

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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W.P.No. 5717 of 2011

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DATE: 02.06.2015

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Between:

Pottuluru Sanjavaiah

and 25 others .. Petitioners

and

The State of Andhra Pradesh

and three others .. Respondents

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ORDER:-

The petitioners assert that they have been in possession and enjoyment of various extents of agricultural lands in Sy.No.4231/2 situated in Alluru village and Mandal, S.P.S.R. Nellore District for the last 50 years by doing cultivation and raising crops every year from December to April. While so, it is stated that the 4th respondent-

Tahsildar issued them notices dated 02.08.2007 under Section 6 of the A.P. land Encroachment Act, 1905 and after following due process of law, evicted them from the lands in question which are required for the purpose of construction of Summer Storage Tank. It is also stated that similarly situated persons were allotted alternate sites in Sy.No. 363 of North Amuluru village and Mandal, S.P.S.R. Nellore District. It is averred that one Alluru Mandal Community of A.P. Rythu Sangam representing about 164 persons filed W.P.No. 17370 of 2007 seeking a direction to the respondents therein not to evict them from various extents of lands in Sy.No.4231 of Alluru village which is classified as "Alluru Big Tank", and this Court, by order dated 06.09.2007, while disposing of the writ petition, gave a direction that persons who are evicted from their lands for the purpose of construction of Summer Storage Tank at Alluru village shall be allotted alternative sites. It is stated that the petitioners, whose cases are similar in nature, made representations dated 02.08.2010 requesting the

2nd and 3rd respondents to allot them alternative sites, but their grievance is that the respondents have neither considered their representations nor allotted them alternative sites. Hence, the present writ petition is filed seeking appropriate directions.

The 4th respondent – Tahsildar has filed counter affidavit *inter alia* stating that the District Collector, S.P.S.R. Nellore District, in his proceedings dated 17.03.2007, ordered that the land admeasuring Ac.100.00 cents comprised in Sy.No.4231/2 of Alluru village where the Summer Storage Tank is proposed to be formed was already under the encroachment of 150 persons belonging to S.C., S.T., B.C. and O.C. communities, and when these encroachers were directed to vacate the lands, they filed W.P.No. 17370 of 2007, and this Court, disposed of the writ petition with a direction to consider the cases of the displaced persons who are found eligible and entitled to allotment of alternative sites. Subsequently, these encroachers were evicted from the lands in question, however, in pursuance of the directions issued by this Court, only 144 encroachers whose encroachment is

within the periphery of Ac.100.00 cents of Alluru Tank Bed where construction of Summer Storage Tank was proposed, were enumerated and granted pattas at the rate of Ac.1.00 cents each in Sy.No.363 of North Amuluru village which is adjacent to Alluru village, but the cases of the petitioners have not been considered on the ground that they are not among 150 encroachers who were evicted from Alluru Big Tank and the place where they are stated to have encroached is out of coverage area of Summer Storage Tank and their encroachments do not fall in the periphery of the Summer Storage Tank. It is further contended that that the writ petitioners are the encroachers in Alluru Big Tank where the encroachment is strictly prohibited in view of the ban orders issued by the Government and as there is no vacant Government land available in Alluru village and also in view of the resistance offered by the villagers of North Amuluru for grant of pattas to the outsiders in Sy.No.363, it is not possible for the revenue authorities to consider the request of the writ petitioners for grant of alternative lands.

The learned counsel for the petitioners has contended that there is hostile discrimination in the matter of allotment of lands to the displaced persons and even assuming for arguments sake, the petitioners fall within the area covering the proposed Summer Storage Tank, and being in occupation of the area of such Tank, they could not have been denied grant of alternative sites because they definitely fall under the category of displaced persons from Alluru Tank Bed area which was admittedly in occupation and enjoyment of the petitioners over a long period of time, as such, their cases may be directed to be considered for allotment of alternative sites.

Having considered the rival submissions and having perused the material placed on record, I find some justification in the contention put forth by the learned counsel for the petitioners. Ultimate object for which eviction was ordered was to clear all kinds of encroachments from the water beds which is a primary and fundamental duty of the Government. In their wisdom they had chosen to grant alternative sites to the persons who are displaced from the Tank Bed area.

While the policy decision was taken by the Government to grant alternative sites to the displaced persons there could not have been any microscopic discrimination within the broad nature of classification of persons who were in occupation of the tank bed lands as all fall within same category. In that view of the matter, this Court feels it just and necessary to direct the respondents-authorities to consider the cases of the petitioners as well on par with the other displaced persons.

While this Court considers the relief sought for by the petitioners, justified, it cannot be said that the petitioners are entitled to be granted the lands within the area of their choice as it is only a gratis which is being given by the Government without there being any substantive right, as such, the insistence of the petitioners that they also ought to have been allotted lands in Sy.No.363 situated in North Amuluru village and Mandal, SPSR Nellore District is undesirable.

In view of the facts and circumstances of the case and in the interest of justice, there shall be a direction to the respondents-authorities to examine the feasibility of granting the lands in favour of the petitioners in accordance with the policies existing as on today with regard to allotment of alternative sites. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

With the above observation, this writ petition is disposed of. No order as to costs.

As a sequel to the disposal of the writ petition, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

CHALLA KODANDA RAM, J

02.06.2015

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