

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.28279 of 2012

ORDER:

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This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking the following relief/s:-

“....to issue a writ order or direction more particularly one in the nature of Writ of Mandamus, declaring the inaction of the Respondent Authorities in preventing the encroachments of the Gram Panchayat sites situated in Sy. Nos. 101 and 102 of Jagarapuvanipalem, Gali Bhimavaram Panchayat, Sabbavaram Mandal, Visakhapatnam District as illegal, arbitrary and unjust and consequently direct the respondents not to allow anybody to encroach or to make constructions in the Gram Panchayat site situated in Sy.Nos. 101 and 102 of Jagarapuvanipalem, Gali Bhimavaram Panchayat, Sabbavaram Mandal, Visakhapatnam District and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

(Reproduced Verbatim)

2. I have heard the submissions of the learned counsel appearing for the writ petitioner and the learned standing counsel for the 6th respondent-Gram Panchayat. I have perused the affidavit filed in support of the writ petition and the counter affidavits filed on behalf of the respondents 4 and 6.

3. The case of the writ petitioner, in brief, is this: The grandfather of the writ petitioner had donated Ac.0.66 cents of land in survey number 101 to the Gram Panchayat for utilisation of the same by the Gram Panchayat for public purpose and that he and his mother had also donated Ac.0.40 cents in survey number 102 to the Gram Panchayat for utilisation of the same by the Gram Panchayat for public purpose and that the said donated lands are being encroached by some villagers illegally and that the Gram Panchayat is not taking any action either to prevent the said encroachments or for their removal; and that, therefore, feeling aggrieved of the inaction of the Gram Panchayat, this writ petition is filed.

4. The learned counsel for the writ petitioner, while making submissions in line with the pleaded case, would submit that the Gram Panchayat, in its counter, had admitted that the land in survey number 101 is donated to the

Gram Panchayat by the forefather of the writ petitioner, but had denied that the land in survey number 102 is donated by the members of the family of the writ petitioner to the Gram Panchayat. The learned counsel would further submit that the writ petitioner is not disputing rights and possession of the Gram Panchayat over the above said lands, but, is only requesting the Gram Panchayat not to allow any encroachments into the said lands and to remove the encroachments already made in the said lands.

5. The learned Standing Counsel for the 6th respondent, while drawing the attention of this Court to paragraph number 7 of the counter affidavit filed on behalf of the 6th respondent, would submit that the instant writ petition is filed by the writ petitioner for his personal interest and that the writ petitioner does not have any lawful right over the subject properties under law and that therefore, in the absence of any such right, a Writ of *mandamus* cannot be issued.

6. A perusal of paragraph number 8 of the counter affidavit filed on behalf of the 6th respondent would make it manifest that the land in survey number 101 is donated to the Gram Panchayat by the forefather of the writ petitioner and that the said land is being utilised by the Gram Panchayat for public purpose and that there are no encroachments in the said land and that insofar as the land in survey number 102 is concerned, already action has been initiated by the Gram Panchayat for stoppage of the illegal constructions and for eviction of the encroachers.

7. In view of the undisputed fact that the land in survey number 101 is donated by the forefather of the writ petitioner to the Gram Panchayat for utilisation of the same for public purpose and that the land in survey number 102 is Government land intended for public purpose, this Court is of the well-considered view that the writ petition can be disposed of with necessary directions, having regard to the submissions and the facts and circumstances of the case.

8. Accordingly, the writ petition is disposed of directing the respondents,

particularly the 6th respondent, not to allow any encroachments into the land in survey number 101, which is admittedly donated by the predecessor-in-interest of the writ petitioner, viz., the grandfather of the petitioner to the Gram Panchayat and utilise the same for public purpose only and to get the encroachments in survey number 102 removed as stated in its counter affidavit, as expeditiously as possible, preferably within a period of two (02) months from the date of receipt of a copy of this order, however, in strict accordance with the procedure established by law. No costs.

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

M.Seetharama Murti, J

19th January, 2016
Bvv