

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.19685 OF 2011

ORDER:

The petitioners pray for Mandamus declaring the communication Roc.E7/1297/2011 dated 10.02.2011 as illegal and arbitrary.

The communication is referred as a proceeding in the writ prayer. The subject matter of the impugned communication relates to Sy.No.246/3 or Sy.No.185/1 situated at Hara Bavi, Ward No.9, Srikalahasti.

The petitioners expressed apprehension that the threatened action of respondents to demolish structures in existence in the subject matter of writ petition, without issuing notice or following the procedure of law, is illegal, arbitrary and unconstitutional.

Sy.No.185 of Srikalahasti Village and Mandal is locally known as Ayyalanadu tank.

To appreciate the apprehension or grievance of petitioners, the communication impugned in the writ petition is excerpted hereunder:

From

Sri V.Sheshadri, I.A.S.,
District Collector,
Chittoor.

To

The Tahsildar,
Srikalahasti Mandal,

Roc.E7/1297/2011 dated: 10-02-2011

Sir,

Sub: HOUSE SITES – Chittoor District, Tirupati Division –
Srikalahasti Mandal – Representation of journalists of
Srikalahasti Mandal – Sanction of Indiramma Housing –
Factual report submitted – Regarding.

Ref: Lr.No.Roc.B/79/2011 dated 22.01.2010 of the Tahsildar,
Srikalahasti.

I invite your attention to the reference cited.

The Joint Collector has made the following observations.

“Issue of patta in Cheruvu Poramboke is barred by orders of Supreme Court/High Court. As such issuing of fresh patta at this junction will violative of the orders of the Supreme Court and High Court.”

I, therefore, request you to take action accordingly.

Yours faithfully,
Sd/- B.Yadagiri
For Collector,
Chittoor”

The case of petitioners is that the petitioners claim to be working in print and electronic media at Sikalahasti and surrounding areas. The persons working in print and electronic media formed Journalists Association for the welfare of Journalists and to represent the causes through association before authorities. On the representation of petitioners, the list of eligible applicants and the land available for allotment as house site pattas were prepared by 4th respondent. According to petitioners, the land in Sy.No.246/3 was identified and possession certificate Nos.95/2006, Plot No.95 dated 01.06.2006, No.76/2006, Plot No.118 dated 01.06.2006 and 206/2006, Plot No.143 dated 01.06.2006 have been issued to petitioners. According to petitioners, on being satisfied with the criteria, the names of petitioners were included in the beneficiaries list under Indiramma Housing Scheme, Phase-I vide Roc.D/166/2008 dated 15.04.2008. The then Mandal Revenue Officer tried to allot the land in occupation of petitioners to Public Health Department. On 10.11.2009, representation was made objecting allotment of land in possession of petitioners to Public Health Department. Again in June, 2011, the 4th respondent came

to the subject land and directed the petitioners and other beneficiaries not to raise constructions therein. The 4th respondent further instructed his staff to demolish the existing thatched houses and directed vacation therefrom. On further enquiries, it is stated that the 4th respondent vide Roc.B/79/2011 dated 22.01.2010 addressed letter to the District Collector and stated that the petitioners in the garb of assignment in Sy.No.246/3 were trying to construct houses in Sy.No.185/1 of Sikalahasti which is classified as Ayyalanadu tank. In reply to letter dated 22.01.2010, the 2nd respondent communicated the proceedings dated 10.02.2011. According to petitioners, the communication is illegal, arbitrary and without jurisdiction. The petitioners assert that the land in their possession is covered by Sy.No.246/3 but not Sy.No.185/1, which is admittedly classified as Ayyalanadu tank. The action of respondents in trying to dispossess or demolish the structures at subject land, except in accordance with law, is illegal, arbitrary and unconstitutional.

Before concluding the allegations of petitioners, it is noted that learned counsel for the petitioners has fairly stated that occupancy certificate issued by respondent No.4 relates to a plot covered by Sy.No.246/3 but not Sy.No.185/1. The further explanation offered by him is that the staff of 4th respondent have shown the land in Sy.No.185/1 as land in Sy.No.246/3 and, therefore, the petitioners are in possession of land given to them. Therefore, this Court, having regard to the inclination expressed by the Revenue Department to protect water bodies in the light of the decisions reported in *INTELLECTUALS FORUM, TIRUPATHI v. STATE OF A.P.*

AND OTHERS¹ and T.RAMAKRISHNA RAO v. CHAIRMAN, HYDERABAD URBAN DEVELOPMENT AUTHORITY, HYD. AND OTHERS², directed the District Collector, Chittoor to file affidavit. Other allegations are not referred.

The docket orders read as under:

12.08.2016

Learned Government Pleader (Assignment) placed on record the statement showing status of land in Sy.No.185 Ayyalanadu tank of Srikalahasthi Village and Mandal.

It is completely shocking and surprising to note that Ayyalanadu tank with an area of 99 acres now is shrunk to hardly 10-11 acres and another extent of 15 acres said to have been allotted to Tirupati Urban Development Authority (TUDA) is remaining unoccupied. The District Collector, Chittoor, through communication dated 10.02.2011 called upon the Tahsildar as follows:

Revenue Department

From	To
Sri V. Sheshadri, I.A.S,	The Tahsildar,
District Collector,	Srikalahasthi Mandal
Chittoor.	

Roc.E7/1297/2011 dated:10-02-2011

Sir,

Sub:- HOUSE SITES – Chittoor District- Tirupati
Division- Srikalahasthi Mandal- Representation of
Journalists of Srikalahasthi Mandal – Sanction of
Indiramma Housing – Factual report submitted –
Regarding.

Ref:- Lr.No.Roc.B/79/2011, dated: 22-01-2010 of the
Tahsildar, Srikalahasthi.

* * *

I invite your attention to the reference cited.

The Joint Collector, has made the following observations.

“Issue of patta in Cheruvu Pormaboke is barred by orders of Supreme Court/High Court. As such issuing of fresh patta at this Juncture will violative of the orders of the Supement Court and High Court”.

I, therefore, request you to take action accordingly.

¹ (2006) 3 SCC 549

² 2001(4) ALD 758 (DB)

Yours faithfully
Sd/- B. Yadagiri
For Collector,
Chittoor."

From the above it is clear the District administration is interested in preserving the available vacant, unoccupied and unutilized area. The preservation of tanks/water bodies is of utmost importance and with a view to at least protecting the available land, this Court is of the view that the District Collector is directed to file affidavit as to the mode and manner of protecting the available water spread area and/or unoccupied and unutilized area with all the allottees and the steps the District administration, through Srikalahasthi Municipality, will be taking up to develop the available land as water body. Copies of assignment in favour of TUDA be also placed on record for consideration.

Learned Government Pleader requests time till 23.08.2016.

List on 23.08.2016.

01.09.2016

On 12.08.2016, the District Collector was directed to file counter affidavit dealing with the steps respondents intend to take for protecting water body with the assistance of Srikalahasthi Municipality and TUDA.

The Assistant Government Pleader requests further time to file the affidavit for the affidavit sent by the District Collector does not advert to the points on which this Court directed him to file counter affidavit.

The request of Assistant Government Pleader is accepted and he is directed to communicate this order to the District Collector.

Post on 09.09.2016."

The District Collector/2nd respondent filed affidavit dated 08.09.2016 along with sketch of field No.185 dated 10.08.2016 and it is taken on record. The affidavit acknowledges the objects laid

down by the Apex Court and this Court further undertakes to preserving water bodies in Sy.No.185/1.

“AFFIDAVIT FILED BY DISTRICT COLLECTOR, CHITTOOR
2ND RESPONDENT

I, Siddharth Jain son Rakesh Fourzdar, aged about 40 years, resident of Chittoor town, Chittoor District, now having temporarily come down to Hyderabad to do hereby solemnly and sincerely affirm and state on oath as follows:-

I am working as District Collector, Chittoor and the Respondent No.2 in the writ petition and as such I am well acquainted with the facts of the case. I have read the affidavit filed in support of the writ petition and I deny all those allegations made in the affidavit except those that are specifically admitted by me herein.

I respectfully submit that the Hon'ble Court on 12.08.2016 and 01.09.2016 directed to file an affidavit in the matter stating that the steps being taken to preserve the Ayyalanadu Tank in the remaining land and further directed to produce orders allotting lands to TUDA.

I respectfully submit that Sri T.Ramesh and 26 others who are journalists and residents of Srikalahasti town have filed the W.P.No.19686 of 2011 seeking directions declaring the impugned proceedings of the District Collector in Roc.E7/1297/2011, dt.10.02.2011. The Tahsildar, Srikalahasti has filed counter in the case on 09.08.2011.

I respectfully submit that the District Collector, Chittoor has allotted an extent of 10.00 acres in S No.185/29 to TUDA, vide proceedings No.Roc.E1/14020/2008 dated 28.03.2009 and the Revenue Divisional Officer, Tirupati has allotted land to an extent of 8.00 acres in SNo.185/1 vide proceedings Roc.G/1376/09 dated 16.01.2010 for maintenance of the tank and tank bed area. Apart from the above extents, the TUDA has occupied 7.68 acres of adjacent land. The TUDA has protected the land by way of barbed fencing and compound wall restricting the encroachers.

I respectfully submit that the entire extent of 25.68 acres which is now under the possession of TUDA, Tirupati will be protected under “**Neeru-Chettu**” programme by forming necessary tank bund and other allied works and the tank will be utilized as percolation tank to recharge the ground water and also by beautifying the tank surrounding area for public recreation, with the assistance of Srikalahasti Municipality, TUDA and Water Resource (CAD) Department.

I respectfully submit that all the encroachments in S.No.185/1 & 2 i.e., the tank bed of Ayyalanadu tank of Srikalahasti including the land encroached by the petitioners will be evicted by the Tahsildar, immediately after following due process of law.

I respectfully submit that the WP filed by the petitioners is liable to be dismissed on the following additional circumstances.

1) As per the Hon'ble Supreme Court's directions in Civil Appeal No.1132/2011 @ SLP(C) No.3109/2011 dated 28.01.2011 vide para 16 held that **"the land recorded as pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose"**.

2) The petitioners have no right to claim land in S.No.185/1 which is tank poramboke as they were allotted some other land in S.No.246/3.

3) The WP may be quashed on the reason that the tank land was allotted to TUDA for maintenance and protection from encroachments.

For the reasons stated above, it is therefore prayed this Hon'ble Court to vacate the interim order granted in WPMP.No.23813 of 2011 in WP.No.19685 of 2011 dated 14.07.2011 and consequently to dismiss the writ petition in the interest of justice."

There is no dispute that the action complained against 4th respondent refers to removing encroachment/occupation in Sy.No.185/1 which is classified as a tank in the revenue records. The petitioners admittedly are assignees of plot in Sy.No.246/3 but not Sy.No.185/1. Therefore, the observation that needs to be made while disposing or demolishing structures in Sy.No.185/1 in occupation of petitioners is that they should be put on notice, heard and appropriate orders passed. The affidavit of 2nd respondent allays these fears.

The 2nd, 4th and 5th respondents are directed to delineate the available vacant land in Sy.No.185, fence the entire vacant land and take all steps that are required for protecting and improving

the available land as a water body. The extent is delineated and no permanent structures are allowed to come up and likewise all steps necessary for preventing encroachment are undertaken by the respondent.

The statement of respondents that procedure will be followed while evicting the petitioners/journalists is placed on record.

As and when notice is issued, the petitioners are given liberty to submit detailed explanation. It is for the authorities to consider in the light of the settled position of law and pass appropriate orders. If the petitioners intend to seek alternative site in view of Sy.No.185/1 being objectionable, petitioners are given liberty to include such request in the representation and the request is to be considered by the authorities to avoid litigation in the matter.

These directions are issued to protect water bodies in Sy.No.185.

The writ petition is, accordingly, disposed of. There shall be no order as to costs.

Consequently, pending miscellaneous petition, if any, stand closed.

S.V.BHATT, J

Date:09.09.2016
Lrkm