

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.15054 OF 2007

ORDER:

This writ petition is filed challenging the proceedings issued by the 2nd respondent- Assistant Director of Fisheries dated 02.07.2007, whereby constituting the Village Level Fisheries Infrastructure Managing Committee for the purpose of maintenance of infrastructure facilities provided under B.C package for Uppada Village of U. Kothapalli Mandal, on the ground that the 2nd respondent is interfering with the affairs of the petitioner-Society without any authority in law.

It is the case of the petitioner as set out in the writ affidavit that the petitioner-society is registered under the A.P. Registration of Societies in the year 2004 and the petitioner's society is formed for construction of a community hall and also for the maintenance and management of the community hall. Pursuant to the objects of the society, the petitioner society from the funds procured from various sources had infact constructed a community hall and named the same as Sri Chandrababu Fisherman Community Hall Welfare Association. Funds were also contributed by the then Member of the Parliament, Kakinada Constituency apart from the contributions of Rs.2,00,000/- by a charitable trust now named as 'Bandana Charitable Trust'. Incidentally the deponent of the writ affidavit who is representing the society is the Chairman of the said charitable trust. The society is an independent private body and the 2nd respondent has no authority whatsoever to appoint a Managing Committee to take control of the community hall which was infact constructed by the petitioner-society. The petitioner society is rendering services by educating the children of the fisherman apart from using the community hall for the purpose of marriages, functions and meetings at a very nominal charges. Infact, the charges are being collected for the purpose of maintenance of the community hall and the said community hall is being used for the benefit of the fisherman community at large and on no profit basis. The petitioner came across the impugned proceedings and immediately thereafter, the petitioner submitted a representation dated 05.07.2007 to the 2nd respondent objecting to the appointment

of the Managing Committee.

Counter-affidavit has been filed by the respondents-authorities denying the various allegations and asserting that in terms of the G.O.Ms.No.62 dated 19.11.2005, the respondents-authorities are entitled to constitute the Managing Committee to manage the developmental works for which the Surpanch of the concerned village will be the Chairman of the committee. It is further stated that the Gram Panchayat had provided the site for implementation of the GO referred to above. The constitution of the Managing Committee was done only in terms of G.O.Ms.No.62 dated 19.11.2005 strictly adhering to the guidelines therein. It is further stated that the community hall was constructed with the funds of Rs.6,00,000/- provided by the Member of Parliament under the M.P Lads Scheme, Rs.4,00,000/- provided by the Marketing Department released through Fisheries Department, Rs.3.218 lakhs provided by Mandal Parishad, U. Kothapalli Mandal and a total sum of Rs.13.218 lakhs was paid from the various sources which are all public funds. The contributions said to have been made by the deponent of the writ affidavit is not known to the respondents and even assuming such contribution has been made the same would only be in the nature of donation or contribution, but it does not confer any right over the community hall which was infact constructed on the land given by Grama Panchayat and with the above averments, the respondents prayed for dismissal of the writ petition.

Sri N.V. Anantha Krishna, learned counsel for the petitioner while reiterating the contents of the writ affidavit filed in support of the writ petition by making a specific reference to G.O.Ms.No.62 dated 19.11.2005 submits that the petitioner does not have any objection particularly with respect to G.O.Ms.No.62 dated 19.11.2005 as the said G.O. has no application to the case of the petitioner. He further urges that a careful reading of the said G.O would reveal that the same is intended for the purpose of regulating the infrastructure facility created by the Fisheries Department viz., the export and import centres of the fish and the drying yards of fish etc.

On the other hand, the learned Government Pleader for Fisheries vehemently opposes the granting of any relief in the writ petition and would support the constitution of the Managing Committee.

The community hall which was constructed by the petitioner-society is not constructed either for trading out the fish or for drying the fish. Infact, the community

hall is not being used for any purpose in relation to the fish or fish trade though the same was constructed for the benefit of fisher man and not for the purposes other than for dealing with the fish as such. In the line of the objects of the society, the community hall is being used for the purpose of educating fisherman's children, the letting out of the premises on nominal costs basis to the fisherman community at large and for other social activities. Inasmuch as G.O.Ms.No.62 dated 19.11.2005 itself has no application in relation to the community hall, the purported exercise of the respondents authorities by constituting the Managing Committee for maintenance of the community hall by issuing the impugned proceedings is illegal and ultra virus.

On a careful reading of the impugned proceedings dated 02.07.2007 it is clear that the source of authority for issuing the impugned proceedings is G.O.Ms.No.62 dated 19.11.2005. The G.O.Ms.No.62 dated 19.11.2005 was issued with an intention to regulate and manage the infrastructure facility created by the Fisheries Department particularly the infrastructure facility which is being used in dealing with the fish trade. In that context, the method and manner of utilisation of the facilities and the constitution of the body and the method and manner of election of the members has been set out. In the impugned proceedings what has been sought to be done is the Management of the community hall which is admittedly under the control of the petitioner-society as on the date. The justification for constitution of the Committee was that the funds for construction of the community hall came from the public sources and if not for the fact that the same was constructed for the benefit and utilisation of the fisherman community, the public funds would not have been made available. It may also be noted that the land for construction of the building or the community hall itself came from the Grama Panchayat. Notwithstanding the contribution of Rs.2,00,000/- from 'Bandana Charitable Trust', the property cannot be said to be belonging to the petitioner society. The contribution made by the 'Bandana Charitable Trust' is a mere contribution in the aid of the effort of the Government in creating a facility. By that itself neither the petitioner nor the petitioner-society can claim any right over the building which is admittedly constructed with the major contributions coming from the public funds. However, once it is admitted that the building which is being used as a community hall is not being put to use for carrying out business in fish or as a drying yard, the constitution of the committee for managing the same would not arise as the G.O.Ms.No.62 dated 19.11.2005 is in relation to appointment of a committee for managing the

infrastructure facility where the fishing trade is being carried out. In that view of the matter, the proceedings dated 02.07.2007 constituting the committee cannot be sustained. However, merely because as on date the petitioner is in control of the building does not by itself make the petitioner-society as the owner of the property and the same does not confer on them any right over the said property. It is always open for the respondents-authorities to take control of the property which is admittedly came to be created with the funds from the public sources and the property as the same is clothed with characteristics of a public property. It is also left open to the respondents authorities to take appropriate steps to take control of the community hall and utilise the same for the benefit of public at large.

Accordingly, the writ petition is allowed setting aside the impugned proceedings dated 02.07.2007 to the extent of constituting the Managing Committee for managing the property of the petitioner-society. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

CHALLA KODANDA RAM, J.

Date:01.12.2015.

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THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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