are the subject-matter of the writ petition.

3. For the purpose of understanding the dispute in this appeal, it is necessary to refer briefly to the various proceedings taken out by the parties earlier namely, O.S. 238/89, pending before the IInd Additional Judge, City Civil Court, Hyderabad, judgment dated 3.12.1992 of the learned Single Judge of the High Court of Hyderabad in W.P. 9211/90, judgment of another the learned Single Judge of the High Court dated 29.1.1997 in W.P. 8280/95, W.P. 22745/94 which is said to be pending in the High Court and finally the judgment dated 29.7.1997 in W.P. 6468/97 out of which the writ appeal which is the subject-matter of this appeal has arisen.

4. We shall refer to the above proceedings to the extent necessary to highlight the limited issue that arises in this appeal before us.

5. A landlord named Chatur Girijee of Rangapur village donated his lands to the Andhra Pradesh Bhoodan Yagna Board on 8.2.1952. The Andhra Pradesh Bhoodan Yagna Board entered into an agreement with Narne Ranga Rao and others of Gunrock Enclave Cooperative Housing Society Ltd., Secundrabad under which the Board was to allot 200 acres at Rangapur village to the above said persons in exchange to 200 acres to be provided by the said Ranga Rao to the Board. On the ground that the said Ranga Rao had given only 42 acres 32 guntas in Edira village to the Board, the Board allotted only 42 acres 32 guntas to the said Ranga Rao. Ranga Rao and others took conveyance of the said 42 acres 32 guntas and sought specific performance of the agreement seeking the sale of the remaining 153 acres in Rangapur village and for that purpose filed a suit O.S. 238/89 in the Court of the IInd Additional Judge, City Civil Court, Hyderabad. It appear as that the said Court has also passed interim orders. The suit is still pending. However, the 42 acres and 32 guntas referred to above is not the subject of any dispute between the parties.

6. It is the grievance of the Board that the said Ranga Rao and the Society negotiated directly with other allottees of Bhoodan Land and purchased land in violation of the provisions of the A.P. Bhoodan and Gramdan Act, 1965. It is this land that is subject-matter of the writ petition out of which this appeal arises.

7. A show cause notice dated 16.1.1990 was issued by the Mandal Revenue Officer, Bibinagar to the said Ranga Rao who is the President of the Narne Estates Pvt. Ltd. and to the Gunrock Enclave Cooperative Housing Society Ltd. Secundrabad, to show cause why action should not be taken under the A.P. Bhoodan and Gramdan Act, 1965 for alleged violation of the provisions of the Act. The said notice was received and a reply was sent on 27.1.1990. No orders were passed by the Mandal Revenue Officer on the reply, but a further notice was issued by him on 13.6.1990 on the same allegations as in the earlier notices. The validity of the notice dated 13.6.1990 was questioned by the Gunrock Enclave Cooperative Housing Society Ltd., Narne Estate Pvt. Ltd and one N. Gopal Naidu in W.P. 9211/90. After hearing the respective parties, the learned Judge issued certain directions that the Bhoodan Board could issue notice to the affected parties including the writ petitioners, in respect of the subject-matter of the Mandal Revenue Officer's notice dated 13.6.1990 and afford them an opportunity of being heard and decide the dispute between the parties, namely the dispute which was raised in the show cause notice issued by the Mandal Revenue Officer. This direction was issued in view of an earlier ruling of the High Court dated 16.12.1976 in W.P. 4503/75 which had held that after the enactment of the A.P. Bhoodan and Gramdan Act, 1965, the revenue authorities had no power to deal with any land which was covered by the Act and that it was only the Board which could deal with the disputes arising under the Act. The learned Single Judge directed that within one month from the date of the receipt of the copy of the judgment in writ petition, the Revenue Officer should transfer the papers relating to the show cause notice to the Bhoodan Board and that within four months thereafter, the said Board should issue a notice to the writ petitioners and dispose of the proceedings in accordance with the provisions contained in the Act and the rules framed thereunder. The learned Single Judge of the High Court observed that insofar as the suit No. OS. 238/89 was concerned, the same could be adjudicated on its own merits without reference to any observations in the writ petition. The learned Judge also stated that *any adjudication to be made by the Bhoodan Board*, would not come in the way of the decision in the said suit, inasmuch the said suit was instituted prior to the issuance of the first show cause notice dated 16.1.1990. The learned Judge also stated that whatever interim orders were passed in the suit, they would continue till the disposal of the said suit, unless varied or annulled in accordance with law.

8. Thereafter, the Bhoodan Board nominated one Shri Kodanda Ram Reddy to conduct an enquiry. After hearing objections of the parties, he submitted a report on 16.8.1993 to the Board. The Board approved the report in toto on 23.8.1993 and sent it to the Mandal Revenue Officer for necessary action. It appears that as per the decision of the Board, the lands which were in the name of Narne Estates Pvt. Ltd. in Survey Nos. 22 to 27, 29 to 41, 43, 45 to 60, 63 to 68, 70 to 74, 79, 80 and 85 of Rangapur village were directed to be restored to the Board. It was stated that individual notices were issued on 13.10.1993 to various assignees of the Bhoodan Board who had sold their lands to Narne Estates Pvt. Ltd and Board found the replies 'unsatisfactory'. A copy of the proceedings of the Board has not been placed before this Court and it is not clear what reasons were given by the Board to say that the replies of the assignees were unsatisfactory. The Bhoodan Board terminated the pattas granted to the said assignees and intimated the same to the Mandal Revenue Office and requested him to take action to restore the land to the Board and make proposals for fresh assignments of the land to Scheduled Castes and Scheduled Tribes. The Board issued a letter to the Mandal Revenue Officer on 14.12.1993 requesting him to take action to restore the lands to Bhoodan Board for fresh

assignments to the Scheduled Castes and Scheduled Tribes.

9. It is stated in the counter-affidavit filed by the Government itself that Mandal Revenue Officer thereafter served a show cause notice on the assignees and cancelled the allotments of the Bhoodan lands vide proceedings B/92-94 dated 25.5.1994 and that aggrieved by the orders of the Mandal Revenue Officer, Shri Miralam Kistaiah and 28 others who were the assignees/allottees/occupants approached the High Court in W.P. No. 22745/94 and obtained orders of stay in W.P.M.P. No. 28335/94. It is stated that the said writ petition is still pending in the High Court.

10. It appears that the All India Scheduled Castes Rights Protection Society and Ors. filed a Writ Petition No. 8280/95 stating that in spite of the directions of the High Court in W.P. No. 9211/90 dated 3.12.1992 referred to earlier no action was initiated by the Bhoodan Board and others. The said writ petition was disposed of on 29.1.1997 directing the respondents therein to expedite the proceedings.

11. We now come to the latest order of the Mandal Revenue Officer dated 8.3.1997 which was impugned in W.P. 6468/97 filed by the defence employees who are members of the East City Defence Personnel Welfare Association (registered No. 387/91) represented by P.R. Krishna Rao. This writ petition was taken up for consideration alongwith W.P. 6497/97 filed by the East City Defence Personnel Welfare Association and W.P. 4707/97 filed by the Narne Estates Pvt. Ltd.

12. The impugned order dated 8.3.1997 of the Mandal Revenue Officer states that the said officer has been directed by the Collector, Nalgonda to take action as per the judgment of the High Court in W.P. 8280/95 dated 29.1.1997 and a requested by the Bhoodan Board in their letter dated 31.12.1993. The officer then says cryptically that "in view of the above facts I do hereby take the possession in the Bhoodan lands in Survey Nos. 22 to 27, 29 to 41, 43, 45 to 60, 63 to 68, 70 to 74, 79, 80 and 85 measuring *507 acres and 34 1/2 guntas* as per the annexure situated at Rangapoor village of Bibinagar mandal alongwith the following structures :

1. Administrative Building
2. Guest House
3. Shopping Complex
4. Godown
5. Water Tanks (2)
6. Other Buildings (3)

and *excluding 42 acres and 32 guntas* covered in Survey Nos. 32, 33, 54, 769, 71 and 72." It will be noticed that this extent is quite large while the land covered by the suit OS 238/89 was 158 acres. The appellant defence personnel contended in the writ petition that the land in their possession was extensive and there were buildings and structures thereon and that the officer could not have taken and did not, in fact, take physical possession. He had also no power under law to pass such an order.

13. The learned Single Judge in his judgment in writ petition No. 6468/97 and batch dated 39.7.1997 (out of which this appeal has ultimately arisen) held that the Mandal Revenue Officer had

no power to pass the above said order dated 8.3.1997 under any statute and that even if it could be said that he had exercised some powers under the Andhra Pradesh Land Encroachment Act, he had violated the principles of natural justice as he had not given notice to the defence personnel and others and that his action was wholly arbitrary. Further, the office could not have taken physical possession of Ac 500 and buildings which were in the possession of the various writ petitioners, by a single stroke of his pen and, therefore, it was only a paper order and no physical delivery was taken by him. The learned Judge further clarified that neither in W.P. No. 9211/90 and in W.P. 8280/95 nor in the writ petitions before him, any rights of title between any of the parties were decided or were being decided. It would be for the Bhoodan Board or for the aggrieved parties to approach the Civil Court for adjudication of their disputes of title. But having said so, the learned Judge proceeded further to appoint the Bhoodan Board as *Receiver* pending initiation of any such proceedings by the Board or by the other parties.

14. To the extent that the learned Judge appointed the Bhoodan Board as receiver, the defence personnel who were the writ petitioners were aggrieved and they filed the writ Appeal. No appeal was filed by the Bhoodan Board or the Mandal Revenue Officer. The said writ appeal filed by the appellant association was, as already stated, dismissed. It is against this order that this appeal has been filed by the said association.

15. We have heard the learned senior counsel for the appellant Shri R. Sundaravardan and Shri A. Raghuvveer, Shri K. Ram Kumar, Ms. Asha G. Nair, Shri Santhyanarayan and Shri S.V. Deshpande and others.

16. After perusing the various proceedings and the counter-affidavit filed before this Court, we are of the view that there was no justification for the learned Judge to appoint a receiver, much less the Bhoodan Board as receiver while at the same time holding that no question of title has been or was being decided. The case of the writ petitioners is that the order of the Mandal Revenue Officer dated 8.3.1997 whereby he recorded that he has taken the possession of 507 acres and 34 1/2 guntas, is a farce and no physical possession had, in fact, been taken or could have been taken. This plea has been accepted by the learned Single Judge. The learned Judge has also said that the parties or the Board can file a suit to prove title. These findings and observations have become final since neither Board nor the Mandal Revenue Officer have filed any writ appeal. If the Mandal Revenue Officer has *not* taken physical possession it is obvious that the possession is, in fact, and in law with the various writ petitioners.

17. If the physical possession of this land has remained with the various writ petitioners, as found by the learned Single Judge, such possession, in our opinion, could not have been ordinarily interfered with by the Court by appointing a receiver and that too without going into any question of *prima facie* title or balance of convenience. The question of title has been left open, as already stated. We do not, therefore, find any justification for the learned Single Judge to appoint a Receiver and that too the rival party, the Bhoodan Board as receiver, pending the initiation of proceedings in the Civil Court by the parties.

18. The learned Single Judge has also directed *status quo* to be maintained by the parties. It is obvious that as and when the parties approach the Civil Court it will be open to that Court to pass appropriate interlocutory orders which it may deem fit in the circumstances of the case by taking into consideration all facts which may be brought to its notice and without being hindered by the *status quo* order passed by the learned Single Judge. Further, if any other orders are necessary in the pending civil suit, in relation to its subject-matter, the parties thereto can approach that court also.

19. In the result, the direction of the learned Single Judge in his judgment dated 39.7.1997 as affirmed in the writ appeal, in so far as the learned Single Judge appointed the Bhoodan Board as receiver is set aside. The order in the writ appeal is also set aside to that extent. It is open to the Board or to the other parties to take appropriate proceedings in a civil Court in regard to the title to the property which is subject-matter of the notice and of the writ petition and seek appropriate interim orders. It will then be for the civil Court to pass such interim orders as it may deem fit in the circumstances of the case and the *status quo* order passed by the learned Single Judge in the writ petition will not come in the way of the Civil Court passing appropriate orders. It is also open to the parties to obtain any further orders in O.S. 238/89, pending before the IIInd Additional Judge, City Civil Court, Hyderabad, in relation to the land covered by that suit.

20. We, accordingly allow this appeal and dispose of the same in the light of the directions given above. There will be no order as to costs. *I.A. No. 1/98*

21. *I.A. No. 1/98* is filed for impleadment by the writ petitioners in the writ petition as party respondents in this appeal. In view of the orders passed by us in the main appeal we do not think it necessary to permit impleadment of these San Marten Margs in the present proceedings. It will be open to them to take appropriate steps as they may deem fit in accordance with law. *I.A. 1/98* is accordingly dismissed.