

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

WRIT PETITION NO.28442 OF 2008

DATED:10-9-2015

Between:

S. Sanga Reddy (died)
(per legal representatives
petitioner Nos.7 & 8)
and others ... Petitioners

And

The Government of Andhra Pradesh
Rep. by its Secretary
(Irrigation & Command Area Development)
Secretariat
Hyderabad
and others ... Respondents
... Respondents

COUNSEL FOR THE PETITIONERS: Mr. R.R. Kalyan

COUNSEL FOR RESPONDENT NOS.1 TO 3:A.G.P. for Irrigation (TS)

COUNSEL FOR RESPONDENT NOS.4 & 5: A.G.P. for Revenue (TS)

THE COURT MADE THE FOLLOWING:

ORDER:

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This writ petition is filed for a mandamus to declare the action of the respondents in not paying compensation to the petitioners' land admeasuring Ac.12.11 gts., in Sy. No.14, Ac.8.16 gts., in Sy. No.15 of Chennapur Village, hamlet of Medipalli Village, Khandari Mandal, Nizamabad District, as illegal and arbitrary, and for a direction to the respondents to pay compensation for the above mentioned lands.

The petitioners pleaded that on account of raising of the level of alugu (weir) to

Kothacheruvu Tank in Chennapur Village in the year 1989, their lands were got submerged and that in spite of their representations, no compensation has been paid. In support of their plea that their lands have got submerged, the petitioners have filed a copy of letter dt.24.1.2005 purportedly addressed by the Deputy Executive Engineer, I.D.I.B. Sub-Division, Kamareddy, to respondent No.2. However, in the counter affidavit the plea of the petitioners is unequivocally denied. It is stated that originally the tank in question was under the control of Panchayat Department till 2005 and that the same was transferred to the Irrigation Department in the said year. While denying that the full tank level or weir level of the tank question was raised, it is stated that for raising such levels obtaining of permission from the competent authority, i.e., Chief Engineer concerned, is necessary, that such work will be taken up after conducting detailed survey of the entire land likely to get submerged and that for raising full tank level and increasing the storage capacity, Hydrological clearance from the Inter-State Water Resources, Hyderabad, is needed. It is also averred that during the floods in 2010, a breach got formed in weir portion and subsequently repair works were taken up to restore the weir to its original level and there was no increase in the level of the weir. That during the repair works the petitioners neither objected to the restoration work nor made representation in this regard.

In order to substantiate the plea of the respondents that the petitioners' lands have not been submerged, they have filed certified copies of pahanies for the last ten years showing that the petitioners are cultivating the lands.

The questions whether weir of the tank in question is raised and the petitioners' lands have got submerged as a result of the same, are seriously disputed questions of fact. Such disputes cannot be adjudicated in a writ petition. The appropriate remedy for the petitioners is to avail common law remedy of a civil suit wherein such disputes have to be adjudicated based on the oral and documentary evidence that may be adduced by the parties.

In this view of the matter, the writ petition is dismissed without adjudicating on the merits of the case with liberty to the petitioners to avail the aforesaid remedy.

As a sequel to dismissal of the writ petition, W.P.M.P. No.43208 of 2014 shall stand dismissed.

C.V. NAGARJUNA REDDY, J

10-9-2015

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