

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.18367 of 2008

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner requesting to grant a Writ of Mandamus or any other Writ, order or direction, directing the 4th respondent-Executive Officer/Secretary, Gram Panchayat, Utnoor village of Adilabad District, not to make any constructions in the land of an extent of Acs.0.14 guntas in survey number 6 and another extent of Acs.0.26 guntas in survey number 7/2 of Utnoor Village, Adilabad District and to direct the 4th respondent to follow the due process of law.

2. I have heard the submissions of the learned counsel for the writ petitioner and the learned Standing Counsel appearing for the 4th respondent Gram Panchayat, Utnoor. I have perused the material record.

3. The case of the writ petitioner, as set out in the affidavit filed in support of the writ petition and as per the submissions now made before this Court, in brief, is as follows:

His family had purchased lands in an extent of Acs.0.14 guntas in survey number 6 and another extent of Acs.0.26 guntas in survey number 7/2 of Utnoor Village under a registered sale deed bearing document number 123 of 1984 for a valuable consideration; and, since then, they are in possession of the said land. They are running a cinema theatre by name 'Tirumala Theatre' after obtaining license for running a cinema theatre in the said land. The 4th respondent and his subordinates have no manner of right whatsoever over the said land. However, they have started construction illegally over the said land. When objected to by the petitioner, the 4th respondent had stated that they are constructing a commercial complex. In spite of a request by the petitioner to show the relevant documents, no documents were shown by the 4th respondent and his subordinates. Therefore, the petitioner had submitted a representation dated 10.08.2008 to

respondents 2 and 3, i.e., the Revenue Divisional Officer and the Tahsildar concerned, bringing to their notice the highhanded action of the 4th respondent in constructing the commercial complex on the land, which belongs to the family of the petitioner. The petitioner had also produced a copy of the title deed along with his representation. On satisfying with the facts stated by the petitioner, the 3rd respondent issued a notice dated 12.08.2008 asking the 4th respondent to stop the construction; the 3rd respondent had further directed the 4th respondent to produce the documents related to the land on 17.08.2008. Even after issuance of such notice, the 4th respondent has been proceeding with the construction. Therefore, the petitioner had again approached the 3rd respondent on 14.08.2008. The 4th respondent, having failed to submit the documents to the 3rd respondent, has been proceeding with the construction of the commercial complex by raising the pillars. The petitioner belongs to Scheduled Tribes community (Lambada) and the village itself is notified as Agency area. The 4th respondent made a complaint to the police against the petitioner and others alleging that they had trespassed into the Gram Panchayat property and dismantled the pump house. On that, a case in Crime number 139/08 was registered by the Station House Officer, Utnoor Police Station for the offences punishable under sections 143, 447, 427 and 506 of the Indian Penal Code. The petitioners and others were enlarged on bail in the said crime. In the said circumstances, the petitioner is constrained to file the present writ petition.

4. The case of the 4th respondent, as stated in the counter affidavit, in brief, is this:

The petitioner had purchased the land in an extent of Acs.0.8 guntas in survey number 6 and an extent of Acs.0.6 guntas of land in survey number 7/2 of Utnoor village vide registered sale deed dated 22.05.2005 from one B.Shantaram. That land originally belonged to one Katepalli Rama Krishna Reddy; and, the said B.Shantaram purchased the land in an extent of

Acs.0.40 guntas from him in the year 1984. The vendor of the petitioner had purchased only Acs.0.40 guntas out of which the petitioner has purchased Acs.0.14 guntas of land. On the eastern side of the land of the petitioner, there is Gram Panchayat road of 50 feet from old Bus Stand to Inspection Bungalow. Just beside that in survey number 6, there is a pump house of the Gram Panchayat in an extent of Acs.2.15 guntas of land and the same is being used for supplying drinking water to Angadi Bazar. This fact is recorded in the revenue records of the Gram Panchayat since 1979. The Gram Panchayat constructed a Pump House with new machinery and new motors, since the existing pump has become old and was requiring repairs frequently. On 29.07.2008, the Gram Panchayat had conducted an emergency meeting and resolved to construct a shopping complex in the land belonging to the Gram Panchayat and to file a criminal complaint against the petitioner and others for dismantling the pump house belonging to the Gram Panchayat. The petitioner is running a cinema theatre in the land purchased by him; and in front of the said cinema theatre, the old pump set was there. The petitioner now intends to grab the said land belonging to the Gram Panchayat. The revenue records would show that the petitioner and his vendors are the owners of Acs.0.40 guntas of land in survey numbers 6 and 7 and that Acs.2.15 guntas in survey number 6 is the land belonging to the Gram Panchayat and that in the said extent of land, the Gram Panchayat's water pump house is in existence. The other material allegations in the writ petition are false. The Gram Panchayat has constructed a tin shed with pillars and brick walls in view of the resolution passed by the Committee. However, in the view of the interim orders passed by this Court, the construction was stopped. The construction of shopping complex, as proposed, is being made as per the resolution of the Gram Panchayat. The Writ petition is liable to be dismissed.

5. At the hearing, the learned counsel for the petitioner and the learned standing counsel for the 4th respondent made submissions in-line with the respective pleadings of the parties, which are stated *supra*.

6. From the pleadings and submissions, it emerges that the Gram Panchayat is not disputing that the petitioner is having lands in survey numbers 6 and 7/2 of Utnoor village. According to the petitioner, he is having land of Acs.0.14 guntas in survey number 6 and Acs.0.26 guntas of land in survey number 7/2 of Utnoor village. The Gram Panchayat also admits that as per revenue record the total extent of land held by the petitioner and his family is Acs.0.40 guntas in the said survey numbers. However, the case of the Gram Panchayat is that there is some more extent of land of Gram Panchayat in survey number 6 and that the total extent of land in survey numbers 6 and 7 is Acs.42.15 guntas, which is equivalent to 5100.19 square yards, and that a pump house is in existence in an extent of 2.15 guntas of land in survey number 6, which belongs to the Gram Panchayat, and that as per the resolution of the Panchayat Committee, the Gram Panchayat is making constructions in the land of the Gram Panchayat and not in the land belonging to the petitioner.

6.1 It is fairly conceded that the calendar case C.C.No.139/08 on the file of the learned Judicial Magistrate of First Class, Utnoor taken on file against the petitioner and the other accused therein had ended in acquittal by judgment dated 21.04.2012.

7. On the analysis of the facts that emerged, in the well considered view of this Court, the controversy would be resolved if the respondents 2 and 3 are directed to cause a survey to be conducted for demarcating the lands of the petitioner and his family before proceeding with the construction activity. In the well considered view of this Court, if a survey is conducted and the property of the petitioner and his family as existing on ground is demarcated, there would be a quietus to the dispute once and for all.

8. In the result, the writ petition is disposed of directing the respondents 2 and 3 to cause a survey to be conducted by the Mandal Surveyor or a Government Surveyor and have the land of the petitioner and his family in survey numbers 6 and 7/2 of Utnoor village demarcated on ground and then proceed with the construction activity in the property of the Gram Panchayat

excluding the demarcated property of the petitioner and his family on such survey. It is made clear that till the survey as directed is conducted and the property of the petitioner and his family is demarcated, the Gram Panchayat shall not proceed with any further construction. The respondents 2 and 3 shall cause the survey to be conducted within a period of one (01) month from the date of receipt of a copy of this order and have the same completed as expeditiously as possible.

There shall be no order as to costs.

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

M.Seetharama Murthi, J

12th February, 2016
Bvv