

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.37230 OF 2012

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the action of the respondents 2 and 3 in not giving effect to the order of the District Collector, East Godavari District, issued vide proceedings R.Dis.No.E2/2582/09, dated 04.05.2010 and non-consideration of the representation dated 12.12.2011 and prays for a direction to the respondents to handover the land, admeasuring Acres 0.50 cents in Survey No.602/6 of Vuyyuri Vari Meraka Village, Sakhinetiipalli Mandal, East Godavari District.

2. Heard the learned Senior counsel, Sri K.G.Krishna Murthy for Sri K.Mahadeva, learned counsel for the petitioner, learned Government Pleader for Panchayat Raj for the respondents 1 and 2 and Sri Ravi Cheemalapati, learned standing counsel for the 3rd respondent Gram Panchayat.

3. Petitioner herein is a society of Devanga community. According to the petitioner, they purchased the land admeasuring Acres 0.50 cents situated in Survey No.602/6 of Vuyyuri Vari Meraka Village, Sakhinetiipalli Mandal, East Godavari District, for the purpose of a burial ground from one Sri G.Kumaraswamy and others for valuable consideration on

04.03.2004. The petitioner herein made a representation to the respondents, seeking permission to use the said land as burial ground and in response to the said representation, the 3rd respondent Gram Panchayat, convened a general body meeting on 17.06.2009 and the general body meeting, so convened, resolved to direct the Secretary of the Gram Panchayat to obtain necessary permission from the Health Department and further directed the Secretary of the Gram Panchayat to take further action in the matter, while asking the petitioner to raise 6 feet compound wall around the burial ground.

4. Thereafter, one Sri B.Shyam Babu, filed W.P.No.21461 of 2009, before this Court against the petitioner herein and the respondents, assailing the action of the Gram Panchayat in allowing the 4th respondent therein to do their activity of burial of the dead bodies of their community people in the said land. This Court, by way of an order dated 09.02.2010, dismissed the said writ petition. As against the said order passed by the learned Single Judge, the said Sri B.Shyam Babu, filed Writ Appeal No.286 of 2010 and a Division Bench of this Court, dismissed the said appeal on 26.04.2010. It is also stated that PLC No.37 of 2009 filed by Sri B.Shyambabu before the Lok Adalat, Razole, also ended in dismissal. Thereafter, vide Reference No.C/50/2009, dated 22.03.2010, the Tahsildar, Sakhinetipalli – 2nd respondent herein,

addressed a letter to the District Collector, East Godavari District, soliciting instructions from the District Collector. Subsequently, the District Collector, vide proceedings R.Dis.No.E2/2582/09, dated 04.05.2010, pursuant to the recommendations made by the Revenue Divisional Officer, Amalapuram and the report of the Tahsildar dated 19.04.2010, accorded permission for utilization of the subject land, admeasuring Acres 0.50 cents by the petitioner community people subject to the following conditions:

- (i) *The land should be separated by construction of 6 feet tall compound wall around the site as resolved by the Gram Panchayat.*
- (ii) *The burial ground should be accessible to all the community people.*
- (iii) *The burial ground should be protected and properly maintained by an advisory committee constituted by the Tahsildar for the protection and proper maintenance of the burial ground subject to the control of Gram Panchayat under the provisions of A.P.Panchayat Raj Act and the rules made thereunder from time to time.*

The Tahsildar, Sakhinetipalli is requested to carryout necessary changes in the village accounts.”

5. It is also evident from the said proceedings of the District Collector that the District Collector instructed the Tahsildar, Sakhinetipalli, to carry out necessary changes in the village accounts also. It is further evident from the

material available on record that in furtherance of the said directions issued by the District Collector vide proceedings dated 04.05.2010, the Tahsildar – 2nd respondent herein instructed the Mandal Surveyor to inspect the land and to prepare necessary sub division record for carrying out changes in the revenue accounts, with a further direction that thereafter the land be handed over to the Secretary of the Gram Panchayat, for construction of compound wall for the burial ground and to report compliance within a week. Subsequently, the petitioner herein submitted a representation on 12.12.2011 before the District Collector, Kakinada, through Grievance Cell, requesting for necessary instructions to the Tahsildar, Sakhinetipalli and the Mandal Surveyor to measure and localize the land, so as to enable them to raise compound wall as per the conditions imposed by the District Collector and the District Medical Officer and as per the resolution of the Gram Panchayat.

6. In the above background, with the grievance that the respondent authorities are not taking any consequential action pursuant to the proceedings of the District Collector, dated 04.05.2010, the present writ petition came to be filed.

7. This Court issued notices on 04.12.2012 to the respondents and responding to the same, counter affidavit deposited by the Tahsildar, Sakhinetipalli – 2nd respondent herein is filed on behalf of the respondents 1 and 2.

8. It is contended by the learned Senior Counsel Sri K.G.Krishna Murthy, representing the counsel on record for the petitioner Sri K.Rama Mohan, that the impugned inaction on the part of the respondent authorities is highly illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India. It is further submitted that the reasons assigned in the counter affidavit of the respondents 1 and 2 are not valid and cannot stand for judicial scrutiny. It is submitted that pendency of O.S.No.154 of 2010 instituted by Sri Madireddy Pullaiah Naidu and others on the file of the Court of the Principal Junior Civil Judge, Razole, in the absence of any injunction order, cannot be a ground to refuse to give effect to the orders of the District Collector, dated 04.05.2010. It is further submitted that the houses of Sri Madireddy Pullaiah Naidu and Vydhani Ramakrishna are situated 300 metres away from the subject land and they are separated by an irrigation canal and Sri Deva Vasantharao expired and his family has no land or house near the subject land.

9. On the contrary, it is vehemently contended by the learned Government Pleader that in view of the pendency of O.S.No.154 of 2010 and likelihood of tension that may arise in the village, the respondents cannot be faulted.

10. In the above background, now the issue that emerges for consideration of this Court is:

“Whether the respondent authorities are justified in not proceeding further pursuant to the orders of the District collector dated 04.05.2010 and whether the reasons assigned by the respondents 1 and 2 in their counter are justified and reasonable?”

11. There is absolutely no controversy on the reality that the District Collector, by way of proceedings R.Dis.No.E2/2582/09, dated 04.05.2010, basing on the proposals sent by the subordinate authorities, accorded permission for utilization of the subject land by the petitioner community as a burial ground, subject to the terms and conditions stipulated therein. It is also noteworthy that in order to give effect to the orders issued by the District Collector, the Tahsildar, by way of memo Ref.C/50/2010, dated 10.05.2010, instructed the Mandal Surveyor, Sakhinetipalli, to inspect the subject land and prepare necessary sub division record for carrying out changes in the revenue accounts, with a further direction to handover land to the Secretary, Gram Panchayat, Vuyyuri Vari Meraka, for construction of compound wall for the burial ground and report compliance within a week. It is further evident from the reply affidavit filed by the writ petitioner that in furtherance of the same, the Mandal Surveyor fixed the boundaries in the presence of the adjacent land owners,

village elders and handed over the schedule land to the Secretary of the Gram Panchayat and thereafter, necessary changes have been incorporated in the revenue records. It is also significant to note that, as on date, there is no order operating against the petitioner's society, restraining them from using the subject land as burial ground. It is also important to note that the writ petition filed by one Sri B.Shyam Babu, complaining against the usage of the subject land as burial ground i.e., W.P.No.21461 of 2009, ended in dismissal before this Court and the same was confirmed in Writ Appeal No.286 of 2010. It is also important to note that there is no injunction granted in O.S.No.154 of 2010. The reasons assigned by the respondents 1 and 2 in their counter affidavit that there is likelihood of tension in the village and the same may lead to law and order problem in the village and pendency of the suit filed by one Sri Madireddy Pullaiah Naidu and others, in the considered opinion of this Court, cannot be sustained. When there is an order passed by the District Collector, according permission in favour of the petitioner herein, the subordinate authorities are obligated to give effect to the same having regard to the provisions of Section 87 of the A.P.Panchayat Raj Act, 1994.

12. For the aforesaid reasons, this writ petition is allowed, directing the respondents herein to give complete effect to the orders of the District Collector, passed vide

R.Dis.No.E2/2582/09, dated 04.05.2010. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

13. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

29.12.2016

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