

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 15998 of 2016

ORDER:

1) The present Writ Petition came to be filed seeking issuance of writ of mandamus declaring the action of respondent Nos.2 to 4 in excavating Canal in D-Form patta lands admeasuring Ac.0.23 cents in Sy.No.64/ 3, Ac.0.29 cents in Sy.No.64/ 2, Ac.0.37 cents in Sy.No.65/ 3, Ac.0.44 cents in Sy.No.65/ 4, Ac.0.53 cents in Sy.No.83/ 11, Ac.0.43 cents in Sy.No.83/ 2, Ac.0.20 cents in Sy.No.83/ 1m, Ac.0.43 cents in Sy.No.66/ 1, Ac.0.33 cents in Sy.No.66/ 3 and Ac.0.59 cents in Sy.No.186/ 2 respectively situated in D-Ravulapalem Village, Allavaram Mandal, East Godavari District, without following due process of law, as illegal, arbitrary and violation of Articles 14, 21 and 300-A of the Constitution of India; and consequently to direct the respondents not to excavate the canal in the patta lands of the petitioners.

2) The petitioners claim themselves to be in possession and enjoyment over lands referred to above. It is said that the said lands were in possession and enjoyment of the forefathers of the petitioners since 1942 and the State Government after recognizing their occupation and enjoyment, issued D-Form pattas in respect of the said lands in the year 1985. It is said that the petitioners have been carrying on agricultural operations in the said lands and have been continuously paying land revenue. As the condition in D-Form patta is to the effect that the lands are heritable but not

alienable, the petitioners, who are the landless poor persons, are continuing the process of cultivation since last 30 years. The action of the respondents in trying to evict the petitioners from the said land without giving any notice and without following due process of law is subject matter of challenge in this writ petition.

3) A counter came to be filed by respondent No.4 disputing the averments made in the affidavit filed in support of the writ petition. According to him, there is a long drain in D.Ravulapalem village of Allavaram Mandal covering various survey numbers including the lands which are subject matter of dispute, with a width of nearly 10 meters to 30 meters carrying flow of waste water from the fields. It is averred that landless poor as well as the adjacent land owners to this canal have encroached on to the drain and started obstructing the flow of waste water. Basing on the representation made by the farmers stating that their lands are getting sub-merged due to blockage of flow of water through the canal during rainy season and cyclones, the government decided to clear the silt in all the drains for free flow of waste water under Neeru-Chettu program, which was entrusted to local Water Users' Association. The Government has also decided to clear the silt in D.Ravulapalem Canal. The Deputy Executive Engineer, Drains, Amalapuram requested the Tahsildar to depute Mandal Surveyor for demarcation of the boundaries between the Government Poramboke (Murugubodi drain) and the Rythwari fields. Accordingly, the Tahsildar issued notice to all concerned for survey of government lands which was acknowledged by most

of the ryots except some of the encroachers including the writ petitioners. The encroachers approached the Surveyor and R.D.O. along with D-Form pattas issued in their favour in the year 1985 under "Grow More Food" scheme and pleaded that they cannot be evicted unless it is shown that they have violated the conditions of the patta. It is stated that though D-Form pattas were granted but the said assignment was not recorded in any of the revenue records and no such file is available in the office. It is said that all the D-Form pattas filed by the petitioners are fake and fabricated and the encroachments were recorded in number-3 (cultivation accounts) even in the year 1993-94 (F 1403) as well as in 1997 (F1407). Since no entries are made in any of the revenue records, it is said that the alleged D-Form pattas cannot be made basis to be in possession of the said land. It is further averred that even assuming for the sake of argument that D-Form pattas were issued, the same would be contrary to the Board Standing Orders and also the judgment of the Apex Court, wherein the Apex Court instructed all the authorities to evict encroachments as well as assignments that are made in the water courses such as tank bunds, rivers, canals and drains. In view of the entries made in the records, which show that the said land is government, he states that there is no merit in the writ petition.

4) Respondent No.5, who was given the contract to clean the drain, filed his counter supporting the plea of respondent No.4 and denying the averments made in the affidavit filed in support of the writ petition. According to him, number of representations

were made by the affected land owners to the concerned authorities, and the government after due consultation constituted a committee to study the problems of the farmers. After negotiations and discussions the committee reported to the Government giving various recommendations and one of the recommendations was to desilting of drains wherever there is no free flow of water. It is said that the work has commenced and except the petitioners none has objected for the said work in any other allotted region. The only ground on which the petitioners object to eviction is grant of pattas to them in the year 1985. A dispute is raised with regard to very issuance of D-Form pattas, since revenue records are silent about the same. In view of the above, he also pleads that he would be put to irreparable loss if the petitioners are allowed to be in possession of the said lands.

5) A reply came to be filed by the petitioners reiterating the averments in the affidavit filed in support of the writ petition.

6) The main plea of the writ petitioners is that since D-Form pattas were granted in their favour in the year 1985 and as they are in occupation of land, they cannot be evicted without following due process of law. From the averments made in the affidavit, counter and reply, one thing which emerges out is that the lands belongs to Government and it is a part of drain canal, also known as D.Ravulapalem Canal having width of about 10 meters to 30 meters. It is also not in dispute that the said canal needs to be de-silted in view of the report of the Committee

which found that the blockage of canal is leading to flooding of adjacent lands during cyclone and in rainy season.

7) The plea taken by the Tahsildar in his counter is that D-Form pattas which have been granted to the petitioners are fake and fabricated but it is admitted by him in his counter that these petitioners have encroached onto some portion of the canal land. Respondent No.5 filed his counter stating that except these petitioners all other encroachers have co-operated and vacated the place in the interest of the entire village and the neighbouring lands.

8) The above observation also get support from the re-settlement register of village of Devaguptam, wherein it has been mentioned that the lands in Sy.Nos. 64, 65, 66 and 67 are described as Bodi and Murugu Bodi. Similarly lands in Sy.Nos.72, 73 and 74 were shown in column No.11 as Murugu kaluva. From the re-settlement register, it is clear that the said portion which is subject matter of dispute is a canal land and is a government land.

9) The question now is whether the petitioners, who have encroached onto the lands, can be evicted without following due process of law.

10) In Hinchlal Tiwari v. Kamala Devi¹ the Apex Court held as under:

¹ (2001) 6 SCC 496

“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.”

11) In *T.Ramakrishna Rao v. Chairman, Hyderabad Urban Development Authority, Hyderabad and others*² and in *Forum for a better Hyderabad and another v. Govt. of A.P. and others*³ the Division Bench of this Court clearly held that the tank bund lands cannot be assigned and they should be protected. But in the instant case D-Form pattas are alleged to have been granted but no corresponding entries are there in the revenue records. Whether the said pattas are genuine or fake is to be established first and then steps are to be taken for their eviction in accordance with law.

12) Even assuming for a moment that the petitioners are encroachers and they have no right or authority over the said lands, the authorities have to follow due process of law in view of the judgment of this Court in *Battula Malakondaiah v.*

² (2001) 4 ALD 758 (DB)

³ (2001) 4 ALD 776 (DB)

Angirekulapadu Gram Panchayat⁴ wherein a learned Single Judge of this Court held as under:

The discretionary jurisdiction of this Court under [Article 226](#) of the Constitution of India will not be exercised in favour of encroachers of public properties, howsoever long standing possession they may have over such properties. Having encroached the land belonging to respondent No.1, it does not lie in the mouth of the petitioner to suggest that respondent No.1 can utilize some other land belonging to it. If such a right is conceded to an encroacher, there will be no protection to the public properties. Under Section 53 of the A.P. Panchayat Raj Act, 1994, all public roads, sewers, drains, culverts etc., in any village vest in the Gram Panchayats and it is empowered to take steps to remove the encroachments by following the procedure prescribed by the Rules made thereunder.

13) In view of the judgments referred to above and taking into consideration the facts in issue, the writ petition is disposed of directing the respondent authorities to issue notice to the writ petitioners, verify genuineness of D-Form pattas which were alleged to have been issued to them in the year 1985 by the Tahsildar, Amalapuram under a scheme of “Grow More Food” and then proceed in accordance with law. It is needless to mention that the entire exercise of giving notice, calling for explanation and passing orders, in accordance with law, shall be completed as early as possible, preferably, within a period of six weeks from the date of receipt of a copy of the order. Till such time *status*

⁴ (2013) 5 ALD 112

quo as ordered by this Court on 06.05.2016 shall be maintained.

There shall be no order as to costs.

14) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

11.11.2016
gkv

