

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.19589 OF 2011

ORDER:

The present Writ Petition came to be filed seeking issuance of writ of *mandamus* by declaring the action of the respondents in not considering the request of the petitioners to give alternative land belonging to 6th respondent, in exchange of the land taken possession by the 6th respondent, as arbitrary and illegal and consequently, to direct the respondents to re-deliver the land taken possession by the 6th respondent or to provide alternative land in exchange of the land taken possession by the 6th respondent.

2. The averments in the affidavit filed in support of the writ petition are as under:

The father of the petitioners by name late Gaddenna was the absolute owner of the property in Sy.No.49. When respondent No.6 wanted to acquire the land belonging to the father of the petitioners, an objection was raised for the possession of the land. Negotiations took place, pursuant to which, respondents have agreed to give Ac.0.12 cents of land in exchange of Ac.0.08 cents of land. Hence, without initiation of any land acquisition proceedings, report was submitted by the 3rd respondent-the Revenue Divisional Officer, Visakhapatnam (RDO), which was recorded by the 4th respondent-the Mandal Revenue Officer, Visakhapatnam (MRO) on 09.09.1996. MRO addressed a letter to respondent No.5-Commissioner of Collegiate Education (Respondent No.5) on 27.06.1994 directing him to find out whether

the owner of the land will accept the exchange of land. MRO also addressed a letter to respondent No.5 on 31.05.2000 directing him to send proposal for exchange of land as to enable him to take further action. Respondent No.2 -the District Collector, Visakhapatnam, addressed a letter to respondent No.5 to offer their remarks with regard to exchange of land admeasuring Ac.0.08 cents belonging to the petitioners standing on the name of the father of the petitioners, which is sought to be used by the college as a play ground and main gate purpose. Respondent No.5 addressed a letter to find out the stage of the proposal under Right to Information Act, 2005, in response to the application filed by the petitioners and it was intimated to the petitioners that the proposals submitted to the 2nd Chief Secretary to the Government and Chief Commissioner Land Administration (CCLA) both were rejected. It is said that though CCLA passed orders on 24.11.2003, the same were not communicated to the petitioners nor any action is taken by the respondents to re-deliver the possession of the land as suggested by the said authority. It is further stated that though a legal notice was issued to the 2nd respondent on 26.03.2011 demanding to allot alternative extent of the land for the land of Ac.0.08 cents covered by Sy.No.49/18B of Maddilapalem village, no action has been taken by the 2nd respondent. Hence the present writ petition.

3. Respondent Nos.1 to 4 filed counter stating that the land in Sy.No.49/18B of Maddilapalem village is classified as a private land and as per the records available, there was an understanding between the petitioners and respondent No.5 for exchange of lands belonging to the petitioners, and respondents 5 and 6 agreed to give Ac.0.12 cents of land belonging to the college in exchange of

Ac.0.08 cents of land belonging to the petitioners. It has been categorically stated that respondent Nos.1 to 4 are not part of the said agreement between the petitioners and respondents 5 and 6. The averments in the counter also show that writ petition against respondent Nos.1 to 4 is misconceived as no relief can be claimed against them. It is further stated that respondent No.5 addressed a letter to the District Collector, Visakhapatnam, for exchange of said land, but this being a private land, no proceedings were issued by the District Collector.

4. Respondent Nos.5 and 6 filed their counter, wherein they have admitted the rejection of the proposal, and also denied the contention of the petitioners that land admeasuring Ac.0.08 cents in Sy.No.49/18B situated at Maddilapalem village was acquired by the Government for college and also denied to have agreed to give alternate land to an extent of Ac.0.12 cents of land in Sy.No.49/20B of the same village to the petitioners. It is further stated that the petitioners never approached the respondents with any kind of representation either oral or written. They also denied the correspondence between the petitioners and the Principal of the College. They also denied the order passed by the CCLA rejecting the proposal of respondent No.5. However, in paragraph No.7 of the counter they admitted that an iron gate supported by an arch was erected in the disputed land and that there is no permanent structure in the disputed land. It is specifically stated that as per the records available in the college, no assurance was given for providing an alternative land to the petitioners in lieu of Ac.0.08 cents of land in Sy.No.49/18B.

5. Heard both sides.

6. From a reading of the averments made in the counter filed by respondents 1 to 4 on one hand and that of respondents 5 and 6 on the other, it appears that each one of them is blaming the other. But, however, paragraph No.7 of the counter filed by respondents 5 and 6 clearly indicates that they have taken possession of Ac.0.08 cents of land in Sy.No.49/18B, but they never gave any assurance for providing an alternative land to the petitioners. It is true that the acquisition of the land under the provisions of the Land Acquisition Act, 1894 did not take place, but, the affidavit filed in support of the writ petition and the counter filed by respondents 1 to 4 clearly show that there was an understanding between the petitioners and respondents 5 and 6 and pursuant to an understanding, respondents 5 and 6 promised to provide an alternative site.

7. Since respondents 5 and 6 denied all the averments, it will be relevant to refer to the correspondence between the parties and the documents that are placed on record.

Proceedings of the Commissioner of Collegiate Education, Andhra Pradesh, Hyderabad reads as under:

“Ro.Eo.2657/CC3-3/89, Dated:27-6-1994
Sub:- Govt. Colleges – Dr.V.S.Krishna Govt. College, Visakhapatnam – Negotiations made by the M.R.O., Visakhapatnam, for settlement of Land dispute in S.No.18-B/49 for an extent of Ac.0.08 cents with Sri P.Gadenna – Acceptance of proposals – Reg.

Read:- 1. C.C.E's Proc.Rc.No.2657/CC3-3/89 dt.8-4-94.

2.From the M.R.O., Visakhapatnam
Lr.Rc.No.1890/93/A, dt.3-5-94.

3.From the Principal, Dr.V.S.Krishna Govt.

College, Visakhapatnam Lr.Rc.No.18-B/93,
Dt.24-5-94.

-oOo-

The attention of the Principal, Dr.V.S.Krishna Govt.College, Visakhapatnam is invited to the C.C.E's Proceedings first read above, wherein he has been requested to findout whether the owner of the land viz., Sri P.Gadenna will accept for exchange of Ac.0.08 cents of collge land instead of Ac.0.12 cents in a corner in lieu of his Ac.0.08 Cents of land in S.No.18-B/49. But as seen from his letter third read above it is observed that the Principal of the said college has not consulted the land owner in the matter.

The Principal, Dr.V.S.Krishna Govt. College, Visakhapatnam is therefore requested to comply with the orders issued in C.C.E's Proceedings first read above and submit his reply for taking further necessary action in the matter.

M.A.RASHEED
For COMMISSIONER OF COLLEGIATE
EDUCATION

To
The Principal, Dr.V.S.Krishna, Govt. College,
Visakhapatnam.
Copy forwarded to the Mandal Revenue Officer,
Visakhapatnam-530013.
Spare-2

//t.c.f.b.o.//

SUPERINTENDENT"

Letter addressed by the RDO to the MRO reads as under:

"Copy of Rc.No.2780/96/C, Dt.31.5.99 Office of the
Revenue Divisional
Office,
Visakhapatnam.

From:	To
Ch.Sridhar, B.Tech.,	The Mandal Revenue
Officer,	
Revenue Divisional Officer,	Visakhapatnam (Urban).
Visakhapatnam.	

Sir,

Sub:- Land – VSP Division – Visakhapatnam
(Urban) Mandal – maddilapalem village –
Exchange of land measuring Ac.0.08 cents of
private land of Sri Palla Gaddem which is
under occupation of Dr.V.S.K.Govt. College –
Regarding.

Ref:- Rc.No.264195 E2, dt.23-2-1999 of the
Collector, Visakhapatnam.

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I invite your attention to the reference cited wherein I was directed by the Collector, Visakhapatnam to inspect the land and inform whether the land now proposed in S.No.49/20B for exchange in-lieu of the land in S.NO.49/18B shall be other than the land reconveyed to Smt.S.Rushyananda and the land available with the Govt.Krishna College or not?

I, therefore, request you to conduct enquiry and submit a detailed report in the matter immediately.

Yours faithfully,
Sd/- Ch.Sridhar,
Revenue Divisional
Officer,
Visakhapatnam.

//true copy//

SUPERINTENDENT

Copy submitted to the Collector,
Visakhapatnam.”

Thereafter, MRO addressed a letter to respondent No.6, relevant portion of which reads as under:

“In this connection, I request you to send proposals for exchange of land measuring in extent of Ac.0.08 cents in S.No.49/20B of College land in lieu of the land occupied by Dr.V.S.Krishna College, belonging to Sri P.Gaddanna in SNo.49/189 so as to enable me to take further action in this matter.”

8. The record further discloses that the Collector vide his proceedings Rc.No.2641/95/E2, dated 06.01.2005, addressed a

letter to the Principal, Dr.V.S.Krishna Govt. College i.e., respondent No.6 herein along with a copy of the CCLA's letter, dated 24.01.2003, requesting him to offer remarks on the orders of the CCLA at an early date for taking further action in the matter.

9. At this stage, it will be useful to refer to the endorsement of the District Collector, dated 23.07.2008, to show that the College has been using the land belonging to the private person and that the request of exchange of land to the said person is rejected. The relevant portion of which reads as under:

“With reference to the application of Sri Palla Chinna Rao s/o Late Gaddenna resident of Visakhapatnam for information of the stage of the land exchange proposals in respect of the land in Sy.No.49/18 B with that of the land in Sy.No.49/20 B as the land is under use by Dr.VS Krishna Government Degree College, Visakhapatnam, he is hereby informed that on a proposal submitted to the Spl. Chief Secretary to government & Chief Commissioner, Land Administration, A.P., Hyderabad in RcNo 2641/1995 E2 dated 17-9-2003, the Chief Commissioner Land Administration, AP., Hyderabad in Ref No: B3/2514/2003 Dated 24-11-2003 rejected the proposal **“observing that there seems to be no compelling reason why the College should be using land belonging to a private person and proposal land belonging to the college to that private person in exchange. It is not that the college will not function if the private land is not in it's disposal.”** Thus the proposal was not agreed to.”

From the above, it is clear that the averments made in the counter affidavit filed by respondents 5 and 6 are absolutely incorrect. They went to the extent of even denying the proposal of exchange of land of the petitioners with Ac.0.12 cents belonging to the College, which palpably appears to be false in view of the order of the CCLA and the communication of the Collector with the

College. If really the version of respondents 5 and 6 is correct, there is no reason for them to erect an iron gate in the disputed land.

10. Learned Government Pleader for Education represented that in spite of repeated requests made to respondents 5 and 6 to send the exact status of the issue, they have not come forward with any information. He submits that appropriate orders may be passed basing on the material available on record.

11. From a reading of the communication between the parties, it is clear that there was a proposal by the College for taking land to an extent of Ac.0.08 cents in Sy.No.49/18B situated at Maddilapalem village belonging to the petitioners since it was very near to the main road and they agreed to allot Ac.0.12 cents of land in Sy.No.49/20B of the same village belonging to the College to the petitioners in exchange of the said land. The communication between the Collector and the RDO, RDO and MRO, MRO and College and later, the order of CCLA, which is referred to above, *prima facie* show that the land was taken, but for reasons best known to respondents 5 and 6, they went back. But, paragraph No.7 of the counter filed by respondents 5 and 6 clearly indicates that they have raised an iron gate with an arch in the disputed land. If really, the said land was not taken by them, the question of erecting an iron gate with an arch in the land belonging to the petitioners, would not arise.

12. Having regard to the circumstances, the Writ Petition is allowed directing respondents 5 and 6 to return back the land to an extent of Ac.0.08 cents in Sy.No.49/18B, which was taken from the petitioners at the earliest.

Miscellaneous Petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

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JUSTICE C. PRAVEEN KUMAR

Date:14.12.2015

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