

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition no.5081 of 2012

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ORDER:

This writ petition under Article 226 of the Constitution of India is filed by the writ petitioners seeking the following relief/s:

“.....to issue a Writ, order or direction, more particularly one in the nature of a Writ of Mandamus declaring the action of the 3rd respondent in issuing the notice dated 21.2.2012 is without any basis and contrary to the petitioners title deed boundary on eastern side and any further action basing on the notice dated 21.02.2012 without following due process of law is highly illegal, unjust and improper while directing the respondents to follow due process of law to initiate any sort of action in respect of petitioners land which is upto Narsimham Raju Cheruvu including the barbed fencing wire which belong to the petitioners and pass such other order or orders as this Hon'ble court may deem fit and proper.”

(Reproduced verbatim)

2. I have heard the submissions of the learned counsel for the writ petitioners, the learned Standing Counsel for Panchayat Raj appearing for the respondents 1 and 3 and the learned Government Pleader for Revenue appearing for the respondents 2 and 4. I have perused the material record.

3. The case of the writ petitioners, as set out in the affidavit filed in support of the writ petition and as per the submissions made is, in brief, as follows:

The petitioners 1 to 3 are the absolute owners and possessors of houses respectively bearing nos.1-131, 1-130, 1-128 situated at Sitarampuram village, Ungutur Mandal, West Godavari District. The said three houses are situated opposite to Katthari Narsimham Raju Cheruvu ('the Tank', for brevity). The open spaces of land in front of the respective houses of the petitioners are being enjoyed by the petitioners with absolute rights and titles since more than four decades. Nobody has questioned their rights over the said open spaces of land. While so, the 1st petitioner had received a notice dated 21.02.2012 from the 3rd respondent *inter alia* stating that a

complaint was received stating that the petitioners are obstructing the farmers from using the gravel Rastha and that on such complaint, the Mandal Revenue Officer had conducted an enquiry on 15.02.2012 and that the issue would be settled after conducting a survey and that on 19.02.2012, the petitioners had erected cement pillars and fenced the place with barbed wire and that such an act would not help the resolution of the issue raised in the complaint and that, therefore, the said facts are brought to the notice of the petitioners; and, that on verification by the Secretary, Gram Panchayat, it was found that the Southern boundary of the Cheruvu, that is, the road was occupied while steps were being initiated for resolving the issue and that the gravel road was laid at the instance of the panchayat President- B.Suryanarayana and one N.Nageswara Rao and that the earlier President, on behalf of the Gram Panchayat, had got laid an electricity pole on the side of the road; and that the petitioners are required to remove the fencing stones and barbed wire within twenty four hours from the time of the receipt of the notice and that on failure to do so, action would be initiated in accordance with the provisions of the Panchayat Raj Act. The said notice was served only on the 1st petitioner on 21.02.2012 at about 4 PM. Though the names of 2nd and 3rd petitioners are also mentioned in the said notice, the copies of the said notices were not served on the said petitioners. The 1st petitioner had got issued a reply telegraphic legal notice dated 22.02.2012 mentioning all the facts. While things stood thus, the respondents had highhandedly entered into the petitioners' land and had tried to remove the fencing stones with barbed wire. On the resistance that was offered by the petitioners, the respondents had left that place. Unfortunately, the BC Colony people had entered into the land of the petitioners on 22.02.2012 at about 3 PM and had highhandedly removed the fencing stones and the barbed wire and had further threatened the members of the family of the petitioners. Therefore, the writ petition is filed seeking the aforementioned relief.

4. The defence of the respondents 1 and 3 as per the averments in the counter affidavit filed by the then Panchayat Secretary, is as follows:

The petitioners had high-handedly fenced the road adjacent to the

Tank and also the Gram Panchayat service road, which leads to the BC Colony (Indira Colony) of Sitarampuram Gram Panchayat. The object of the petitioners is not to allow the residents of BC Colony to pass and re-pass on this particular service road, which is in front of the houses of the petitioners.

The action of the petitioners, therefore, is highhanded. The petitioners resorted to the said acts without having any right or title over the panchayat road and the tank, which vests with the Gram Panchayat. Having fenced the said area with cement poles and barbed wire, the petitioners are obstructing the village public to walk on the service road in front of their houses. In the year 1998, the then committee of the Gram Panchayat had passed an unanimous resolution for laying the gravel on the existing road. The said work was executed with the contributions from the public. Thereafter, in the year 2008, the gravel was laid once again with MP LAD's funds. The petitioners had kept quiet all these days and had suddenly started obstructing the public from walking on the Gram Panchayat road by saying that the land belongs to them and that nobody will be allowed to walk on the road. In the circumstances, a representation was made by the public to the Panchayat. Hence the petitioners were requested not to create any problems in the village. Thereafter, the petitioners had again kept quiet for some time and had later fenced the road with barbed wire. Immediately, the said fact came to the notice of these respondents 1 and 3. On that a request was made for removal of the same. However, the petitioners had refused to do so. Hence, the subject notice was issued. A survey was also conducted through Mandal Surveyor of Unguturu. A sketch along with a report was submitted by him. The same clearly show that the tank is surrounded by Gram Panchayat road and all the public are using the said road and that there is a overhead tank constructed by the Gram Panchayat opposite to the petitioners' houses. The revenue record also clearly shows that the existing road vests with the Gram Panchayat. Therefore, the petitioners cannot obstruct anybody from using the road in front of their houses. The writ petition may be dismissed.

5. The case of the 2nd respondent, as stated in the counter affidavit of the then Tahasildar, in brief, is this:

The villagers including Nalla Naga Satyanarayana and 26 others of Indira Colony of Sitarampuram had submitted a representation dated 07.01.2012 to the then Tahsildar, Ungutur stating that the 2nd petitioner had closed the existing road, which leads to Indira Colony by heavy stones, and had caused obstruction for use of the road and that therefore, they are facing much inconvenience; and, that in view of the said obstruction, there is not even a possibility for the Ambulance to enter their colony in case of emergency; and, that the way to the Panchayat water tank is also blocked from the colony and that, therefore, a road facility has to be provided to their colony. On such complaint, the then Tahasildar had made enquiries into the matter along with the Mandal Revenue Inspector and the Village Revenue Officer; and the said enquiries had revealed that RS no.483 of Rachuru village of Unguturu Mandal is classified as follows:

Sl. No.	R.S.No.	Extent Ac. Cents	Classification	Name of Registered Holder	Present Status on ground
1	483/1	1-72	Govt.-Wet	1 1 5 Katari Venkata Raju, Suryanarayana Raju and Konda Raju	D o n a t e d to Panchayat Board (Gram Panchayat Drinking Water Tank)
2	483/2	0-08	Govt.-Wet	3 2 3 . S r i Kathari Singaraju	Houses 7 the existing Gravel Road
3	483/3	0-19	Govt.-Wet	1 2 5 . S r i Katari Narasimharaju	Houses including the petitioners & the existing Gravel Road
4	483/4	3-18	Govt-Poramboke	Sitarampuram Village site	Sitarampuram Village site

R.S.No.483/1 measuring Ac.1.72 is classified in the village accounts as ‘Government wet’ though it is registered first in favour of Kathari Singa Raju, Suryanarayana Raju and Kondraju and that the same was donated to the “Gram Panchayat Board” by the registered holders for “Drinking Water Tank” purpose and that place, which is popularly known as “Panchayat Drinking Water Tank”, is within the following boundaries: North: zerothi lands of Nalla Lakshmi etcetera; East: Indiramma (B.C) Colony; West: R.S.no.483/3 covered by existing houses including the houses of the petitioners; and South: Panchayat Road towards Sitarampuram village site. The enquiries also

revealed that the villagers are utilizing the two road ways, which lead from the R & B Main Road to Harijanawada-Sitarampuram village site. At present, there are no obstructions in the disputed roadway situated in R.S.No.483/2, 3 i.e., the Western side of the Panchayat Tank. The disputed roadway is Zeroit land, which is covered by houses in R.S.no.483/2, 3 of Seetharamapuram, H/o Rachuru village. The petitioners' houses are situated in R.S.no.483/3 measuring Ac.0.19 guntas of Sitarampuram, H/o Rachuru village i.e., the Western side of the existing Panchayat Tank covered by R.S.No.483/1. The villagers are utilizing another roadway leading from the R & B Main road to Harijanawada-Sitaramuram village site. When the villagers had complained that the road was closed by laying heavy stones and barbed wire fencing and that an obstruction is being caused for people passing on the road covered in R.S.no.483/2, 3 of Sitarampuram village, the then Tahasildar had issued instructions to the Panchayat Secretary to take necessary action in the matter and to conduct a survey of the lands in dispute by availing the services of a Team of Mandal Revenue Inspector/Mandal Surveyor, the Village Revenue Officer and the Panchayat Secretary concerned to solve the problem in the interests of the general public. Hence, the 3rd respondent had issued notice dated 21.02.2012 and had informed the petitioner to remove the concrete polls and barbed wire fencing within 24 hours and not to cause any obstruction to the villagers to pass on the existing Panchayat gravel road. Without complying with the directions in the said notice, the writ petitioners had filed this writ petition. On conducting survey by the Mandal Surveyor, Ungutur on 22.12.2015 in regard to the disputed road way in R.S.nos.483/1, 2, 3 of Seethramapuram, H/o Rachuru village, the disputed road way was found to have been covered by R.S.Nos.483/2, 3 and not covered in the R.S.No.483/1 i.e., the Panchayat Tank of Seetharampuram village H/o Rachuru village of Unguturu Mandal. The petitioners are the owners of the respective houses; and, the open space in front of the said houses is covered by R.S.nos.483/2,3. On the Western side of the "Panchayat Drinking Water Tank" open space is available in R.S.No.483/2,3 and it is being utilized since a long time as a road way, which is of a width of 12 feet and which leads from

the R & B Main Road to Harijanawada-Sitarampuram village site. At present, there are no obstructions in the disputed road way situated in R.S.No.483/2,3 i.e., Western side of the Panchayat Tank.

5.1 Be it noted that to the said counter affidavit of the Tahasildar, the copies of the village field no.483, village field no.64, a list of adjacent registered holders in the village of Rachuru, the copies showing the details of field records and the copies of the adangals of Sy.nos.483/1, 483/2, 483/3, 483/4 are enclosed.

6. The learned counsel for the petitioners and the learned standing counsel and the learned GP appearing for the official respondents made submissions in line with the pleadings. I have given detailed and thoughtful consideration to the pleadings. I have perused the documents filed by the writ petitioners as well as the 2nd respondent.

7. The petitioners are the owners of their respective houses and that there is a vacant land in front of their houses and that the said land is in between a tank and their houses is not in dispute. The petitioners claim that the land in front of their respective houses i.e., the land in between their houses on one side and the tank on the other is their private land and that they are the absolute owners and possessors of the same and that they are enjoying the said land since more than four decades and that earlier their predecessors in interest were in possession and enjoyment of the said lands in front of their respective houses upto the Narasimharaju Cheruvu [tank] and that at present the said lands are in the possession and enjoyment of the petitioners and that at no point of time, anybody questioned their right over the said lands. Per contra, the official respondents state that the said land in front of the respective houses of the petitioners, that is the land to the West of the Narasimha Raju Ceruvu [tank] is a road; and, that over the said land, there is an existing GP road; and, that long time back, i.e., in the year 1998, the said road was laid with gravel pursuant to the unanimous resolution of the committee of Gram Panchayat; and, that thereafter in the year 2008 also, the gravel was re-laid with MP LAD's funds. Be it noted that the 3rd respondent

did not produce any record in support of its contention that the road was laid in the year 1998 with the contribution of the public and that the gravel was re-laid in the year 2008 with MP LAD's funds.

8. A perusal of the impugned notice would show that when a complaint was said to have been received from the villagers and the residents of BC colony against the petitioners that they are obstructing them from using gravel rasta/way, the impugned notice was issued after conducting an enquiry by the Tahasildar. In the said notice addressed to all the petitioners, but, served only upon the 1st petitioner, it is stated that the issue would be settled after conducting a survey. However, in the said notice, it is also stated that the petitioners had erected fencing stones and fenced the land in question with barbed wire and that they have occupied the road while the steps were being initiated by the Mandal Tahasildar for resolving the issue. Therefore, as on the date, the notice that was issued and which was impugned, the survey was not conducted and the issue as to whether the land in dispute is the private land of the petitioners or a rasta [path way] is not finally resolved. However, it is further stated in the notice that Southern boundary of the Cheruvu was occupied and that the Special Officer of Seetharampuram Gram Panchayat on information and oral instructions the impugned notice was being issued by *inter alia* stating that the petitioners have occupied the road while steps are being initiated by the Mandal Surveyor for resolving the issue. Finally, in the notice it was stated that the villagers are utilizing the road and that the petitioners are informed that they have to remove the fencing stones and barbed wire within 24 hours from the time of the receipt of the notice and that on failure to do so, action will be initiated in accordance with law. In the counter of the contesting official respondents, it is stated that after the writ petition is filed on 24.02.2012, a survey was conducted on 22.12.2015. It is pertinent to note that the counter of the respondents 1 and 3 is filed even before the survey was conducted. Thus, in the notice, at one breathe it is stated that the issue cannot be resolved unless a survey was conducted and at another breathe it is stated that the land in dispute is a road and it was occupied by the petitioners. Even without conducting a survey,

how such predetermination was made could not be explained. Be that as it may. According to the contentions of the 2nd respondent, the Tank is situated in R.S.no.483/1 and the houses of the petitioners are situated in Survey no.483/2 and 3. Though survey was said to have been conducted, it is not stated as to what is the area of the tank and what is the width of the tank bund on its Western side and what is the width of the disputed land/road as per the survey. The detailed survey report with sketches and enclosures, if any, is not filed into Court.

9. Even the boundaries of the tank as mentioned in the Counter affidavit of the 2nd respondent disclosed that the Western Boundary of the said Tank is RS no. 483/3 covered by the existing houses including the houses of the petitioners. There is no mention that the Western boundary of the Tank is a road or a way or a passage much less gravel road. It is very apt to note that the Eastern Boundary in the sale deed dated 10.06.1960 filed by the writ petitioners is described as Panchayat Board Cheruvu Gattu (tank bund). Therefore this document of the earliest period makes it manifest that there is no road by that year and that the land upto the tank bund is the private property of the vendee under the said sale deed. As rightly contended by the learned counsel for the petitioners, if any road is subsequently laid in a private property, such private property on the West of the Tank must have been acquired and that it is not the case of any of the official respondents that any such land was ever acquired as per law. Further, as rightly contended by the learned counsel for the petitioners, if any road is carved out from out of a land existing in one survey number or sub-survey number, the road portion will be assigned a separate by-number or sub-number or sub-division number. However, it is not stated in the pleadings of the respondents as to whether any such separate by-number or sub-number was assigned to the road in question, if it was later carved out from a private property or from out of the tank bund. Further, the learned Government Pleader at the hearing had submitted that inspite of his sincere efforts he could not get any instructions as to whether any sub-division number was assigned to the land in question, which is being stated to be a road. The houses of the petitioners were not

subjected to survey as per their title documents before arriving at a conclusion whether the subject road of 12 feet width is a part of their respective house and site properties or not. It is only stated in the counter affidavit of the 2nd respondent that road is also in sy.nos.482/2 and 3 in which the houses of the petitioners are situate. The copy of the earliest sale deed dated 10.06.1960 executed in favour of Penamatsa Sithamahalakshmi, wife of Venkatapathi Raju, who is no other than the father of the petitioners 1 and 2, would show that the Eastern boundary is Panchayat Cheruvu gattu (tank bund). Thus, a reading of the counter affidavit of the 2nd respondent would show that there is no consistency in the defence and the averments in the said counter affidavit are mutually inconsistent. Hence, it appears that it would be just and fair that after a detailed survey/enquiry and after measuring the properties of the petitioners and others in that locality as well as tank with its bunds it has to be ascertained with certainty as to whether or not the disputed land falls within the properties of the petitioners as being claimed by them. Admittedly, the survey was conducted during the pendency of this writ petition without notice to the writ petitioners and without their participation. By conducting a detailed survey the core issue as to whether or not the lands in front of the houses of the petitioners are their private properties shall be determined to give a quietus. Even in the notice impugned, it is stated that conducting of a survey is necessary to resolve the issue. The writ petitioners had also assailed the notice *inter alia* stating that the said notice was issued without following the due process of law. Therefore, in the well-considered view of this Court, the writ petition can be disposed of by giving appropriate directions.

10. In the result, the Writ Petition is disposed of directing the respondents not to take any further action pursuant to the notice, which is impugned in the writ petition, and further directing them to have a detailed survey conducted for measuring and demarcating the properties of the petitioners 1 to 3 as per their title documents and enjoyment and also demarcating the other private properties of the others, if any involved, and also the Tank (with its bunds) as per records/field maps etcetera for resolving the issue as to the existence of

12 feet road/path way, if any, to the West of the Tank, i.e., to the East of the petitioners' houses. It is made clear that the survey as directed shall be conducted to answer the core issue as to whether or not the lands in front of the respective houses of the petitioners i.e., upto the tank bund are their private properties. The respondents shall commence the exercise in that direction within one month from the date of the receipt of a copy of this order and complete the survey work as expeditiously as possible, after due issuance of notices to the petitioners to produce their documents, if any, and after giving them an opportunity to participate in the survey work. It is needless to mention that the respondents are at liberty to take an appropriate action, after such survey, if necessary, however, after furnishing the certified copies of the survey report and sketch maps to the petitioners under proper acknowledgments.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

28th March 2016
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