

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.7116 OF 2017

ORDER:

This writ petition is filed, under Article 226 of the Constitution of India, for the following relief:

“to issue an appropriate writ or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the Respondents No.2 to 6 in not releasing the seigniorage fee collected from different levels of mining done in the erstwhile Ranga Reddy District during the period 2006 to August, 2016 to the newly formed three districts i.e., Ranga Reddy District, Vikarabad District and Medchal District, proportionately as per the G.O.Ms.No.255 Panchayat Raj and Rural Development (PTS.II) Department dated 2.8.2011 as arbitrary, illegal, violative of G.O.Ms.No.255 Panchayat Raj and Rural Development (PTS.II) Department dated 2.8.2001 besides also violating Article 14 of the Constitution of India, and consequently direct the respondents No.2 to 6 to release the seigniorage fee collected during the period 2006 to August, 2016 to the newly formed three districts i.e., Ranga Reddy District, Vikarabad District and Medchal District, proportionately as per G.O.Ms.No.255 Panchayat Raj and Rural Development (PTS.II) Department dated: 2.8.2001 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.”

2. Heard learned counsel for the petitioners and also the learned Government Pleaders for Panchayat Raj, Mines

and Geology and Revenue respectively, on behalf of the all the official respondents and perused the prayer in the writ petition with supporting affidavit and also Section 74 of the Panchayat Raj Act, 1994 and the G.O.Ms.No.255, Panchayat Raj and Rural Development (PTS.II) Department, dated 02.08.2001.

3. The learned counsel for the petitioners submits that contrary to the very G.O. issued by the Government, the Government having collected the amount, failed to distribute to the beneficiary local bodies which are entitled that is the sum and substance of the prayer that has to be ordered for nothing to dispute the existence of G.O. and collection of amounts and non-distribution.

4. Whereas, it is the submission of the learned respective Government Pleaders on behalf of the respondents that the writ petitioners in their personal capacity individually maintained the writ, one is a ZPTC Member the then and the other is President of the Panchayat Chamber the then.

5. No doubt, it is not their prayer for their benefit but for in a common purpose to benefit the local bodies from pointing out the abdication of the responsibility of the Government as a trustee pursuant to the G.O.Ms.No.255 supra. The learned Government Pleaders submit that the petitioners have no locus standi. The learned Government Pleaders in support of that placed reliance on the:

1. Decision of this Court in ***Sarpanch, Gundlur Gram Panchayat, Y.S.R.Kadapa District Vs. Princiapl Secretary, Stamps & Registration Department Dept, Hyderabad & Others***, in W.P.No.37323 of 2013, dated 30.06.2014, wherein Section 22A of the Panchayat Raj Act was in challenge by the individual writ petitioner and the 1st respondent therein impugned the locus as it was the Panchayat represented by the Secretary that has to maintain and not by that individual petitioner for the relief sought therein. It is thereby answered in upholding against maintainability of the writ and the same when impugned by the petitioner therein, in W.A.No.1104 of 2014, by order dated 09.09.2014, the appeal was dismissed in upholding the same.
2. The other decision of this Court is ***G.Krishna Murthy Vs. Government of Andhra Pradesh and others***¹, wherein it is in relation to the collection of the parking fees from the contractor of the bus stand area within the limits of the panchayat granted to the writ petitioner that was later cancelled by panchayat secretary for failure to deposit the bid amount within the stipulated time. The competency of the panchayat secretary to issue re-auction notification cancelling the earlier lease that impugned came for consideration, where there is an observation contextually that the panchayat issued the proceedings by the secretary indicating that there is a resolution of the panchayat accepting the petitioner as the highest bidder and the panchayat secretary's duty pursuant to the resolution of the panchayat is only to implement the resolutions. That decision and the observation therein in no way in fact applicable by any stretch of imagination to the present facts much less to serve as a precedent.

¹ 2008 (4) ALD 445

3. Coming to the expression of the Apex Court of ***Rajubhai Somabhai Bharwad and another Vs. Ahmedabad Municipal Corporation***², which is a case under Gujarat Panchayat Act, 1993 on the powers of the Sarpanch where it is observed that Sarpanch individually could not enter into any settlement with workman but for by panchayat by a resolution. That expression also no way applicable to the present facts.

6. In the factual scenario, coming to the locus, the three judge bench judgment of the Apex Court in ***Kalyan Singh Vs. Smt.Chhoti and others***³, observed that any person interested in a communal property or a common property without even representative capacity under Order 1 Rule 8 of C.P.C. maintain for the benefit of the community or the common good as a case may be and the question of locus by the respondents to the matter is held unsustainable.

7. Having regard to the above, when the petitioners prayer is not to pay to them but to pay to the Gram Panchayat, Mandal Parishad and Zilla Parishad respectively, that too only to implement the G.O.Ms.No.255, that is issued by the Government as a trustee to collect and distribute, the writ petitioners got for that purpose locus.

8. Now coming to the merits, even under the Indian Trust Act, 1882, more particularly from Section 88, a trustee cannot being in a fiduciary position have any advantage of the trust property in the hands. Here by virtue of the very

² (2015) 7 SCC 633

³ AIR 1990 SC 397

G.O.Ms.No.255, the Government collecting as a trustee to distribute, thereby it cannot retain, much less, to cause loss to the local bodies without distribution timely. In fact there are covered judgments in this scenario in directing the authorities to distribute by implementing strictly the G.O.Ms.No.255, vide order in W.P.Nos.20344 of 2010, dated 28.03.2011, in Ghanpur Gram Panchayat Vs. Government of Andhra Pradesh and order in W.P.No.18336 of 2010, dated 28.09.2010, in Chundru Mangayamma and others Vs. Government of Andhra Pradesh.

9. Having regard to the above, this writ petition is allowed, directing the respondents to distribute the seigniorage amount collected as per the pro-rata to the Panchayat, Mandal Parishad and Zilla Parishad respectively, within two months from the date of receipt of a copy of this order.

10. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

DR.B.SIVA SANKARA RAO, J

05.07.2017
SS

Note: L.R. copy to be marked - Yes