

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

WRIT PETITION No.24369 OF 2009

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, calls in question the endorsement bearing ROC No.5305/09-G8, dated 10.09.2009 issued by the District Collector (Panchayat Wing), Guntur, Guntur District – fourth respondent herein.

2. Heard the learned counsel for the petitioners and the learned Government Pleaders for Panchayat Raj and Revenue for respondent Nos.4 and 5.

3. The petitioners herein are the Nagarjuna Sagar Waterusers Association represented by its President Kalluri Subba Rao and the Grampanchayat Kakani Village of Narsaraopet, Guntur District. Earlier the District Collector – fourth respondent herein issued orders vide Rc.No.5306/96-G2, dated 29.10.2001 and questioning the validity of the same, Writ Petition No.17576 of 2006 was filed before this Court for a direction to declare the ayacut of Kakani Minor Irrigation Tank as Ac.79.00 cents. The said writ petition was dismissed by this Court, by way of an order dated 30.09.2008. Assailing the validity of the said order, Writ Appeal Nos.1671 and 1543 of 2008 were filed. The said writ appeals were disposed of by this Court, by way of an order dated 21.01.2009, granting liberty to the appellants to make an appropriate representation before the District Collector, Guntur, to resolve the issue with regard to the transfer of land from the ayacut of Nagarjunasagar project, within

a period of four weeks and with a further direction that as and when such representation being made, the same be disposed of by the District Collector, after giving an opportunity to all the persons aggrieved. Subsequently, the petitioners herein submitted a representation on 03.03.2009 before the District Collector, as per the above said orders passed by this Court. The District Collector vide endorsement bearing ROC No.5305/09-G8, dated 10.09.2009, confirmed that the ayacut of Kakani Minor Irrigation Tank is 230 acres. Challenging the validity and legal sustainability of the said endorsement, dated 10.09.2009, the present writ petition came to be filed.

4. While ordering 'Rule Nisi' on 19.11.2009, this Court in W.P.M.P.No.31682 of 2009, granted interim suspension of the impugned endorsement. In response to the 'Rule Nisi' issued by this Court, counter affidavits have been filed by respondent Nos.3 and 4, denying the averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

5. It is contended by the learned counsel for the petitioners that the impugned endorsement is highly illegal, arbitrary and violative of the principles of natural justice and in flagrant violation of the fundamental right guaranteed to the petitioners under Article 14 of the Constitution of India. It is the further submission of the learned counsel that though the petitioners herein submitted a representation on 03.03.2009, pursuant to the orders of this Court in Writ Appeal No.1671 of 2008, the fourth respondent herein did not consider anyone of the contentions raised therein. It is also

submitted that though the petitioners herein raised the aspect of the lack of jurisdiction of the District Collector in resorting to the impugned action, the District Collector did not consider the said cardinal aspect. It is further submitted that the impugned action on the part of the fourth respondent- District Collector is a total violation of the principles of natural justice.

6. On the contrary, it is strenuously contended by the learned Government Pleaders that there is absolutely no illegality nor there exists any procedural infirmity in the impugned action and strictly adhering to the principles of natural justice and in terms of the orders of this Court in Writ Appeal No.1671 of 2008, the fourth respondent – District Collector, issued the impugned endorsement as such, the impugned action is not amenable for any judicial review under Article 226 of the Constitution of India.

7. In the above back ground, now the issue that emerges for consideration of this Court is - “whether the questioned endorsement is sustainable and tenable?”

8. There is absolutely no controversy on the reality that in the earlier round of litigation a writ petition bearing Writ Petition No.17576 of 2006 was filed before this Court and as against the orders passed by the learned Single Judge, Writ Appeal No.1671 of 2008 was filed before this Court and a Division Bench of this Court disposed of the said writ appeal. It may be appropriate to reproduce the operative portion of the order dated 21.01.2009 passed by this Court in Writ Appeal Nos.1671 and 1543 of 2008 and the same reads as under:

“Under the above circumstances, we are of the opinion that it would suffice if the liberty is granted to the appellants herein to make an appropriate representation before the District Collector, Guntur, to resolve the issue with regard to the transfer of land from the ayacut of Nagarjunasagar project, within a period of four weeks from today. As and when such representation is filed, the District Collector shall dispose of the same, after giving an opportunity to all the persons aggrieved, within a period of eight weeks thereafter.”

9. There is also no controversy on the reality that the petitioners herein submitted a representation to the District Collector – fourth respondent herein on 03.03.2009. A perusal of the affidavit filed in support of the writ petition in vivid and candid terms discloses that the petitioners herein raised various issues including the aspect of jurisdiction of the District Collector to resort to the impugned action. A perusal of the impugned endorsement discloses, in clear terms, that the District Collector did not advert to anyone of the contents of the said representation, including the aspect of jurisdiction specifically raised by the petitioners herein. The justification sought to be canvassed by the fourth respondent - District Collector for issuing the impugned endorsement that the District Collector acted in accordance with the orders of this Court, in the considered opinion of the Court cannot be a valid justification. The question of conferring jurisdiction on the fourth respondent does not arise nor this Court conferred such jurisdiction on the District Collector. In the considered opinion of this Court, non-consideration of the above aspects is fatal to the case of the respondents. Therefore, the impugned endorsement cannot be sustained in the eye of law and

this Court is of the opinion that the matter requires fresh consideration.

10. For the aforesaid reasons, the Writ Petition is allowed, setting aside the impugned endorsement issued by the District Collector, vide proceedings in ROC No.5305/09-G8, dated 10.09.2009 and the matter is remitted to the fourth respondent – District Collector for fresh consideration in accordance with law, after giving a notice and opportunity to all the stakeholders, including the petitioners herein within a period of three (3) months from the date of receipt of a copy of this order. Pending such exercise, *status quo* as on today shall be maintained by all the parties.

11. Miscellaneous Petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. There shall be no order as to costs.

Date: 26.12.2016
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A.V.SESHA SAI, J