

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition Nos.3896 of 2011 and 30670 of 2011

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COMMON ORDER:

The grievance of the respective petitioners in both the writ petitions is in regard to the action of the respondents, particularly, the Village Secretary of Samanthakurru Gram Panchayat and the President of the said Gram Panchayat in proceeding with the digging of pits and the construction of the Panchayat Office building in R.S.no.172/2 of Samanthakurru village, which is classified as village tank leaving aside the site of Ac.0.03 cents in Rs.S.no.139/2 donated by Gandrothu Bapi Raju (the writ petitioner in W.P.No.30670 of 2011) under gift settlement deed dated 22.12.2010 to the Gram Panchayat for the very purpose of construction of the Panchayat office building. They had hence filed this writ petition seeking a writ of *mandamus* or order or direction directing the respondents to construct the Panchayat Office building in the said site donated by the said Bapi Raju and not in R.S no.172/2, which is a Tank.

2. The cases of the writ petitioners, as stated in the respective writ petitions, may be stated, in brief, as follows:

The Gram Panchayat, Samanthakurru has no office building of its own. The petitioner in W.P.no.30670 of 2011 (hereinafter referred to as 'Bapi Raju') is the absolute owner of Ac.0.19 cents in R.S.no.139/2 and Ac.0.01 cents in R.S.no.139/15 having purchased the said extents under a registered sale deed dated 31.01.1969 from Devaguptapu people. It is his self acquired absolute property; and he is enjoying the said property to the knowledge of one and all in the village; and he is paying taxes in respect of the said property to the Gram Panchayat. He also owns a big house bearing Door no.1-20 located in the said property, which is in the middle of the village and opposite to Venugopalaswamy temple. While so, the village elders and the then President of the Gram Panchayat had approached him and requested to donate an extent of about Ac.0.03 cents from out of his above said Ac.0.19

cents for the purpose of construction of a permanent office building for the Gram Panchayat, Samanthakurru village. They had also promised to name the said building in the name of his parents. Having agreed for the said proposal, Bapi Raju had executed a gift settlement deed in favour of the Gram Panchayat on 22.12.2010 in respect of Ac.0.03 cents, on the Eastern side, from out of Ac.0.19 cents and had delivered possession of the same to the Gram Panchayat. Since it is represented by the authority of the Gram Panchayat that no registered instrument is required, no registered document was executed evidencing the said gift transaction. But, the Gram Panchayat had obtained delivery of the said Ac.0.03 cents and had accepted the gift made by Bapi Raju. A resolution was also passed for construction of the Panchayat Office Building in the said site, which was gifted by Bapi Raju. Further, funds were also sanctioned for the construction of the said building in the said site. Bhumi Puja was performed in the said site. When a request was made to Bapi Raju to supervise the work, he had expressed his inability citing his old age as the reason. He had suggested that the village elders may supervise the work. While the construction work was in progress in the said site donated by Bapi Raju, the Contractor in collusion with the President and others had shown that there are some disputes between the children of the brother of Bapi Raju and Bapi Raju in respect of the site that was donated. This was done by them with a view to meet their purpose and to make a wrongful gain. All of a sudden, it was proposed to leave the site donated by Bapiraju and shift the construction of the Panchayat Office building to the outskirts of the village and construct the same in another site that too in a tank situated in Sy.no.172/2. Any construction in the tank and on the tank bunds etcetera is prohibited as per the decision of the Supreme Court; and the proposed construction is quite contrary to the guidelines given by the Supreme Court. The respondents have highhandedly and illegally started the construction of the office building in the said tank site. A sum of Rs.11,00,000/- was sanctioned for the purpose of said construction. Construction of office building in the tank or the tank site is nothing but a waste of public money. It is being proclaimed by the authorities that the office building is being constructed in the own site of the Gram Panchayat. There is

no site for the panchayat or the Government in R.S.no.172/2. The subject site in R.S.no.172/2, where the proposed panchayat office building is now being constructed, is a tank. Being aggrieved of the acts of the respondent authorities, Bapi Raju got issued a legal notice dated 15.11.2011. Having come to know of the issuance of the said notice, the respondent authorities are proceeding in a hurried manner to show that the construction is already made. The Village Secretary and the President of the Panchayat had misguided the higher authorities. Though the writ petitioner in W.P.no.3896 of 2011 had made representations to the District Collector and the District Panchayat Officer to look into the matter and conduct an enquiry and take appropriate steps for construction of the Panchayat office building in the site donated by Bapi Raju, which is situated in the middle of the village, no action was taken by the respondents concerned. No action was taken on the representation dated 25.01.2011 submitted by the writ petitioner in W.P.no.3896 of 2011 to the respondents 2 to 5. They are wasting public money by proceeding with the construction of the office building in a tank site without looking into the aspect of convenience of the villagers. Hence, these two writ petitions are filed.

3. In both the writ petitions, the then Panchayat Secretary of Samanthakurru village had filed a counter affidavit *inter alia* contending as follows:

The writ petitions are misconceived and are filed due to political rivalry and with an oblique motive to stall the construction of the Gram Panchayat building during the tenure of the present Gram Panchayat committee. The writ petitions are not maintainable. The land, which was donated by Bapi Raju for the purpose of construction of Gram Panchayat office, is in dispute. The gift deed executed by Bapi Raju on a non-judicial stamp of Rs.50/- donating Ac.0.03 cents to the Gram Panchayat out of Ac.0.19 cents in R.S.no.139/2 and 139/15 is not registered. Pursuant to the said gift, the Gram Panchayat had taken steps for the construction of the Gram Panchayat building. One Adabala Ananthalakshmi, the daughter of the brother of the said Bapi Raju came to the site on 22.1.2011, at the time of ground breaking ceremony, and had objected for the construction of the panchayat office

building in the site donated by Bapi Raju by stating that the land belongs to her joint family and that the Gram Panchayat cannot proceed with the construction of the Gram Panchayat office in the said site without either acquiring the land or obtaining her consent. Therefore, the said ceremony was stopped on the instructions of the officials who were present at the time of the said ceremony. Thereafter, the Gram Panchayat had passed a unanimous resolution to shift the place for construction of the Gram Panchayat office building to a place near MPP elementary school of Samanthakurru village where the Gram Kantam land in R.S.no.172/2 is available. The allegation that the proposed site at which the construction is being made is a tank is absolutely false. The proposed place for the construction of the building of the Gram Panchayat office is just by the side of the Mandal Parishad Elementary School in R.S.no.172/2 where the Transformer of the Power Distribution Company is also located. To enable the Gram Panchayat to construct the Gram Panchayat office building, a request was made to the Electricity Department to shift the said transformer. The said request was accepted by the Electricity Department. Funds were also granted by the District Collector from NGNREG Scheme for the construction of the Gram Panchayat office building. The said sanction was given by the Collector to construct the Gram Panchayat office building in R.S.no.172/2 in an extent of Ac.0.03 cents. The proposed construction has to be completed in the stipulated period as instructed by the authorities. In view of the said facts, on 29.01.2011, the Gram Panchayat has passed an unanimous resolution to start the construction of the panchayat office building under the supervision of the Gram Panchayat with the assistance of the Engineering Department of the Panchayat Raj Institution. The land that was proposed for construction of the office building of the Gram Panchayat is not a tank. The site of the proposed office building is adjacent to the compound wall of the water tank, where the temple of Siddi Vinayaka Swamy as well as the Mandal Parishad Elementary school are located. The new Gram Panchayat office building is being constructed in between these two buildings. The writ petitioner in WP.no.3896 of 2011 has no locus standi as he has neither donated the land nor contributed for the construction of the

Gram Panchayat office building. He cannot file the writ petition as Public Interest Litigation as no such interest is involved. There is no violation of the individual rights of the writ petitioners and no prejudice is caused to them on account of the shifting of the place for the construction of the building of the Gram Panchayat office from the site donated by Bapi Raju, which is in dispute, to the present site, which is in Sy. no.172/2, which is not a tank. Hence, the writ petitions may be dismissed.

4. I have heard the submissions of the learned counsel for both the sides. The learned counsel for the writ petitioners and the learned standing counsel and the AGP appearing for the official respondents made submissions in line with the respective pleadings of the parties, which are extracted supra, in detail. I have perused the material record.

5. From the pleadings, the following facts and aspects emerge:

There is no office building for the Gram Panchayat, Samanthakurru village. According to the writ petitioner-Bapi Raju, he is the absolute owner of Ac.0.19 cents in R.S.no.139/2 and Ac.0.01 cents in R.S.no.139/15 having purchased the said extents under a registered sale deed dated 31.01.1969 from Devaguptapu people and that the said properties are his self acquired absolute properties and that he is in possession and enjoyment of the said properties to the knowledge of one and all in the village and that he is paying taxes in respect of the said properties to the Gram Panchayat. He had admittedly donated Ac.0.03 cents out of his above said extent to the Gram Panchayat by executing an unregistered gift settlement deed dated 22.12.2010 for the construction of the office building of the Gram Panchayat in the said site. The Gram Panchayat had accepted the said gift and had taken possession of the said extent of land and had passed a resolution for construction of the office building in the said site donated by Bapi Raju. As per the averments in the counter, when Bhoomi Pooja and digging operations were being undertaken in the presence of the higher officials and the village elders on 22.01.2011, one Adabala Ananthalakshmi, who is no other than the daughter of the brother of the Bapiraju, came to the spot and had raised an

objection stating that the land is their joint family land and that the Gram Panchayat cannot construct any building in the subject site without either acquiring the land or obtaining her consent; therefore, the bhoomi pooja and digging operations were stopped on that day on the advice of the officers present. The writ petitioners while denying the said aspect would contend that while the construction work was in progress in the said site donated by Bapi Raju, the Contractor in collusion with the President and others had shown that there are some disputes between the children of the brother of Bapi Raju and Bapi Raju in respect of the donated site and that the same was done by the contractor and others with a view to meet their purpose and to make a wrongful gain. Be that as it may. The Gram Panchayat has passed a resolution to shift the place of construction of the Gram Panchayat office building from the site donated by Bapi Raju to the site of an extent of Ac.0.03 cents in R.S.no.172/2, which is said to be the site available with the Gram Panchayat for the construction of the Gram Panchayat office building. The said site is stated to be situated near the MPP elementary school of Samanthakurru village. Now, the grievance of the petitioners in both the writ petitions is that the Gram Panchayat is proceeding in a hurried manner with the construction of the Panchayat Office building in the site in R.S.no.172/2, which is a tank. They also complain that their representations given to the respondents were not considered and that, therefore, the construction activity of the Panchayat Office building in the tank site is nothing but a waste of public money in a huge sum of Rs.11 lakhs sanctioned for the purpose of construction of office building.

6. On the other hand, the Village Secretary in his counter had categorically denied the allegations in the writ petitions and had affirmed that the proposed site in Sy.no.172/2 where the Panchayat Office building is proposed to be constructed is not a tank and that office building is being constructed on the site available to the Gram Panchayat in the said survey number and that the site proposed for the present new panchayat office building is adjacent to the compound wall of the water tank, where the temple of Siddi Vinayaka Swamy as well as the Mandal Parishad Elementary school

are located and that the new Gram Panchayat office building is being constructed in between those two buildings.

7. At the hearing, it is stated that in view of the writ petitions and the interim orders of this Court, the construction of the panchayat office building in the proposed site in survey no.172/2, which is in progress, was stopped when the construction was at the roof level.

8. Therefore, the short, but, vital question is:

Whether or not the subject land in Sy.No.172/2, i.e., the land where the panchayat office building is now under construction is a tank or part of a tank?

8.1 I have given detailed and thoughtful consideration to the facts pleaded and I have noted the submissions. Since the pleadings and contentions are stated supra in detail, there is no need for reiteration. Along with the writ petitions, the writ petitioners had filed not only the copies of the notice and the representation, which are respectively, submitted by the writ petitioners to the authorities requesting to stop the construction of the office building in the tank site, but also the certified copies of village account no.3 (adangal/pahani) in respect of Sy.no.172/2 issued by the Village Revenue Officer, Samanthakurru. The said documents on a plain perusal would disclose that the total area of Sy.no.172/2 is Ac.3.44 cents and it is a Government property and is a tank. Therefore, the revenue records lay bare that the entire extent of Ac.3.44 cents in Sy.no.172/2 is a tank. Even though these material papers are filed and it is asserted in the writ petitions that the proposed site in Sy.no.172/2 is a tank and that in the said tank site, the office building of the Gram Panchayat cannot be constructed, the truth of the contents of the copies of the said adangal/pahanies is not denied by the village secretary. Even at the hearing, the genuineness of the said documents and the correctness of the entries therein are not disputed by the respondent. No documents of similar nature, if any, were filed by the respondents to show that the land in Sy.no.172/2 is not a tank. Therefore, there is *prima facie* sufficient evidence of the required standard to come to a safe conclusion that the land in Sy. No.172/2 where the respondents are now proceeding with the construction of

the panchayat office building is a tank. Be that as it may. The learned AGP would submit that the construction of the office building of the panchayat upto roof level is already made and, therefore, considering the cost that was incurred so far in constructing the said office building by investing public money, the writ petitions may be disposed of permitting to complete the construction and allowing it to stay and directing the respondents not to allow any further encroachments or constructions in the tank/tank site in case this Court accepts the contention of the writ petitioners that the site in question i.e., the land in RS no.172/2 is a tank. The learned counsel for the writ petitioners had strongly objected for giving such directions and had strongly asserted that permitting constructions in a tank site and allowing them to continue is impermissible in view of the decisions of the Supreme Court.

8.2 It is now necessary to refer to the relevant legal position obtaining.

In the decisions in – “**The Illinois Central Railroad Co. v. The People of the State of Illinois** 36 L ED 1018: 146 U.S. 387 (1892); **M.C. Mehta v. Kamal Nath and Ors.** (1997) 1 SCC 388; **Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai and Anr.** (2004) 3 SCC 214; **Intellectuals Forum, Tirupathi v. State of A.P. and Ors.** (2006) 3 SCC 549; **Fomento Resorts and Hotels Limited and Anr. v. Minguel Martins and Ors.** (2009) 3 SCC 571 and **Reliance Natural Resources Limited v. Reliance Industries Limited** (2010) 7 SCC 1” the 'public trust doctrine' was enunciated and it was held:

As natural resources are public goods, the doctrine of equality, which emerges from the concepts of justice and fairness, must guide the State in determining the actual mechanism for distribution of natural resources. In this regard, the doctrine of equality has two aspects: first, it regulates the rights and obligations of the State vis-à-vis its people and demands that the people be granted equitable access to natural resources and/or its products and that they are adequately compensated for the transfer of the resource to the private domain; and second, it regulates the rights and obligations of the State vis-à-vis private parties seeking to acquire/use the resource and demands that the procedure adopted for distribution is just, non-arbitrary and transparent and that it does not discriminate between similarly placed private parties.

In **Intellectuals Forum, Tirupathi v. State of A.P and others** [(2006) 3 SCC 549] the facts disclose that the grievance of the appellant society was in respect of alienation of tank bed lands of two tanks by the Government

concerned in favour of some Government agencies for construction of houses. The Supreme Court having considered the report of a committee of experts disposed of the civil appeals with certain directions. The relevant ratio is as under:

It is true that the tank is a communal property and the State authorities are trustees to hold and manage such properties for the benefits of the community and they cannot be allowed to commit any act or omission which will infringe the right of the Community and alienate the property to any other person or body.

In Delhi Water Supply & Sewage Disposal Undertaking and Anr. v. State of Haryana and Ors [1996 Cri LJ 1887] the Supreme Court held as follows :

Water is a gift of nature. Human hand cannot be permitted to convert this bounty into a curse, an oppression. The primary use to which the water is put being drinking, it would be mocking the nature to force the people who live on the bank of a river to remain thirsty, whereas others incidentally placed in an advantageous position are allowed to use the water for non-drinking purpose. A river has to flow through some territory; and it would be travesty of justice if the upper-riparian States were to use its water for purpose like irrigation, denying the lower riparian States the benefit of using the water even for quenching the thirst of its residents.

Similarly in Chameli Singh and Ors. v. State of U.P. and Ors. [AIR1996 SC 1051] the Supreme Court observed as under:

Right to live guaranteed in any Civilised society implies the right to food, water, decent environment education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live, should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence,

therefore, frustrates the very object of the Constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself. To bring the Dalits and Tribes into the mainstream of national life providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights.

In **Hinch Lal Tiwari v. Kamala Devi: [AIR 2001 SC 3215]** the Supreme Court (vide paragraphs 13 and 14) observed thus:

13. It is important to note that material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enable people to enjoy a quality life which is essence of the guaranteed right under Article 21 of the Constitution. The Government, including revenue authorities, i.e. respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.

14. For the aforementioned reasons, we set aside the order of the High Court, restore the order of the Additional Collector dated February 25, 1999 confirmed by the Commissioner on March 12, 1999. Consequently, respondents 1 to 10 shall vacate the land, which was allotted to them, within six months from today. They will, however, be permitted to take away the material of the houses which they have constructed on the said land. If respondents 1 to 10 do not vacate the land within the said period the official respondents i.e. respondents 11 to 13 shall demolish the construction and get possession of the said land in accordance with law. The State including respondents 11 to 13 shall restore the pond, develop and maintain the same as a recreational spot which will undoubtedly be in the best interest of the villagers. Further it will also help in maintaining ecological balance and protecting environment in regard to which this Court has repeatedly expressed its concern. Such measures must begin at the grass-root level if they were to become the nation's pride.

8.3. Having regard to the facts and the ratios in the decisions and considering the further fact that the respondents are under a constitutional obligation to protect the tank in question, which is a public property in which the community at large and each and every ayacutdar has got a property right, and that the said right cannot be taken away by the Government to their detriment, and that the communal property cannot be diverted for the purpose of construction of houses either private or Government, this Court is of the well considered view that in the event of conflicting interests between environment and social development, the former should be preferred as it is the responsibility bestowed upon the State to protect and preserve the tanks,

which are an important part of environment of the village.

8.4 Viewed thus, this Court finds that these writ petitions can be disposed of with the following directions.

The Village Secretary and the President of Samanthakurru Gram Panchayat and others concerned shall stop and not proceed with the further construction of the Panchayat office building in the subject site of an extent of Ac.0.03 cents which is part of a tank site in Sy.no.172/2 of a total extent of Ac.3.44 cents of Samanthakurru village. The constructions already made shall not be allowed to continue and be demolished and the tank be restored to its original condition. It is needless to mention that the State is at liberty to proceed and take necessary action in accordance with the procedure established by law against the persons and the Officers responsible for proposing and sanctioning of and also the construction of the Panchayat Office building in a tank (tank site/bund) in sy.no.172/2 of Samanthakurru village. The respondents are at liberty to take immediate steps for finding out an alternate suitable site for the construction of the office building of the Gram Panchayat, Samanthakurru village. It is made clear that the investment made for the construction so far made in the tank site shall not come in the way of implementing the instant orders as otherwise it would seem that once a party makes certain investment in an illegal activity it would be a fait accompli.

9. The writ petitions are, accordingly, disposed of. There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

28.03.2016

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