

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.8675 of 2009

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, by the petitioner-Gram Panchayat of Madakasira, Anantapur District, against the respondent, the Conservation Assistant, Archeological Survey of India, Anantapur Range, Anantapur, is filed impugning the order of the said respondent *vide* proceedings No.ATP/GNKL/2008-08/ Encroachment/ 1827, dated 11.03.2009. By the said proceedings, the respondent made a request to the petitioner-Gram Panchayat to stop the execution of the toilet block construction work on the ground that ancient monument's view will be spoiled.

2. I have heard the submissions of Sri R.N.Hemendranath Reddy, learned counsel for the sole petitioner/Gram Panchayat, and of Sri B.Narayana Reddy, learned Assistant Solicitor General of India, representing the sole respondent. I have perused the material record.

3. The case of the petitioner and the submissions made on its behalf, in brief, are as follows:

The petitioner-Gram Panchayat, having removed the illegal encroachments in survey number 419/1 of Madakasira Town, started preparations for construction of a shopping complex in the said vacant place. When the petitioner-Gram Panchayat is proceeding with the construction activity, the agents and staff of the respondent came to the construction site and ordered the men at work to stop construction stating that it is a prohibited area, as it is within 200 metres distance

from the ancient Bastion, which is declared as a national protected monument a long time back. Further, the respondent issued the impugned proceedings directing the petitioner-Gram Panchayat to stop the execution of the work stating that the view of the monument will be spoiled and that the construction is highly objectionable as per the Ancient Monument and Archaeological Sites and Remains Act, 1958. Around the ancient Bastion, there are several pucca residential and commercial buildings, i.e., within the vicinity of 200 metres since a long time. The respondent never raised any objection for such constructions all these days. In-fact, the petitioner-Gram Panchayat removed the illegal encroachments over the subject site and has undertaken the construction of a shopping complex. Even for such encroachments also, no objection was ever raised by the respondent. All of a sudden, the respondent is making all sorts of allegations and raising objections for reasons not known to the petitioner-Gram Panchayat. If the respondent is not restrained from interfering with the construction activity of the shopping complex undertaken by the petitioner-Gram Panchayat, the petitioner-Gram Panchayat will suffer serious loss. The subject monument is not notified as a protected monument in any Gazette of the Government. The ancient Bastion is situated in survey number 291-2, which is adjacent to the proposed construction site.

4. The case of the respondent and the submissions made on his behalf, in brief, are as follows:

The material allegations in the affidavit filed in support of the writ petition are all false and the same are specifically denied. There are many encroachments in the prohibited limits of the Centrally Protected

Monument 'Large Bastion and Old Gateway to Madakasira', which is a centrally protected monument of national importance under the control of the Archaeological Survey of India, Government of India, Hyderabad Circle, Hyderabad. It is governed by the Ancient Monuments and Archaeological Sites and Remains Act, 1958, (Act XXIV of 1958) and the rules made under the said enactment. The monument is protected *vide* notification under Section 3, sub-section 1 of the Ancient Monuments Preservation Act, 1904, (Act VIII of 1904), and is declared as a protected monument within the meaning of the provisions of the said Act. As per the provisions of the said enactment and the amended provisions and rules, an area upto 100 metres distance from the boundary of the protected monument is prohibited area for any construction/mining operations and beyond it, the area upto 200 metres is declared as regulated area. A copy of the Gazette notification is filed into the Court. It is true that illegal encroachments in survey number 419-1 of Madakasira Town were removed, as the said encroachments were made in the prohibited area. When the Sarpanch of the village started earth work for construction of shopping complex in the prohibited limits of the monument, i.e., within 10 metres distance, a letter, which is impugned in this writ petition, was addressed requesting to stop the work immediately. Any new constructions within the prohibited limits and within the distance of 100 metres from the ancient monument are not permissible. No permission is being given to the existing buildings for any further expansion. Action is being taken to remove all the encroachments within the prohibited limits of the monument. The monument is in survey numbers 291-2 and 292-1. It is a Government

land and a small road is going through the said area since times immemorial. In this prohibited area, construction/mining is prohibited. Hence, the writ petition may be dismissed.

5. I have bestowed my attention to the facts and submissions. I have perused the material record.

6. From the pleadings and submissions, the following aspects emerge for consideration. 'The subject monument is admittedly an ancient monument and it is in survey numbers 291-2 and 292-1. Its existence since several decades even prior to the year 1921, that is, its existence since times immemorial is not in dispute. According to the contentions of the respondent, it is a protected monument and is of national importance and it is under the control of the Archaeological Survey of India, Government of India, and that it is governed by the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, and the Rules made thereunder and that the monument is protected by a notification under Section 3 (1) of the Ancient Monuments Preservation Act, 1904, (Act VII of 1904) and was declared as a protected monument within the meaning of the provisions of the said Act. It is not in dispute that the site where the petitioner-Gram Panchayat proposed to construct a shopping complex, though is in survey number 419-1, the said site in the said survey number and the other site in the other survey numbers in which the ancient monument is in existence are adjacent to each other. Thus, the two sites viz., site where the proposed construction was undertaken by the petitioner-Gram Panchayat and the site where the monument stands are adjacent sites.'

7. Though in the pleadings of the parties the proposed construction is referred to as a shopping complex, the impugned letter of the respondent refers to the proposed construction as a toilet block. During the course of hearing also, the learned counsel for the petitioner-Gram Panchayat submitted that a toilet block is being constructed for provision of the said facility to the visitors to the monument and it is not intended for any commercial use and for making profit. Be that as it may, whether the proposed construction is a shopping complex or a toilet block, it is within the distance of 10 metres from the ancient monument to which visitors flock is not in dispute. Thus, the undisputed fact is that the site in which the proposed construction activity was undertaken by the petitioner-Gram Panchayat is within a distance of 10 metres from the ancient monument and that any construction/mining operation within the distance of 100 metres around an ancient notified monument is prohibited. Though a copy of the draft/preliminary notification was filed along with the counter of the respondent, the said notification does not refer to any property in survey numbers 291-2 and 292-1, which survey numbers relate to the site where the monument is in existence. Therefore, the petitioner-Gram Panchayat contends that the present ancient monument, though ancient in nature, is not notified in the Gazette as a protected monument under the provisions of the Act VII of 1904 or any other enactment. Nonetheless, the document filed by the respondent, on plain perusal, discloses that many areas in Madakasira village - like Hill Fort – hill Poramboke in survey number 314; and, large Bastion and an old gate way-village-site in survey number 313 B-2 Poramboke, were covered by the draft notification, which was issued in the year 1921. Though the

survey number is not mentioned, there is a specific mention of 'Large Bastion and old gate way of Madakasira village' in the draft notification of the year 1921. However, no document subsequent to the year 1921 showing the change, if any, of the survey numbers and no copy of the co-relation register showing the co-relation between the old and new survey numbers, in case of any such change, is filed by any of the parties. Be that as it may. From the description by name in the said earliest draft notification of the year 1921 it is possible to infer that the ancient monument is a notified protected monument. Whether the instant ancient monument is notified or not, it is an ancient monument of national importance and it is under the protection and control of the Archaeological Survey of India is not in dispute. Therefore, this Court is satisfied that the petitioner-Gram Panchayat, which is a public body, is not supposed to make any constructions within the prohibited distance from the ancient monument and therefore, the respondent is justified in making a request not to execute the work of construction in the subject site *vide* letter, dated 11.03.2009, which is impugned in this writ petition by the petitioner-Gram Panchayat. In that view of the matter, this Court finds that there is no merit in the writ petition and the writ petition is liable to be dismissed.

8. In the result, the writ petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

M. Seetharama Murti, J

09th March, 2017
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