

**HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO**

**WRIT PETITION No.24274 of 2006**

**ORDER :**

This Writ Petition has been filed by the petitioner, a private Company, questioning the notice dt.10-11-2006 issued by the 3<sup>rd</sup> respondent to it alleging that the petitioner had encroached and made certain boundary fencing in Revenue Sy.No.132 of Anthaipally village, which is claimed to be forest land notified under the A.P.Forest Act, 1967 in the said notice.

2. Petitioner's case is that it purchased Ac.33.33 gts in Sy.No.85 of Anthaipally village of Shameerpet Mandal, under sale deeds bearing Doc.Nos.1038/97 dt.17-04-1997, 1040/97 dt.17-04-1997, 1172/97 dt.02-05-1997, 1278/97 dt.12-05-1997, 2137/97 dt.29-07-1997 and 2614/97 dt.19-09-1997 registered in the office of the Sub-Registrar, Shamirpet and that the said property was the ancestral property of its vendors. Petitioner contends that adjacent land is in Sy.No.135 of the same village, that it is forest land, that the petitioner had erected fencing only in Sy.No.85 and not in Sy.No.132, and there is no question of it encroaching any land in Sy.No.132 by it. Petitioner placed reliance on a survey made by the Mandal Surveyor in proceedings No.F/62/2003 dt.29-06-2004 to contend that the boundaries of Sy.No.85 are very clear and demarcated and that it did not encroach the land in Sy.No.132, which is alleged by the Forest Department to be forest land.

3. The Writ Petition was admitted on 22-11-2006 and in W.P.M.P.No.30999 of 2006, while issuing notice to respondents, this Court directed respondent Nos.2 and 3 not to interfere with the possession of the petitioner in respect of the land situated in Sy.No.85 of Anthaipally village. It directed the petitioner to submit explanation to the notice dt.10-11-2006 within one month from that date and left it open to respondents to proceed with enquiry.

4. Petitioner subsequently gave explanation, but thereafter no further action was initiated.

5. Petitioner thereafter filed W.P.M.P.No.34713 of 2008 to appoint an Advocate-Commissioner to demarcate the boundary line of Sy.No.85 with the assistance of Assistant Director of Survey and Land Records Department in the presence of representatives of the petitioner as well as Forest Department officials, pending disposal of the Writ Petition.

6. After hearing both sides, on 11-12-2008, this Court took note of the fact that no enquiry was conducted after petitioner submitted its explanation and that it was a fit case to appoint an Advocate-Commissioner. It therefore appointed Sri G.L. Nageswara Rao, Advocate as Advocate-Commissioner and directed him to visit the land in question and survey it with the assistance of Assistant Director of Survey and Land Records Department and also the 4<sup>th</sup> respondent-Mandal Surveyor, R.R. District and submit a report. Liberty was given to both sides to furnish work memos.

7. On 13-03-2009, the Assistant Director of Survey and Land Records Department addressed a letter in Rc.No.A4/436/2009 dt.13-03-2009 stating that the survey records are in torn condition, that teepans of Sy.No.85 and its adjoining S.Nos. are not traceable in his office, that as per his office records, the area of Sy.No.85 is Ac.67.26 gts and that of Sy.No.132 is Ac.42.30 gts. He stated that he demarcated the village boundary of Sy.Nos.103, 102, 91, 90, 88, 82 and 86 of Anthaipally village, Shameerpet Mandal on the instructions of Advocate-Commissioner and with the help of village map and fixed the Tri-junction point in respect of Sy.No.103 of Anthaipally, Thimmaipally and Upperpally villages. He stated that basing on the Tri-junction point, he also demarcated Sy.No.85 with the help of village map and fixed the boundaries. He stated that as per his observation, Sy.No.85 is not encroached by any forest land in Sy.No.132. He enclosed sketch showing the boundary of Sy.No.85.

8. The Advocate-Commissioner, in his report, stated that he examined the location of Sy.No.85 and the boundary with reference to permanent features of the area and observed:

*“a) The survey No.85 of Andhtaipally village is at a distance of 298 mtrs measuring from the centre of Thumkunta-Ghatkesar Road at the point of crossing Babaguda-Yapral road.*

*b) Babaguda-Yapral road is a 12 feet BT road which passed through survey No.85. The boundary line starts at a distance of 40.6 mtrs to the north of 7.6 kms stone of Babaguda-Yapral road and passes through survey No.85, thus dividing survey No.85 in two parts.*

*c) In the eastern part of survey No.85 there are four big poultry sheds and several staff and worker quarters and in the portion to the west of the road also there are three big poultry sheds and some quarters for the workers and staff.*

*d) The fencing erected after the survey in 2004 still exists on the western part of survey No.85. The main issue relates to demarcation of boundary line on the north west point of Survey No.85. The said point is determined by the Assistant Director of Survey & Land Records by starting the survey from tri-junction of three villages namely Anthaipally, Timmaipally and Upparpally. The tri-junction exists on the border of survey No.103 of Anthaipaly village and by continuing the measurement from that point the north east point of survey No.85 was fixed.*

*There is CC building by name Bible House near the north western border point. It got the distance between the western end of that building which is towards north east of boundary point measured and the distance between, the western end of the said building and the north west boundary point is 37.2 meters.*

*The petitioners fencing of the boundary is on the boundary of survey No.85. The fencing as well as permanent constructions made are within the boundary lines of survey No.85.*

9. Thus, the Advocate-Commissioner opined that the petitioner's fencing and the boundary of its property is on the boundary of Sy.No.85 and the fencing as well as permanent constructions were made by it within the boundary line of Sy.No.85.

10. To this report, the 2<sup>nd</sup> respondent filed objections on 10-03-2010 stating that the demarcated survey line by the Advocate-Commissioner is coming into the RF area which is already demarcated as per the notification, and any deviation for non-forestry purpose of forest land attracts Forest Conservation Act, 1980.

He disputed the opinion of the Assistant Director of Survey and Land Records, R.R. District and stated that though Forest officials attended the survey and inspection by the Advocate-Commissioner and the Assistant Director of Survey and Land Records Department, they did not sign the report of the Assistant Director of Survey and Land Records as well as the Advocate-Commissioner.

11. In the objections, there is a reference to a survey earlier done of Sy.No.132 and 85 from 06-08-2007 to 08-08-2007 and a joint inspection report prepared at that time along with a sketch mentioning that an extent of Ac.4.37 gts of forest land is under encroachment by petitioner and that the petitioner had erected some poultry sheds there. It is denied that there is a variation between report of the Assistant Director of Survey & Land Records, Ranga Reddy District in reference Rc.No.A4/436/2009 dt.13-03-2009 addressed to the Advocate-Commissioner and the joint inspection report dt.10-08-2007. It is contended that Sy.No.132 of Anthaipally village is included in the Thumkunta Forest Block and is adjacent to Sy.No.85 of Anthaipally village, that both survey numbers have a common boundary and that the same was not demarcated at the time of joint inspection conducted on 12-03-2009. It is contended that it is essential to demarcate Sy.No.132 of Anthaipally village before finalising the dispute in Sy.No.85. He therefore wanted re-entrustment of warrant to the Advocate-Commissioner.

12. The respondents have placed before the Court the joint inspection report of Tumkunta Block conducted by Forest officials and Survey and Land Records officials from 06-08-2007 to 08-08-2007. It is important to note that for this joint inspection, the petitioner was not given any notice.

13. Learned counsel for petitioner strongly objects to the reliance on this report on the ground that it was prepared petitioner's behind back and so cannot bind the petitioner. The objection raised by the counsel for petitioner is a valid objection and petitioner cannot be said to be bound by a survey report prepared behind its back without issuing notice to it.

14. Even otherwise, the contents of the said joint inspection report show that survey was conducted on 07-08-2007 and 08-08-2007 by the officials of Forest Department and Survey Department as mentioned therein. In the last paragraph of the said report, it stated:

*“After completion of the above survey, a sketch was prepared showing the details of the forest boundary overlaid on the revenue village map and it is concluded that Ac.4.37 gts of forest area is under the encroachment by M/s.Janaki Feeds, where some poultry sheds are constructed.”*

15. A perusal of the sketch indicates that area enclosed within green line shown therein as forest area and the area within black line is non-forest area in Sy.No.85. The alleged encroached portion is according to the said sketch falling within Sy.No.85 and the boundary of Sy.No.85. It does not fall within Sy.No.132 which according to the respondents is forest land.

16. When no portion of Sy.No.85 has been notified as forest land admittedly, and the structures or boundary fencing erected by petitioner falls within the boundary of revenue Sy.No.85 indicated in black lines in the sketch appended to the Joint Inspection report dt.10-08-2007, the petitioner cannot be said to have encroached any portion of Sy.No.132, which alone is alleged to be forest land.

17. Even otherwise, according to the counter-affidavit filed by respondent Nos.1 to 3, forest block of Thumukunta was declared as Protected Forest through notification No.116 dt.13-04-1953 of 1355 Fasli under Section 29 of the Hyderabad Forest Act, 1355 Fasli of extent Ac.1362.6 gts. A copy of this notification filed along with the counter-affidavit does not mention about Sy.No.132 of Anthaipalli village specifically though it is asserted in the counter that it included Ac.83.21 gts of Sy.No.132. However, according to the Assistant Director of Survey and Land Records Department, Ranga Reddy District proceedings in Rc.No.A4/436/2009 dt.13-03-2009, total extent of Sy.No.132 is only 42.30 gts and not Ac.83.21 gts as in the counter-affidavit. Therefore this claim of the Forest Department does not appear to be correct.

18. In the counter-affidavit filed by respondent Nos.1 to 3, it is also alleged that there is subsequently a proposal for issuance of notification of land in Sy.No.132 under Section 4 of the A.P. Forest Act, 1967 as forest land, but it is not the case of 2<sup>nd</sup> respondent that there was in fact any notification of that nature at all.

19. It is shocking that the Forest Department officials presume the land in occupation of petitioner to be forest land and claim that their opinion about the survey conducted by the Assistant Director of Survey and Land Records Department, who is said to be expert in conducting survey, should prevail. Such an attitude on the part of the Forest Department officials is deprecated since they have no expertise in doing survey.

20. It is pertinent to note that the Revenue Department, which is represented by the Mandal Revenue Officer, Shamirpet Mandal, Ranga Reddy District as 4<sup>th</sup> respondent, has chosen not to file a counter-affidavit thereby accepting the report of the Advocate-Commissioner about the survey conducted by him with the assistance of the Assistant Director of Survey and Land Records Department.

21. Once the Advocate-Commissioner, with the assistance of Assistant Director of Survey and Land Records Department, has demarcated the land in question in Sy.No.85 and the land in Sy.No.132, and has found as a fact that the petitioner's structures are located only in Sy.No.85, the 2<sup>nd</sup> respondent cannot question the same stating that the demarcated survey line of the Advocate-Commissioner is coming into the Reserve Forest area.

22. His contention that the boundaries were fixed without following norms and in particular teepans cannot be accepted because admittedly teepans of Sy.No.85 were not available and only village map is available. It is not the case of the Forest Department that it has

custody of the teepans of Sy.No.85 and it had provided them to the Assistant Director of Survey and Land Records Department at the time when he assisted the Advocate-Commissioner.

23. When the Advocate-Commissioner and the Assistant Director of Survey and Land Records Department conducted survey of 2008 with the village map, to insist that they should have conducted survey with the non-existent teepans, indicates that the objections raised by 2<sup>nd</sup> respondent to the report of the Advocate-Commissioner have absolutely no merit and have to be discarded.

24. Therefore I hold that the petitioner has not encroached forest land in Sy.No.132 and he had erected boundary fencing only in Sy.No.85 and the 2<sup>nd</sup> respondent did not act in a *bona fide* manner in terming the petitioner as an encroacher.

25. Accordingly, the Writ Petition is allowed, the impugned notice dt.10-11-2006 issued by the 3<sup>rd</sup> respondent is set aside and the respondents are restrained from interfering with the petitioner's enjoyment and possession over its land in Sy.No.85 of Anthaipally village, Shameerpet Mandal, Ranga Reddy District. No costs.

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

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**JUSTICE M.S. RAMACHANDRA RAO**

Date: 23-10-2017

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