

HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.13144 of 2009

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Date: March 19, 2015

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Between:

1. Pentakota Chilukamma & another ...
Petitioners

And

1. The District Collector,
Visakhapatnam District,
Visakhapatnam & 3 others. ...
Respondents

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ORDER:

This writ petition is filed under Article 226 of the Constitution of India, seeking the following relief:

“To declare the action of respondents 1 to 4 in constructing 33 K.V. sub-station in Survey No.29/5 in an extent of Ac.0.43 cents of Gadirai Village, V. Madugula Mandal, Visakhapatnam District, without initiating land acquisition proceedings under the Land Acquisition Act as illegal and arbitrary and consequently to direct demolition of the said 33 K.V. sub-station.

3. Heard Sri K. Subrahmanyam, learned counsel for the petitioners, learned Government Pleader for Revenue appearing for respondents 1 and 2 and Sri P. Anand Seshu, learned standing counsel, appearing for respondents 3 and 4 apart from perusing the material available on record.

4. According to the petitioners, they are wife and son of late Sri Pentakota Arjuna and the said Arjuna and his father owned the land, admeasuring Ac.0.43 cents in Survey No.29/5 of Gadirai Village, Madugula Mandal, Visakhapatnam District and the said Arjuna was issued pattadar passbook No.47796/46 in the year 1995 and subsequently the said Arjuna died. After his death, petitioners continued to be in possession and enjoyment of the said land till 2008. It is also the case of the petitioner that the Tahsildar issued pattadar passbook and collected land revenue and issued receipts to the petitioners. The grievance of the petitioners is that respondents 1 to 4, without recourse to law and without issuing any proceedings under the Land Acquisition Act, constructed and installed 33 K.V. sub-station in the subject land admeasuring Ac.043 cents in Survey

No.29/5. It is also pleaded that when the petitioners herein raised objection, respondents 1 to 4 orally promised to give appointments to two of the land owners/land oustees, children but did not fulfill the same despite the representations. It is also the grievance of the petitioners that no compensation has been paid to the petitioners though the authorities opened the sub-station.

5. Responding to the *Rule Nisi* issued by this Court, a counter-affidavit is filed by respondents 3 and 4, denying the averments made in the affidavit filed in support of the writ petition. It is pleaded in the said counter that vide proceedings Rc.271/2006/C dated 16.10.2006, the Tahsildar, Madugula Mandal, handed over possession of the land admeasuring Ac.0.17 cents in Survey No.27/9A and another extent of Ac.0.13 cents poramboke land in Survey No.27/11 totally admeasuring Ac.0.30 cents for construction of sub-station. The counter further states that it is stated in the said proceedings of the Mandal Revenue Officer that the land in Survey No.27/9A admeasuring Ac.0.17 cents is a patta land belonging to Pentakota Jagannadha Rao and the said Jagannadha Rao

agreed to give the said land and the other extent of 0.13 cents is a poramboke land and the encroachers voluntarily agreed to withdraw from the land. The counter also avers that after handing over of the land, respondents 3 and 4 constructed the sub-station also. It is also stated in the counter that as per the writ affidavit, the petitioners are owners of the land in Survey No.29/5, whereas, the sub-station is in the land bearing Survey Nos.27/9A and 27/11.

6. A reply affidavit is also filed by the writ petitioners herein, denying the averments in the counter-affidavit filed by respondents 3 and 4. In order to show that they owned the land admeasuring Ac.0.43 cents in Survey No.29/6 and the same is affected by establishment of sub-station, petitioners filed the land revenue receipt dated 01.03.2009 and a certificate dated 28.12.2008 issued by the Tahsildar. The said certificate issued, vide L.Dis.No.1/2009/HDT dated 28.12.2008, reads as under:

“Certified that as per survey report that 33 K.V. sub-station was installed in S.No.29/5 measuring an extent of Ac.0.43 cents of Gadirai Village, Madugula Mandal belongs to Sri Pentakota Arjuna, s/o Atchim Naidu, who is pattadar vide pattadar passbook No.47796/46”

7. On the contrary, it is the case of respondents 3 and 4 herein that sub-station is not located in Survey No.29/5, but it is in Survey No.27/9A. In view of this factual dispute and in order to have a complete quietus to the controversy, this Court deems it proper to direct respondents 1 and 2 herein to arrange for survey after issuing notices to the petitioners as well as respondents 3 and 4 herein to find out as to whether the sub-station is in survey Nos.29/5 or in Survey Nos.27/9A and 27/11 as pleaded by respondents 3 and 4 to take further action in the matter.

8. For the aforesaid reasons, the writ petition is disposed of, directing respondents 1 and 2 herein to arrange for survey of the subject land after giving notices fixing a date for the same and to get a report. If the report reveals that the sub-station is located in Survey No.29/5 as pleaded by the petitioners herein, further action shall be taken for payment of compensation for the persons entitled under the relevant legislation and this entire exercise shall be completed within a period of six months from the date of receipt of this order.

9. Pending miscellaneous petitions, if any, shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

Date: March 19, 2015.
BSB

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