

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

WRIT PETITION No.21891 of 2015

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07.12.2015

Between:

Annabattula Venkata Ramana Murthy

.. Petitioner

and

The State of Andhra Pradesh,
represented by its Principal Secretary,
Industries and Commerce (Mines) Department,
Hyderabad and others

.. Respondents

Counsel for the petitioner: Mr.N.Sreedhar Reddy

Counsel for respondent No.1: Assistant Government Pleader
for Industries and Commerce (AP)

Counsel for respondent Nos.2 and 3: Assistant Government Pleader
for Panchayat Raj (AP)

Counsel for respondent No.4: Mr.K.V.L.Narasimha Rao

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The Court made the following:

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ORDER:

This writ petition is filed for a *mandamus* to set aside proceedings in Lr.Roc.No.4323/2014/A2, dated 04.05.2015, of respondent No.2.

The petitioner claims to be the owner and possessor of patta lands admeasuring Acs.17.76 cents in survey Nos.53 to 55 of L.Gannavaram Village, P Gannavaram Mandal, East Godavari District. He made an application to respondent No.1 for grant of permission to decast sand from his patta lands as per G.O.Ms.No.186, Industries & Commerce (Mines-I) Department, dated 17.12.2013, which was in force at that time. The petitioner further pleaded that though various authorities recommended grant of permission in his favour for decasting sand, his application was not disposed of. Hence, he filed W.P.No.29165 of 2013 for a direction to respondent No.1 to dispose of his application. This Court, by order, dated 08.10.2013, in the said writ petition, directed the respondents to consider the petitioner's application and pass appropriate orders thereon. That on 22.01.2014, respondent No.1 issued proceedings permitting the petitioner to decast sand from his patta lands. He further submitted that on 04.03.2014, Mineral Dealers Licence was issued in his favour and that though he stocked 54000 m³ of sand and paid seigniorage fee in respect thereof, he could transport only 18000 m³ of sand, with the balance quantity of 36000 m³ of sand lying in the stockyards. It is the further pleaded case of the petitioner that new sand policy has come into force on 28.08.2014, *vide* G.O.Ms.No.95, and that on 25.11.2014, respondent No.1 issued revised memo granting transit permits to the petitioner for decasting sand till the balance 1,61,624 m³ of sand is exhausted. That the petitioner made a detailed representation, dated 27.11.2014, to respondent No.2 marking a copy to respondent No.3 requesting them to comply with the directions contained in memo,

dated 25.11.2014, of respondent No.1 and that as no action was taken by the said respondents, the petitioner filed W.P.No.7169 of 2015, wherein, this Court, by interim order, dated 20.03.2015, directed the said respondents to consider his representation in terms of the aforesaid memo, dated 25.11.2014. Thereafter, respondent No.2 issued the impugned proceedings, dated 04.05.2015, directing joint inspection of the petitioner's lands. It is also stated that this Court, by interim order, dated 08.07.2015, in W.P.No.20668 of 2015, directed respondent Nos. 2 and 3 to forthwith issue transit permits to the petitioner in respect of 36000 m³ of sand lying in the stockyards. Feeling aggrieved by the impugned proceedings, dated 04.05.2015, of respondent No.2, the petitioner filed this writ petition.

On 15.07.2015, this Court passed a detailed interim order, wherein respondent Nos.2 and 3 were directed to issue transit permits in favour of the petitioner as per the memo, dated 25.11.2014, issued by respondent No.1. No counter-affidavits are filed by any of the official respondents.

Mr.K.V.L.Narasimha Rao, learned counsel for the impleaded respondent - respondent No.4, however, opposed the writ petition, by submitting that even as per the sale deed No.1743/1958, dated 02.07.1958, on which the entire case of the petitioner is based, what was conveyed by his client was Acs.2.53 cents of land and that suppressing this fact, the petitioner has applied for transit permits in respect of Acs.6.80 cents of land, out of which Acs.4.27 cents of land belongs to his client and his family.

Mr.N.Sreedhar Reddy, learned counsel for the petitioner, submitted that as respondent No.4 was trying to interfere with his client's peaceful possession and enjoyment of the disputed property, his client has filed O.S.No.79 of 2014 on the file of the Principal Junior Civil Judge, Kothapeta, and secured an injunction. He has further

submitted that the sale deed, dated 02.07.1958, contains specific boundaries and that the law is well settled that the boundaries prevail over the extent mentioned in the sale deed.

From the facts noted above, it is evident that there is a serious title dispute between the petitioner on the one side and respondent No.4 on the other side. The petitioner has based his claim on the sale deed executed as far back as 1958, in respect of which a presumption as to its validity arises under Section 90 of the Indian Evidence Act, 1872. In a writ petition under Article 226 of the Constitution of India, this Court refrains from deciding a title dispute between the parties. Since the petitioner is holding a sale deed with certain boundaries to support his claim, he is entitled to seek permission for decasting of sand in respect thereof. However, if respondent No.4 disputes the title of the petitioner based on the extent in the sale deed, he shall seek adjudication of this dispute before the competent Court of law. The learned counsel for respondent No.4, however, submitted that if before his client approaches the civil Court, the petitioner takes away the sale proceeds, he will not be able to recover the same from him.

Therefore, in order to balance the interests of both the parties, the petitioner is permitted to decast the sand over the entire extent of Acs.6.80 cents of land in addition to his own patta lands, which are not in dispute. If within sixty days from today, the petitioner decasts the sand and sells the same, as far as the sale proceeds pertaining to Acs.4.27 cents of land, which is in dispute, he shall deposit the same with respondent No.3, who shall retain the same, to enable respondent No.4 to avail appropriate remedy before the competent civil Court within the abovementioned period. If within the above stipulated time, respondent No.4 fails to secure an appropriate interim order from the competent civil Court, the petitioner is entitled to withdraw the amount deposited with respondent No.3. It is needless to observe that if respondent No.4 files a suit, the civil Court shall dispose of the same

on its own merits, without being influenced by any of the observations contained in this order.

Subject to the above observations and directions, the Writ Petition is disposed of.

As a sequel to disposal of the writ petition, W.P.M.P.No.28198 of 2015 shall stand disposed of.

C.V.NAGARJUNA REDDY, J

07th December, 2015
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