

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.33619 of 2015

Date:19.01.2016

Between:

Osuri Devendra Phanikar,
S/o Gangadharam

..... Petitioner

And:

Narsapur Municipality,
reptd by its Municipal
Commissioner and six others.

.....Respondents

Counsel for the Petitioner: Mr. S.R.Sanku

Counsel for Respondent Nos.1 & 2: Mr. Nimmagadda
Venkateswarlu

Counsel for Respondent No.3: AGP for Irrigation (AP)

Counsel for Respondent No.4: AGP for Municipal Admn.
AP)

Counsel for Respondent Nos.5 & 6: AGP for Revenue (AP)

Counsel for Respondent No.7: AGP for Home (AP)

The Court made the following:

ORDER:

This Writ Petition is filed for a *Mandamus* to declare the action of respondent Nos.1 and 2 in trespassing into the petitioner's coconut garden admeasuring Acres.4.31 cents in R.S.Nos.61/9 and 70/2 located on the side of Flood Bank, abutting Vasishta

Gadavari river, Narsapur, West Godavari District and destroying 10 coconut trees due to dumping of garbage, as illegal and arbitrary.

On 19.11.2015, this Court has passed the following order:

“Sri Nimmagadda Venkateswarlu, learned Standing Counsel appearing for respondent No.1, submitted that in compliance with the interim order, dated 12.10.2015, respondent No.1 has demarcated the petitioner’s land and the municipality land used as dumping yard and is taking precautions to prevent wastage from flying and falling on the petitioner’s land. He requested for a short adjournment for filing an affidavit along with photographs in support of his submission.”

In obedience to the above-mentioned order, the Commissioner of respondent No.1-Municipality has filed a counter-affidavit, wherein he has *inter alia* enumerated the following precautions taken to prevent dumping of garbage into the petitioner’s coconut garden:

“(a) This respondent didn’t enter or encroach the land of the petitioner and placed Rag pickers in the said dump site to pick up the plastic and papers from time to time on daily basis.

(b) This respondent had provided fencing all around the said Ac.0.21 cents so that garbage will not fly into the coconut garden belonging to the petitioner.

(c) This respondent has taken precautions for not polluting the adjacent storm water drain and not polluting the Godavari river duly maintaining the proper distance from the river bank.

(d) This respondent used the effective micro organisms solutions (EMI solution) for quick decomposing the garbage and also to control the foul odour of the garbage.”

Along with the counter-affidavit, the Commissioner has filed photographs showing that a bamboo partition

has been raised separating the petitioner's land from the municipal dumping yard.

Mr. S.R.Sanku, learned counsel for the petitioner, has denied the claim of respondent No.1 that all precautions have been taken and that he has submitted that due to the negligence of respondent No.1, 10 coconut trees have died. He has, however, submitted that his client has filed O.S.No.161 of 2015 for permanent injunction before the civil Court and the same is pending.

Mr. Nimmagadda Venkateswarlu, learned Standing Counsel for respondent No.1, has placed before the Court further photographs during the hearing showing that respondent No.1 has raised bamboo partition besides tying plastic sheet in green, obviously, to increase the height of the partition to the existing bamboo partition.

From the facts pleaded in the counter-affidavit and the photographs filed by respondent No.1, this Court is convinced that as undertaken on 19.11.2015, respondent No.1 has taken proper precautions to clear the garbage from the petitioner's land and also to prevent garbage from entering into the petitioner's land. However, if the petitioner is not satisfied with the measures taken by respondent No.1, he is entitled to pursue the suit already filed by him or he can even file a comprehensive suit claiming damages for the alleged death of the coconut trees as well. The petitioner is also entitled to pursue the Contempt Case stated to have been filed by him against respondent No.1 before this Court.

Subject to the liberty given to the petitioner as above, the Writ Petition is disposed of.

As a sequel to disposal of the Writ Petition, WPMP.No.43345 of 2015 and WVMP.No.4506 of 2015 of 2015 are disposed of as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

*19th January, 2016
DR*

