

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO.36953 OF 2014

DATED:06-01-2016

Between:

J. Ashok Babu
and others ... Petitioners

And

The State of Andhra Pradesh
Rep. by its Principal Secretary
Panchayat Raj Department
Secretariat Buildings
Hyderabad
and others ... Respondents

... Respondents

COUNSEL FOR THE PETITIONERS: Mr. Ghanta Rama Rao, Senior Counsel

for Mr. Ghanta Sridhar

COUNSEL FOR RESPONDENT NOs.1 to 4: A.G.P. for Revenue (AP)
COUNSEL FOR RESPONDENT NOs.5 to 7: A.G.P. for Panchayat Raj
(AP)

COUNSEL FOR RESPONDENT NO.8 : Mr. C.V. Mohan Reddy,
Senior Counsel,
for Mr. V.R. Reddy Kovvuri

THE COURT MADE THE FOLLOWING:

ORDER:

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This writ petition is filed for a mandamus to declare the inaction of the respondents in taking steps to protect the road developed by Panchayat Raj Department using public funds, connecting National Highway (NH)-16 (old NH-5) and VNP (Vodarevu, Narasaraopet and Piduguralla) Road, in spite of a number of representations, as illegal and arbitrary.

2. I have heard Mr. Ghanta Rama Rao, learned Senior Counsel for the petitioners, Mr. C.V. Mohan Reddy, learned Senior Counsel and Mr. V.R. Reddy Kovvuri, counsel for respondent No.8, and the learned Assistant Government Pleaders for Revenue and Panchayat Raj Departments (AP).

3. The petitioners, who are residents of Maddukuri Gardens, Pasumarru Village, Chilakaluripet Mandal, Guntur District, pleaded that they have purchased different plots in Maddukuri Gardens Layout and some of them have constructed pucca houses therein. That as evident from the village map prepared in the year 1901, there is a road from Pasumarru to NH-16 (old NH-5), which is also the connecting road between NH-16 and VNP Road of the State Highway, and that the same was in existence even prior to 1901. That the Guntur Zilla Parishad has taken over the said road and accordingly the Panchayat Raj Department has undertaken development and maintenance of the said road, and that from 2005 to 2011 the Panchayat Raj Department has undertaken either development or improvement of the said road on three occasions, through its agencies. The petitioners further submitted that some portion of the road in Sy. No.16/1 (old Sy.No.7) was damaged in June, 2014 by some persons and that on enquiry, the petitioners came to know that the same was done at the behest of respondent No.8, who is claiming ownership over the said land. That after coming to know about the same, petitioner No.2 submitted representations to Tahsildar, Chilakaluripet, on 24.7.2014,

and thereafter the road was restored. That again the road was damaged in the year 2014 by some antisocial elements at the behest of respondent No.8 which was brought to the notice of the Panchayat, Revenue and Police Departments. That respondent No.2 has forwarded the representations to the Tahsildar, Chilakaluripet, for taking necessary action, that the Tahsildar has given an endorsement on 04.10.2014 stating that after inspecting the land and after verification of the allegation against respondent No.8 it has come to light that the land is not described as road and no patta land was acquired as per the records of the China Pasumarru Village and that therefore it is not possible to take any action. That the petitioners have submitted an application for supply of Resurvey Settlement Register/Fair Land Register (RSR/FLR) with effect from 1906 in order to know the description of the land being used as road and that respondent No.4 has not been furnishing extracts of the revenue records and in reply to the application made under the Right to Information Act, 2005, respondent No.4 has given an endorsement on 16.10.2014 stating that the said records are not available in the office.

4. Respondent Nos.2 and 8 have filed separate counter affidavits. In the counter affidavit of respondent No.2 he has *inter alia* averred that there is a donka road from Pasumarru Village connecting NH-16 (old NH-5) of Chilakaluripet Town and that respondent No.8 destroyed certain portion of the road touching NH-16, measuring Ac.0.65 cents in Sy. No.16/1 of China Pasumarru Village claiming right over the land as it is classified as patta land. That petitioner Nos.1 and 2 filed objections before respondent No.2 in 'Prajavani Grievance' against destruction of the road and the enquiries revealed that the road under dispute is classified as patta land and the same belongs to respondent No.8, that respondent No.4 – Tahsildar has submitted a report vide Rc. No.1401/14-A, dt.10.10.2014, wherein he has *inter alia* stated that as per the available revenue records, the road leading to National Highway is a patta land and the same belongs to respondent No.8 and that the village record does not contain any road over the disputed land or that no such land was acquired by the Government for formation of the road. It is further stated in the counter affidavit that in the approved layouts in Sy. Nos.651/1A and 785 of

Pasumarru Village, nearly eleven petitioners have constructed houses and are residing therein. That in the said approved layout, 40 feet road has been shown passing nearby their plots from Pasumarru Village and connecting NH-16 and it was located in Sy. No.16/1 and that it is under usage as pathway by the villagers of Pasumarru to enter Chilakaluripet Town. That a chapta, located across Ogeru vagu between China Pasumarru and Chilakaluripet Town, being used as ingress and egress of the traffic to enter Chilakaluripet Town from Pasumarru Village, collapsed in the year 2005 due to which the traffic could not enter Chilakaluripet Town and hence the public and villagers have chosen the donka poramboke land existing in Sy. Nos.782/B and 775/B of Pasumarru Village as an alternative way and this way has been extended by forming an approach road through patta land located in Sy. No.16/1 of China Pasumarru Village connected to NH-16 and the entire traffic utilized this way as an alternative road to access National Highway without knowing that the land is a patta land. It is further averred that the Superintending Engineer, Panchayat Raj Department, Guntur, vide Lr. Rc.No.T2/Court Cases/Chilakaluripet/Pasumarru/2014, dt.15.12.2014, has stated that due to heavy floods and rains on 16.09.2006, the causeway connecting Pasumarru Village with Chilakaluripet, on Ogeru Vagu breached, that hundreds of villagers of Pasumarru have to go to Chilakaluripet in search of daily work for their livelihood, that they were left without a way to reach Chilakaluripet, and that at that time, this donka road was proposed for development to solve the plight of the villagers of Pasumarru and that soon it was formed and gravelled upto a length of 1.3 km. out of 2.40 km. from Pasumarru Village end towards NH-16. That in the year 2010, metal road was laid to a length of 2.128 km out of 2.40 km. from Pasumarru village end towards NH-16 and that the disputed portion of the road from 2/2 to 2/4 km. (tail end portion of road connecting NH-16) was not developed and no expenditure was incurred by the Department but the said road is being used by public. That according to the village accounts, the land located in Sy. No.16/1 measuring an extent of Ac.1.50 cents is classified as patta land, and the same has been sub-divided as under:

Sy. No.	Extent	Classification of land	Remarks
16/1	Ac.1.50 cents	Patta Land	Approach road covering in an extent of Ac.0.65 cents
16/2A	Ac.1.44 cents	Patta Land	
16/2B	Ac.1.44 cents	Patta Land	
16/3	Ac.0.05 cents	Cart Track	
16/4	Ac.0.11 cents	Cart Track	

That as per ROR-1B Register of China Pasumarru Village, Sri Ambadipudi Narasimha Dev, S/o. Sessaiah, R/o. Chilakaluripet, was recorded as pattadar for an extent of Ac.1.50 cents in Sy No.16/1 and Pattadar Pass Book/Title Deed No.6779626, vide Khata No.2, was also issued to him, that said Ambadipudi Narasimha Dev, has handed over the possession of the said land to his sister Smt. Kantheti Adilakshmamma, W/o. Gopaiah, R/o. Chilakaluripet, through a Registered Deed No.2246/2006, dt.03.06.2006, that the said Smt. Kantheti Adilakshmamma, executed a registered deed for the said land in favour of her son, namely, Sri Kantheti Venkata Krishna Murthy, S/o. Gopaiah, (husband of respondent No.8), who died on 31.07.2006 and that after his demise, respondent No.8 has been recorded as pattadar in the Adangal of the Village, as pattadar and enjoyer of the land.

5. Respondent No.8 has also filed a detailed counter affidavit wherein she has asserted that the land in question is a private land, tracing ownership therein to her predecessors in title. She has further averred that as a culvert bridge existing over Ogeru Stream connecting Chilakaluripet and Chirala was washed away due to heavy rains in the year 2008, the Government of Andhra Pradesh, with a view to reconstruct the culvert bridge connecting Chilakaluripet and Chirala, formed a temporary approach road through the land belonging to her, and that as there was no other way for Pasumarru villagers to reach NH-16, in public interest she did not raise any objection at that time. It is further stated that the construction work of culvert bridge was commenced in the year 2008 and the same was completed in the year 2009 and it was opened on 31.01.2009 by the then Finance Minister and that therefore there is no need for the temporary approach road, which was developed on account of breach of the culvert bridge. She has further averred that the Mandal

Surveyor has surveyed the land based on the field map book and fixed the boundaries to the subject land and all the revenue records clinchingly establish that the land is a private land.

Respondent No.8 has filed documents such as pattadar pass books, title deeds, Adangals, Form 1-B Register, and also copies of village map and FLR in support of her plea that the subject land is a patta land and not classified as a part of the road.

6. Mr. Ghanta Rama Rao, learned Senior Counsel appearing for the petitioners, vehemently submitted that China Pasumarru village is an Inam Estate Village as evident from G.O. Ms. No.2348, dt.23.12.1958 and that the burden is on respondent No.8 to show that consequent on the abolition of estates, ryotwari patta was granted in favour of her predecessors in title. He has further submitted that when an application under the Right to Information Act was made, respondent No.4 has given an endorsement to the effect that RSR and FLR of China Pasumarru Village are not available in the said office. He has placed reliance on some Maps to buttress his submission that a road was in existence from the early 20th century itself and that respondent No.8, in collusion with respondent No.4, has manipulated the revenue record in order to claim the land as patta land. The learned Senior Counsel has also questioned the propriety of respondent No.4 in issuing endorsement dt.4.10.2014 stating that the subject land, which was in old Sy. No.7 (new Sy. No.16/1) is a patta land, on the ground that the said endorsement is contrary to his own endorsement dt.16.10.2014 wherein it is mentioned that “no such record is available.”

7. As could be seen from the contents of the counter affidavit of respondent No.2 he has categorically asserted that the subject land was never classified as road and that the same is a private patta land. The learned Senior Counsel appearing for the petitioners, however, seriously disputed this stand taken by respondent No.2 on the ground that the said respondent was misguided by respondent No.4, who has issued conflicting endorsements as to the availability of records such as RSR and FLR.

8. It is trite that in a proceeding under Article 226 of the Constitution of India, this Court would not embark upon adjudication of serious disputes regarding title. As the petitioners assert that the subject land is not a private land and is classified as road, the burden heavily lies on them to prove the same. Except sporadic material such as some maps, the petitioners failed to produce conclusive evidence in support of their plea. On the contrary, respondent No.2, being the District Collector, asserted in unequivocal terms that the property in question is a private patta land and was never classified as road, though the same was temporarily used by people to commute from China Pasumarru Village to Chilakaluripet Town. It is not in dispute that the current village records, including FLR support the case of respondent No.8 that the subject land is a private land. Even if contradictory endorsements were made by respondent No.4 regarding availability of RSR and FLR, the fact remains that respondent No.8 has filed a copy of FLR which shows that no road is in existence over the subject land. No doubt, in one of the sale deeds executed by her, respondent No.8 has shown southern boundary as road. It was however explained by the learned counsel for the said respondent that as the subject land was temporarily used as a road, it was described as such on the insistence of the purchaser. In my opinion, this cannot be treated as conclusive evidence in determining the nature of the land in the face of overwhelming evidence supporting the plea of respondent No.8 that the subject land is a private land and the same was never recorded as road in the revenue records. Therefore, based on the material available on record, it is not possible for this Court to accept the plea of the petitioners that the subject land is not a private land, and consequently no mandamus as sought by them, can be issued in favour of the petitioners.

9. For all the above mentioned reasons, I do not find any merit in this writ petition and the same is accordingly dismissed.

As a sequel to dismissal of the writ petition, interim order dt.02.12.2014 granted in W.P.M.P. No.46242 of 2014 shall stand vacated and W.P.M.P. No.46242 of 2014 and W.V.M.P. No.188 of 2015 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

06-01-2016

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