

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

TUESDAY, THE TENTH DAY OF MARCH
TWO THOUSAND AND FIFTEEN

PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No. 4697 of 2015

BETWEEN

Bale Mahalakshmi and others

... PETITIONERS

AND

The State of Andhra Pradesh, Rep. by its Principal Secretary (Department of Home), Secretariat Buildings, Hyderabad and others.

...RESPONDENTS

The Court made the following:

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ORDER:

Heard learned senior counsel for the petitioners; learned Government Pleader for Home; learned Government Pleader for Fisheries; and Mr.Raju, learned counsel representing respondent Nos.8 and 9.

2. The present writ petition is filed complaining of action of respondent Nos.2 to 9 in not permitting the petitioners to harvest the fish in an extent of Ac.16-00 in Survey No.254/1 and 255/1 of Prattikolla Lanka Village and for consequential direction.

The present writ petition is a sequel to W.P.No.35706 of 2014,

which was heard and disposed of by me by order, dated 15.12.2014, with the following direction:

“Keeping in view the dispute between two groups, it is appropriate to continue police picket till both the parties resolve their dispute by appropriate proceedings before court of law. Except continuing police picket, the police state that they are not interfering with the fish tanks nor causing any harassment to the parties. Hence, in my view, in the facts and circumstances of the case, no further orders are required to be passed in this writ petition.”

3. While the said police picket continues at site, the dispute between the petitioners on the one hand and respondent Nos.8 and 9 on the other still remains unresolved and is pending before the competent civil court in O.S.No.3 of 2014 before I Additional Junior Civil Judge, Eluru, West Godavari, together with I.A.No.26 of 2014 for interim injunction sought for by respondent Nos.8 and 9 and no orders, as such, are passed till date. Consequently, therefore, while petitioners' claim that they are assignees of the said land with permission to continue aqua culture in terms of G.O.Ms.No.7, AHDD and Fisheries (Fish-II) Department, dated 16.03.2013, respondent Nos.8 and 9 claim to be lessees under the petitioners and further claim that they have raised the fish pond and they alone are entitled to harvest the fish. Petitioners claim that they were granted D-form pattas in April, 2007 and they were also granted permissions for cultivating existing fish and prawn by taking up aqua culture. The dates on which such permissions were granted to the petitioners under the aforesaid GO are, however, different, but during the hearing it is accepted across the bar that in case of petitioner Nos.1, 6 and one Bala Swaroopa and three others, licences have expired on 28.01.2014 and for all the other petitioners, licences are valid and subsisting.

4. It is also evident from the counter affidavit filed by respondent No.7 that the renewal applications of petitioner Nos.1 and 6 is pending consideration, whereas the said Bale Swaroopa and three others have not applied for renewal with reference to licence granted to them earlier.

5. The dispute, which was subject matter of the earlier writ petition, referred to above, was with reference to the action on the part of the respondents therein interfering with petitioners' fish tanks and keeping in

view the dispute between the two groups and the law and order problems likely to arise, the police picket has been continuing in the said site and accordingly to that extent, the directions, extracted above, were passed in the above writ petition.

6. As stated above, the grievance of the petitioners in the present writ petition is that the respondent authorities, particularly the police are preventing them from harvesting the fish on the ground that there is no order in favour of the petitioners permitting them to harvest the fish. The facts, as emerging from the record, show that permissions were granted to the petitioners under GO Ms.No.7, referred to above, and except petitioner Nos.1, 6, one Bale Swaroopa and three others, counter affidavit of respondent No.7 does not dispute the aqua culture permissions in favour of other petitioners herein.

7. Learned senior counsel for the petitioners contends that except for the above licencees, all other petitioners have subsisting permission and licence is valid to the extent of petitioner Nos.1 and 6 also. It is pointed that in view of clause B(4) dealing with renewal of aqua culture licence under guidelines framed and appended to G.O.Ms.No.7, once a licensee applies for renewal, even if he applies late, he is allowed to continue aqua culture operations during pendency of his application until the disposal of his application for renewal or modification or rejection. Based on the above, learned senior counsel for the petitioners contends that petitioner Nos.1 and 6, whose licence expired on 28.01.2014, have admittedly applied for renewal and the renewal applications are pending.

8. In terms of the aforesaid clause, therefore, petitioner Nos.1 and 6 are entitled to continue aqua culture operations during pendency of their renewal applications. The aforesaid contention is clearly sustainable in terms of the guidelines under clause B(4) issued in Annexure-I of G.O.Ms.No.7 under the heading "Renewal". However, no such benefit can be claimed by the licencees viz., Bale Swaroopa and three others, who have not applied for renewal of licence.

9. It is also evident from the record that in view of the dispute between the petitioners on the one hand and respondent Nos.8 and 9 on the other, even in the past the Revenue Divisional Officer (RDO), Eluru, by proceedings dated 03.06.2014 had taken note of the said dispute and directed the Deputy Director of Fisheries, West Godavari District, to take over the disputed fish tanks including harvest of the fish in all the four tanks. Pursuant to the said directions, the Deputy Director of Fisheries also issued proceedings, dated 06.06.2014, asking the Sub Divisional Police Officer to provide sufficient protection to harvest the fish in order to prevent mass mortality and eventual loss of the crop of fish, which is perishable. It is also on record that earlier the Tahsildar had initiated proceedings under Section 145 Cr.P.C. vide orders in M.C.No.109 of 2014 to maintain law and order situation on account of the disputes between petitioners and respondent Nos.8 and 9.

10. All the aforesaid orders were subject matter of consideration in W.P.Nos.23507 and 17142 of 2014 and interim orders passed in the said writ petitions were duly considered by this court in the vacate stay petitions filed by the petitioners herein and by order, dated 25.08.2014, the order of the Tahsildar, taking up proceedings under Section 145 Cr.P.C. was suspended. Similarly, interim directions issued by this court, dated 02.07.2014 to implement the RDO's proceedings, dated 03.06.2014, was also vacated. Thereby, neither the revenue nor the fisheries department could take control of the fish tanks of the petitioners nor could harvest the fish.

11. The said situation continues even as on today and evidently since the petitioners have subsisting licence for aqua culture, it cannot be said that petitioners are not entitled to harvest the fish. So far as respondent Nos.8 and 9 are concerned, they have already filed a suit before the competent civil court, as referred to above, seeking permanent injunction and consequential relief. However, their claim is only through the petitioners, as is evident from the plaint in the said suit. They further claim that under oral lease, respondent Nos.8 and 9 were granted lease for a period of ten years. On the said pleadings they filed the aforesaid suit and sought interim injunction. However, it is not disputed that I.A.No.26 of 2014 is still pending and no orders, as

such, are passed in favour of respondent Nos.8 and 9. In these circumstances, therefore, it has to be *prima facie* held that petitioners are entitled to harvest the crop.

12. The counter affidavit of Respondent No.7 and the instructions of learned Government pleader for Home clearly show that they are only concerned with maintaining law and order at site and it is also accepted that fish crop is sensitive and perishable and if not harvested in time, it would lead to damage and the villagers as well as the Government would be deprived of the income.

13. Learned counsel for respondent Nos.8 and 9, in the circumstances, suggested that the harvesting of crop by the fisheries department and setting apart the money received for the benefit of successful party would serve the ends of justice.

14. While the said suggestion, *prima facie*, looks appropriate, it is to be remembered that similar directions issued by the revenue authorities by order dated 03.06.2014 were not approved by this court in the earlier order, dated 25.08.2014, referred to above.

In view of that, said course of action is not permissible, at this stage, particularly, *prima facie* case and *prima facie* right to harvest the fish crop is found in favour of the petitioners, as noted above.

15. To the extent of instructions of the learned Government Pleader for Home that a mob is assembling on the fish tanks for the purpose of harvesting fish and creating serious law and order problem is concerned, in my view, a further direction in that regard is also warranted. Hence, while permitting the petitioners to harvest the crop, I deem it appropriate to further direct that petitioners shall nominate any 15 persons by giving their names and particulars to the police authorities and the respondent police shall permit only those 15 persons to complete the work relating to harvesting of crop.

The respondent police are at liberty to ensure that except the said identified 15 persons nominated by the petitioners, no other petitioner or their representative interferes with or harvests the crop at the tanks aforesaid.

16. Writ petition is, therefore, disposed of with the aforesaid directions. However, these directions issued shall not affect the rights of respondent Nos.8 and 9, which are subject matter of the suit, and they are at liberty to seek appropriate directions from the civil court.

As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

March 10, 2015

Note: -

Furnish copy by two days.

{B/o} **Lmv**