

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.32430 OF 2011

ORDER:

The case of the petitioner is that the 1st respondent issued notification dated 12.12.2000 calling for proposals from private entrepreneurs for investment in tourism related projects and expressing interest in constructing/setting up a beach resort at Mallaparru, H/o.Perupalem Village, Mogalthur Mandal, West Godavari District and in response to the said notification, the petitioner had expressed its willingness and the 1st respondent vide G.O.Ms.No.148, dated 25.07.2002 had awarded the work of setting up of beach resorts to the petitioner under build, operate and transfer basis on the land licensed by the 1st respondent. According to the said G.O., the beach resort shall have cottages, dormitories, restaurant, conference and banquet facilities, walking track, health club, swimming pool, cards room, indoor games, outdoor games, children play area, playwrights and ayurvedic massage centre at the estimated cost of Rs.3 crores and that construction has to be completed within 18 months subject to the provisions of access by way of road and supply of electricity lines near the beach. Since the possession of the said land of 30 acres was not delivered to the petitioner, the petitioner filed WP.No.16685 of 2003 and

this Court allowed the writ petition by order dated 02.12.2003, directing the respondents to deliver possession of the land indicated in G.O.Ms.No.148, dated 25.07.2002 and agreement dated 13.09.2002 within a period of four weeks from the date of receipt of a copy of the order. In pursuance of the said Judgment, the respondents 2 to 4 have changed the alignment plan of the land which was supposed to be delivered to the petitioner and possession of an un-useful and disadvantageous land of 30 acres falling in the Coastal Regulation Zone (CRZ) was handedover to the petitioner in December, 2003. Since the project cannot be grounded in the said land which is situated in the CRZ, the petitioner had submitted representations for delivery of possession of the suitable land and on those representations, the 1st respondent vide D.O.Letter dated 26.07.2008 had directed the respondents 2 to 4 to put the land of 30 acres consisting of pucca building constructed by fishermen community and some piece of land covered with coconut trees, in full control of the petitioner for grounding of the project. Since the same was not implemented, the petitioner filed WP.No.1090 of 2009. While the said writ petition is pending, the 1st respondent issued show cause notice dated 08.11.2010 proposing to take action for termination of the award of work. In response to the said notice the petitioner had submitted

explanation dated 06.12.2010 stating the factual aspects, but, without considering the said explanation, the 1st respondent issued the impugned termination order in Memo No.PMU/EO/2002, dated 17.11.2011. Aggrieved by the same, present writ petition is filed.

The 1st respondent filed counter affidavit admitting that the petitioner was awarded project vide G.O.Ms.No.148, dated 25.07.2002, but the fact of providing supply of electricity lines near the beach was denied. The contention of petitioner that possession of land was not delivered is denied stating that in compliance of the order dated 02.12.2003 in WP.No.16685 of 2003, the respondents handed over the possession of 30 acres of land in Survey No.897 of Mallaparru, H/o Perupalem Village, Mogaltur Mandal, West Godavari District to the petitioners vide possession certificate dated 27.02.2004. It is submitted that the land proposed for Beach Resort Project comes under the CRZ Regulations and that the developer has to develop the project as per the norms and guidelines issued by the Ministry of Environment and Forest, Government of India, from time to time. It is stated that the 1st respondent issued show cause notice dated 11.06.2007 as the developer failed to construct the components within the stipulated period, as agreed, in the allotted site, except construction of cottages, fencing the entire land and growing trees; and that

inspection was conducted by the Tourism Officer, YAT & C(PMU) Department, and submitted its report stating that the developer completed the following works as on the date of inspection.

- 1) fencing of the Acs.30.00 cents of land awarded to project
- 2) construction of two cottages
- 3) leveling of land
- 4) children's play area
- 5) digging of one bore well and open well for provision of drinking water.

It is further stated that on instructions of the 1st respondent, the Additional Chief (PMU), YAT & C Department has inspected the Beach Resort Project at Perupalem, West Godavari District on 31.12.2010 along with District Tourism Officer, Tahsildar, Mogaltur and Mandal Surveyor; that the petitioner was also present on the day of inspection and that during the inspection, the Tahsildar, Mogaltur and the Mandal Surveyor have explained that out of 30 acres of allotted land, an extent of Ac.5.35 cents is available free from encroachments and the remaining area is under encroachment of the local people who have raised coconut and casuarinas plantations and insisting for issue of pattas. Due to the above, the developer was advised vide letter dated 22.03.2010 to ground the project in the available land of

Ac.5.35 cents which is free from encroachments and requested to submit the revised detailed project proposals along with action plan to enable this Department to take ratification from the Empowered Committee of Ministers for restricting the project in an extent of Ac.5.35 cents, instead of 30 acres. It is also informed to the petitioner that an alternate land situated in Survey No.879 and 880 was identified to relocate the encroachers. Further, the Tahasildar, Mogaltur informed that as per the instructions of the Collector, West Godavari District, the MPDO, Mogaltur has sent a proposal with regard to the approach road from Malaparru to Beach point to a distance of 2 Kms., for formation of a gravel road under National Rural Employment Guarantee Programme Scheme (NREGPS). The 1st respondent instructed the District Collector vide D.O.letter dated 12.05.2010 that this Court has suggested a remedy for the encroachers and hence there should not be any local problems if the Court suggestions are implemented and further informed that the RDO and Tahasildar are not in a position to take this initiative, hence, the District Collector directed to depute the Joint Collector, West Godavari District to resolve this long pending issue and also informed that there is a need to form a gravel road up to the project site under NREGP funds and take up the electrification work under any ongoing District level scheme.

It is further stated that the Tahasildar, Mogaltur enquired and reported that the petitioner has informed that he could not develop the land as there is no approach road, but as stated by some villagers he is cultivating casuarinas and cashew plantations and getting personal benefits from the land. The Tahasildar also reported that some part of the land was pre occupied by the villagers and raised coconut trees and also requested him to regularize and issue pattas. Finally, the Collector, West Godavari District requested this Department to cancel the lease agreement with the developer as the local fishermen community people and others are highly objecting the lease of land to the developer. It is further stated that on receipt of the report from the Collector, West Godavari District, this department has issued show cause notice dated 08.11.2010 to the developer and by taking into consideration of the reply given by the developer in response to the show cause notice and the report of the District Collector, West Godavari District, the 1st respondent passed impugned orders for termination of lease agreement. Finally, it is stated that if the petitioner is really interested to promote the project, he might have started the project in the available land of Ac.5.35 cents instead of waiting for total extent of disputed land and sought for dismissal of the writ petition.

Respondents 2 to 4 filed counter affidavit stating that when the petitioner complained that the Fishermen Community villagers are creating obstructions to proceed with the work and spoiling the entire fencing and not allowing him to continue his work properly, the Mandal Revenue Officer, Mogaltur again delivered the lease land in the presence of the Panchayat Secretary, Perupalem South Gram Panchayat to the petitioner and obtained another Lease Land Delivered Possession Certificate dated 14.10.2005 from the petitioner. It is also stated that as per G.O. the lease land was handed over to the petitioner on 30.09.2002 by the representatives of YAT & C (PMU) Department on 27.02.2004 and again on 14.10.2005 by the then Mandal Revenue Officer, Mogaltur, but, it is not developed by the petitioner. It is stated that as per the conditions laid down in G.O.Ms.No.148 in para 2(g) the period given to complete the project was 18 months from the date of issue of G.O, but the petitioner has not developed beach within the stipulated time, even though the land was handed over to him long back. It is also stated that as per the report of the Collector, West Godavari District, Eluru, a show cause notice was issued to the petitioner as the petitioner failed to develop the beach resorts as per the schedule of agreements and for not clearing

the pending arrears and that after considering his explanation the impugned order is passed.

Learned Senior Counsel Sri D.Prakash Reddy submits that though there was a direction in WP.No.16685 of 2003, dated 02.12.2003 to deliver possession of subject property, but the same was not handedover to the petitioner and when the same plea was raised by the respondents in the said writ petition that there was resistance from the fishermen community, this Court overruled the said plea and allowed the writ petition directing the respondents to deliver possession of the subject property indicated in G.O.Ms.No.148, dated 25.07.2002 and agreement dated 13.09.2002. It is also submitted that even according to D.O.letter No.2186/PMU/EO/2001, dated 26.07.2008 addressed by the 1st respondent it is clear that the possession of the subject land was not delivered to the developer due to encroachments and that only Ac.5.30 of land is free from encroachments. But, contra to the said proceedings, it is stated in the counter affidavit that possession was handed over to the petitioner. He also submits that petitioner has filed explanation to the show cause notice stating that Ac.5.35 of land is not feasible for implementing the project and that unless basic amenities are provided as per the agreement and G.O.Ms.No.148, it is not possible to

implement the project. He further submits that the explanation filed by the petitioner was not considered in proper perspective.

On the other hand, learned Assistant Government Pleader for Tourism and also Revenue submits that since there is encroachment by fishermen, petitioner was advised to develop the project in the available land of Ac.5.35 cents which is free from encroachments and requested to submit revised detailed project proposal, but the petitioner failed to do the same. He also submits that initially the petitioner was handedover possession of the subject land, but petitioner could not develop the project.

Though in the counter affidavit, it is stated that possession of the subject land was handed over to the petitioner, but the 1st respondent along with counter affidavit filed D.O.Letter No.2186/PMU/EO/2001, dated 12.05.2010, which reads as follows;

“The Tourism Department have awarded a project under Public Private Partnership Mode to M/s.Gold Coast Beach Resorts Limited at Perupalem Village near Upputeru Creek for an extent of Acs.30.00 cor developing a Beach Resort. The project has been awarded in 2002, but till now the Department has not been able to hand over the land to the developer due to encroachments. The private developer has also approached the High Court for handing over possession of the land and the court in its judgment has directed the respondents to deliver possession. The court has also

given a specific alternative regarding facility to be given to fishermen community and other encroachers.

However, the latest position on ground is that only Acs.5.35 cents is free from encroachments and the remaining extent is still under encroachment. No attempt has been made to handover the physical possession of the entire extent despite High Court orders. In view of the prevailing circumstances, there is an every likelihood of facing contempt of court. The High Court has suggested a remedy for the encroachers and hence there should not be any local problems if the court suggestions are implemented. Since the RDO and Tahsildar are not in a position to take this initiative, I would request you to depute the Joint Collector under your personal supervision to resolve this long pending issue. Furthermore, there is also a need to form a gravel road upto the project site and to provide electricity facility. I would request you to tie up NREGA funds for the road and take up the electrification work under any ongoing District level scheme.”

The aforesaid letter addressed by the 1st respondent goes to show that as on 12.05.2010, possession of the subject land was not handed over to the petitioner and that only an extent of Ac.5.35 cents is free from encroachment out of the total extent of the subject land and the remaining extent is under encroachment. Even in the show cause notice it is stated that only an extent of Ac.5.35 cents of land is free from encroachment and also a suggestion was made to the petitioner to submit project proposals to an extent of Ac.5.35 cents only instead of Ac.30.00 and petitioner has also submitted explanation stating that the same is not feasible, but, without considering the same, only basing on the

proposal of the Tahasildar, the impugned order is passed. Even in the proceedings addressed by the 2nd respondent dated 16.08.2010 to the 1st respondent, there is a mention of letter dated 20.07.2010 addressed by the Revenue Divisional Officer wherein it is stated that while handing over possession of the subject land to the firm, the local fishermen strongly opposed the transfer of the land and obstructed the MRO, Mogaltur. Further, though the order dated 02.12.2003 passed by this Court in WP.No.16685 of 2003 has become final, the subject land was not handed over to the petitioner. Impugned order of termination is passed without application of mind.

In view of the aforesaid facts and circumstances, the impugned termination order is liable to be set aside.

Accordingly, the writ petition is allowed and the impugned order is set aside. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

28.12.2016
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