

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.20075 of 2014

Date: 12-02-2015

Between:

Atluri Usha Rani @ Usha Swamy

.. Petitioner

AND

The State of Andhra Pradesh, represented by its
Principal Secretary, Panchayat Raj Department,
Secretariat Hyderabad and 4 others

.. Respondents

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.20075 of 2014

ORDER:

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This writ petition is filed for a mandamus declaring the proceedings dated 28-06-2014 issued by the respondents 4 and 5 directing the petitioner to vacate the landed property admeasuring Ac.4.95 cents situated in R.S.No.319/A and 319/B of Vennenapudi village, Nandivada Mandal, Krishna District as arbitrary, illegal and violative of principles of natural justice and for a consequential direction to the respondents 4 and 5 not to interfere with the petitioner's peaceful possession and enjoyment of the property.

2. The case of the petitioner is that the landed property admeasuring Ac.4.95

cents situated in Survey No.263 was resurveyed and denoted as R.S.No.319/A and 319/B of Vennenapudi village, Nandivada Mandal, Krishna District which was originally belonged to Government of Andhra Pradesh. On a representation made by one Atluri Devaiah, the paternal grandfather of the petitioner's husband, the Revenue Divisional Officer, Gudivada issued proceedings on 19-08-1922 granting permission to excavate a seed bed tank in the southern portion of Survey No.264 of Vennenapudi village subject to conditions mentioned therein and accordingly, the said Atluri Devaiah excavated the tank and used to enjoy the usufruct from the tank during his life time and after his demise, his lineal descendants including the husband of the petitioner raised fish seed in the tank and enjoyed the usufruct besides using the water to raise seed beds. The husband of the petitioner and his predecessors had been in continuous and effective possession and enjoyment of the above tank covering an extent of Ac.4.95 cents without any interference from any of the respondents. While so, the 5th respondent issued the impugned notice dated 28-06-2014 directing to vacate the tank within 10 days therefrom, as the same is without permission. Challenging the said notice, the present writ petition has been filed.

3. The 5th respondent filed his counter denying the allegations of the petitioner and stated that the said land was classified as Ura Cheruvu in the revenue records and the same is vested with the Vennenapudi Gram Panchayat by operation of law as per Section 55 of the A.P. Panchayat Raj Act, 1994. It is stated that the petitioner cannot claim any right or benefit through the proceedings on which she relied as the same are neither eternal nor heritable and under the said proceedings, permission was accorded in favour of one Atluri Devaiah to excavate seed bed tank in the southern portion of Survey No.263 subject to certain conditions. The 5th respondent, among other things, stated that as the Gram Panchayat of Vennenapudi is facing financial stringencies to meet the expenditure for the developmental activities, it decided to improve the income of Gram Panchayat through various sources by utilizing the sources available in the Gram Panchayat and on the letter issued by the Tahsildar to the Mandal Parishad, Nandivada informing that the said tank was classified as property of the Grampanchayat, the Mandal Development Officer issued proceedings dated 28-07-2014. It is further stated that the petitioner has

alternative remedy as per A.P. Panchayat Raj Act, 1994.

4. Heard the learned counsel for the petitioner and the learned standing counsel for the respondents 4 and 5.

5. Learned counsel for the petitioner stated that though the petitioner is in possession by virtue of proceedings dated 19-08-1922 issued by the 3rd respondent, the issuance of impugned notice is without jurisdiction and without any prior notice.

6. Learned standing counsel for respondents 4 and 5 stated that by virtue of enactment of A.P. Panchayat Raj Act, all the tanks vest in the Gram Panchayat.

7. Having regard to the facts and circumstances of the case, since the 5th respondent never stated in the counter affidavit that the petitioner was put on notice before issuing the impugned notice, the action of the 5th respondent in issuing the impugned notice is arbitrary, illegal and nothing but violation of principles of natural justice. Ends of justice would be met if the impugned notice can be treated as show cause notice to the petitioner.

8. In the circumstances, the impugned notice shall be treated as show cause granting one month time to the petitioner for filing objections to the 4th respondent to the said show cause notice with all relevant documents, if any, including the proceedings dated 19-08-1922 issued by the Government and on filing such objections, the 4th respondent shall consider and pass appropriate orders in accordance with law. Till such orders are passed, status quo obtaining as on today shall be maintained.

With the above observation, the writ petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A. RAJASHEKER REDDY, J

Date: 12-02-2015

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