

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.26705 of 2009 & Suo Motu C.C.No.612 of 2017

COMMON ORDER:

Petitioner has filed the Writ Petition questioning highhanded action of respondent Nos.1 and 2 in conducting survey in gross violation of the mandatory procedure contemplated under the A.P. Survey and Boundaries Act, 1923 (for brevity 'the Act') and in illegally dispossessing the petitioner from the land without any notice and without following any due process of law.

THE BACKGROUND FACTS

2. Petitioner is pattadar of extent of Ac.4.34 gts in Sy. No.139/78 situated at Kagazmajdoor village, Narsapur Mandal, Medak District. Adjacent to this land, there is an extent of Ac.5.02 gts in Sy. No.139/2.

3. A notice was issued to the petitioner informing him that a survey would be conducted by the Tahsildar, Narsapur Mandal, Medak District on 09-05-2007.

THE SURVEY OF 5.6.2007

4. However, on that day survey was not conducted and it was conducted on 05-06-2007 without issuing any notice to the petitioner. In that survey, Mandal Revenue Inspector, Mandal Surveyor and the Tahsildar participated. In the Panchanama prepared on that day, it was recorded that the petitioner was found to be in

possession of Ac.5.02 gts in Sy. No.139/2 in addition to his patta land of Ac.4.34 gts in Sy. No.139/78 and that possession of the said land of Ac.5.02 gts was taken over since he had no patta for it. The Village Revenue Officer also endorsed on the said Panchanama that he has taken over possession of Ac.5.02 gts of land. No procedure contemplated under the A.P. Land Encroachment Act, 1905 was followed by the then 2nd respondent before dispossessing the petitioner from the extent of Ac.5.02 gts in Sy. No.139/2.

W.P.No.13210 of 2007

5. The petitioner then filed W.P.No.13210 of 2007 for a Writ of Mandamus to declare the action of Tahsildar in conducting survey without issuing any notice to him and sought to set aside the said survey on the ground that there was violation of Section 6 (1) of the Act and principles of natural justice.

6. Counter affidavit was filed by the then Tahsildar, Narsapur Mandal in the said Writ Petition admitting that the petitioner was in possession of Ac.5.02 gts in Sy. No.139/2 and stating that he had illegally occupied it and did not allow respondent Nos.3 to 22 who were assignees of the said land to cultivate the land. It is further stated that these respondent Nos.3 to 22 had approached the then Hon'ble Chief Minister and the District Collector, Medak for handing over possession; and thereafter, he had issued a notice on 02-05-2007 for conducting survey on 09-05-2007, but due to other urgent works, the survey could not be conducted. He stated that

notice was then issued for conducting survey on 05-06-2007 by the Mandal Surveyor, but since the petitioner was not resident in the village at that time, it was affixed to the notice board of the Gram Panchayat on 05-06-2007 and then a survey was conducted on 05-06-2007 in the presence of Village Revenue Officer, Mandal Revenue Inspector and other officials. He also stated that the boundaries of the petitioner's land of Ac.4.34 gts in Sy. No.139/78 were identified and the excess area of Ac.5.02 gts in Sy. No.139/1 was taken in favour of Government and handed over to the Village Revenue Officer, Kagazmaddur village for safe custody.

ORDER DT.11.2.2009 IN W.P.13210 OF 2007

7. On 11-02-2009, W.P.No.13210 of 2007 was allowed. The Court recorded that the petitioner was found to be in possession of Ac.5.02 gts of Government land in Sy. No.139/2 in addition to the Ac.4.34 gts owned by him and in the survey conducted on 05-06-2007, possession of the said land was taken over by the respondents without following the requirement of issuing notice under the A.P.Land Encroachment Act,1905. It also held that display of notice in the Gram Panchayat office on the day of conducting survey itself is fatal. After taking into account the fact that respondents had proceeded to recover possession from the petitioner of Ac.5.02 gts, the Court not only set aside the survey conducted on 05-06-2007 *but also all the steps taken in pursuance of it.*

8. It left open to the respondents to conduct survey observing the provisions of the A.P.Survey and Boundaries Act,1923 and observed that if the petitioner is found to be in possession of any Government land, possession thereof to be recovered after initiating proceedings under the A.P.Land Encroachment Act, 1905.

9. Thus even the action of the respondents in dispossessing the petitioner from this Ac.5.02 gts in Sy.No.139/2 was set aside by this Court.

SURVEY OF 13.6.2009

10. Thereafter, the respondent Nos.1 and 2 again got conducted survey on 13-06-2009 and in the Panchanama prepared on that day, they stated therein that possession of the land was handed over to respondent Nos.3 to 22.

C.C.No.1030 of 2009

11. Petitioner filed C.C.No.1030 of 2009 in this Court complaining that the said survey of 13-06-2009 was also conducted behind his back. He alleged that since he had difficulty in attending the survey on that day, he informed the respondents to postpone the survey, but they did not do so.

SURVEY OF 14.9.2009

12. On 11-09-2009 in the Contempt Case No.1030 of 2009, this Court directed a fresh survey to be conducted and accordingly survey was conducted on 14-09-2009.

13. In view of the subsequent survey held on 14-09-2009, the Contempt Case was closed on 16.9.2009 observing that if the petitioner is aggrieved by it, he can institute necessary proceedings in relation thereto. The Court also set aside the survey conducted on 30-06-2009 and consequent steps in relation thereto and directed that the survey of 14-09-2009 would hold good until it is modified in accordance with law.

14. Challenging the said order, petitioner filed Contempt Appeal No.7 of 2009. But the said Contempt Appeal was also dismissed on 05-11-2009 reiterating the observations of the learned Single Judge.

THE PRESENT W.P.

15. Therefore, the petitioner filed the present Writ Petition to set aside Panchanama in File No.B/1913/2007 dt.14-09-2009 of the 2nd respondent on the ground that it is arbitrary and illegal and violation of the provisions of the A.P.Survey and Boundaries Act, 1923 and for a direction to the respondent Nos.1 and 2 to restore possession of the land admeasuring Ac.5.02 gts in Sy No.139/2.

16. It is his specific contention that this panchanama dt.14-09-2009 was conducted wrongly holding that he is in possession of Ac.0.07 gts of land only and determining that Ac.5.02 gts was in possession of respondent Nos.3 to 22. It is contended that this Panchanama is contrary to the ground reality and contrary to the records of the respondents and also earlier reports including the Panchanama dt.05-06-2007 wherein the possession of the petitioner over the extent of Ac.5.02 gts was clearly admitted. Reliance is also placed in the counter affidavit filed by the then Tahsildar in W.P.No.13210 of 2007 admitting petitioner's possession over the land of Ac.5.02 gts. It is contended that in view of the clear admission of petitioner's possession of the disputed land of Ac.5.02 gts, the survey report dt.14-09-2009 stating that respondent Nos.3 to 22 are in possession of the said land, is illegal and cannot be sustained.

17. The matter was heard by this Court on 14-03-2017 and 16-03-2017 initially.

18. On 16-03-2017, the Court noticed the contention in the counter affidavit filed in the Writ Petition on behalf of respondent Nos.1 and 2 that the Panchanama of the survey done on 05-06-2007 was drafted wrongly stating that Ac.5.02 gts of land was taken into the Government possession from the Writ Petitioner ; and that action was initiated against the then Revenue Inspector by addressing a letter to the Principal Secretary, Government of Andhra Pradesh requesting to take action against him as he was working in the Secretariat

through the letter dt.07-09-2009 and through another letter dt.12-09-2009.

19. The Court observed that when the petitioner had no notice of the survey of 05-06-2007, he had no way of influencing the said survey in any manner, and that obviously to get over the finding recorded in the Panchanama of the survey dt.05-06-2007 (admitting possession of the petitioner of Ac.5.02 gts of land in Sy. No.139/2 which was also reiterated in the counter affidavit filed by the Tahsildar, Narsapur on 23-07-2008 in W.P.No.13210 of 2007 as well as the observations made in the order dt.11-02-2009 in W.P.No.13210 of 2007), this tactic has been adopted by the respondents.

20. It held that this *prima facie* amounts to over reaching the Court order dt.11-02-2009 in W.P.No.13210 of 2007.

C.C.No.612 of 2017.

21. It therefore *suo motu* issued show cause notice to A.Narsimha Reddy, S/o.Krishna Reddy, the then Tahsildar, Narsapur Mandal, Medak District, presently working as Revenue Divisional Officer, Kandukur, Ranga Reddy District to show cause why proceedings of Contempt Case shall not be issued against him for filing such a counter affidavit and in distributing the land to respondent Nos.3 to 22 without dispossessing the petitioner from the subject land by following the provisions of the A.P.Land Encroachment Act, 1905.

22. The said Suo Motu case has been numbered as C.C.No.612 of 2017.

23. Counter affidavit has been filed by the respondents in the said Contempt Case reiterating the stand taken in the counter affidavit filed in W.P.No.26705 of 2009.

CONTENTIONS OF COUNSEL FOR PETITIONER

24. Learned counsel for the petitioner pointed out that the Panchanama dt.05-06-2007 was signed by the then Tahsildar, Narsapur Taluk; in the said survey, the Village Revenue Officer, Mandal Surveyor and Revenue Inspector participated; and it was recorded in the Panchanama dt.05-06-2007 that the petitioner is in possession of Ac.5.02 months of land in Sy. No.139/2; these facts are also reiterated in the counter affidavit filed by the then Tahsildar in W.P.No.13210 of 2007; and therefore, it is not open to the respondents to take a stand that the petitioner is in possession of only Ac.0.07 gts of land as found in the Panchanama conducted on 14-09-2009.

CONTENTIONS OF GOVERNMENT PLEADER

25. Learned Government Pleader for Assignment appearing for respondents sought to contend that the survey report of 05-06-2007 has since been set aside by this Court in W.P.No.13210 of 2007 and therefore any findings recorded in the said survey report are also deemed to be set aside.

CONTENTIONS OF COUNSEL FOR RESPONDENT NO.S 3-22

26. Sri M.S.R.Chandra Murthy, learned counsel, appearing for respondent Nos.3 to 22 supported the contention of the learned Government Pleader for Assignment and contended that his clients have been assigned the land in Sy.No.139/2 of extent Ac.5.02 gts in 1980 and they continue to be in possession thereof.

THE CONSIDERATION BY THE COURT

27. The averment in para-8 of the counter affidavit of 2nd respondent that at the time of the survey conducted on 05-06-2007, respondent Nos.3 to 22 were in possession of the land, is clearly a false averment for the following reasons.

28. The Mandal Revenue Officer, Narsapur had filed a counter affidavit in W.P.No.13210 of 2007 admitting that the petitioner was in possession of Ac.5.02 gts of land in Sy. No.139/2 and also stated that respondent Nos.3 to 22 approached the Hon'ble Chief Minister and the District Collector, Medak District for handing over the possession of the land and that was why the survey was initiated in the year 2007.

29. Though the learned counsel for the respondent Nos.3 to 22 has stated that his clients did not approach the Hon'ble Chief Minister and the District Collector, Medak District, for handing over possession to his clients and they only sought for survey, copy of the representations given by respondent Nos.3 to 22 to the then Chief

Minister and the District Collector, Medak District, have not been placed on record. So adverse inference is drawn against the respondent no.s 3-22 for this conduct and it is concluded that they were not in possession of the Ac.5.02 gts in Sy.No.139/2 before 5.6.2007.

30. In the order dt.11-02-2009 in W.P.No.13210 of 2007, this Court had not only set aside the survey conducted on 05-06-2007, *but also steps taken pursuant to it*. Since it is not in dispute that the petitioner was dispossessed under the same Panchanama of the survey conducted on 05-06-2007, the dispossession of the petitioner by the Mandal Revenue Officer and other officials of Revenue Department, is also deemed to be set aside in the final order passed in W.P.No.13210 of 2007. Even in the Panchanama of the survey conducted on 30-06-2009, it is mentioned that possession of Ac.5.02 gts was *handed over to* respondent Nos.3 to 22. Therefore, prior to that date, respondent Nos.3 to 22 were not in possession of the said land.

31. When the dispossession of petitioner from the land of Ac.5.02 gts in Sy.No.139/2 by respondents was set aside in the order dt.11-02-2009 in W.P.No.13210 of 2007, it was the obligation of respondent Nos.1 and 2 to restore possession to petitioner and then initiate action against the petitioner under the provisions of the A.P.Land Encroachment Act, 1905. They admittedly did not do so.

32. But taking advantage of the dispossession of the petitioner on 05-06-2007, and without restoring possession of land to him as per the mandate of this Court in the order dt. 11-02-2009 in W.P.No.13210 of 2007, respondent no.2 allegedly inducted respondent Nos.3 to 22 into possession of the land and created the Panchanama dt.14-09-2009 stating that petitioner was in possession of only Ac.0.07 gts in Sy. No.139/2.

33. As regards the attempt of the respondents to throw doubt on the Panchanama of the survey of 5.6.2007 by alleging that the Government was addressed to initiate disciplinary action against the Revenue Inspector (who drafted the said Panchanama) only, the said attempt also cannot succeed. It is another attempt by the respondent No.2 in the Writ Petition to overreach the Court order dt.11-02-2009 in W.P.No.13210 of 2007 by attempting throw a doubt over the survey conducted on 05-06-2007.

34. It is not in dispute that the survey of 05-06-2007 was conducted by the Mandal Surveyor, the Revenue Inspector and the Mandal Revenue Officer and they found the petitioner to be in possession of Ac.5.02 gts in Sy. No.139/2. Admittedly no action is initiated against the Mandal Surveyor, Mandal Revenue Officer and the Village Revenue Officer who also participated in the said survey.

35. Merely by writing to the Government for initiating disciplinary action against the Revenue Inspector only, who drafted

the Panchanama, and excluding the other officers mentioned above, who also participated in the said survey, the respondents cannot wriggle out of the admissions contained in the Panchanama conducted on 05-06-2007. This action of 2nd respondent in the Writ Petition, who is respondent in the Contempt Case, is clearly *mala fide*.

36. Therefore, I am of the opinion that the survey conducted on 14-09-2009 by 2nd respondent has to be set aside.

37. It is accordingly set aside and the respondents are directed to restore possession of land measuring Ac.5.02 gts in Sy. No.139/2 of Kagazmajdoor village, Narsapur Mandal, Medak District to the petitioner within four weeks from the date of receipt of a copy of this order. Respondents shall also pay costs of Rs.10,000/- (Rupees Ten Thousand only) to the petitioner.

38. In **E.T. Sunup v. C.A.N.S.S. Employees Assn'**, the Supreme Court deprecated the practice of Govt. officials trying to avoid implementing/circumventing Court orders. It observed:

“16. It has become a tendency with the government officers to somehow or the other circumvent the orders of court and try to take recourse to one justification or other. This shows complete lack of grace in accepting the orders of the Court. This tendency of undermining the Court's order cannot be countenanced. This Court time and again has emphasised that in a democracy the role of the court cannot be subservient to administrative fiat. The executive and legislature have to work within the constitutional framework and the judiciary has been given the role of watchdog to keep

¹ (2004) 8 SCC 683

the legislature and executive within check. In the present case, we fail to understand the counter filed by the appellant before the Court. On one hand they say that all the cases of GPF have been processed and on the other hand they are not prepared to revoke the administrative order. This only shows a deliberate attempt on the part of the bureaucracy to circumvent the order of the Court and stick to their stand. This is clear violation of the Court's order and the appellant is guilty of flouting the Court's order."

The instant case is a classic illustration of this attitude of the State Govt. Officials.

22. In **Maninderjit Singh Bitta v. Union of India**², the Supreme Court reiterated :

"20. In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and wilful violation of the orders of the court, even to constitute a civil contempt. Every party to lis before the court, and even otherwise, is expected to obey the orders of the court in its true spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution. The government departments are no exception to it. The departments or instrumentalities of the State must act expeditiously as per orders of the court and if such orders postulate any schedule, then it must be adhered to. Whenever there are obstructions or difficulties in compliance with the orders of the court, least that is expected of the government department or its functionaries is to approach the court for extension of time or clarifications, if called for. But, where the party neither obeys the orders of the court nor approaches the court making appropriate prayers for extension of time or variation of order, the only possible inference in law is that such party disobeys the orders of the court. In other words, it is intentionally not carrying out the orders of the court. Flagrant violation of the court's orders would

² (2012) 1 SCC 273

reflect the attitude of the party concerned to undermine the authority of the courts, its dignity and the administration of justice.

21. In **Vinay Chandra Mishra, In re**³, this Court held that: (SCC p. 617, para 39)

“39. ... judiciary has a special and additional duty to perform viz. to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. ... dignity and authority of the courts have to be respected and protected at all costs.”

39. So the respondent in CC. NO.612 of 2017 cannot escape the consequences of his misdeeds.

40. For trying to mislead the Court and attempting to over reach the order dt.11-02-2009 in W.P.No.13210 of 2007, the respondent in C.C.No.612 of 2017 is sentenced to Simple Imprisonment for a period of four (4) weeks with fine of Rs.2000/- (Rupees Two Thousand only) to be paid to the petitioner within four weeks from today. In default on payment of fine, he shall suffer further Simple Imprisonment for a period of three (3) weeks. The petitioner shall deposit the subsistence allowance @ Rs.300/- per day within 4 weeks from today. The sentence of imprisonment imposed on the respondent in C.C.No.612 of 2017 shall stand suspended for a period of eight (8) weeks.

41. Accordingly, both the Writ Petition and Contempt Case are allowed.

³ (1995) 2 SCC 584

42. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-04-2017

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