

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 37894 of 2022

Between:

K.Thirumala and others ... **Petitioners**

And

The State of Telangana and others

... **Respondents**

JUDGMENT PRONOUNCED ON: 25.04.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. **Whether Reporters of Local newspapers may be allowed to see the Judgment?** : **yes**
2. **Whether the copies of judgment may be marked to Law Reporters/Journals?** : **yes**
3. **Whether Their Lordships wish to see the fair copy of the Judgment?** : **yes**

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 37894 of 2022**

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.....**Respondents**

< **Gist:**

> **Head Note:**

!Counsel for the Petitioner : Sri G.Ravi

^ Counsel for Respondents 1 &2 :G.P. for Medical Health &
Family Welfare

^Standing counsel for R.3 : Sri S.Surender Reddy

^Counsel for R.4 : G.P. for Revenue

^ counsel for R.5 : G.P for Home

^ standing counsel : Sri B.Shiv Kumar

? **Cases Referred:**

1. AIR 2022 SC 2703
2. (2020) 9 SCC 356
3. 2020 SCC on line SC 950

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 37894 of 2022****ORDER:**

Heard Sri G.Ravi, learned counsel for the petitioners, learned Government Pleader for Medical, Health and Family Welfare appearing for respondents 1 and 2, Sri S.Surender Reddy, learned standing counsel for GWMC appearing for respondent No.3, learned Government Pleader for Revenue appearing for respondent No.4, learned Government Pleader for Home appearing for respondent 5 and learned standing counsel appearing for respondent No.6.

2. This writ petition is filed to issue a Writ, order or direction, more particularly one in the nature of Writ of Mandamus, directing the respondents not to interfere with the peaceful possession and enjoyment of the petitioners Flats bearing Nos.3, 5, 7 in Block 9 allotted under Rajiv Gruhakalpa Scheme situated in Survey Nos.437, 438 of Urs-Warangal and consequently declare the action of the respondents in interfering the possession and demolishing the Flats 3, 5 and 7 in Block 9 as arbitrary, irregular, besides illegal and against

principles of natural justice against Articles 14, 16, 19 and 300-A of the Constitution of India.

3) The case of the petitioners, in brief, is as follows:

a) During the year 2010 the then Government of Andhra Pradesh through its Housing Board i.e. Andhra Pradesh State Housing Board issued a notification for allotment of several Flats under Rajiv Gruhakalpa Scheme which are to be constructed in Survey No.437, 438 Urs-Warangal and accordingly, the petitioners applied for allotment of Flat under Rajiv Gruhakalpa Scheme.

b) The 4th respondent allotted flats by way of lottery by picking up applications and allotted flats to the petitioners in Block No.9, in which 4 flats are constructed and accordingly Flat NO.G7 allotted to the 1st petitioner, Flat No.G5 allotted to the 2nd petitioner and Flat No.G3 allotted to the 3rd petitioner and allotment letters were issued individually by providing Bank loan of Rs.74,250/-, in which every allottee has to pay Rs.8,250/-, as initial payment and Government share of Rs.10,000/-, total Rs.92,500/-. Thereafter, the petitioners

have to pay EMIs to the Bank and accordingly Andhra Bank has granted loans to all the petitioners.

c) The petitioners cleared their loan amount by paying all instalments and obtained clearance certificate. Ever since the petitioners purchase of flats, they are in peaceful possession and continuous possession of the same, though the respondents constructed with cheap quality material. Block B9 allottees attempting repairs time to time with their own funds to see that the building may not collapse.

d) The Government launched to establish Basti Davakhana in each and every ward and accordingly a clinic was allotted to B.R.Nagar and in order to allot the same the officials of the 2nd and 3rd respondents visited entire area and it seems they have selected the petitioners' block i.e. G.9 which is centrally located and stated that they are going to acquire the same for locating Basti Davakhana. Therefore, the respondents got evicted the petitioners forcibly and took possession of the subject property and started dismantling all walls inspite of giving several representations to all the public officials including the 4th respondent and also to the police. Hence, this writ petition.

4. This Court granted *status quo* vide its order dated 28.11.2022 and observed as under:

"This writ petition is coming up for consideration before this Court since 28.09.2022. Finally, this Court, by an order dated 14.11.2022, directed the respondents to file their counter affidavit positively by today. The said order reads as under:

"A perusal of the material on record shows that the subject flats were allotted to the petitioners on having availed a loan. The petitioners have also repaid loans to the respective banks. However, in the said flats, the respondents have now established a Basti Davakhana on the ground that the said flats are vacant.

According to learned counsel for the petitioners, the petitioners were dispossessed from their respective flats without issuing notice and without following any due process of law. In the circumstances, the respondents are directed to file their counter positively within a period of two (2) weeks from today. Post on 28.11.2022 in AML."

In spite of the same, the respondents have failed to file their counter affidavit.

In the circumstances, pending further orders, the respondents are directed to maintain status quo, obtaining as on today, in respect of the subject flats, in all respects, till the next date of hearing.

Post on 12.12.2022. If no counter affidavit is filed by that date, respondent Nos.2 to 4 shall remain present in the Court in-person to answer the impugned action and their failure in filing the counter affidavit.

The said *status quo* order passed on 28.11.2022 has been extended vide orders dated 13.12.2022 and 27.03.2023.

PERUSED THE RECORD:

5. The counter affidavit of the 2nd respondent, in particular, para 3 and 4 read as under:

"It is respectfully submitted that the establishment of Basti Davakhanas the land will be identified by the Revenue Officials, on such identification, the local Municipalities/Municipal Corporations are being the administrative authorities of the area has to hand over the land to the Commissioner of Health and Family Welfare

who in turn has to with the consent of the local District Collector direct the District Medical and Health Officer to establish and take care of the said Hospitals. In this entire exercise, the role of Director of Public Health and Family Welfare is not there and as such I am not the proper authority to file reply in the present case."

6. The Vacate Stay Petition No.2 of 2022 along with counter affidavit filed by the 3rd respondent, in particular, paras 3, 4, and 5 reads as under:

"3. In reply to the para Nos.3 to 5 of the affidavit filed by the petitioners, it is submitted that in proof of the petitioners alleged allotments, they have filed the notices in Ex.P.4 and P.5, in pursuance of Ex.P.4, it is a notice via A1/2649/2008, dated 09.08.2011 issued to the petitioner No.2 herein, with a direction to take over the possession on or before 31.08.2011, otherwise

without any further correspondence, the allotment of the flat will be cancelled, and in pursuance of the Ex.P.5, it is also a notice vide No.A1/2649/RGK/5, dated 04.04.2007 issued to Burra Devender the petitioner No.3 herein, with a direction to complete the documentation within one week. i.e. on 15.04.2007, if failed to do so, without allowing any correspondence, the allotment of flat will be cancelled. But within the stipulated period as on 15.04.2007, he failed to file any evidence in proof of the completing of the documentation as directed in the notice. Except, the above notices, the petitioners have failed to submit the final allotment orders and occupation of the subject flats by the petitioners. In view of these facts, the petitioner alleged occupation of the subject flats and continuous possession is not truly and correctly stated, hence denied. The further alleged making repairs from time to time by the petitioner over the subject flats are also not truly and correctly stated hence, denied. It is further humbly submitted that all other allegations including the amounts paid by the petitioners in bank are put to strict legal proof of the same.

04. In reply to the para No.5 to 9 of the affidavit filed by the petitioners, It is humbly submitted that in view of the poor health status of the Urban Poor and lack of access to Urban primary health centers due to distance from slums, unsuitable OPD timings and less number of UPHCS, the Government has taken up the program to

construct the Basti Dawakhana for providing health facility to the poor peoples, accordingly a circular vide Roc No.E-399202/2022/H3-1, dt: 10/03/2022 was issued for construction of Basti Dawakhana within the state. In pursuance of the said circular, the matter is placed before the council of this respondent Corporation, and the council through the resolution No.62, dated 19.05.2022, has decided to construct Basti Dwakhana in (5) places within the limits of this respondent Corporation and subsequently out of (5) places, the District Collector, Hanumakonda through the letter Rc.No.SPL/Basti Dawakhana/2021-22, dated 23.05.2022, has permitted to establish the Basti Dawakhanas in (3) places, one of the locations is Rajeev Gruha Kala building, BR Nagar, Warangal, which is the present subject property.

5. It is further humbly submitted that the flats of the Rajeev Gruhakalpa at BR Nagar were unoccupied, and were in dilapidated condition, the Greater Warangal Municipal Corporation of the 3rd respondent with an intention to provide the health facility for the poor people, and in compliance to the proceedings dated 23.05.2022 of District Collector, of the District Collector, Hanumakonda has renovated the subject flats duly making all the repairs and alterations for establishment of Basti Dawakhana. The renovation of flats for opening of Basti Dawakhana is almost all completed."

7. The Counter affidavit filed by the 4th respondent, in particular, paras 5 and 6 reads as under:

"5. It is further humbly submitted that as the flats of the Rajeev Gruhkalpa at BR Nagar were unoccupied, and were in dilapidated condition, the Grater Warangal Municipal Corporation of the 3rd respondent herein with an intention to provide the health facility for the poor people, and in compliance to the proceedings, dated 23.05.2022 of District Collector, Hanumakonda has renovated the subject flats duly making all the repairs and alterations for establishment of Basti Dawakhana. The renovation of flats for opening of Basti Dawakhana is almost all completed.

6. It is humbly submitted that during the renovation of the flats for establishment of Basti Dawakhana, the petitioners have failed to bring to the notice of this respondent regarding the alleged allotment, till the completion of the Basti Dawakhana, they have failed to file any representation to this respondent regarding their alleged allotment, and filed the present writ petition with a malafide intention to stop the work in providing the health facility to the poor people. The allegation of the petitioners is that they filed a representation dated 05.09.2021 to the District Collector, Warangal, but they failed to file

documentary evidence in proof of filing the said representation before the Hon'ble High Court. As on the date of filing of the writ petition, the renovation of the flats for establishment of the Basti Dawakhana was all most all completed."

8. The petitioners filed reply affidavit to the counter affidavit filed by the 4th respondent denying the pleas raised by the 4th respondent in his counter.

9 No dues certificate dated 05.09.2022 issued by the Union Bank of India, Khazipet Branch, Warangal vide Lr.No.02991/Misc/003 to the wife of the petitioner reads as under:

" Mrs K.Thirumala W/o K.Thirupathi had availed housing loan with A/c No.029930100021833 under Rajeev Gruhkalpa Scheme for Procurement of flat at Ursu area, Warangal has been settled under OTS Scheme and there are no Dues pending at our Kazipet Brach as on dated 03.09.2022."

10. Certificate dated 31.08.2016 issued by the Andhra Bank, Khazipet Branch, Warangal to the 3rd petitioner reads as under:

" This is to certify that Sri B.Devender S/o Lingaiah had availed housing loan with no 029930100024790 under

Rajeev Gruhakalpa Scheme for procurement of flat bearing No. G3, Block No.9 at Urusu Area, Warangal has been settled in full and final under OTS (One Time Settlement scheme) on 15.07.2016.

This certificate issued in the request of the customer.”

DISCUSSION AND CONCLUSION

11. A bare perusal of the letter issued by the Andhra Bank, Kazipet Branch filed as material document No.16 along with the affidavit filed by the petitioner in support of the present writ petition pertaining to loan account No.029930100021833 clearly indicates that the flats were allotted to the petitioners and the petitioners had taken possession of the said flats and the subject flats are mortgaged in favour of the banks and the banks had released the loan amount in respect the subject flats and paid amounts directly to the Andhra Pradesh State Housing Corporation. It is also borne on record that the representation of the petitioners to the District Collector, the 4th respondent had been registered vide Registration No.WGRDC/E/2022/01606, dated 12.09.2022 and is received by the District Collector, Warangal and the same is filed as material document No.11 by the petitioner along with the reply affidavit. This Court opines that the above referred

documents negative the pleas put-forth by the respondents that the flats of Rajeev Gruhakalpa, BR Nagar were unoccupied and were in dilapidated condition and further that the petitioners failed to bring to the notice of the respondents the fact of the said allotment till the completion of Basti Dawakhana and the petitioners did not file any representation to the respondents and only with a malafide intention to stop the work to provide health facility to the poor people, the petitioners filed the present writ petition. A bare perusal of the No Due Certificates dated 05.09.2022 and 31.08.2016 filed as material documents in support of the present writ petition clearly indicate that there are no dues pending and the subject house loans had been cleared.

12. The petitioners in the reply affidavit also contended specifically that the petitioners are in possession of the subject flats and electricity connection vide USC No.15652290 had been issued in the name of the 2nd petitioner, but however, the respondents had forcibly taken possession from the 2nd petitioner under the guise of establishing Basti Dawakhana and that the petitioners also made a representation to the 5th respondent for necessary action

against the petitioners, who dismantled the walls of the flats belonging to the petitioners by trespassing into the petitioners' flats and further that the petitioners were threatened to be killed in the event the petitioners did not vacate their flats. A bare perusal of the contents of the notices filed as material documents by the petitioner along with the affidavit filed in support of the present writ petition i.e. the notice dated 09.08.2011 issued to the 2nd petitioner and the notice dated 04.0.2007 issued to the 3rd petitioner clearly indicates that the subject flats were allotted to the petitioners under Rajeev Gruhakalpa scheme in Block No.9 in Survey No.437 and 438, Urs-Warangal.

13. The Apex Court in the judgment reported in AIR 2022 SC 2703 in Kalyani (dead) through LRs and others v Sulthan Bathery Municipality and others, in particular at para 20, observed as under:

"Article 300A clearly mandates that no person shall be deprived of his property save by authority of law. In the present case, we do not find, under which authority of law, the land of the appellants was taken and they were deprived of the same. If the Panchayat and the PWD

failed to produce any evidence that appellants have surrendered their lands voluntarily, depriving the appellants of the property would be in violation of Article 300-A of the Constitution.

14. **The Apex Court in the judgment reported in (2020) 9 SCC 356 in Harikrishna Mandir Trust v State of Maharashtra, in particular, paras 96, 97 and 99 observed as under:**

“96. The right to property may not be a fundamental right any longer, but it is still a constitutional right under Article 300-A and a human right as observed by this Court in Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel. In view of the mandate of Article 300-A of the Constitution of India, no person is to be deprived of his property save by the authority of law. The appellant Trust cannot be deprived of its property save in accordance with law.

97. Article 300-A of the Constitution of India embodies the doctrine of eminent domain which comprises two parts, (i) possession of property in the public interest; and (ii) payment of reasonable compensation. As held by this Court in a plethora of decisions, including State of Bihar v. Project Uchcha Vidya, Sikshak Sangh: Jilubhai Nanbhai

Khachar v. State of Gujarat Bishambhar Dayal Chandra Mohan v. State of U.P, the State possesses the power to take or control the property of the owner for the benefit of public. When, however, a State so acts it is obliged to compensate the injury by making just compensation as held by this Court in Girnar Traders v. State of Maharashtra((2007) 7 SCC 555)

99. In case of dispossession, except under the authority of law, the owner might obtain restoration of possession by a proceeding for mandamus against the Government as held by this Court in Wazir Chand v State of H.P (AIR 1954 SC 415)

15. The Apex Court in the judgment reported in (2020) SCC on line SC 950 in **B.K. Ravinchandra and others v Union of India and others**, in particular, at paras 21, 22, and 23 observed as under:

“21. Although the right to property is not a fundamental right protected under Part III of the Constitution of India , it remains a valuable constitutional right. The importance of this right has been emphasized and reiterated several times by this court. In Delhi Airtech Services Pvt. Ltd. v. State of U.P. for instance, this court underlined the issue as follows:

"30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property." Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed the view that property itself is the seed bed which must be conserved if other constitutional values are to flourish is the consensus among political thinkers and jurists."

22. Earlier, in State of Rajasthan v. Basant Nahata , this court highlighted that a property owner's rights cannot be deprived, stating that:

"59. ..In absence of any substantive provisions contained in a parliamentary or legislative act, he cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one's right of property as envisaged under Article 300-A 300-A of the Constitution."

23. The decision in K.T. Plantation Pvt. Ltd. v. State of Karnataka interpreted Article 300A and held that:

"168. Article 300A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. The expression "property" in Article 300-A confined not to land alone, it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognized by law. 169. This Court in State of W.B. v. Vishnunarayan and Associates (P) Ltd. , while examining the provisions of the West Bengal Great Eastern Hotel (Acquisition of Undertaking)

Act, 1980, **held in the context of Article 300-A that the State or executive officers cannot interfere with the right of others unless they can point out the specific provisions of law which authorises their rights.**

16. This Court on due perusal of the record, opines that subject flats were allotted to the petitioners and the petitioners had availed the bank loans and the said loans have been paid directly to the Andhra Pradesh State Housing Corporation bank and the 3rd respondent corporation, without further considering all these aspects decided to establish Basti Dawakhana and evicted the petitioners' from the subject flats, which are located at Block G9 unilaterally, without issuing any notice to the petitioners, high handedly, in clear violation of principles of natural justice.

17. This Court opines that no person can be deprived of his/her property save by authority of law and depriving the petitioners of the property without following due process of would be in clear violation of Article 300-A of the Constitution of India and also the petitioners' fundamental right to property. This Court opines that the respondents failed to produce any

evidence on record on the point that the allotments made in favour of the petitioners had been cancelled or the fact of any notices having been issued to the petitioners calling upon the petitioners' explanation prior to renovating petitioners subject flats. The plea taken by the 3rd respondent in para 5 of the counter affidavit filed in the present writ petition that the flats of the Rajeev Gruha Kalpa at B.R.Nagar were unoccupied and in dilapidated condition and therefore, the 3rd respondent renovated the subject flats for establishment of Basti Dawakhana is untenable and cannot be accepted. The 3rd respondent cannot take decisions unilaterally high handedly in clear violation of principles of natural justice. This Court opines to permit the State to assert that it has an indefinite or overriding right to continue occupying one's property, whatever be the pretext, is no less than condoning lawlessness, and the same cannot be permitted in the eye of law.

18. Taking into consideration the above facts and circumstances, and the law laid down by the Apex Court in

the judgments (1) **In Kalyani (dead) through LRs and others v Sulthan Bathery Municipality and others** reported in AIR 2022 SC 2703 (2) **In Harikrishna Mandir Trust v State of Maharashtra** reported in (2020) 9 SCC 356 **and** (3) **In B.K. Ravinchandra and others v Union of India and others** reported in (2020) SCC on line SC 950 (referred to and extracted above), the writ petition is allowed as prayed for and the respondents are directed not to interfere with the peaceful possession and enjoyment of the petitioners' flats bearing No.3, 5 and 7 allotted to the petitioners under Rajeev Gruhakalpa Scheme situated in Survey Nos.437 and 438 of Urs-Warangal. It is however, observed that if the respondents intend to take possession of the subject flats for any public purpose, the due process of law under Land Acquisition Act needs to be followed duly adhering to principles of natural justice as well. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand dismissed.

SUREPALLI NANDA, J

Date: 25.04.2022

Note: L.R. copy to be marked
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