

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO**

WRIT APPEAL No.450 of 2016

Date: 01.07.2016

Between:

Thoorpu Gangavaram Mohammed Kshme-mariyu Samasa
Abhivrudhi Sangam, Toorupu Gangavaram village,
Talluru Mandal, Prakasam District, rep.by its President,
Shaik Adam Shareef, Toorpugangavaram Village,
Prakasam Dostroct/

.....Appellant/
Respondent No.5

and

Yarika Sreenivasa Reddy s/o. Punna reddy,
Aed about 38 years, Occu:Landlord, r/o. East Gangavaram
Village, Talluru Mandal, Prakasam district and others.

.....Respondents/
respondents

The Court made the following:

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE P. NAVEEN RAO**

WRIT APPEAL No.450 of 2016

JUDGMENT: (*Per the Hon'ble Sri Justice P.Naveen Rao*)

Heard Mr. I.Koti Reddy, learned counsel for the appellant, Sri M.Subba Reddy, learned counsel for the respondents 1 and 2, and learned Government Pleader for Revenue (AP) for respondents 3 to 5.

2. Fifth respondent is the appellant. Parties are referred to as arrayed in the writ petition.

3. Learned single judge has delineated all facts relevant to the issue. The undisputed facts as noted by learned single Judge would disclose that land to an extent of Ac.2.34 in Sy.No.67 of East Gangavaram village, is classified as cart track poramboke. Sy.No.67/2 is located at the intersection on Ongole - Darsi State Highway and is in use from time immemorial as cart track that provides access to Ongole – Darsi high way. It is located nearer to the developed neighbourhood and proximate to bus shelter and a valuable property. Petitioners instituted O.S.No.69 of 2006 on the file of Junior Civil Judge, Darsi, Prakasam District, praying to grant mandatory injunction against affecting their right of ingress and egress or the right to use cart track on the above land. On 5.5.2006, trial Court granted *status quo* order in I.A.No.378 of 2006.

In the written statement filed in the above suit, 4th respondent admitted of unauthorized construction made by 5th respondent and letting out to third parties and committed to take steps to remove unauthorized constructions. While so, on an application filed by 5th respondent to convert Ac.0.82 land in Sy.No.67/2 from cart track to burial ground, gazette notification dated 25.09.2008 was issued and consequential orders were passed converting the land as prayed. The gazette notification and the consequential orders are assailed in the writ petition. Petitioners challenged the change of use of land and creation of burial ground.

4. On scrutiny of material placed on record, original record and pleadings, learned single Judge observed that the subject land has been in use as cart track, existence of tombs found to be erroneous, as per status report dated

16.11.2014 filed by 4th respondent, as per Court orders, and that it is never used by Muslim community people as burial ground and was never in their possession.

5. Learned single Judge held that the change of classification was not made in valid exercise of power and for justifiable reasons and exercise of power was arbitrary and illegal and intended to clothe illegal encroachments of public property by the 5th respondent. The impugned decision was taken in utmost haste and for compulsive reasons, more so when suit was pending and the decision was contrary to categorical statement made in the written statement filed in the suit that 5th respondent is in illegal encroachment and that he would remove the encroachments. Learned Judge further held that the change of status of the land would now amounts to restriction of use of the land for general users and confine the usage only to a particular community. Learned Judge also noticed that the reasons for change of the subject land from cart track poramboke to burial ground poramboke is not revealed from the record, except a representation for such change and the legal opinion.

6. Learned counsel for the appellant reiterated his contentions as urged before the learned single Judge. Learned single Judge has considered all the aspects concerning the issue and has come to conclusions, noted above, based on the material available on record. We are not persuaded to take different view from the view taken by the learned single judge. We see no error in the decision arrived at by the learned single Judge after elaborate consideration of rival claims, warranting interference. Writ Appeal merits no consideration and is accordingly dismissed.

Miscellaneous petitions, if any, stand dismissed. No costs.

DILIP B. BHOSALE, ACJ

P.NAVEEN RAO, J

Date: 01.07.2016

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HON’BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
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