

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE S.V. BHATT**

PIL No.176 OF 2015

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

Heard Mrs. S.Nanda, learned counsel for the petitioner, learned Government Pleader for Revenue (AP), Mr.T. Sudhakar Reddy, learned standing counsel for Andhra Pradesh Housing Corporation and Mr. N. Venkateswarlu, learned standing counsel for Bhimavaram Municipality.

Muslim Social Welfare Association represented by its President through the present PIL prays for Mandamus declaring the inaction of respondents in evicting the encroachers from an extent of Ac.0-49 cents in Survey No.364/1 in Bhimavaram, West Godavari as arbitrary and illegal and the petitioner prays for consequential direction to remove the encroachment from petition land and thereby facilitate using the petition land as burial ground by the Muslims of Bhimavaram town, West Godavari District.

The case of petitioner is that the petition land is a classified burial ground meant for use by the Muslims of Bhimavaram town. According to the petitioner, on account of the petition land being under the encroachment of third parties, the petition land is not used as burial ground and the community is facing lot of hardship and inconvenience in providing place to deceased.. The petitioner relies upon proceedings of 3rd respondent bearing No.D.Dis.2534/98(E) dated 05.10.1999 to contend that the Revenue Department admits classification of petition land as burial ground and as early as 1998, the 4th respondent was directed to remove encroachments and hand over the vacant land for use as burial ground. The complaint under these circumstances is that neither the encroachment is removed nor the petition land is allowed to be used as burial ground by the Muslims of the Bhimavaram town.

On 13.07.2015, this Court ordered notice to respondents. Respondents 4 and 5 have filed their replies. The relevant portion in the

reply filed by 4th respondent is required to be excerpted for the nature of disposal we propose to give to the PIL.

“As all the encroachers belonging to Scheduled Caste Community and poorest of the poor, soon after the construction of G+1 type houses is completed in the acquired land of Ac.0.50 cents in R.S.No.364/2, the encroachers of dwelling houses in R.S.No.364/1 will be got vacated by rehabilitating them to G+1 type houses to be constructed, so that the extent of land (Burial ground) Ac.0.49 cents in R.S.No.364/1 which is vested to Bhimavaram Municipality will be maintained by the Bhimavaram Municipality, toward usage of Muslims burial ground.

In reply to Para 4 of the affidavit, it is submitted that R.S.No.364/1 situated in Bhimavaram Town measuring Ac.0.49 cents is classified in accounts as Burial ground. At present there are encroachments by 56 families by means of dwelling houses belonging to SC Caste in the said burial ground poramboke and the said encroachments have been in existence since the last 4(four) decades i.e, generations together and all of them are poorest of the poor. Pursuant to the instructions issued by the R.D.O., Narsapur, the 3rd respondent herein in his D.,Dis.2534/98 (E) dated 05.10.1998, several attempts are made to vacate the above encroachments with a view to hand over the burial ground extent to the Bhimavaram Municipality for usage of Muslims burial ground. But all the above encroachers have bluntly refused to vacate their encroachments from the burial ground. A report was submitted to the R.D.O., Narsapur the 3rd respondent herein appraising that it is not possible to evict the above encroachments unless and until the encroachers are rehabilitated into G+1 type houses to be constructed as they are poorest of the poor.

In reply to para 5 of the affidavit, it is submitted that there is existing Muslims burial ground on the Eastern Side of Bhimeswara Swamy Temple in Bhimavaram Town and the dead bodies of Muslims are being buried in the said burial ground and at present the process of burial of dead bodies of Muslims is being attended therein.

In reply to Para 13 of the affidavit, it submitted that the extent of land Ac.0.50 cents in R.S.No.364/2 adjacent to Burial ground Ac.0.49 cents in R.S.No.364/1 on its' Southern side was acquired by the Government under S.W.L.A. scheme for vacating the encroachments in R.S.No.364/1 Ac.0.49 cents by rehabilitating the encroachers to the acquired land. The

proposal for construction of G+1 type houses under Indiramma Phase-II programme has to be taken up by the Housing Department soon after handing over Pattas as the acquired land has been already leveled up. Without allotting the G+1 type houses to be constructed, it is not possible to get them vacated by initiating eviction proceedings as the untoward incidents may arise causing Law & Order problem and also the beneficiaries comes under Poorest of the poor category.

It is further submitted that there is existing Muslims burial ground on the Eastern side of Bhimeswara Swamy Temple in Bhimavaram Town and the dead bodies of Muslims are being buried in the said burial ground and at present the process of burial of dead bodies of Muslims is being attended therein.

It is further submitted that land Ac.0.50 cents in R.S.No.364/2 was acquired by the Government under Indiramma Phase-II Programme for the purpose of construction of Houses to the encroachers in R.S.No.364/1 abutting to the acquired land on its' Northern side and for rehabilitating the encroachers in to the G+1 type houses to be constructed, and for providing Ac.0.49 cents in R.S.No.364/1 towards burial ground to Bhimavaram Municipality. As the Encroachers will be evicted soon after completion of G+1 houses to be constructed in the acquired land of Ac.0.50 cents, the allotment of acquired land for the purpose of Burial Ground is not necessitated"

From the above it is evident that the 4th respondent while showing alternative accommodation to encroachers of petition land intends to remove the encroachers. The reply of 4th respondent appears to be reasonable. Having regard to the above circumstances, we are satisfied the PIL can be disposed of in the following terms.

Respondents 2 to 4 and 6 are directed to expeditiously complete the steps already initiated for construction of houses to the encroachers of petition land, preferably within a period of nine months from today, and after completion of houses as indicated above, the 4th respondent is directed to pass a comprehensive order of assignment of houses to the encroachers and eviction from the petition land. The dispossession of petition land and possession of new houses shall be carried out simultaneously. After vacant possession of petition land is secured, the petition land is entrusted to 5th respondent for maintenance and

administration in accordance with the Municipalities Act. The PIL is disposed of as indicated above.

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

ACJ

DILIP B. BHOSALE,

S.V.BHATT,

J
Date:31.08.2015
Stp