

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO.26076 OF 2012

DATED:9-7-2015

Between:

Gubbala Venkateswara Rao

... Petitioner

And

The State of Andhra Pradesh
Rep. by the District Collector (Panchayat Wing)
West Godavari District,
Eluru
and others

... Respondents

... Respondents

COUNSEL FOR THE PETITIONERS: Mr. K. Gopal, for Mr. P.Durga
Prasad

COUNSEL FOR RESPONDENT NO.1: G.P. for Panchayat Raj (AP)
COUNSEL FOR RESPONDENT NOS.2, 3 and 6: A.G.P. for Irrigation
&

CAD (AP)

COUNSEL FOR RESPONDENT NOS.4 and 5: Mr. Ravi Cheemalapati

THE COURT MADE THE FOLLOWING:

ORDER:

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This writ petition is filed for a mandamus to set aside proceedings No.M.C.3/F.No.1266 M, dated 8.8.2012, of the Executive Engineer, Gadavari Head Works Division, Dowlaiswaram, East Godavari District.

The father-in-law of the original petitioner was an Ex-service man and in consideration of his service in the army, proceedings were issued on 19.7.1985 by respondent No.3 permitting him to plant 195 numbers of coconut plants from KM 47/2 to 47/8 on Vasista right bank canal. It is the pleaded case of petitioner that his father-in-law has accordingly planted the trees. He has further pleaded that in 1986 floods to river Godavari occurred and during the process of reconstruction and widening of river banks, 120 out of 200 trees planted by the family of the petitioner were cut and removed by the Irrigation Department. The petitioner feels aggrieved by the proceedings dt.8.8.2012 of respondent No.2 whereunder he has permitted the Panchayat Secretary of Bhimalapuram Gram Panchayat, to auction the leasehold rights of growing green grass for cattle and for enjoying the usufruct of the coconut trees and the mango trees on either side of the 2 kilometers long river bank from KM 47.500 to 49.500 of Vasista Right Bank.

During the pendency of the writ petition, the original petitioner died and his legal representatives have been brought on record.

A perusal of the proceedings dt.19.7.1985 of respondent No.3 shows that the father-in-law of the original writ petitioner was granted permission to plant 195 coconut plants on the right canal bank of river

Vasista. Surprisingly, the order does not contain terms and conditions regarding the right of the beneficiary to enjoy the usufruct and the period for which such right is conferred. Indubitably the property over which the permission for plantation was given was a tank bund vested in the Irrigation Department of the Government and one cannot conceive of a situation where an individual is conferred with permanent rights over usufruct for generations unlimited merely for the reason of the grant of permission to plant fruit yielding trees. In the absence of specific terms governing the conferment of right, it is reasonable to think that the right to use usufruct is limited to the lifetime of the person in whose favour such permission is granted. In the instant case, the original writ petitioner himself represents the second generation and on his demise even a third generation has come on record. In my opinion, it would be unreasonable for the third generation to expect enjoyment of the usufruct from the plants situated on the public property. On the strength of the interim order granted by me on 24.8.2012, the family of the petitioner is enjoying the usufruct. As they have enjoyed the benefit of the plantation of coconut plants for more than three decades, it is time that the respondents are permitted to lease out the usufruct for augmentation of public revenue.

For the above mentioned reasons, I do not find merit in the writ petition and the same is accordingly dismissed.

As a sequel to dismissal of the writ petition, interim order dt.24.8.2012 shall stand vacated and W.P.M.P. No.33235 of 2012 and W.V.M.P. No.3644 of 2012 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

9-7-2015

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