

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

**FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

**THURSDAY, THE TWENTY THIRD DAY OF APRIL TWO THOUSAND AND
FIFTEEN**

Present

HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.29432 of 2010

Between:

D. Saraswathi, W/o. D. Ramajineyulu,
Aged about 30 years, Occ: Housewife,
R/o. Navodaya Colony,
Ananthapur Town & District & 2 others

.. Petitioners

AND

The District Collector,
Ananthapur,
Ananthapur District & 4 others

.. Respondents

The Court made the following:

The petitioners claim to be belonging to lowest strata of the society and do not have shelter to live. The petitioners applied for grant of house site patta in and around Ananthapur Town. On consideration of their request, they were allotted

Plots bearing Nos.1, 2 and 3 in Survey No.302, situated at Navodaya Colony, Ananthapur Town, Ananthapur District, by proceedings, dated 05.06.2007, and possession is granted to them. Thereafter, they have constructed temporary huts in the said plots and thereafter, they are in possession and enjoyment of the three house site plots allotted to them. While so, the Revenue Divisional Officer, Ananthapur, Ananthapur District (2nd respondent) issued notice bearing Rc.No.D2/2807/2010, dated 08.10.2010, calling upon the petitioners to submit explanation as to why the allotment of plots granted to them should not be cancelled since it was contrary to the Government rules and procedures such assignment was made and the land actually is Smasanam poramboke (burial ground) and no pattas can be granted on such land. The petitioners filed explanation. After the explanation was submitted by the petitioners, the Tahsildar, Ananthapur, Ananthapur District (3rd respondent) submitted a report to the District Collector in his letter, dated 16.09.2010, proposing to the District Collector, Ananthapur, Ananthapur District (1st respondent) to cancel the house site pattas, as the land on which such pattas were granted was forming part of burial ground. Now even before any orders are passed in pursuant to the notice, this writ petition is instituted.

2. Learned counsel for the petitioners contends that after due verification of the revenue records only, plots were allotted to the petitioners and the petitioners are in possession and enjoyment. Such assignment was made to them in the year 2007. There was no justification to seek to cancel the assignment made. Learned counsel for the petitioners further submits that it is not in dispute that the petitioners are poor persons and they do not have any house sites in their name and are qualified for allotment of house site pattas. Learned counsel for the petitioners further submits that if there was an illegality in identification of the correct extent of land earmarked for burial ground, the petitioners cannot be penalized. Learned counsel for the petitioners further contends that the plots, which are allotted to them, are not forming part of the burial ground. A compound wall was already constructed around the burial ground clearly demarcating the area of the burial ground and these plots are outside the burial ground.

3. Sri M. Panduranga Rao, learned counsel appearing for the implead 5th respondent submits that sizeable number of Muslims are living in Ananthapur Town, particularly in Navodaya Colony. They do not have proper place to offer prayers. In order to construct a Masjid, they have been representing to the revenue authorities to assign a land to them so that a Masjid can be constructed. While their request was pending, illegally these plots were assigned to the petitioners, who are not eligible for such assignment. Learned counsel for the 5th respondent, therefore, contends that the assignment ought to be cancelled and there was no illegality in the notice issued by the Revenue Divisional Officer, Ananthapur, Ananthapur District (2nd respondent), dated 08.10.2010, warranting interference by this Court.

4. Having regard to the controversy with reference to the allotment of plots to the petitioners whether forming part of the burial ground or not, this Court by order, dated 27.03.2015, directed the District Collector, Ananthapur, Ananthapur District (1st respondent) to obtain a detailed report on the actual status of the area demarcated as burial ground and whether plots allotted to the petitioners are forming part of the burial ground or are adjacent to burial ground.

5. In pursuant to the said orders, the Revenue Divisional Officer, Ananthapur, Ananthapur District (2nd respondent) submitted his report to the District Collector in his letter, dated 20.04.2015, which is placed before this Court. According to this report, the Tahsildar, Ananthapur, Ananthapur District (3rd respondent) inspected the land in Survey No.302. The total extent of land in Survey No.302 is Ac. 20.08 cents and it was classified as "Smasanam" as per RSR of the Ananthapuramu Village. However, on the status of the ground, the total extent of land in Survey No.302 was sub-divided into Survey No.302-1 to an extent of Ac. 9.18 cents and Survey No.302-2 to an extent of Ac. 10.90 cents. Land to an extent of Ac. 9.18 cents in Survey No.302-1 house site pattas were formed and given to the needy people and house colony by name Navodaya Colony has been formed in due course of time. With reference to the remaining extent of land i.e., Ac. 10.90 cents in Survey No.302-2, burial ground continues to exist. It is surrounded by a compound wall and clearly

demarcated. These three plots are outside the compound wall and are not forming part of Survey No.302-2.

6. However, as seen from the said report, if the land is not forming part of Survey No.302-2 and if house sites were already formed and a housing colony by name Navodaya Colony has already come in an extent of Ac. 9.18 cents, it is not known how these three plots are allotted to the petitioners. Adjacent to Survey No.302 is Survey No.301, which is classified as private patta land. These are the matters which require consideration by the revenue authorities. The petitioners have approached this Court at the stage of issuance of show cause notice. Whenever it is brought to the notice of the competent authority that some illegality or irregularity has taken place in taking a decision in favour of individual citizen, it is permissible for the competent authority to take remedial steps and in the process, a notice was caused. Thus, when a notice was issued by a competent authority, even before the competent authority takes a decision, the writ Court cannot go into the legality or validity of such a notice and interject the process of taking decision by the executive authority. Thus, writ in the present form is not maintainable and is liable to be dismissed.

7. Having regard to the fact that such a notice was issued in the year 2010 and the latest report of the Revenue Divisional Officer (2nd respondent) is dated 20.04.2015, the petitioners are permitted to file fresh explanation and are also entitled to rely upon the contents of the report now placed before this Court and the copy of which is already served on the learned counsel for the petitioners. In view of the rival claim made by the implead 5th respondent, the Revenue Divisional Officer shall also cause notice on the Masjid-E-Anas (5th respondent) and grant them opportunity of hearing to file their objections on the issue. After considering the objections of the petitioners as well as Masjid-E-Anas, the Revenue Divisional Officer shall pass appropriate orders, as warranted by law. The petitioners as well as Masjid-E-Anas be offered personal hearing with due notice in advance. Until a decision is taken, *status quo* obtaining as on today shall be maintained.

8. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO, J

Date: 23rd April, 2015

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HON'BLE SRI JUSTICE P.NAVEEN RAO

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