

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
WRIT PETITION No.17469 of 2011

Between:

Bhanoth Raja and another

.. Petitioners

and

The Government of Andhra Pradesh,
represented by its Principal Secretary, Forest Department,
Hyderabad and others

.. Respondents

Counsel for the petitioners: Mr.Mummaneni Srinivasa Rao

Counsel for the respondents: Government Pleader
for Forests (TS)

JUDGMENT PRONOUNCED ON: 09th September, 2015

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

*** THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**
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>Head Note:

? Cases referred:

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The Court made the following:

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ORDER:

At the interlocutory stage, the writ petition is taken up for hearing and disposal with the consent of the learned counsel for the parties.

The petitioners, who are husband and wife, averred that they belong to schedule tribe and that from the time of their forefathers, their family has been in possession of Acs.4.20 guntas of land in survey No.76 of Nagaram Village, Paloncha Mandal, Khammam District, for more than nine decades. It is their further case that as they are entitled for conferment of rights over the forest land for cultivation under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (for short 'the Act'), they have submitted application Nos.34 and 35 on 22.05.2008 along with several other scheduled tribes and till the date of filing of the writ petition, they have not received any information of their applications i.e., either accepting or rejecting the same. The petitioners also averred that on 31.05.2011, while they were carrying on agricultural operations by engaging a tractor bearing No.AP 20 Y 1018, the officials of the respondents headed by respondent No.5 highhandedly entered into their land, stopped agricultural operations, forcibly took away the tractor and kept the same at the premises of respondent No.4 on 31.05.2011 itself and stated that unless the land in question is vacated, the tractor will not be released. The petitioners claimed protection under Sub-Section (5) of Section 4 of the Act, which postulates that no member of a forest dwelling scheduled tribe or other

traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete.

On behalf of the respondents, respondent No.4 filed a counter-affidavit. It is, *inter alia*, stated in the counter-affidavit as under:

That there is no patta land included in the reserve forest of Narayanaraopeta block from survey No.76 as stated by the petitioners. That the petitioners illegally entered into the reserve forest Narayanaraopeta block, which was notified under Section 19 of the Andhra Pradesh (Telangana Area) Forest Act, 1355 Fasli, along with tractor bearing No.AP 20Y 1018 in order to grab the forest land. That the plea of the petitioners that from their forefathers, they are in occupation of the land in question is not correct. That the land occupied by the petitioners falls under the jurisdiction of Narayanaraopeta reserve forest and accordingly, the same exclusively belongs to the forest department and that the plea of the petitioners that they have been raising agricultural crops since 1980 is not correct. That during the year 2007-08, an extent of 30.00 hectares of area was selected by the Forest Department for raising bio-diesel (kanuga) plantation under RIDF XII scheme, *vide* respondent No.2's sanction order, dated 14.03.2008, and that as per the said order, advance operations like clearance of miscellaneous growth, uprooting of slumps and dragging of cut growth have been taken up during the month of March, 2008 and pre-planting works i.e., ploughing and planting have been taken up in the months of June and July, 2008. That on 07.11.2008, when the petitioners entered into the plantation area i.e., Narayanaraopeta reserve forest, removed the planted kanuga seedlings and tried to occupy the reserve forest land, a case *vide* POR No.83/77 was registered on 07.11.2008 itself and petitioner No.1 was arrested and was produced before the Additional Judicial First Class

Magistrate, Kothagudem, for remand. That the said petitioner admitted the offence and gave his written statement before the Magistrate.

As regards the applications of the petitioners filed before the Forest Rights Committee (FRC) for grant of pattas, the counter-affidavit averred that the said applications were rejected as they were made in respect of the land, where bio-diesel plantation was raised during the years 2007-08 and 2008-09. In support of the averments made in the counter-affidavit, the deponent filed the remand application pertaining to petitioner No.1, filed in the Court of I Additional Judicial First Class Magistrate, Kothagudem.

By order, dated 23.06.2011, this Court, while admitting the writ petition, granted interim direction to the respondents not to dispossess the petitioners from the land in their occupation referred to above pending further orders. The matter was heard on 26.08.2015. During the hearing, this Court has specifically asked the learned Government Pleader for Forests (TS) about the details of disposal of the applications of the petitioners as the counter-affidavit is silent with regard thereto.

Today, at the hearing, the learned Government Pleader for Forests (TS) submitted that the Forest Beat Officer, who is one of the members of the FRC, inspected the land and as he found the petitioners not being in possession of the land, he made an endorsement on their applications and therefore, the applications were not further processed. This procedure adopted by the respondents is patently contrary to the procedure laid down in Rule 12 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 (for short 'the Rules'). Under this rule, the FRC shall, after due intimation to the claimant concerned and the Forest Department, visit the site and physically verify the nature and extent of the claim and evidence on the site; receive any further

evidence or record from the claimant and witnesses; and ensure that the claims are verified when such individuals, communities or their representatives are present. Further, the Forest Rights Committee shall then record its findings on the claim and present the same to the Gram Sabha for its consideration. Contrary to this procedure, even as per the submission of the learned Government Pleader for Forests (TS), the Forest Beat Officer exercised the power of the FRC, himself by making an endorsement and not processing the applications of the petitioners further. From the scheme of the Rules, the Forest Beat Officer has no such power. Even if he is a member of the FRC, he cannot exercise the power of the FRC by himself alone. It is not the pleaded case of the respondents that the FRC members at any point of time have visited the land claimed by the petitioners after notice to the latter and received any evidence on record from the petitioners and other witnesses with regard to their possession. Thus, while dealing with the applications of the petitioners, the respondents acted contrary to the spirit of the Act and the Rules made thereunder. At the end of the hearing, the learned Government Pleader for Forests (TS) has fairly conceded that the applications of the petitioners have not been disposed of by the FRC as they were not forwarded by the Forest Beat Officer to the FRC. In the light of these admitted facts, the plea of the respondents that the applications of the petitioners were rejected is without any basis and the same is accordingly rejected.

As regards the stand taken by the respondents that the petitioners are not in occupation of the land in question, the learned counsel for the petitioners has rightly relied upon the contents of the remand application *vide* POR No.94/77, dated 31.05.2011, and the remand report filed before I Additional Judicial First Class Magistrate, Kothagudem. The relevant portion of the remand report reads as under:

“The accused (is) produced before the IIIrd Addl. Judicial

Magistrate, Kothagudem for remand and charge sheet (is) also filed in this case vide CC No.192/2010 and the case is pending trial in the Court. The accused (is) released on bail and in the same area again he (sic - was) engaged the Tractor for uprootal of cotton crop which was raised in last year and preparing the land for further cultivation.”

No better evidence than the above reproduced statement contained in the remand report sent by respondent No.4 is required to show that the petitioners had been in possession of the land by raising cotton crop during the previous year i.e., 2009-2010 and they were preparing the land for raising a fresh crop when the tractor was seized on 31.05.2011 and criminal case was registered. Therefore, this Court is not able to accept the stand of the respondents that the petitioners have for the first time tried to encroach upon the land in question on 31.05.2011.

In the light of the above discussion, this Court is of the opinion that the action of the respondents in trying to dispossess the petitioners from the land admeasuring Acs.4.20 guntas in survey No.76 of Nagaram Village, Paloncha Mandal, Khammam District, is in violation of the provisions of Sub-Section (5) of Section 4 of the Act as their applications for grant of pattas are not disposed of in accordance with law and are deemed to be pending.

Accordingly, the Writ Petition is allowed as prayed for.

As a sequel to allowing the writ petition, W.P.M.P.No.20993 of 2011 and W.V.M.P.No.2777 of 2011 shall stand disposed of.

C.V.NAGARJUNA REDDY, J

09th September, 2015

Note: L.R.copies to be marked.

(B/o)
GHN