

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

WVMP. No.761 of 2015 in WP.No.1025 of 2015 and
WP.No.1025 of 2015

ORDER :

The petitioner herein is Sarpanch of OL Puram Village, Narsipatnam Mandal, Visakhapatnam District.

2. The petitioner contends that there is a water tank in an extent of Acs.8.99 cents in Survey No.102 in the said village, that it has been in existence from time immemorial. He alleges that it is the source of irrigation as well as drinking water for the cattle, that it is catering to the needs of public for supply of water to agricultural lands of nearly 900 acres in the said village, and except the said water tank there is no irrigation source for agriculture purpose or for providing drinking water to cattle in the village. The petitioner contends that respondent nos.5 to 7 under the guise of pattas granted in their favour by respondent nos.1 to 4 started raising crops and converted the said water tank into agricultural lands and are obstructing the usage of tank by the villagers.

3. The petitioner alleges that respondent nos.4 to 6, who were granted pattas in respect of the said land covered by the water tank are not economically weaker section persons and also do not belong to backward

communities and they had obtained the said pattas by using political influence. According to him, the villagers made several representations to him and to respondent nos.1 to 4 to cancel the pattas and to clear obstructions, but no action was taken by respondent nos.1 to 4. He also stated that the OL Puram Village Gram Panchayat passed a resolution for removing the occupation by respondent nos.5 to 7 of the land covered by the water tank, and since no action has been taken, the Writ Petition has been filed.

4. In WPMP.No.1291 of 2015, this Court directed respondent nos.5 to 7 not to change the nature of the water tank situated in the extent of Acs.8.99 cents in Survey No.102 of OL Puram Village, Narsipatnam Mandal, Visakhapatnam District.

5. The counsel for petitioner reiterated the submissions made in the affidavit filed in support of the Writ Petition and contended that respondent nos.5 to 7 cannot be allowed to convert land covered by water tank for agriculture purpose, and respondent nos.1 to 4 ought not to have issued any pattas to them in this regard.

6. The 4th respondent filed a counter. He stated that long back there was a water tank existing in the above land called 'Neredu' Tank which is also mentioned in the Diglot of the village, that due to construction of

Ravanapalli Reservoir, the village of OL Puram and lands therein are being fed by water from the said reservoir; and that Public Works Department authorities had declared the said tank as having been abandoned along with certain other tanks in the Mandal. He stated that in 1967, the then Tahsildar, Narsipatnam granted assignments under Political sufferer's quota for an extent of Acs.4.92 cents to one Sri Kutcherlapati Chittiraju, Political sufferer (for short K.Chittiraju) , and to the 7th respondent for an extent of Acs.1.47 cents in the land covered by the abandoned tank in Survey No.102 of the said village. According to him, after giving these assignments, the land of Acs.8.99 cents got sub-divided as follows :

<i>Survey No.</i>	<i>Extent (Ac.Cts.)</i>	<i>Classification</i>	<i>Remarks</i>
<i>102/1</i>	<i>0-95</i>	<i>Govt. Poramboke</i>	<i>Existing Canal</i>
<i>102/2</i>	<i>0-38</i>	<i>Govt. Poramboke</i>	<i>Burial ground</i>
<i>102/3</i>	<i>4-92</i>	<i>Govt. Wet</i>	<i>D.Patta issued to Kutcherlapati Chitti Raju in 1967</i>
<i>102/4</i>	<i>1-47</i>	<i>Govt. Wet</i>	<i>D.Patta issued to Mutyala Ganeswara Rao in 1967</i>
<i>102/5</i>	<i>1-27</i>	<i>Govt. Poramboke</i>	<i>Tank Bund</i>
<i>Total</i>	<i>8-99</i>		

7. The 4th respondent stated that when such D-

Form pattas were granted to the above persons, Geddam Pothuraju and three others (who were residents of the village) filed O.S.No.178/1967 in a representative capacity before the District Munsif Court, Narsipatnam against the State Government and others challenging the said assignments, but the said suit was dismissed on 20.10.1970. He stated that this judgment was challenged by plaintiffs therein in A.S.No.32 of 1971 before the II Additional District Court, Visakhapatnam; and in the said appeal, the trial court judgment was modified as under :

“In the result, the appeal is allowed with costs throughout to the extent of the relief namely, a decree against the 1st Defendant only for declaration that the plaintiffs are entitled to supply of water of Ravanapalli Reservoir through Gabbada Channel by providing channels in the tank bed upto the sluices. They are entitled to the consequential mandatory injunctions against the 1st defendant to provide channel suitably. The judgment and decree of the lower court are modified only on this extent. The appeal stands dismissed without cost against the other defendants.”

8. The 4th respondent stated that in 1978 an extent of Ac.0.26 cents out of Survey No.102/3 was acquired for formation of a cross-channel and an Award No.3/86 dt.23.08.1986 was passed under the provisions of the Land Acquisition Act, 1894 and compensation of Rs.5922.19 ps. was also paid. He stated that Survey No.102/3 was thereafter further sub-divided under :

Survey	Extent	Classification	Remarks
No. 102/3-A	(Ac.Cts.) 0-84	Govt.Wet	Pattadar : K. Chittiraju
102-3-B	0-26	Govt.Poramboke	Channel
102-3-C	3-82	Govt.Wet	Pattadar : K. Chittiraju
Total	4-92		

9. The 4th respondent further stated that the assignments had been made to K.Chittiraju and to 7th respondent of land mentioned above in Survey No.102, although the land had been originally classified as Government Poramboke and registered as Neredu Cheruvu, but only after the tank was abandoned by the irrigation authorities. He stated that because of the court judgment referred to above, the assignees/pattadars cannot be evicted. He also stated that the legal heirs of the above pattadars (i.e respondent no.s 5 and 6) and respondent no.7 were in actual possession since 1967 and were also issued pattadar passbooks and title deeds. According to him, the people of the village were agitating forty-five years after the said assignment for eviction of respondent nos.5 to 7 from the land assigned to them and to their ancestors, taking advantage of a Supreme Court order. He stated that respondent nos.5 to 7 raised wet crops in the lands and the lands have also

been classified as wet lands in the Revenue Records. It is specifically asserted that only after the Public Works Department ordered for abandonment of the tank, the said assignment was validly made in favour of respondent no.7 and the ancestors of respondent nos.5 and 6, Sri K. Chittiraju, and that it is incorrect to state that they are changing the very nature of the land or obstructing the usage of the tank or converting it for purpose of disposal to third-parties. He stated that the ayacut lands were being fed by water supplied from Ravanapalli Reservoir. According to him, in 1967, the assignment had been made as per the policy of the then Government to assign lands to political sufferers and that there was no violation of assignment rules by the assignees. It is also pointed out that in the First Appellate Court judgment, the Court had directed the Collector to provide water to the plaintiffs in the suit from the water of Ravanapalli Reservoir, and a mandatory injunction was also issued in favour of plaintiffs therein directing the Collector to provide a channel suitably.

10. On the other hand, the learned Government Pleader for Revenue for respondent nos.1 to 3 reiterated the above submissions.

11. WVMP.No.761 of 2015 was filed by respondent no.s 5 to 7 to vacate the above interim order. It is stated that respondent no.s 5 and 6 are grand children of Sri

K.Chittiraju and the contentions raised by respondent no.4 were reiterated.

12. Sri Vedula Srinivas, counsel appearing for respondent nos.5 to 7 asserted that the suit O.S.No.178 of 1967 had been filed in a representative capacity by plaintiffs therein on behalf of all the villagers of OL Puram Village, and the decision therein operates as *res judicata* and binds the petitioner. He also stated that petitioner, who is the Sarpanch of the said village, cannot claim to be ignorant of the orders passed in O.S.No.178 of 1967 as well as A.S.No.32 of 1971 and the petitioner has deliberately suppressed these facts and filed the present Writ Petition. Therefore, he contended that the Writ Petition is not *bona fide* and should be dismissed on the ground of suppression of material facts of the abandonment of the tank and grant of land by way of assignment by the State Government to the paternal grandfather of respondent nos.5 and 6, Sri K.Chittiraju and respondent no.7.

13. No reply-affidavit has been filed by writ petitioner disputing the contentions raised by respondents in the counter-affidavits filed by them.

14. It is therefore clear that respondent nos.5 and 6's grandfather Sri K.Chittiraju and 7th respondent were assigned lands in D-Form patta in 1967 by the then

Tahsildar, Narsipatnam of extent Acs.4.92 cents and Acs.1.47 cents respectively in Survey No.102 of OL Puram Village, only after the Public Works Department authorities declared the tank in Survey No.102 of the said village as an abandoned tank. This assignment had been made almost 50 years back, and the land was being used since 1967 for agriculture purpose by respondent nos.5 to 7.

15. By misrepresenting that the conversion of the land for agriculture purpose is a recent phenomenon and misleading the Court, the Writ petitioner, who is the Sarpanch of OL Puram Village, has obtained an interim order on 28.01.2015. He has also suppressed the fact that the suit O.S.No.178 of 1967 had been filed in representative capacity by certain villagers of the OL Puram Village against the paternal grandfather of respondent nos.5 and 6 as well as 7th respondent alleging that the State Government cannot treat the suit tank as an abandoned tank and had sought for a consequential permanent injunction directing the Government not to interfere with the said tank in any way by way of assignment or lease; and that the said suit was dismissed on 20.10.1970 by the District Munsif, Narsipatnam; and no relief was granted as against Sri K. Chittiraju, ancestor of respondent nos.5 and 6, and 7th respondent, even in A.S.No.32 of 1971 preferred by plaintiffs before the II

Additional District Judge, Visakhapatnam. It is difficult to believe that as Sarpanch of the said village the petitioner would not be aware of these facts.

16. In this view of the matter, the petitioner cannot be allowed to take advantage of his own wrong of obtaining interim order in the Writ Petition by suppressing material facts to the Court.

17. Also as per Or.1 Rule 8(6) CPC, a decree passed in a suit under Or.1 R.8 shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted. Since O.S. No.178 of 1967 was instituted in a representative capacity by some villagers raising the same contentions as the Writ Petitioner, the decision therein binds him. He cannot reagitate the said issue.

18. Therefore, this Court does not find any error in the action of respondent nos.1 to 4 in assigning the land to the ancestor of respondent nos.5 and 6, i.e., Sri K. Chittiraju or to the respondent no.7 in 1967 under the political sufferers quota as per the then existing policy of the Government after the Public Works Department authorities declared that the tank in Survey No.102 of extent Acs.8.99 cents should be abandoned.

19. Accordingly, WVMP.No.761 of 2015 is allowed, and the order dt.28.01.2015 in WPMP.No.1291 of 2015 is vacated, and WP.No.1025 of 2015 is dismissed with costs

of Rs.2000/- each to be paid by petitioner to respondent nos.5 to 7 within a period of four (04) weeks from the date of receipt of a copy of this order.

20. Miscellaneous applications pending if any in this Writ Petition shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 19-04-2016

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