HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

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WRIT PETITION No. 20996 of 2012

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ORDER:

Heard the learned counsel appearing for the petitioners and learned Government Pleader for respondents.

The present Writ Petition came to be filed seeking issuance of a writ of mandamus declaring the action of the respondents in threatening to the petitioners in evicting from the land admeasuring Ac.4.00 in R.S.No.162 of Thummagudem village, Chatrai Mandal, Krishna District, without any notice and following due process of law, as illegal, arbitrary and violative of Articles 14, 19, 21 and 300A of the Constitution of India.

The petitioners submits their ancestors occupied the dy land existing on the eastern side of the Yerra Cheruvu and are cultivating the same since several years and thereafter the petitioners who are the legalheirs are cultivating the same. It is said that all the petitioners are poor persons belonging to B.C., and S.C., community and have been eking out their livelihood by cultivating their small extents of land. While things stood thus, on 02.07.2012 the 3rd respondent/Tahasildar, Chatrai Mandal, came to the land along with the Village Revenue Officer and questioned the petitioners about they cultivating the land and threatened to vacate them from the land. It is further stated that all the petitioners made a representation dated 02.07.2012 to the 3rd respondent stating that they have been in possession and cultivating the same since the time of their ancestors and as they are all poor persons requested him not to dispossess them, but the 3rd respondent failed to consider the same. It is further averred that on 06.07.2012 the 3rd respondent came to the land told the petitioners to vacate the land within a week, failing which he

threatened to remove the existing crops with the help of machines. Challenging the said highhanded action, the present Writ Petition came to be filed.

While issuing rule nisi in the Writ Petition, the following order came to be passed in W.P.M.P. No.26894 of 2012 on 16.07.2012:

> "Pending further orders, it is directed that the respondents shall not evict the petitioners, as long as the land is not submerged under water of any irrigation tank. It is made clear that the petitioners shall not be entitiled to cultivate the land, in case the tank is filled."

A counter came to be filed disputing the averments made in the affidavit petition. It is stated in the counter that the petitioners herein are cultivating paddy and maize in R.S.No.162 of Thummagudem village since about 10 years covered by an extent of Ac.36.47 cents with a total registered ayacut of Ac.92.86 cents stands classified as Yerracheruvu as per village accounts. The ayacutdars of Yerracheruvu of Thumagudem village have filed petition in Prajavani on 13.02.2012 stating that they are facing inconvenience and loss due to the unauthorized encroachment on to Yerracheruvu and requested to evict the encroachers. When the encroachers were informed to vacate the land, they have promised to vacate the same voluntarily but without vacating have filed the present Writ Petition. The averments in the affidavit that the land which is in the eastern side of the Yerra Cheruvu is dry land and the said land is not submerged in water even in rainy water or even floods occurred, is strongly refuted by the respondents in their counter. It is stated that a report came to be lodged before the Station House Officer on 07.05.2012 stating that Penukuduru Nageswara Rao and 5 others of the village removed the boundary stones of Yerracheruvu Tank fixed by the Mandal Surveyor, Chatrai and requested for taking action against the above persons for the illegal activities committed by them. Thus, it is said that the allegation that the respondents are threatening the encroachers with police force is not true and correct. It is further stated that the petitioners have no right or authority to continue in the possession of the said land, which is admittedly the

tank poramboke serving to the needs of various ayacutdars of Yerracheruvu.

The implead petitioners also filed a counter dispute the averments made in the Writ Petition. It is stated that the petitioners are removing banks of the canal when the water in the pond is about to reach to the full tank level, thereby the lands of the Ayacutdars are getting submerged. It is said that the encroachers are managing to see that the pond does not reach the full tank level. They are also excavating the water from the tank by using bores and as such the Ayacutdars of the region are put to great inconvenience.

At the time when the matter is taken up for hearing the learned counsel for the petitioners submits that since the representation dated 02.07.2012 made by the petitioners is still pending, it may be directed to be considered. But the averments in the affidavit and also the record clearly discloses that the petitioners are in illegal occupation of the tank bund lands since several years and have been raising crops though they are not legally entitled.

In **Hinchlal Tiwari v. Kamala Devi** the Apex Court held as under :

> "It is important to note that material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is essence of the guaranteed right under Article 21 of the Constitution of India. The Government, including revenue authorities, i.e., respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites."

Having regard to the circumstances stated above and since the petitioners have illegally encroached on to the land, the respondents/authorities are directed to take steps, in accordance with law, after giving notice to all the encroachers and see that tank bed is

protected from encroachers at the earliest.

Accordingly, the Writ Petition is disposed of. No costs. As a sequel to it, miscellaneous petitions pending if any, in this Writ Petition shall stand disposed.

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C. PRAVEEN KUMAR, J

Date:09.12.2015

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