

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.25288 OF 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner to declare the action of respondents 1 to 3 in seeking to convert Kothacheruvu tank situated in Survey No.8 of Kallurupalli village, Nellore rural Mandal, Nellore District into house sites, as illegal and arbitrary and consequently direct the respondents not to convert the said minor irrigation source into house sites.

The case of the petitioner is that there is a natural tank, called as Kotha Cheruvu, in Sy.No.8 of Kallurupalli village in an extent of Acs.77.46 cents, which is a minor irrigation source as well as the source of drinking water. On 22.11.2006, the 3rd respondent – MDO, Nellore Rural Mandal, Mandal Surveyor along with his staff came to the Kothacheruvu area, at the instance of the local M.L.A. and requested the villagers to remove bushes in the cheruvu so that they would convert it into house sites and give pattas to other villagers. The petitioner and other villagers resisted the action of the respondents. On 25.11.2006 the Grampanchayat, Kallurupalli passed a resolution to preserve the said tank. On 27.11.2006, the petitioner made a representation to respondent Nos.1 to 3 bringing to their notice the statutory violations, and requested them to preserve Kothacheruvu tank. As the respondents have not taken any action on the representation filed by the petitioner so far, the present writ petition is filed.

Respondent Nos.1 and 3 filed separate counter affidavits. It is stated that at present the land in Sy.No.8 of Kallurupalli village is being used neither as an irrigation source nor as a drinking water source and as the land is suitable for human habitation and other public purposes, it is proposed to utilize the land for the welfare of poor people under

various Government programmes i.e., Indiramma Housing Program and houses under Rajeev Swagruha Scheme.

Heard the learned counsel for the petitioner as well as the learned counsel for the respondents and perused the material available on record.

Learned counsel for the petitioner filed a photostat copy of the orders of the Chief Commissioner of Land Administration, A.P., Hyderabad, dated 18.03.2013, wherein the Chief Commissioner referred the orders passed by the Supreme Court in C.A. No.4787 of 2001, dated 25.04.2001 with regard to protection of tank-beds, water-bodies river-beds etc., and also the orders of this Court in WP No.9250 of 2011 wherein it was stated that for conversion of tanks, water bodies and other water resources the revenue authorities are not competent, and they cannot convert the said sources without permission of the Government.

It is the case of the respondents that the petitioner is an encroacher and with an intention to grab the land, he filed this petition. If that being the case, it is always left open to the respondents to invoke the appropriate provisions to remove the encroachers from the said land. If the respondents intend to convert the tank in question into house sites, the same cannot be done without following due process of law.

In the above circumstances and in view of the above proceedings of the Chief Commissioner of Land Administration, the Writ Petition is disposed of with the following directions:

The District Collector, Nellore, is directed not to convert the Kothacheruvu tank situated in Survey No.8 of Kallurupalli village, Nellore, for the purposes stated by the respondents in their counters, without there being any order of the Government.

If the authorities intend to convert the Kothacheruvu tank for any other purpose, it should be done only after obtaining permission from the Government.

There shall be no order as to costs. The miscellaneous petitions pending, if any, shall stand closed.

RAJA ELANGO, J

March 04, 2015.

KTL