

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.17710 OF 2012

ORDER :

This Writ Petition is filed challenging the inaction of the respondent in considering the petitioner's application dt.14.05.2012 to grant permission to the petitioner to fill a private tank owned and possessed by him situated in the land in survey No.31 of Penumarhi Village, Kakinada Rural Mandal, East Godavari District.

2. Petitioner claims to be the absolute owner of the above land which comprises of an unused fish tank at a vacant site. He states that he purchased the said property under a registered sale deed document dt.10.03.2006 from one Gavara Anjaneyulu and Chintapalli Apparao and since then he is in peaceful possession and enjoyment of the land. He also claimed that the report of the Tahsildar sent to the Collector on 06.01.2011 also states that it is a private land.

3. Petitioner contended that one Inuganti Venkata Suryarao and others filed O.S.No.103 of 1971 before the Principal District Munsif, Kakinada, by impleading the petitioner's predecessors in title, to declare the subject property to be a village tank or communal property and also claimed a right of passage over the bund; that they also alleged that the entire village of Penumarhi, consisting of Ac.18.20 cents in survey No.31, is Gramakantam Poramboke land, and the tank is a public property; and prayed that the defendants be directed not to interfere with their right to use the tank along with the general public in the village.

4. According to petitioner ultimately in A.S.No.23 of 1976 a decision was given by the Principal Subordinate Judge, Kakinada stating that the plaintiffs therein have no manner of right in the property much less any easementary right over the property and that the tank in question is not Poramboke land or communal property, but it is the property of the petitioner's vendors.

5. Petitioner alleges that the local MLA came to the land on 26.01.2012 when the petitioner was not there and declared that he is going to lay a road across the tank bund owned and possessed by the petitioner and the petitioner was then forced to file W.P.No.2775 of 2012 before this Court and an interim order of status quo was granted therein on 06.02.2012.

6. Petitioner contended that since the tank in question is abutting dwelling houses and people were throwing garbage therein, he wanted to build a compound wall to protect the land and for that he made an application to the respondent through post on 14.05.2012, but no response was received from the respondent. Therefore, he contends the action of the respondent in not granting permission to him to fill the tank and to construct a compound wall around the tank to protect it, is arbitrary and illegal.

7. Counsel for the petitioner contended that in view of the increase in land cost, some of the local people, who are inimical to the petitioner, again reopened the issue contending that the tank is Gramakantam Poramboke land.

8. Counter affidavit is filed by the Panchayat Secretary on behalf of the respondent-Grampanchayat refuting the above contentions. He alleged that the petitioner's vendor has no right or title in the property; that the said land vests with the Grampanchayat; and the petitioner wanted to grab the village tank which is located in Gramakantam of Grampanchayat. It is claimed that the Grampanchayat has a right to protect the water tank belonging to it and reference is made to G.O.Ms.No.188 dt.21.07.2011. It is also stated that Mandal Surveyor submitted a report that the tank in question is in possession and control of the Grampanchayat and the petitioner's representation for grant of permission to fill the tank and build a compound wall around

the tank was rejected on 13.06.2012.

9. However, the respondent admitted that the decree in O.S.No.103 of 1971 was not in favour of the plaintiffs therein but was in favour of the petitioner's vendor's father in the first appeal. Further, having claimed that the petitioner's representation for grant of permission to fill the tank and build a compound wall around the tank was rejected on 13.06.2012, no copy of the said order is annexed to the counter.

10. Counsel for respective parties reiterated the above allegations.

11. Recently this Court in ***Voonna Bangaraju v. Government of Andhra Pradesh and others***^[1] has categorically held that Gramakantam land is not Government land and there is no prohibition to undertake transactions in it. It held that Gramakantam describes land identified for the purpose of construction of residential houses and incidental structures in a village and it is neither a Government land nor land which is vested in the Grampanchayat. It also held that Section 2(1) of the A.P. Land Encroachment Act, 1905 describes what Government property is and Gramakantam is not included in it. It also referred to para 4(6) of G.O.Ms.No.100 dt.22.02.2014, wherein it is stated that the property owned by a private individual or a family in village site, which are used as cattle sheds or for any other agrarian purpose and domestic purpose by way of dwelling houses in the Gramakantam can be considered to be private property and the persons in whose possession the said land is, can also sell away the said land.

12. This legal position is not disputed by the Standing counsel for the respondent-Grampanchayat.

13. Therefore, by no stretch of imagination, the Gramakantam land can be said to vest either in the Grampanchayat or in the Government.

14. That apart, in A.S.No.23 of 1976 arising out of O.S.No.103 of 1971 filed by some of the villagers, in a representative capacity, against the petitioner's vendor's father and others, it was held that the tank in question is a private property of the defendants therein and not communal property. This judgment had attained finality since it has not been questioned by any third party including the respondent .

15. Further, the plea in the counter that possession of the tank is with the Grampanchayat on the basis of a Mandal Surveyor's report cannot be accepted, since he is not competent to give any certificate with regard to possession. In fact no such plea was raised in O.S.No.103 of 1971 by the plaintiffs therein. It is most unfortunate that the respondent, who claims to have rejected the petitioner's application on 13.06.2012 to fill the tank in the subject land and protect it by constructing a compound wall around it, had not even filed the copy of the said order along with the counter affidavit, creating a serious doubt whether there is such a rejection at all, in fact.

16. Having regard to the findings in the Civil Suit that the tank is the private tank of the petitioner's vendor's father in which no resident of the village has any right and that it is not communal property but a private tank, and also having regard to the legal position that Gramakantam land does not vest in the Grampanchayat, it is not open to the respondent to again raise a plea that the petitioner has no title over the property and that the tank vests in it.

17. Therefore, the Writ Petition is allowed and the respondent is directed to permit the petitioner to fill the tank with soil and other material and to construct a compound wall around it to protect it. This exercise shall be done within two (02) weeks from the date of receipt of a copy of this order. The respondent shall also pay costs of Rs.2,000/- to the petitioner within four (04) weeks from today.

18. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

01st March, 2016.
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