

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 13124 of 2011

ORDER:

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Heard learned counsel for the petitioners, Government Pleader for Revenue and learned counsel for respondent No.4.

The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of respondent Nos.1 to 3 in not taking action for restoration of Patheru Channel (Drain Channel) to its original position, as illegal and arbitrary; and consequently direct respondent Nos.1 to 3 to restore the Patheru channel passing through the fields of Kalavamoola Kandriga, Gangapatnam and Ramudupalem villages to its original position.

The averments in the affidavit filed in support of the writ petition would show that the petitioners herein claim to have agriculture lands at Gangapatnam and Kalavamoola Kandriga village. A channel by name Patheru Channel was passing through their agriculture lands. The flood water and waste water from the agriculture lands was flowing through this channel upto Upputeru. The Irrigation Department executed repairs by spending Rs.1.91 lakhs and the channel was said to have been in existence since last 30 years. It is stated that the said channel starts from Kalvamula Donka and joins in Uppukalava, to discharge the flood water from Kalavamula village fields. It is alleged that respondent No.4 dismantled the channel and closed the same to a distance of 120 meters thereby causing lot of inconvenience and hardship to the petitioners. It is stated that by virtue of closure of the channel at a particular point, obstruction is caused for free passage of waste and flood water through the channel. The petitioners are said to have

made representation to respondent Nos.1 to 3 to remove the obstructions caused by respondent No.4. Challenging the inaction of the respondents in not restoring the channel to its original position, the present writ petition is filed.

By an order dated 30.04.2011, this Court while issuing notice before admission, directed respondent Nos.1 to 3 to inspect the site in question in the presence of the Engineering Personnel of the Irrigation and Command Area Development and take all such necessary measures for restoring the water channel if it exists earlier.

Respondent No.4 filed counter denying the averments made in the affidavit. According to him the allegations made in the writ petition are all false and invented for the purpose of this case. It is his case that he purchased agricultural land admeasuring Ac.4.57 cents in Sy.No.880 of Ramudupalem Village, Indukurpet Mandal, SPSR Nellore District from his vendor Kothapalli Supriya vide registered sale deed bearing document No.1193 of 2011, dated 08.04.2011 by paying sale consideration. It is stated that a perusal of the boundaries in the sale deed establish that there was no Patheru Channel as claimed by the petitioners. The counter further discloses that respondent No.4 made an application before the Assistant Executive Engineer No.1, Section, Narayana Reddypet on 06.08.2015, under Right to Information Act, to ascertain as to the existence of Patheru Channel. The Assistant Executive Engineer furnished information stating that the existence of Patheru Channel is not recorded in the records of the Irrigation Department and the drain plan is not a drain. He placed on record the copy of the information furnished by the Assistant Executive Engineer.

At the time when the matter is taken up for hearing, the

counsel for the petitioner placed on record the communication dated 27.02.2015 between the Collector and the Secretary to Government, Revenue Department. The said letter reveals that pursuant to an order passed by this Court on 30.04.2011, the Tahsildar, Indukurpet along with Assistant Engineer, Irrigation Department, conducted a joint inspection of the site on 26.08.2011. During inspection, it was observed that a canal was passing through the lands in Sy.No.876/P and 877 of Gangapatnam Village, which was granted lease under the fold of CJFS and in Sy.Nos. 880 and 881 of the patta land of Mavulluru Sreenivasulu Reddy (respondent No.4). The said canal is not a plan marked as per the village plan or records maintained by the Irrigation Department and there is no ayacut to it. It is stated that due to disputes between respondent No.4 and one P.Ramachandra Naidu (petitioner No.1), respondent No.4 is alleged to have closed the canal.

The report of the Tahsildar which has been referred to in the letter show the existence of channel and that the drain water got stagnated in the upper land due to closure of the channel, which according to the counsel for respondent No.4 is false in view of the information given by the Assistant Executive Engineer pursuant to an application made by respondent No.4. But however the letter dated 27.02.2015 show that the District Collector sought permission for acquisition of 15 cents of patta land in Sy.Nos. 880 and 881 situated at Gangapatnam Village for formation of drain canal by providing funds as there is no alternate mechanism to allow drain water to flow in the disputed area. In view of the above, the issue as to opening the channel cannot be adjudicated, when there are number of disputed questions of fact with regard to existence of the channel. However, leaving it open to the respondents and the authorities to take action in accordance with law, the writ petition is

disposed of. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this
Writ Petition shall stand closed.

**JUSTICE C. PRAVEEN
KUMAR**

11.09.2015
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