

(2012) 09 AP CK 0029

Andhra Pradesh High Court

Case No: Writ Petition No's. 14438 of 2005 and 28239 of 2008

Mohd. Ali and Others

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision: Sept. 10, 2012

Acts Referred:

- Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 - Section 3, 4, 5, 6, 7

Citation: (2013) 1 ALT 643

Hon'ble Judges: Noushad Ali, J

Bench: Single Bench

Advocate: P. Roy Reddy, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Noushad Ali, J.

Petitioners in both the writ petitions have common interest and grievance against the respondents arising out of a dispute in relation to the same land. Hence these writ petitions are heard together and are disposed of by this common order. Land measuring Ac. 13.28 gts., situated in Sy. No. 428 of Patancheru village and Mandal Medak District is an Inam land classified as "Dasthagartha Inam Land". All inams in the Telangana Area of the State of A.P., were abolished under the provisions of the A.P. (Telangana Area) Abolition of Inams Act, 1955 (for brevity "the Act"). The predecessor-in-title of the petitioners was an inamdar of the said land. Abbas Ali, Mohd. Ibrahim Ali, Mahaboob Ali and Faqueer Mohammad, sons of one Shaik Dade were registered as occupants. A final patta u/s 4 of the Act was issued in their favour vide proceedings of the Revenue Divisional Officer in proceedings bearing No. B/750/75/542 - G/7150/75/542, dated 5.09.1977, thus conferring title on them. Appeal filed against the said order by some third parties was dismissed by orders of the District Collector, Medak dated 10.07.1984, thus confirming the ownership rights

of the predecessors-in-title of the petitioners. These petitioners are the successors of the said grantees.

2. At one point of time, the possession of the petitioners was sought to be distributed (sic, disturbed) by the State. Some of the petitioners filed a suit bearing O.S. No. 8 of 1986 in the Court of the Subordinate Judge, Sangareddy, impleading the District Development Officer, Zilla Parishad, Medak District, the 4th respondent herein as the defendant and sought for declaration of title and injunction. The suit was dismissed by judgment dated 20.05.1988. An appeal bearing A.S. No. 1488 of 1988 was filed against the said judgment in this Court. This Court noticed the fact that the State nowhere claimed the ownership of the suit property and as a matter of fact ownership of the plaintiffs had been conceded, dismissed the suit observing that the plaintiffs were not in possession and that the plaintiffs desired to withdraw the suit along with the appeal to enable them to make a representation to the Government for payment of suitable compensation.

3. Pursuant to the orders of this Court in the aforesaid appeal, the petitioners submitted representations on 27.01.2004 and 26.03.2004 seeking payment of compensation in so far as an extent of Ac. 2.18 gts., of land which remained in the possession of the 4th respondent, who has set up a school on a part of the said land. As the State Government was not inclined to pay compensation, the petitioners have filed this writ petition seeking to declare the action of the respondents in illegally occupying the said land without initiating proceedings under the Land Acquisition Act, 1894 and payment of compensation, as illegal.

4. A counter affidavit is filed on behalf of the respondents sworn to by the District collector, Medak, inter alia admitting that the subject land is an Inam land as per revenue records, viz., Khasra Pahani 1954-55, and Occupancy Rights Certificate (ORC) was granted on 6.09.1977. However, it is stated that the ORC has not been implemented in the revenue records and that the petitioners have no right over the said land. A high school building was established by the State Government and the same has been in existence as per the revenue records, viz., Pahani 1958-59. The school building was recorded as the owner of an extent of Ac. 4.00 gts., and a godown over an extent of Ac. 0.28 gts., in the 1989-1990 Record of Rights. Therefore, the petitioners are not the owners of the land, and hence they are not entitled for compensation.

5. I have heard Sri Roy Reddy, learned counsel appearing for the petitioners and learned Government Pleader for Revenue (Telangana Area) and perused the material on record. The respective learned counsel advanced arguments raising the aforesaid contentions.

6. As mentioned above, admittedly the subject land was an Inam land and that ORC was granted in favour of the predecessors-in-title of the petitioners. There is no dispute in this regard.

7. Section 3 of the Act provides that all Inams shall be deemed to have been abolished and shall vest in the State notwithstanding anything to the contrary contained in any usage, settlement, contract, grant, sanad, order or instrument, Act, regulation, or rules etc. The consequences of the abolition of Inams is that every Inamdar, shall with effect from the date of vesting is entitled to be registered as an occupant of all Inam lands, which immediately before the date of vesting, were under his personal cultivation except the lands set apart for village community and communal purposes, and the land in respect of which persons are entitled to be registered under Sections 5, 6, 7 and 8 of the Act and the lands upon which have been erected buildings owned by any person other than the Inamdar.

8. Thus though the rights of Inamdars were abolished by the Act, they are entitled to be registered as occupants of the same and after they are so registered, the lands absolutely vest in them. In the instant case, admittedly ORC was granted recognizing the rights of the predecessors of the petitioners. Thus the petitioners acquired absolute rights over the subject land.

9. The contention of the State is that the school was established in the year 1958-59 on a part of the land and it has been recognized as the owner in the year 1989-90 as per the record of rights. Inams in the instant case were abolished w.e.f., 20.07.1955, thereby the land came to be vested in the State Government by virtue of the provisions of Section 3 of the Act. Hence, the school, which was established in the year 1958-59 was recognized as the owner in the Record of Rights in the year 1989-90 to the exclusion of the rights of the petitioners. The State, therefore, contends that the petitioners lost ownership immediately after the abolition of the Inams from 20.07.1955 and therefore they ceased to be the owners of the subject land. The State relies upon Section 9 of the Act in support of its contention.

10. In my considered opinion, the said contention is without any substance. It is true that the Inams were abolished w.e.f., 20.07.1955 and that all the Inams stood vested in the State as per Section 3. However, mere vesting the Inam will not confer any right on the State to claim absolute rights. Provisions of Section 3 vesting the Inam in the Government is subject to the rights of the parties u/s 4 to 8. u/s 4, every Inamdar is entitled to be registered as an occupant. Similarly, under Sections 5 to 8, every kabiz-e-kadim, a permanent tenant, protected tenant and a non-protected tenant, respectively, are entitled to be registered as occupants of the land under their personal cultivation. It is crucial to note that the registration so made in favour of the occupants will have the effect from the date of vesting, i.e., in the instant case w.e.f., 20.07.1955. It is true that the name of the school was found in the revenue records in the year 1958-59 and it was recorded as the owner in the year 1989-90. Nonetheless, it cannot be said that the school acquired ownership rights absolutely because its possession is not absolute, but it is subject to the aforesaid provisions of the Act. As noticed, the State Government does not become the absolute owner merely because the property is vested in it. In the scheme of the Act the State

Government holds the property as a custodian and its vesting is only transitory, until the provisions of Sections 4 to 8 are invoked by the claimants.

11. The contention of the State that since the Inam land had been converted for a non-agricultural purpose by constructing the school building, the school is entitled to keep such land as per sub-section (2) of Section 9. I am unable to accept the said contention, firstly, because the said provision has no application to the facts of the case. Secondly, as noticed above, the building was constructed in the transitory period during which time claim u/s 4 was pending.

12. Nonetheless, the State contends that the ORC granted in favour of the petitioners is under challenge in appeal at the instance of the Headmaster of the school and the same is pending. According to the State, the ORC has not become final. However, I am not inclined to take this fact into consideration since admittedly, the appeal was filed in the year 2010, i.e., after lapse of more than 35 years, particularly after filing of this writ petition.

13. It is not in dispute that the subject land has been taken over otherwise by following due process of law either by acquiring the same under the provisions of Land Acquisition Act or by negotiations with the petitioners. It is well settled that nobody shall be deprived of his property except by authority of law.

14. For the foregoing reasons, it must be held that the occupation of the land of the petitioners measuring Ac. 2.18 gts., in Sy. No. 428 of Patancheru Village and Mandal by the State is illegal. It is made clear that if the State Government still wants to retain the land, it shall do so only by acquiring the same as per law and paying compensation to the petitioners.

15. The writ petitions are accordingly allowed. No costs. In view of allowing the writ petitions, W.P.M.P. No. 27187 of 2009 and W.P.M.P. Nos. 19463 and 19464 of 2009 in W.P. No. 14438 of 2005 are dismissed as unnecessary.