

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Writ Petition No.40797 of 2015

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Date: 16.12.2015

Between:

Kancharana Raghu and 12 others

.. Petitioners

and

The State of Andhra Pradesh
rep. by its Prl.Secretary
Municipal Administration & Urban Development Dept.,
Hyderabad and another.

.. Respondents

Counsel for the petitioners:

Mr.VVN.Narayana Rao

**Counsel for respondent No.1:
Administration (AP)**

GP for Municipal

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The Court made the following:

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Order:

This Writ Petition is filed for a Mandamus to set aside the Endorsement in B.A.No.10736/2014/DCP-II/G1, dated 04.03.2014, of respondent No.2, whereby it has rejected the Application filed by the petitioner for grant of permission to construct a compound wall around Acs.7-08 cents of land in Madhavadhara Village, Visakhapatnam.

The petitioners pleaded that the subject land is situated in Madhavadhara Village, which was an Estate Village of Vizianagaram Zamindari; that in or about the year 1937 or 1938, the erstwhile Zamindar of Vizianagaram leased out the subject land in favour of Smt.Kancharana Visakamma, who is the mother of the petitioner, for an annual rent of Rs.26.20 ps; that she has immediately taken possession of the same and brought it under cultivation; that after the Madras Estates Abolition Act, 1948, came into force, the Vizianagaram Estate was abolished and the subject land was included in Marripalem Village; that the same was taken over

by the Government on 02.07.1952 as Inam Estate and settlement rights were introduced on 01-07-1959; that during the lifetime of the petitioners' mother, who died on 07-01-1975, the then Tahsildar had issued a notice, dated 02-03-1970, under the Andhra Pradesh Land Encroachment Act, 1905, to her; that on the explanation submitted by her, the Tahsildar, Visakhapatnam, has conducted an inspection of the subject land on 04-01-1966 and again on 26-12-1966 and found her in possession; that the said Tahsildar had directed the then Village Officer to issue B-Memo in her favour; and that the Revenue Department has classified the subject land as Gayyalu (Banjar), forcing the petitioners to file OS.No.310 of 1992 in the Court of the learned III Additional Subordinate Judge, Visakhapatnam, (i) for declaration that the classification of the suit schedule land covered by R.S.No.13 (O.S.No.42/D) admeasuring Acs.7-08 cents in Madhavadhara Village as Porambok, is illegal; (ii) for a consequential relief directing the defendants therein to change the classification of the said land as Zeroithi; (iii) for a further declaration that the

petitioners are entitled to patta; and (iv) for a permanent injunction.

The petitioners further averred that the civil Court has granted decree, dated 07-06-1996, by (i) declaring that the classification of the subject property as porambok is erroneous; (ii) directing the defendants therein to change the classification of the subject land as zeroithi land of the plaintiffs in the relevant revenue records; and (iii) declaring that the plaintiffs are entitled to grant of ryotwari patta. The Civil Court has also granted permanent injunction restraining the defendants, who are the State of Andhra Pradesh and the Mandal Revenue Officer, from interfering with their peaceful possession.

The petitioners further pleaded that during the enquiry initiated under Section 11-A of the Andhra Pradesh (Andhra Area) Estate (Abolition and Conversion into Ryotwari) Act, 1948 (for short 'the Act'), their claim for grant of ryotwari patta was rejected by the Primary Authority on 24-06-1996; that the revision filed under Section 5 (2) of the Act

before the Director of Settlements was also dismissed by Order, dated 04-11-1997; that the further revision filed under Section 7 (d) of the Act was also dismissed by the Commissioner of Survey and Settlements on 26-12-1998; that Writ Petition No.22517 of 1999, filed by them against the hierarchical orders, was allowed and the matter was remanded; and that after remand, the hierarchical authorities once again concurrently held that they are not entitled to ryotwari patta. Feeling aggrieved by those orders, the petitioners have again filed WP.No.26568 of 2013, which is pending.

The facts noted above would show that though the civil Court has granted a declaration that the petitioners are entitled to grant of ryotwari patta, the competent authorities, who were empowered to consider their application for grant of ryotwari patta, have rejected their claim on two occasions. Thus, the petitioners' right to obtain ryotwari patta over the subject land is still inchoate.

As regards the request of the petitioners for grant of permission for raising the compound wall,

under the provisions of Greater Hyderabad Municipal Corporation Act, 1955, a building includes compound wall and although the Corporation does not adjudicate the title while considering the application for grant of building permission, it is entitled to examine the *prima facie* title of the applicant over the land in respect of which the application for building permission is filed. (See **Hyderabad Potteries Private Limited Vs. Collector, Hyderabad District & another**^[1] and **Sri K.Pavan Raj Vs. The Municipal Corporation of Hyderabad**^[2]). As the petitioners do not have title vested in them, they cannot raise any building, which expression includes compound wall, even if there is a threat of encroachment by third parties. Unless the petitioners succeed in the pending Writ Petition and obtain ryotwari patta, they are not entitled to raise any construction over the subject land.

Mr.VVN.Narayana Rao, learned Counsel for the petitioners, strenuously submitted that the observation of respondent No.2 that the subject

land is described as an Assessed Waste Dry (Government Land) in the revenue records is patently contrary to the decree referred to above.

In my opinion, the above submission of the learned Counsel for the petitioners has no relevance at all as even assuming that the subject land is zeroithi land as declared by the competent civil Court, still the petitioners are not entitled to grant of building permission for raising a compound wall so long as the ryotwari patta is not granted to them. In this view of the matter, I do not find any illegality in the impugned endorsement rejecting the petitioners' application for building permission. It is, however, made clear that the observation made in the impugned endorsement that the subject land is an Assessed Waste Dry (Government Land) does not bind the petitioners and the same does not in any manner prejudice their right for claiming ryotwari patta.

Subject to the above observations, the Writ Petition is dismissed.

As a sequel to dismissal of the Writ Petition,
WPMP.No.52669 of 2015, filed by the petitioners for
interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 16th December, 2015
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[\[1\]](#) 2001(3) ALT 200

[\[2\]](#) 2008 (1) ALD 792