

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

W.P.No.29045 of 2012

ORDER:

In this Writ Petition, the petitioners, who belong to the Scheduled Caste Mala community, and who have been assigned Ac.0.03 cents of land each in Survey No.174-7B1 in H.T.Halli Village, Rolla Mandal, Ananthapur District vide proceedings Rc.No.1304/IAY/2005-06/E2 dt.20.10.2005 of the A.P.State Housing Corporation Ltd., Ananthapur and have been given possession certificate in the name of their wives, complain of lack of protection by respondents 1 to 4 against the action of respondents 5 to 10 for preventing them from constructing houses in the sites allotted to them and seek directions to the respondents 1 to 4 in that regard.

2. In this writ petition, the first respondent is the District Collector, Ananthapur District, 2nd respondent is the Tahsildar, Rolla Mandal, Rolla, Ananthapur District, the 3rd respondent is the Superintendent of Police, Ananthapur, and the 4th respondent is the Circle Inspector, Madakasira, Ananthapur District.

3. According to the petitioners, the assignment was made to four others also along with them under the Indira Avas Yojana, the housing scheme for the poor, and that those persons had completed construction of houses and are living therein.

4. The petitioners had earlier filed W.P.No.24811 of 2007 in this Court to declare the action of the respondents in not constructing houses for them under the above scheme. The respondents therein took the plea that there were differences among the petitioners themselves which prevented them from constructing houses. By order dt.05.02.2008, this Court disposed of the writ petition taking note of the fact that the A.P. Housing Corporation provides technical guidance and the 1st respondent would provide financial assistance under the above scheme once the petitioners approach them after settling their internal disputes.

5. The petitioners contend that as of now there are no internal disputes among them and that respondent Nos.5 to 10 who belongs to Madiga Community were obstructing them from making construction by creating law and order problem and the respondents are not evincing any interest in controlling the same though they are obligated under the provisions of the S.C.&S.T (Prevention of Atrocities) Act, 1989 to render assistance to them.

6. They contend that they made complaints to the 1st respondent on 06.12.2010 in that regard, that he simply forwarded the same on 13.12.2010 to the 3rd respondent to cause an enquiry to be made and report to him, and that the Inspector of Police, Madakasira conducted enquiry and submitted report dt.03.06.2011 to the 3rd respondent.

7. In that report, the Inspector of Police, Madakasira stated that respondent Nos.5 to 10 and others were obstructing petitioners, threatened the Mandal Revenue Inspector, and even though criminal cases were filed against them, they were released on bail and continued to obstruct the petitioners from completing the construction work. He stated that the respondent Nos.5 to 10 and others trespassed into the land of the petitioners and even caused injuries, that there are only five to ten families of Mala community while members of Madiga community are more, and though the petitioners have legal rights over the land, the respondents 5 to 10 and others are opposing their construction as it would inconvenience them with regard to a passage leading to their houses. He suggested that the petitioners be allotted house sites elsewhere by the 1st respondent.

8. The petitioners have challenged the said report in this Writ Petition contending that instead of maintaining law and order, the police are supporting respondent Nos.5 to 10 and that the Inspector cannot suggest that petitioners be given house sites elsewhere to placate the respondent Nos.5 to 10. They also contend that there is no restriction for passage by the members of the Madiga community if the petitioners construct their houses; that sufficient space for their passage is available; and in fact the non-official respondents have their own rasta on the southern side of their houses. They contend that just to avoid law and order problem being caused by respondent Nos.5 to 10, the respondents cannot overlook additional financial

burden to be incurred by the Government for providing house sites in the other area of the village when sufficient surplus land is available in Survey No.174-7B1, where SC Malas were already assigned house sites.

9. Initially respondents 5 to 10 had not been impleaded in the writ petition. Subsequently W.P.M.P.No.5574 of 2017 was filed by the petitioners to implead them and the same was allowed on 02.03.2017.

10. After service of notice on respondents 5 to 10, they filed a counter stating that only 7 house sites were granted in 1976 and not 10 house sites; out of these sites, five houses were constructed, but not under the Indira Avas Yojana scheme; that only 1st petitioner was residing in the village and he had two other own houses; the 3rd petitioner was settled in Bangalore; that all the petitioners have Ac.9.00 of agricultural land and are well settled; that construction of houses by the petitioners in the sites allotted to them will restrict ingress and egress to the respondents 5 to 10 since there is only 20 feet gap road between the houses of the respondents and the proposed construction place.

11. In my opinion, it is not for the respondents 5 to 10 to decide whether the petitioners are eligible for assignment of the house site plots or not. No material is placed about the fact that petitioners 2 and 3 are not residing in the village. Also a 20 feet gap is adequate for ingress and egress of respondents and they cannot prevent the

petitioners from making construction in the sites allotted to them and cause harm to them.

12. Respondent Nos.5 to 10 stated that O.S.No.43 of 2011 and 44 of 2011 was filed by the 5th respondent and the 7th respondent against the petitioners and their family members and that the same were decreed on 20.11.2015 by the Junior Civil Judge, Madakasira and permanent injunction was granted in favour of respondent Nos.5 and 7.

13. Copies of the said judgments filed by respondent Nos.5 to 10, indicate that the decrees are in respect of House Nos.7-72 and 7-72C in Survey No.174-7B and some open space to north and south of said houses. Admittedly, the land where house sites were allotted to the petitioners in Survey No.174-7B1 and not Survey No.174-7B. Therefore, the said decrees do not assist the respondents 5 to 10.

14. Also it is not the case of respondents 5 to 10 that they had any title in the land assigned to the petitioners by respondent Nos.1 and 2. So under the guise of the Civil court decrees, the respondent Nos.5 to 10 cannot prevent the petitioners from building in the plots admittedly assigned to them.

15. Initially, the Tahsildar, Rolla only filed counter, but the District Collector, Ananthapur and the Superintendent of Police, Ananthapur had not filed counters.

16. The former, in his counter affidavit admitted that the petitioners had been assigned land in the name of their wives in Survey No.174-7B1 of H.T.Halli Village, that revenue and officials of the housing department visited the village, gave marking to their plots and showed the boundaries for construction of houses. He contended that out of 10 beneficiaries, 7 members of S.C. Mala community constructed houses and got financial assistance from A.P. Housing Corporation Ltd., but the petitioners could not construct their houses due to ill-feelings among the S.C. community people. He stated that his responsibility ended when he gave house site patta/possession certificate and showed the boundaries of the site to the petitioners and it is their responsibility to make construction in the plots shown to them.

17. The Government Pleader for Revenue stated that after the Writ Petition was filed, the Revenue Officials pointed out the land to the petitioners and it is for the petitioners to protect their possession against the unsocial elements, who were trying to stop them from constructing in the assigned land.

18. The Government Pleader for Home stated that there were disputes between the people of S.C.Madiga and S.C. Mala in respect of construction of houses in the said area and Crime No.4 of 2009 dt.21.02.2009 has been registered under Sections 353, 186, 188 and 506 read with 34 IPC, but the accused were acquitted in C.C.No.16 of

2009 by the Judicial Magistrate of First Class, Madakasira on 24.04.2009. He stated that the police authorities have nothing to do in the Writ Petition.

19. From the above stand taken by the Government Pleaders, it is clear that the Revenue Department and Police Department are abstaining from discharging their responsibility under the law to protect people like the petitioners who belong to Schedule Caste Community. This shows lack of sincerity on the part of the respondents 1 to 4 in implementing the constitutional goal of protecting the weaker sections in the society.

20. In fact, neglect of duties conferred on the public servants under the SCs/STs (Prevention of Atrocities) Act, 1989 is a punishable offence under Section 4 of the said Act.

21. Therefore, on 09.03.2017, this Court directed the District Collector and the Superintendent of Police to appear before the Court 15.03.2017.

22. The Court explained to them the need to protect the petitioners from the unlawful activities of respondent Nos.5 to 10 and adjourned the matter after two weeks to enable them to file counter stating what action they have taken on the report of the 4th respondent.

23. The District Collector, Anantapur then filed counter referring to the report dt.03.06.2011 of the Circle Inspector of Police, Madakasira to the Superintendent of Police and the cases filed by the petitioners' group against the respondent Nos.5 to 10 and vice-versa. He stated that the Revenue Divisional Officer, Penukonda visited the site on 10.03.2017 along with the Deputy Superintendent of Police, Penukonda and others and interacted with both petitioners and respondents 5 to 10; that respondents 5 to 10 and others have stated that sites allotted to petitioners are hindrance to them to move to their houses; and that a temple of their goddess is existing in western side of the allotted sites. The existence of a temple is not stated by respondents 5 to 10 themselves. This is a new plea now taken by the District Collector.

24. The District Collector further stated that only five feet space will be available to the SC Madiga people, if the petitioners are allowed to construct houses in the sites assigned to them. But respondents 5 to 10 have stated that there is a 20 feet space available. In any event, for ingress and egress of people, a five feet gap is sufficient.

25. In the reply affidavit filed by petitioners they stated that the SC (Madigas) have a pathway on their main door side i.e., on their southern side to go to the area on the backside i.e., the northern side apart from a passage six feet width; that this is also stated in the report

dt.29.05.2008 of the Mandal Surveyor, Gudibanda and in charge of Rolla Mandal submitted to the Tahsildar, Rolla; and when adequate space is available for movement of the SC(Madigas), they cannot object the construction of houses by petitioners in the sites assigned to them.

26. The District Collector also stated that the 3rd petitioner appeared before the Tahsildar, Rolla and gave a statement that the house site was given in the name of his first wife, Ratnamma, that she left the village and settled in Bangalore, and due to the dispute being raised by the Madiga Caste people, the plot allotted to him in the name of his first wife could not be occupied. He stated that the 3rd petitioner occupied plot No.7 in survey No.179 by erecting a hut and requested to assign the same by cancelling the plot allotted to Ratnamma. Copy of any such statement is not filed along with the counter.

27. But in the reply affidavit filed by the petitioners, it is stated that the 3rd petitioner constructed a house in the house site assigned to 2nd petitioner, who is his father, and both are residing in the same house. It is not admitted that 3rd petitioner had made any statement before the Tahsildar, Rolla as alleged by the Collector.

28. The District Collector also stated that he and the Superintendent of Police also interacted with both parties on 12.03.2017 in the presence of village elders and even then the SC(Madiga) Caste People objected for construction of houses by the petitioners stating that they

will face rasta problem, if constructions were allowed to be made; and that the District Administration explained to them about the orders of the Court and asked both parties to come to a settlement, but they did not respond.

29. According to him, the internal dispute mentioned by this Court in W.P.No.24811 of 2007 continues to exist between the parties.

30. As already pointed out, the dispute mentioned in that Writ Petition is a dispute among the writ petitioners, while the dispute now existing is the dispute between the petitioners, who belong to SC(Mala) Community and respondents 5 to 10 and others, who belong to SC(Madiga) Community.

31. The District Collector further stated that in view of the existing dispute, the Court ought to permit issuance of revised house site pattas to petitioners and demarcate the rasta to the respondents in the area to solve the problem. He denied that respondents have not taken any action to help the petitioners.

32. The Superintendent of Police also filed a counter affidavit supporting the stand taken by the Collector and referred to some instances where the police had intervened in the dispute between petitioners and respondents 5 to 10. He further stated that the police do not get involved in civil matters.

33. The facts on record clearly indicate that the petitioners, who belong to SC(Mala) Community and who have been allotted house sites by the State Government, were being prevented from constructing houses therein by respondents 5 to 10 and other persons belonging to SC(Madiga) Community. The latter have not been assigned the land assigned to the petitioners. Therefore, they cannot obstruct the petitioners, when they proceed to construct in the land assigned to them by the State.

34. Even according to the District Collector, there is a five feet rasta for ingress and egress of SC(Madiga) Community people available after the petitioners construct houses in their plots. In my opinion the said passage is adequate for the use by the SC(Madiga) Community people and they cannot insist that the petitioners should not construct houses in the plots assigned to them, because it would deprive them of a wider passage. In fact, according to the counter of respondents 5 to 10, there is a 20 feet road between the existing houses of respondents 5 to 10 and the proposed construction place. 20 feet road is wide enough for any purpose.

35. So it is apparent that without any valid reason, the respondents 5 to 10 and other persons of SC(Madiga) Community are creating a law and order problem. It is the duty of respondents 1 to 4 to take action against them under the existing provisions of law, such as Sections 107 and 145 of Criminal Procedure Code, 1973 and may be

even preventive detention laws against the known miscreants, who are indulging in activities disturbing the law and order and preventing the petitioners from making constructions in the sites assigned to them. The respondents cannot plead helplessness and abdicate their responsibility to maintain law and order and allow unsocial elements to run amok and disturb the peace and tranquility in the area. The constitutional goal of upliftment of weaker sections in the Society such as the petitioners cannot be achieved if public servants like the respondents do not act to protect them.

36. Accordingly, the Writ Petition is allowed; the respondent Nos.5 to 10 are restrained from interfering in any way with the construction by the petitioners in the house sites assigned to them in survey No.174-7B1 of H.T.Halli Village, Rolla Mandal, Anantapur District; and respondent Nos.1 to 4 are directed to give protection to the petitioners against respondent Nos.5 to 10 or other persons belonging to SC(Madiga) Community, who might interfere with the construction to be done by petitioners. They shall also take steps as suggested in para no.35 (supra), if necessary. No costs.

37. As a sequel, miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 28-04-2017
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