

PETITIONER:
EAST CITY DEFENCE PERSONNEL WELFARE ASSOCIATION

Vs.

RESPONDENT:
STATE OF A.P. AND ORS.

DATE OF JUDGMENT: 27/07/1999

BENCH:
M.J.Rao, N.Santosh Hegde

JUDGMENT:

M.JAGANNADHA RAO, J.

Leave granted.

This appeal has been preferred by the appellant -
association - which consists of defence personnel
-against

the judgment of the Division Bench of the Andhra
Pradesh

High Court in W.A.No.1251/97 dated 2.3.98 whereby the
judgment of the learned Single Judge in W.P.
NO.6468/97

dated 29.7.97 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.

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 3.12.92 of the learned Single Judge of the High Court of Hyderabad in W.P.9211/90, judgment of another learned Single Judge of the

High Court dated 29.1.97 in W.P.8280/95, W.P. 22745/94 which

is said to be pending in the High Court and finally the

writ judgment dated 29.7.97 in W.P.6468/97 out of which the

appeal which is the subject matter of this appeal has arisen.

We shall refer to the above proceedings to the extent necessary to highlight the limited issue that arises in this

appeal before us.

A landlord named Chatur Girijee of Rangapur village donated his lands to the Andhra Pradesh Bhoodan Yagna Board

on 8.2.52. 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 158 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 appears 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.

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.

A show cause notice dated 16.1.90 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 27.1.90. No orders were

passed by the Mandal Revenue Officer on the reply, but a

further notice was issued by him on 13.6.90 on the same

allegations as in the earlier notice. The validity of the

notice dated 13.6.90 was questioned by the Gunrock Enclave

Cooperative Housing Society Ltd, Narne Estates 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 13.6.90 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 16.12.76

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 16.1.90. 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.

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 16.8.93

to the Board. The Board approved the report in toto on

23.8.93 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 13.10.93 to various assignees of the Bhoodan Board who had sold their lands to

Narne Estates Pvt. Ltd and replies were received from

assignees. The Bhoodan 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 Officer 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.

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 25.5.94 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.

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 3.12.92 referred to earlier no action

was initiated by the Bhoodan Board and others. The said writ

petition was disposed of on 29.1.97 directing the respondents therein to expedite the proceedings.

We now come to the latest order of the Mandal Revenue Officer dated 8.3.97 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.

The impugned order dated 8.3.97 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 29.1.97 and as requested by the Bhoodan Board in their letter dated 31.12.93. The officer then says cryptically that "in view

of the above facts I do hereby take the possession of 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)

Nos. and excluding 42 acres and 32 guntas covered in Survey

this 32, 33, 54, 69, 71 and 72." It will be noticed that

suit OS extent is quite large while the land covered by the

238/89 was 158 acres. The appellants - 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.

which The learned Single Judge in his judgment in writ petition No.6468/97 and batch dated 29.7.97 (out of

Mandal this appeal has ultimately arisen) held that the

Revenue Officer had no power to pass the above said order

dated 8.3.97 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 officer 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.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.

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.

We have heard the learned senior counsel for the

appellant Shri R. Sundaravardan and Shri A. Raghuv eer,

learned senior counsel for the respondents alongwith Shri K.

Ram Kumar, Ms. Asha G. Nair, Shri Santhynarayan and Shri

S.V. Deshpande and others.

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 8.3.97

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.

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.

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.

In the result, the direction of the learned Single

Judge in his judgment dated 29.7.97 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 IInd Additional Judge, City Civil Court, Hyderabad, in

relation to the land covered by that suit.

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

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 petitioners 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.

.....CJI.

JUDIS