

THE HON'BLE SRI JUSTICE S.V.BHATT

W.P.No. 39978 of 2016

ORDER :

Heard Ms.Sridevi for petitioners and the learned Government Pleader for Irrigation and Energy.

The petitioners pray for *Mandamus* declaring the action of the 4th respondent in trying to construct flood bank-cum-road through the land in Sy.No.123/2 and Sy.No.223 of Gavaravaram Village, Chodavaram Mandal, Visakhapatnam District, without recourse to law or issuing notice to petitioners, much less initiating proceedings under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Rules 2014, as illegal and unconstitutional.

At request of Respondent No.4, the Writ Petition was adjourned on 18-11-2016 and 22-11-2016 for counter of Respondent No.4. The Respondent No.4 filed counter-affidavit together with combined sketch for Gavaravaram Village of Sy.Nos.125, 124, 123, 122, 219, 223, 224, 226, 61, 60 and 241 and a few photographs as annexures. The Respondent No.4 does not dispute the ownership or possession of petitioners of petitioners' lands. The issue raised by the 4th respondent is that there exist river bund in petitioners' lands since 1970 and as a matter of fact, the Irrigation Department has been undertaking repairs to the bund passing through the petitioners' lands and other survey numbers shown in the combined sketch and therefore, the respondents by undertaking the strengthening of bund or laying the road is not affecting the proprietary right of petitioners.

The counsel for petitioners submits by placing reliance upon the documents filed by the 4th respondent that the existence of river bund in these survey numbers is assumed by the 4th respondent and if at all river bund is in existence, the same is recorded in the revenue records or the records maintained by the 4th respondent. As no such document is filed by the 4th respondent, it is contended that the proposed laying of road through petitioners' lands is illegal, arbitrary and unconstitutional.

I have perused the annexures relied upon by petitioners and the 4th respondent. In my considered view, the issue boils down to existence of a river bund through petitioners' lands or not. It is not in dispute that these details of the existence can be verified and determined by respondent Nos.4 and 5. I am not proposing to examine a fact in issue on the identity of a river bund through the survey numbers. The petitioners are given liberty to represent to the 5th respondent on the proposed construction and the 5th respondent issues notice to the 4th respondent, enquires into the matter and decides on the existence of the river bund and its boundaries and communicate the same to petitioners. It is open to petitioners, if they are so aggrieved by the decision of 5th respondent, to work out their remedies in accordance with law. The said exercise shall be completed within three weeks from today. The interim order granted on 22-11-2016 is directed to be maintained till 20-12-2016. The interim direction is confined to the petitioners' lands.

The Writ Petition is disposed of with the above observations. No order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand disposed of.

S.V. BHATT, J.

Date:29.11.2016
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