

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.8613 of 2012

ORDER:-

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking the following relief/s:-

“....to issue writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents in not issuing suitable directions to the 4th respondent for restoration of the petitioner's house bearing Plot No.54 to an extent of Ac.0.05 cents in Sy.No.1153 of Muthireddigudem Village, H/o. Chada Village, Atmakur Mandal, Nalgonda District, is illegal, arbitrary and in violation of the principles of natural justice and consequently direct the 4th respondent to hand over the possession of the petitioner's property bearing Plot No.54 to an extent of Ac.0.05 cents in Sy.No.1153 of Muthireddigudem Village, H/o. Chada Village, Atmakur Mandal, Nalgonda District, and pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.”

2. I have heard the submissions of the learned counsel for the writ petitioner and the learned Government Pleader for Revenue (TG) representing respondents 1 to 3 and the learned standing counsel for the 4th respondent. I have perused the material record.

3. The case as set out by the writ petitioner, in brief, is as follows:-

The 3rd respondent had granted in the year 1981 a patta to the writ petitioner in respect of plot no.54 of an extent of Ac.0.05 cents in survey no.1153 for house site purpose, i.e., for the purpose of dwelling vide letter no.B1/2126/81, dated 30.11.1981 and that after taking possession of the said site, he had raised a housing loan from A.P. State Housing Corporation Limited and had constructed a residential house and had later repaid the entire loan amount to the said Corporation and had obtained 'No Due Certificate' dated 12.02.2002 and that he has been paying water tax to the 4th respondent Panchayat regularly and that while things stood thus, the 4th respondent, without either giving a notice or following the due process established by law, had taken forcible

possession of the subject property for the purpose of constructing a water tank in the village and that therefore, he had approached the 2nd respondent with a representation to stop the unauthorised use of his residential house by the 4th respondent and that the 2nd respondent, having received the representation, had forwarded the same to the 3rd respondent by making an endorsement for taking necessary action and that the 3rd respondent did not take any action and that the petitioner is a poor person of 80 years of age belonging to backward class community and that he has no source of income or any other house site or property in his name in the village or anywhere else and that on account of the illegal action of the 4th respondent and the inaction on the part of the respondents 2 and 3 in keeping silent over the representation made by him, he is constrained to file the present writ petition seeking the aforementioned reliefs and for appropriate directions to the 4th respondent.

4. The 3rd respondent had filed a counter affidavit *inter alia* stating as follows:

That an extent of Ac.4.03 cents of land in survey no.1153 situated at Muthireddygudem, hamlet of Chada village was acquired for providing house site plots to the weaker sections. Fifty one (51) certificates were issued vide proceedings no.A4/2126/81 dated 23.03.1981 by the Tahasildar, Mothkur before the formation of the Mandal. At that time, some site of land was left out. Afterwards that site was laid out into plots. From out of the said plots, the plot no.54 was allotted to the writ petitioner, who is a migrant from Chollair village of Yadagirigutta Mandal to the house of his father-in-law. While his major sons are residing at Chollair village, he was residing with his father-in-law. As per the report of Panchayat Secretary, Chada the writ petitioner had not obtained any permission for construction of house in plot no.54 and that therefore, the averment in the writ petition that he has constructed a house by raising loan from the A.P. State Housing

Corporation Limited is incorrect. No permission was granted to the writ petitioner for construction of a house by the Gram Panchayat, Chada, as per the revision register. The petitioner had violated the conditions of the patta granted to him in respect of plot no.54 and therefore, the patta is liable for cancellation. About 20 years back, a Mahila Vikasa Centre was established in the subject property and a drinking water bore-Well was also dug up and filtered drinking water is being supplied to the villagers of Muthireddygudem village, Hamlet of Chada Mandal. After this writ petition is filed, a Panchayat was conducted by the Panchayat Secretary of Chada village and that at that time, the panchas have deposed that the subject property was allotted and being put to use for community purpose and that the villagers have constructed a Community Hall and have got dug up a bore-Well for drinking water purpose and filtered water is being supplied to the villagers. Since the petitioner had violated the patta conditions and had not constructed house over the said plot within the time frame fixed, the question of taking any action by the 4th respondent on the representation submitted by the petitioner does not arise and that the writ petition is devoid of merit and is liable to be dismissed.

5. The 4th respondent had also filed counter affidavit stating that no permission was granted to the petitioner for construction of house in plot no.54 as alleged by the petitioner and that the petitioner had paid contribution for construction of water tank in the year 1997 as is evident from the documents filed by him in this writ petition and that the petitioner paying water tax is totally incorrect and that Mahila Vikasa Centre was established twenty years back and that a drinking water bore-Well was got dug up in the subject property and that filtered drinking water is being supplied to the villagers and that the plot is now being used for community purpose.

6. At the time of hearing, the learned counsel for both the sides made submissions in-line with their respective pleaded cases, which are stated supra, in detail.

7. I have bestowed my attention to the facts and I have noted the submissions.

8. It is an admitted fact that plot no.54 was originally allotted to the writ petitioner in the year 1981 by way of a patta. The petitioner *inter alia* claims that after the patta was granted to him, he had obtained a loan from A.P. State Housing Corporation Limited (APSHCL) and that he had constructed a house over the subject property and that on 12.02.2002, he had paid an amount of Rs.3,070/- to the Assistant Engineer (Housing), APSHCL, Motkur and that he had obtained a 'No Due Certificate' and that the same is filed along with the writ petition and that the document filed in this writ petition evidencing the payment of Rs.250/- towards water charges is only a water tax receipt and not a receipt issued for the contribution for construction of water tank for providing protected water as contended by the 4th respondent and that for his personal reasons, he had left the village and was residing elsewhere and that taking advantage of his advanced age and illiteracy, the 4th respondent, without issuing any notice and without following the due procedure established by law, had taken forcible possession of the property illegally and in violation of the principles of natural justice and that the representation of the writ petitioner was not attended to and was not disposed of by respondents 2 and 3 and that since the procedure for resumption of the patta land was not followed, he is entitled to the relief claimed.

9. *Per contra*, the learned Government Pleader for Revenue (TG) and the learned standing counsel for the Gram Panchayat would submit that the facts of the case would reveal that the petitioner, who is required to construct a house in the plot allotted to him within the time frame as per the patta conditions had failed to do so and had thus violated the patta conditions and that since more than two decades he had abandoned the plot by residing elsewhere and that the possession of not only the plot of the petitioner but also of several other plots in a total extent of Ac.4.03 cents was resumed and that the land so resumed, in turn, has been

allotted/transferred to the Social Welfare Department of Government of Andhra Pradesh on 13.03.1981 and that in the subject plot, about twenty years back, a Mahila Vikasa Centre was established and that a drinking water bore Well was also got dug up and filtered drinking water is being supplied to the Muthireddygudem villagers and that therefore, the property that was resumed is being utilised for community purpose and that though since twenty years the petitioner was not in possession of the subject land, he did not avail the remedies, which the law permits within a reasonable time, and that he having made representation in the year 2005 had kept quiet till filing of this writ petition in the year 2012 and that the documents of APSHCL do not reveal that the loan transaction there under relates to the construction of house over the subject plot by the petitioner and that no permission was obtained from the Gram Panchayat by the petitioner for the construction of a house over the subject plot and that in the light of the admitted fact that the petitioner is not in possession of the subject plot for more than two decades and for laches on his part, the writ petition is liable to be dismissed.

10. The learned counsel for the writ petitioner, alternatively by placing reliance on a decision of this Court in ***Chittibabu S/o Varapalliah, R/o.Borabanda, Hyderabad Vs. The District Collector, East Godavari District at Kakinada and others***^[1] would contend that since the land was resumed without cancelling the assignment made in favour of the writ petitioner and as for the resumption of the plot, the procedure established by law was not followed, and as the subject plot nevertheless is now being used for community purpose and is serving a public purpose, a suitable direction may be given to the respondents to identify a suitable extent of land, at least of an extent of hundred square yards, at any suitable place in the village and allot the same to the writ petitioner in exchange of the subject plot that was resumed possession of.

11. As rightly pointed out by the learned counsel for the contesting respondents, except averring that the petitioner having obtained a loan

from the APSHCL had constructed a house, not even the door number that was assigned to the house said to have been constructed by him was pleaded in the writ petition and no document was produced either to show that the house was assigned a house number and that any house tax was paid to the Gram Panchayat in the name of the petitioner in respect of the said house or to show that any water connection was obtained and water tax was paid to the Gram Panchayat. No document was also filed to show that any electricity service connection was obtained for the said house in the name of the petitioner. Admittedly, the petitioner is not residing in the house over the subject plot. Even according to his own showing, he was residing away from the subject plot since several years prior to the present */is*. The document filed with the counter of the 3rd respondent, viz., the certificate issued by the Panchayat Secretary would reveal that as per the records of the Gram Panchayat, no permission was granted to the writ petitioner to construct a house over the subject property. Further, the panchanama dated 16.04.2012, which was reduced into writing at a meeting conducted by the Panchayat Secretary in the village, on a perusal, would reveal that twenty years back, a Mahila Vikasa Centre was established in the subject plot and that a drinking water bore Well was got dug up and filtered drinking water is being supplied to the villagers of Muthireddygudem village, Hamlet of Chada village and that the subject plot was being put to use for community purpose since more than two decades. The petitioner, having kept quiet for quite a long time without availing the remedies, which the law permits, had made a belated representation in the year 2005. Even thereafter, he had kept quiet for quite a long time even though his representation was not attended to by respondents 2 and 3. However, he had filed the present writ petition in the year 2012 merely alleging that he belongs to a backward community and that he is an illiterate aged person, but did not offer any explanation much less valid explanation for the long delay. Therefore, on the ground of laches, the writ petition is liable to be dismissed in the well considered

view of this Court.

12. The exercise of jurisdiction under Article 226 of the Constitution of India is discretionary and a writ is not issued as of right or as a matter of course. (**Vide C.R.Reddy Law College Employees' Association, Eluru, West Godavari District v. Bar Council of India, New Delhi**)^[2].

The High Court having regard to the facts of the case has discretion to entertain or not to entertain a writ petition. The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, it must be exercised along recognised lines and subject to certain self-imposed limitations. The expression 'for any other purpose' in Article 226, makes the jurisdiction of the High Courts more extensive but yet the Court must exercise the same with certain restraints and within some parameters. [vide **Director of Settlements, A.P. v. M.R. Apparao** (2002) 4 SCC 638]. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But, the High Court has imposed upon itself certain restrictions in the exercise of this power. [See: **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors.** (AIR1999SC22)]. Having regard to the facts of the instant case, this Court finds that jurisdiction in this class of case cannot be exercised as the writ petitioner, who had abandoned the subject plot more than 20 year prior to the filing of the writ petition could not establish any substantial injustice had ensued to him on account of the resumption of the plot, which was abandoned by him.

13. Coming to the alternate contention of the learned counsel for the petitioner basing on the decision (1 supra) relied upon by him, it is to be noted that it is not possible to discern the facts of that case from the copy of the order in W.P.No.21132 of 2011, which was produced before this Court. Therefore, in the well considered view of this Court and the facts peculiar to the case on hand, the petitioner is not entitled to an exactly similar relief as was granted to the writ petitioner in the decision of this

court (1 supra).

14. Be that as it may, this Court is satisfied that a suitable direction can be given to the writ petitioner to submit an application, if so advised and if he so desires, to the District Collector, Nalgonda District, requesting to identify a suitable alternate plot and allot the same to the writ petitioner in exchange of the plot that was resumed possession of, for community purpose and to serve the larger interest of the public at large. It is needless to mention that the District Collector, Nalgonda District may in strict accordance with the procedure established by law consider any such application of the writ petitioner subject to his entitlement.

15. The writ petition is dismissed accordingly subject to the above observation. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this writ petition, shall stand closed.

M.Seetharama Murti, J

03rd December, 2015
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[\[1\]](#) W.P.No.21132 of 2011 dated 27.07.2011 [unreported]

[\[2\]](#) 2004(5) ALD 180 (D.B)