

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No.28584 of 2013

ORDER:

Heard.

2. The present Writ Petition came to be filed seeking issuance of writ of mandamus declaring the order of the Commissioner of Fisheries vide Memo No.5567/ 12/ 2013, dated 09.09.2013 and the consequential proceedings of the fourth respondent vide Notice Nos.417/ A/ 2013-1 to 17, 19 and 20, dated 27.09.2013 as illegal, arbitrary and contrary to A.P.Schedule Area Land Transfer Regulation Act, 1959 as amended, apart from the provisions of the A.P.Co-operative Societies Act, 1964.

3. The averments in the affidavit filed in support of the writ petition would show that the petitioners are the members of the Fishermen Co-operative Society, Gandhinagaram, Singareni (M), Khammam District, which was formed in the year 1979, consisting of 63 members and having three tanks in three different panchayaths. The area of operation of Society was in Acs.166.10 guntas. At the time of registration of Society, the members of the society were non tribals, though the petitioners and the tanks were in agency area. Hence, the society was consisting of both tribal and non tribal members. Thereafter, the third respondent requested the fifth respondent to enroll Sri Bhukya Purya and 20 others as members of the society. The fourth respondent called for a report from the Assistant Inspector of Fisheries, Khammam, who had submitted a report dated 20.06.2013 to the Commissioner of Fisheries, Hyderabad, requesting to guide him in the matter, for taking further action on the request of the Project Officer, ITDA, Bhadrachalam, for removal of non-tribals from the said society. As per the proceedings of the Commissioner,

the fourth respondent issued a show cause notice dated 27.09.2013 calling upon the petitioners to explain as to why their membership should not be removed, as they do not belong to tribal community. Challenging the said show cause notice, the present writ petition came to be filed.

4. Learned counsel for the petitioners would submit that there is no basis for the respondents to issue the impugned notices since neither the A.P.Schedule Area Land Transfer Regulation Act, 1959 nor G.O.Ms.No.74, Animal Husbandry, Dairy Development and Fisheries (Fish.II) Department, dated 21.10.2011 vide memo No.5567/ 12/ 2013, dated 09.09.2013, relied upon, do not anywhere contemplate removal of non-tribals though they are residents of tribal areas, moreso when their tanks are situated in tribal area. The same is refuted by the learned counsel for the respondents stating that since the present writ petition came to be filed against the show cause notice, the petitioners could have approached the concerned forum itself by giving reply, instead of filing the writ petition under Article 226 of the Constitution of India.

5. It is to be noted that the present writ petition came to be filed against a show cause notice issued to the petitioners calling upon them to explain within seven days as to why they should not be removed from the membership of the society, as they are non-tribals. Without submitting any explanation to the said show cause notice, the petitioners have straight away approached this Court raising various factual disputes. The issue as to whether the said authority has a right to remove the petitioners from the membership of the said society, in view of the provisions of A.P.Schedule Area Land Transfer Regulation Act, 1959 and also as to whether any power is conferred on the said authority in said G.O.Ms.No.74, can as well be raised before the deciding authority.

6. Having regard to the above, since the present writ petition is only against issuance of show cause notice, the writ petition is disposed of directing the petitioners to submit their explanations within a period of three weeks from today, in which event, the authorities shall consider legal and factual issues raised and pass orders, at the earliest. Till such time *status quo* as on today to be maintained with regard to membership of the petitioners in the society.

7. Accordingly, the writ petition is disposed of. There shall be no order as to costs.

8. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

12.04.2017
vhb



JUSTICE C. PRAVEEN KUMAR