

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE SRI JUSTICE S.V. BHATT

P.I.L.No.235 OF 2015

PC: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

The petitioner, through the instant public interest litigation, complains against inaction of respondent Nos.1 to 4 in taking suitable steps on the representation of petitioner dated 21.07.2015 against respondent No.5/school situated on the tank bed called "Kanteru Kunta" in Sy.No.555 of Kalluru Village and Mandal, Khammam District, as illegal, arbitrary and unconstitutional.

On 31.08.2015, this Court ordered notice to respondent No.5. The parties are represented by the counsel and counter affidavits are filed by the contesting parties.

The present writ petition is filed on the premise that the school run by respondent No.5 is constructed on tank bed called "Kanteru Kunta" and not safe for students.

The further grievance is that the 5th respondent has not taken adequate measures to prevent happening of unfortunate incidents to children studying in the school.

The District Collector/2nd respondent filed counter affidavit and to appreciate that there is no inaction in looking into the grievance of petitioner, the following paragraphs are excerpted:

".....Immediately after receipt of the orders of this Hon'ble Court, I have directed the Revenue Divisional Officer to conduct an enquiry and submit a report vide proceedings in Rc.No.E3/2616/2015 dated 08.09.2015.

In pursuance of the same, a joint inspection has been conducted by the Revenue Divisional officer along with the Tahsildar, Kalluru and verified the records of Sy.No.554 & 555 of Kalluru Village, Khammam District. The land situated in Sy.No.555 is a

patta land and belongs to

Sri Md.Ayub, S/o Madar Saheb, R/o Kalluru and the land situated in Sy.No.554 is a tank bed land/shikam land of Kanterukunta. During the inspection, it is also found that the building constructed by the 5th respondent is situated in Sy.No.555 which is a patta land and no encroachments were found in Sy.No.554 which is a tank bed land, vide proceedings Rc.No.A/11903/2015 dated 26.09.2015.

.....that the Revenue Divisional officer also clarified that the land situated in Sy.No.555/A total admeasuring Ac.4.12 gts was converted from agricultural use to

non-agricultural use after collecting necessary conversion fee, vide proceedings in Letter No.D.Dis.A4/6109/2015 dated 22.05.2015. The Deputy Executive Engineer, Irrigation Sub-Division, Sathupalli, vide Lr.No.DEE/ISD/ SPL/Camp 1 dated 13.05.2015 clarified that the land situated in Sy.No.554 of Kalluru village is shikam land and the other survey numbers are not forming part of FTL (full tank level) of Kante Ramuni Kunta. Further, Deputy Executive Engineer, Kalluru Village, also certified about the structural soundness of the building of the 5th respondent vide letter dated 28.05.2015. The Tahsildar also issued certificate, vide proceedings in Lr.Rc.No.C1/453/2015 dated 26.05.2015 stating that the land situated in Sy.No.555/A/A to an extent of Ac.2-06 gts is a patta land and belongs to Md.Ayub and his name has been recorded in the pahanies as pattedar and enjoyer and the Grampanchayat also issued No Objection Certificate”.

The 2nd respondent enclosed to the counter affidavit the inspection report of Tahsildar, Kalluru dated 05.09.2015 and the relevant portion of the report reads thus:

“As per the report of the Mandal Surveyor, Kalluru,

I have issued a notice in Form-7 under L.E Act, 1905 to both parties. But one Sri Md.Ayub has submitted reply to the notice and informed that he has no objection to take over the land while fixing the boundaries for Sy.No.554 which is covered Tank Bed land of “Kanterukunta:.

The Mandal Surveyor, Kalluru conducted survey and fixed boundaries for 555 and 554 after measurement only, it is found that Sri Md.Ayub has encroached the tank bed land to an extent of 0.05 gts, which is a road formed.

Therefore, they have been issued notice in Form-6 with speaking

order vide reference 6th cited directing Mandal Revenue Inspector-I to remove the illegal encroachments in Sy.No.554 and taken over possession.”

From the above, it is clear that the inaction complained by the petitioner is factually incorrect and at the same time from the averments in the counter affidavit or contents in the report dated 05.09.2015, a few aspects viz., alleged encroachment by 5th respondent in an extent of five guntas of land and location of 5th respondent school by the side of tank and lack of safety measures, are evident. Considering the fact that the 5th respondent runs a school at the subject building, we are satisfied that the following directions would meet the ends of justice:

“The 2nd respondent directs Tahsildar, Kalluru Mandal to complete the enquiry initiated against alleged five guntas of encroached land under the Land Encroachment Act within a period of two months from the date of receipt of a copy of this order.

The 4th respondent/District Educational Officer, Khammam causes inspection of the school run by 5th respondent in Sy.No.555 of Kalluru Village and Mandal, Khammam District and examines the safety measures provided by the 5th respondent vis-à-vis the location of tank in the neighbourhood.

The 4th respondent, having regard to the safety of children studying in the school, directs taking all steps by respondent No.5, including construction of a wall separating the school and tank. The grant or renewal of approval shall be made subject to complying these conditions by respondent No.5”.

PIL is, accordingly, disposed of.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V.BHATT, J

Date: 26.10.2015

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