

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.26692 of 2015

ORDER:

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This writ petition is filed seeking writ of mandamus declaring the inaction of the 3rd and 4th respondents in taking action against the objectors over the cart track-20 ft width and 145 chains long- from Singaram village to Ramalayam which connects Cart Track (Naksha) from Ramalayam to Jamasthanpally village, as illegal, arbitrary and contrary to the provisions of A.P. Panchayath Raj Act and A.P. Land Encroachment Act, 1905 and consequently to direct the respondents 1 to 5 to preserve the said cart track by recording the same in revenue records and pahanies and register criminal cases in case of obstructions in respect thereof.

2. Brief facts which are necessary for disposal of the writ petition are as follows:

The petitioner is cultivating the agricultural land in Sy.No.645 of Munugodu Village, which belongs to his daughters-in-law. There is a cart track of 20ft width and 145 chains long from Singaram Village to Ramalayam which connects to Naksha road i.e., Singaram Village to Jamasthanpaly village. The said cart track is in existence since ages, but the same is not shown in village map of Singaram Village. It passes through Sy.Nos.61, 62, 63, 71, 73, 74 of Singaram Village and Sy.Nos.630, 631, 632 and 633 of Munugodu Village before joining the Naksha road and that the said cart track is being used for passage and transport of goods etc., without any objection from any one. As the Government failed to lay pucca road in place of cart track, the villagers contributed Rs.50,000/- for removal of thorn bushes and for laying earth for smooth passage of carts, animals, sheep, tractors etc. That the then MLA of Munugodu Sri Palla Venkat Reddy also allocated an amount of Rs.1,00,000/- from his ACDP funds for improvement of the

said cart track. While so, two farmers objected for formation of road on the cart track on the ground that it is their patta land. The then Sarpanch of 4th respondent and villagers filed application dated 02.11.2008 before the 3rd respondent and similarly lodged report dated 03.11.2008 with the 5th respondent, who prevented them and ensured smooth laying of cart track. It is stated that there is no other route for the villagers to go to Jamasthanpally village except the present cart track. The villagers also requested the respondents 1 to 3 to notify the cart track in the Gazette and also provide in the village map, but the same was not considered. The Police also state that they cannot register any case against the objectors as the cart track is not notified and not shown in the village map. It is also stated that the third parties have also objected for laying roads. The petitioner's daughters in-laws filed O.S.No.99 of 2013 against the Uppunuthala Lingaiah and Venkanna and obtained interim orders. One Depalaxmamma and Depa Manemma filed O.s.No.106 of 2015 on the file of Junior Civil Judge, Nalgonda against the petitioner and his family members and obtained *exparte* temporary injunction in respect of their land in Sy.No.630 of Munugodu village basing on their pattadar pass books and title deeds, which includes the land covered by cart track and same is pending. It is stated that the 4th respondent passed resolution on 07.11.2008 to take action against the persons who creates any disturbance in respect of the subject cart track and third parties have also signed an undertaking that they will abide by the advise of elders of village. It is stated that action has to be initiated by the 3rd respondent in accordance with the provisions of A.P.Land Encroachment Act, 1905 as the public roads and streets vest in local authority. Hence, writ petition.

3. Counter affidavit is filed by the 3rd respondent denying the averments in the affidavit filed in support of this petition stating that

about 30 farmers of Singaram village purchased agricultural lands in Munugode shivar covering Sy.Nos.630, 633, 641, 643, 645, 646, 647, 648, 649, 650, 651 & 652 etc., to an extent of about Ac.183.00 gts about 30 years back and formed a cart track through Sy.Nos.36, 60, 74, 61 of Singaram village and Sy.No.630, 631, 632 and 633 of Munugodu village with mutual consent with a width of 18' covering a distance of 145 chains i.e., for easy approach to their fields, though a cart track was already existing in Munugodu Shivar to Jamasthanpally.

That the above privately arranged cart track is not there in the village map and revenue records. It is a private arrangement between the land holders for easy approach to their fields. One Kumbham family owned Acs.30.00 gts out of Ac.183.00 gts purchased by the farmers of Singaram Village in Munugodu Shivar. The subject cart track is not a public way under the control of Government and it cannot be enforced by law, as it is way to the fields of farmers made with their mutual agreements and the Government is no way concerned with the same.

It is also stated that when the local MLA granted funds for formation of roads to the fields of farmers, Sri Jinukuntla Ramulu and others who are the owners of Sy.Nos.74 & 72 of Singaram Village, whose lands are going to be affected, stopped laying the road in place of cart track.

Smt. Depa Laxmamma and Depa Manemma, who are pattedars of land to an extent of Ac.4.00gts in Sy.No.630 of Munugodu village filed O.S.No.106 of 2015 on the file of Junior Civil Judge, Nalgonda against the petitioner and his family members and obtained ad-interim order in I.A.No.167/2015 dated 22.04.2015 and the said suit is pending for trial.

It is also stated that the petitioner occupied the cart track about 10 years back and cultivating the said land obstructing the people of Singaram village to go to tank for watering the cattle. It is stated that in addition to Depa Laxmamma & Depa Manemma, who instituted a suit in O.S.No.106/2015 on the file of Junior Civil Judge, Nalgonda for perpetual injunction against the petitioner and his family members, the

other land holders Uppunuthala Lingaiah, Venkanna of Sy.No.648, situated within the limits of Munugodu, Jinukuntla Ramulu, Lingamma, N.Swamy, Narayana and N.Saidulu of Sy.No.74 and 72 are also obstructing the formation of road claiming that there is already a cart track as per village map and there is no need for laying another road. It is stated that Sri Uppunuthala Lingaiah filed a case in O.S.No.171 of 2013 against Kumbham Dayakar Reddy, Vani, Indrasena Reddy and Anusha seeking directions to the respondents not to interfere with their possession, wherein the Court below granted interim order in I.A.No.623 of 2013. The aforesaid suits filed by the parties *inter se* are pending before the Courts below. It is also stated that the petitioner filed complaint before the Lokayuktha in case No.2252/2015/B2 alleging inaction against the respondents in which a detailed report was submitted. It is stated that the petitioner also filed a complaint before A.P. Human Rights Commission in case No.1555/2012 alleging inaction in conducting survey on 'Naksha Bata' from Singaram to Jamasthanpally village and fixation of boundaries, and illegal bore wells. The District Collector vide Lr.No.F1/10703/2012, dated 19.11.2012, informed that the alleged cart track is not depicted in the village map and revenue department has no authority to enforce the same and submitted detailed report to the Secretary, A.P. State Human Rights Commission vide Lr.No.F1/10703/2012, dated 15.12.2012 stating that the complaint against the then Tahsildar is false. It is also stated that the alleged cart track is not a public road to be enforced under Section 24 of Telangana Land Revenue Act, 1317 Fasli, as it does not exist in the village map or in records.

4. Reply affidavit is filed by the petitioner reiterating the averments in the affidavit filed in support of the petition, denying the averments in the counter affidavit admitting that the cart track is not shown in the village map or in the revenue records. It is stated that there is no

agreement among the farmers and it is not a private way, but it is under the control of the Government. That the people of Singaram village never used such non existing cart track and that there is a road in Sy.No.630 and all the people are passing through the same. It is stated that merely because the subject cart track is not in the village map, the respondents cannot say the same as not falling in their jurisdiction for enforcing under Section 24 of the Telangana Land Revenue Act. It is stated that the 3rd respondent issued notices for cancellation of assignment patta granted in favour of my family members wherein houses were constructed. The 3rd respondent also got registered FIRs against the family members of the petitioner in connection with the borewells in Shikam, without filing cases against other 117 bore wells.

5. Learned counsel for the petitioner submits that due to obstruction of third parties, the petitioner and his family members are unable to access to their lands and cultivate the same, as such, the respondents should have taken action against the obstructers. In support of his contention, he relied on the order of this Court dated 24.01.2013 in W.P.Nos.39717 of 2012 & batch.

6. On the other hand, learned Assistant Government Pleader for Revenue submits that civil suits are pending between the petitioner and third parties before various lower Courts and that petitioner has not made all the affected parties, as parties in this writ petition. More so, when the civil suits are pending, no mandamus can be issued.

7. In this case, it is to be seen that even according to the petitioner, the so called cart track claimed in the writ petition is not notified in the village map and that is the reason, the Police are unable to take any action against the obstructions. The petitioner is also seeking a direction to delete the said land from the holding of revenue records, which are registered in favour of third parties. More so, the petitioner has not made the third parties, against whom his family members filed

suit before the Courts below, as necessary parties in the writ petition. It is pertinent to note that the petitioner also admitted about the filing of suits and obtaining injunction order against third parties, before the Court below. In para 13 of the affidavit of the writ petition, it is stated as follows:

“I submit that the subject cart track is becoming subject of litigation in civil court as the same is not reflected in the revenue records. If the respondents 1 to 3 act in accordance with the provisions of A.P. Land Encroachment Act, 1905 (hereinafter called the Act) there will not be any problem in usage of said cart track.”

Even according to the petitioner, the subject land is recorded in the name of third parties and not notified in the village map. When once it is not notified in the Village map and it is not a Government land, invoking the provisions of A.P. Land Encroachment Act may not arise at all. The petitioner relied on the interim orders of this Court in W.P.Nos.39717 of 2012 & batch, dated 24.01.2013. In this case, civil suits are pending and interim orders are subsisting, as such, the interim order of this Court dated 24.01.2013 in W.P.No.39717/2012 relied on by the petitioner, cannot come to the rescue of the petitioner. The decision relied on by the petitioner in **Nawab Bahadur Muhammad Rustam Ali Khan v. Municipal Committee of Karnal City**^[1] has no application since it is rendered in first appeal arising out of suit.

Be that as it may, these are all disputed questions of fact, which cannot be resolved in the writ petition and this Court cannot go into the merits of the case. It is for the petitioner to agitate his grievance in the suits already pending before the Courts below, by leading evidence.

It is pertinent to note that along with reply affidavit, petitioner also filed report dated 22.12.2012 made by Tahsildar, which also states that petitioner has to approach Civil Court for redressal of his grievance.

In view of above facts and circumstances, no relief can be granted to the petitioner in this writ petition and accordingly, the same

is dismissed. However, it is made clear that the Courts below to dispose of the suits filed by the petitioner and third parties, without being influenced by any of the observations made in this order.

There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stands dismissed.

A. RAJASHEKER REDDY, J

Date:16-08-2015
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HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

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