

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.27410 of 2014

Between:

Sri Anjaneya Sand Qarry Boastsmen and Filed Labour FCS,
Rep. by its President Barri Hanumantha Rao

PETITIONER

AND

1. The Government of Andhra Pradesh, rep. by its Principal Secretary, Panchayat Raj Department, Secretariat, Hyderabad, and others.

RESPONDENTS

ORDER:

Heard learned counsel for the petitioner, learned Government Pleader for Panchayat Raj for respondents 1 to 5 and learned Government Pleader for Fisheries for respondent No.6.

The petitioner-society was registered on 10.01.1959 and it is having jurisdiction over seven tanks within Aryapeta Gram Panchayat, the 7th respondent herein. The petitioner was obtaining fishing rights in the said tanks, which are in the area of operation of the society, till the year 2013-14 pursuant to G.O.Ms.No.343 dated 10.04.1978. While so, for the year 2014-15 to 2016-17 the 5th respondent resolved to grant the fishing rights of the seven tanks belonging to Arayapeta Gram Panchayat through public auction ignoring the provisions of G.O.Ms.No.343, dated 10.04.1978. Challenging the said action of the 5th respondent the petitioner filed the present writ petition.

A counter affidavit is filed on behalf of respondents 2 and 3 stating that the seven tanks are belonging to Aryapeta Gram Panchayat and the Gram Panchayat passed resolution on 29.03.2014 to lease out the fishing rights by conducting public auction. If the petitioner wants to challenge the said resolution it has to take steps under Section 246 of A.P. Panchayat Raj Act, 1994 (for short 'the Act').

The 5th respondent filed a separate counter affidavit stating that the population of the Aryapeta village was about 2,500 and out of which 70% belongs to Scheduled Caste and remaining are Backward Community. They have been representing since long back to lease out the tanks available in Aryapeta Gram Panchayat for their livelihood.

The petitioner society belongs to other village i.e., Elamanchili. The area of operation of the said society was confined to Elamanchili. But it was subsequently amended and extended by including the tanks in Aryapeta Gram Panchayat also. No individual of Aryapeta was the member of the petitioner-society. In view of the same, the Gram Panchayat passed a resolution on 29.03.2014 for leasing out the fishing rights by public auction and accordingly the lease was granted in favour of private persons for the year 1.07.2014 to 30.06.2015. Even at the time of granting lease in favour of the private persons, the petitioner never approached the Gram Panchayat.

The learned counsel for the petitioner brought to the notice of this Court the relevant provisions of G.O.Ms.No.343, Panchayat Raj Department dated 10.04.1978. Rule 3 (a)(i) of the said Rules reads as follows:

Rule 3(a)(i):- The gram panchayat shall lease out, except sources set, a part for washing of clothes by the local washermen, the rights of fishing in Minor irrigation tanks and other tanks vested in it under clause (b) of sub-section (1) of Section 65 and under sub-section (2) of Section 85 of the Andhra Pradesh Gram Panchayat Act, 1964 (hereinafter called the Act), without public auction to the Fishermen Co-operative Society of the local area.

In the light of the above rule, it has to be seen that there is an obligation on the part of the Gram Panchayat to lease out the fishing rights to the petitioner society.

The learned Standing Counsel for the 7th respondent Gram Panchayat submits that since there is no society within the local area of the Aryapeta Gram Panchayat, the Gram Panchayat is entitled to auction the leasehold rights and accordingly the Panchayat passed the resolution. He also submits that if the petitioner is aggrieved by the decision taken by the Gram Panchayat, it should have taken appropriate steps challenging the resolution.

The procedure prescribed in the said Government Order provides that the Executive Authority of the Gram Panchayat shall make an application to the Divisional Panchayat Officer concerned furnishing the particulars of revenue of minor irrigation tanks. After receipt of such information, the Divisional Panchayat Officer shall fix an upset price duly considering the revenue of the previous years, market value and other factors and communicate the same to the executive authority and to the Extension Officer (Panchayats) concerned. If there is fishermen cooperative society in the local area, the Gram Panchayat shall lease out in its favour, and in the absence of any society, put the lease hold rights to public auction.

Since the petitioner's area of operation includes the Aryapeta Gram Panchayat, it cannot be said that the petitioner is not coming within the meaning of local area of the Gram Panchayat. The area of operation of the petitioner was duly amended by virtue of the orders passed by the Assistant Director of Fisheries, and hence, it has to be construed that the petitioner's jurisdiction extends to Arayapet Gram Panchayat also. The said amendment took place on 28.01.2006 by proceedings of the Assistant Director of Fisheries, Bheemavaram.

In the circumstances, the Gram Panchayat is bound to follow G.O.Ms.No.343, Panchayat Raj Department, dated 10.04.1978 while leasing out the fishing rights in the tanks belonging to the Aryapeta Gram Panchayat. Respondents 2 to 6 shall take necessary steps for implementation of the said Government Order in favour of the petitioner.

The writ petition is accordingly allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

A. RAMALINGESWARA RAO, J.

27th July, 2015

Js.