

HIGH COURT FOR THE STATE OF TELANGANA

**TUESDAY, THE FIRST DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SRI JUSTICE J SREENIVAS RAO**

WRIT APPEAL NO: 235 OF 2024

Writ Appeal under clause 15 of the Letters Patent Preferred Against Order Dated 28/04/2023 in WP.No.42167 of 2016 on the file of the High Court.

Between:

1. State of Telangana, Rep by Principal Secretary, Revenue Department, Hyderabad.
2. The District Collector/Joint Collector, Hyderabad
3. The Revenue Divisional Officer, Hyderabad Division
4. The Tahsildar, Bandlaguda Mandal, Hyderabad

...APPELLANTS/RESPONDENTS

AND

G.Ramesh, S/o Late.G.Venkatesham Aged (47), Occ. Business, R/o.H.No.18-242/C.Shamsheergunj, Hyderabad.

...RESPONDENTS/WRIT PETITIONERS

IA NO: 2 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the order dated 28/04/2023 passed in W.P.No.42167 of 2016.

**Counsel for the Appellants: SRI MURALIDHAR REDDY KATRAM,
GP FOR REVENUE**

Counsel for the Respondent: SRI OMER SHAREEF

The Court made the following: JUDGMENT

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE J.SREENIVAS RAO

WRIT APPEAL No.235 of 2024

JUDGMENT: *(Per the Hon'ble Sri Justice J. Sreenivas Rao)*

This intra-court appeal is filed invoking the clause 15 of the Letter Patent by the appellants aggrieved by the order dated 28.04.2023 passed by a learned Single Judge, by which a writ petition i.e., W.P.No.42167 of 2016, filed by the respondent has been allowed.

2. Heard Sri Muralidhar Reddy Katram, learned Government Pleader for Revenue appearing for the appellants and Sri Omer Shareef, learned counsel for the respondent. With the consent of both parties, the writ appeal is disposed of at the stage of admission.

Brief facts of the case :

3. The claim of the respondent is that he is owner and possessor of the property to an extent of 4,280.60 sq. yards covered by Sy.No.12 situated at Sultanbagh Village of Bandlaguda Mandal, Shamsheergunj, Hyderabad, which was purchased by his father, namely G.Venaktesham, during his lifetime, through registered sale deeds *vide* document bearing Nos.1389 of 1979,

3390 of 1984, 1546 of 1985 and 401 of 2000 and since then they have been in possession and enjoyment of the said property and constructed the houses bearing H.Nos.18-4-42, 18-4-42/2, 18-4-42/5/A, 18-4-798 and 798/5/A. While things stood thus, appellant No.4 issued notice under Section 7 of the Andhra Pradesh/Telangana Land Encroachment Act, 1905 (hereafter referred to as 'the Act'). Pursuant to the same, the respondent submitted explanation on 07.10.2013. Appellant No.4 without considering the said explanation passed order under Section 6 of the Act on 21.10.2013. Aggrieved by the same, the respondent filed appeal under Section 10 of the Act before appellant No.3. The appellate authority dismissed the appeal on 03.12.2014. Questioning the same, the respondent filed revision petition before appellant No.2. The revisional authority also dismissed the revision petition on 08.10.2016. Aggrieved by the same, the respondent filed W.P.No.42167 of 2016. The learned Single Judge of this Court allowed the said writ petition on 28.04.2023. Aggrieved by the same, the appellants filed the present writ appeal.

The Learned Government Pleader vehemently contended that the respondent is claiming rights in Sy.No.12, on the other hand, encroached the Government property covered by Sy.No.11. As

the respondent occupied the Government land in Sy.No.11, appellant No.4 issued notice on 28.09.2013 and passed order under Section 6 of the Act on 21.10.2023. Aggrieved by the same, the respondent approached appellant No.3. Appellant No.3 authority after following the due procedure under the provisions of the Act dismissed the appeal on 03.12.2014 and the said order was confirmed by respondent No.2, *vide* order dated 08.10.2016. Hence, the learned Single Judge ought to have directed the respondent to approach the competent Civil Court to establish his right and title over the property.

5. *Per contra*, learned counsel for the respondent contended that unless and until the appellants establish their title by approaching the competent Civil Court, they are not entitled to initiate summary proceedings under the provisions of the Act. The learned Single Judge rightly allowed the writ petition and there are no grounds to interfere with the impugned order.

6. Having considered the rival submissions made by the respective parties and after perusal of the material available on record, it reveals that the respondent is claiming rights over the property to an extent of 4,280.60 sq. yards covered by Sy.No.12 through registered sale deeds bearing Nos.1389 of 1979, 3390 of 1984, 1546 of 1985 and 401 of 2000. Appellant No.4 alleged that

the respondent encroached the Government land covered by Sy.No.11 and passed order dated 21.10.2013 as per the provisions of the Act and the said order was confirmed by the appellate authority and the revisional authority. Questioning the same, the respondent filed W.P.No.42167 of 2016 and the same was allowed by the setting aside order dated 08.10.2016 passed by appellant No.2. Aggrieved by the same, the appellants filed the present writ appeal.

7. It is pertinent to mention here that the appellants, without conducting any survey and demarcation of the land whether the respondent is in possession of the land in Sy.No.11 or in Sy.No.12 and how much extent of land in Sy.No.12 is encroached by the respondent, straightaway initiated the proceedings exercising the powers conferred under the provisions of the Act. Learned Single Judge, while passing the impugned order, specifically held in paragraph 10 that the appellants herein failed to adjudicate as to in which survey numbers the subject property is situated.

8. In view of the above said reasons, this Court is of the considered view that unless and until the appellants conduct survey and demarcate the land in Sy.Nos.11 and 12 as per the provisions of the Telangana Survey and Boundaries Act, 1923,

and fix the boundaries to the land of the respondent, they are not entitled to initiate the proceedings under the provisions of the Act.

9. For the foregoing reasons, the appellants are granted liberty to conduct survey and fix the boundaries in respect of the subject property of the respondent. In the event any portion of the land is encroached by the respondent in Sy.No.12, the appellants are entitled to take action, in accordance with law, if so they aggrieved. To the above said extent, the order passed by the learned Single Judge is modified.

10. In the result, the writ appeal is disposed of. No order as to costs.

Miscellaneous applications pending, if any, shall stand closed.

Sd/- I. NAGA LAKSHMI
DEPUTY REGISTRAR

SECTION OFFICER

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To

1. The Principal Secretary, Revenue Department, Hyderabad, State of Telangana.
2. The District Collector/Joint Collector, Hyderabad
3. The Revenue Divisional Officer, Hyderabad Division
4. The Tahsildar, Bandlaguda Mandal, Hyderabad
5. Two CCs to GP for REVENUE, High Court for the State of Telangana, at Hyderabad. [OUT]
6. One CC to SRI OMER SHAREEF, Advocate [OPUC]
7. Two CD Copies

PSK.

MP

HIGH COURT

DATED:01/10/2024

JUDGMENT

WA.No.235 of 2024



*12
copies
23/10/2024*

**DISPOSING OF THE WRIT APPEAL
WITHOUT COSTS.**