

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WV.MP.No.4359 of 2017

in/and

WP.No.19399 of 2017

COMMON ORDER:

W.V.MP.No. 4359 of 2017 is filed to vacate the order dt.22.09.2017 in WP.MP.No.23625 of 2017 in WP.No.19399 of 2017.

2. Parties will be referred to as per their array in the Writ Petition.

3. Petitioner contends that an extent of Acs.1.44 cents in survey No.277 of Bayyavaram Village, Kasimkota Mandal, Visakhapatnam District is designated as 'tank' in the Revenue Records, and that at the instance of the local Member of Legislative Assembly(MLA), the said land is now permitted to be used for house sites under Housing Scheme of the State Government.

4. This allegation is corroborated by the counter affidavit of the respondents wherein it is stated that the MLA of Anakapalli Constituency requested for sanction of houses at the said village, that proposals were submitted to the 2nd respondent-District Collector on 21.12.2015 through the Revenue Divisional Officer, Anakapalli for sanction of Housing

Scheme; that request was made to Collector to convert the 'Tank Poramboke' in survey No.277 of Bayyavaram Village into 'Ryothwari', so that it can be used for Housing Scheme, and that the Collector on 19.01.2016 accorded permission for said conversion. It is stated that thereafter layout was prepared and pattas were issued to 29 beneficiaries of weaker section and recommended for Housing Scheme, and at that stage, the following interim order was passed by this Court on 23.06.2017:

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W.P.No.19399 of 2017

Admittedly, subject matter of the writ petition is water body. From the written instructions, the said assertion is also re-enforced. Under those circumstances, either changing the water body or assigning the water body for constructing houses is contrary to Board Standing Orders and illegal.

Rule nisi. Call for records. Notice returnable in four weeks.

WP.MP.No.23625 of 2017

The respondents are directed not to allow construction or change of physical features in an extent of Ac.1.44 cents in Sy.No.277 of Bayyavaram Village, Kasimkota Mandal, Visakhapatnam District, for a period of twelve (12) weeks from today.

Notice.

List after eight (08) weeks.”

5. It is not in dispute that the Hon'ble Supreme Court in ***Jagpal Singh & Ors. V. State of Punjab & Ors.*** in Civil Appeal No.1132/2011 @ SLP(C) No.3109 of 2011 has held that

lands recorded as ponds or water bodies must not be allowed to be allotted to anybody for construction of houses or for any allied purposes.

6. Therefore, having regard to the said legal position, the action of the District Collector, Visakahpatnam in converting the subject land, which is earmarked as “Tank Poramboke” in the revenue record, as ‘Ryothwari’ enabling it to be used for Housing Scheme on the request made by the MLA of Anakapalli Constituency, cannot be countenanced.

7. Accordingly, the WV.MP.No.4359 of 2017 is dismissed and the Writ Petition is allowed; the action of the respondents in converting the land earmarked as “tank poramboke” admeasuring Acs.1.44 cents in survey No.277 of Bayyavaram village as Ryotwari at the instance of the MLA, Anakapalli constituency is declared as illegal, arbitrary and violative of articles 14 and 21 of the Constitution of India; the respondents are directed not to allow usage of the said area for any housing activity by the assignees; and consider allotting other land in the village to said assignees. The respondents are further directed to restore the tank in the subject land which would benefit the residents of Bayyavaram village. No costs.

8. Consequently, miscellaneous petitions, pending if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

30th November, 2017.

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