

HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.500 OF 2010

ORDER:

Heard Mr.G.Krishna Murthy for petitioners, the Assistant Government Pleaders for Panchayat Raj and Revenue, Mr.Chimalapati Ravi for respondents 3 and 6 and Mr.Gudipati Venkateshwar Rao for respondents 8 to 21.

The petitioners pray for Mandamus declaring the communication/notice ROC. No.12/09-10/P.S of 3rd respondent Gram Panchayat directing removal of encroachments of houses in Survey No.209/1, 2, 3, 4 and 5 of Dharmapuram H/o Akiveedu Village and Mandal, West Godavari District and to handover to 3rd respondent Gram Panchayat, as illegal, arbitrary and unconstitutional.

The case of petitioners is that the petitioners belong to weaker sections and also landless poor persons. The petitioners live on agriculture or working as agriculture labour. The petitioners are in possession of small extents of land in Survey No.209/1, 2, 3, 4, and 5 of Dharmapuram H/o Akiveedu Village and Mandal which is hereinafter referred as 'subject tank'.

The petitioners aver that the houses in possession of petitioners are assigned, Door Numbers provided electricity connection and petitioners claim to be in possession of huts/houses in subject tank for over 100 years. The 3rd respondent issued notices dated 07.08.2009 to petitioners. The petitioners filed writ petition No.24667 of 2009 and on 13.11.2009, the writ petition was disposed

of with a few directions. Thereafter, the 3rd respondent issued notices, received objections, taken decision and communicated through notice impugned in the writ petition.

The gist of conclusions recorded by 3rd respondent in the impugned notice is that the petitioners are in occupation of tank bund and the houses have been constructed in the immediate past, but not 100 years as asserted by petitioners. The domestic residues/water from bath rooms etc. is flowing into the subject tank and thereby causing pollution to the water body. The further finding recorded by the 3rd respondent is that the petitioners with a view to expand the area of enjoyment have been filling up the water body with debris and finally resorting to unauthorised constructions thereon. According to 3rd respondent, the subject tank is a drinking water source to 300 families in the village and the 3rd respondent wishes to dig the tank further and establish summer storage tanks, filter beds for water storage and utility in summer season. The presence of petitioners at subject tank and their activities are hindering the proposed developments in addition to causing pollution to the water body. According to 3rd respondent, at best, the possession of the petitioners can be treated as 10 year old, but not 100 years. The 3rd respondent rejected all the objections and finally directed the petitioners to remove constructions on tank bund and directed delivery of vacant possession to 3rd respondent Gram Panchayat for better utilization of tank bed/bund.

The respondents filed counter affidavits and also the copies of joint inspection report of subject tank etc. With the assistance of

learned counsel representing respondents, I have perused the material available on record particularly, Annexure P.9 and also explanatory sketch of R.S. No.209 of Dharmapuram H/o Akiveedu Village. By appreciating the location of houses shown in Annexure P.9 and supported by explanatory sketch filed by respondents 2, 4 and 5, this Court has no hesitation to conclude that the petitioners are in possession and enjoyment of Survey No.209/ 1, 2, 3, 4 and 5 of Dharmapuram H/o Akiveedu Village which is classified as tank. The respondents with a view to preserving the water body and utilise the available land for providing additional facility as summer storage tanks, water beds etc. are directing petitioners to remove houses and enable Gram Panchayat to undertake work which is useful for entire Gram Panchayat.

Learned counsel for petitioners though made strenuous efforts to persuade this Court on the illegality in the enquiry conducted by 3rd respondent while issuing notice impugned in the writ petition, alternatively submitted that as the petitioners do not have grant/assignment from Government in their favour, the Court considers protecting the interest of petitioners by issuing suitable directions to respondents for allotting houses/plots to them, for all of them belong to weaker sections.

The Assistant Government Pleader for Revenue draws the attention of the Court to Paragraphs 7 to 10 of the counter affidavit and contends that the respondent No.3 is prepared to give house sites to petitioners. The petitioners cannot compel the respondents to accommodate house sites according to their choice. He further submits that in spite of passage of time, there is no change in the

stand of respondents 2, 4 and 5 and they are prepared to accommodate house sites to petitioners subject to firstly the petitioners agreeing to vacating huts/houses in their possession and secondly vacate the huts/houses after allotment orders are issued.

The 3rd respondent filed counter affidavit and the relevant portion on the question of providing house sites to petitioners reads thus:

“It is further respectfully submitted that to provide house sites to the houseless poor, a layout of formed with 500 plots at Tallakodu area of Akiveedu under Indiramma Phase III. 300 plots were given house site patta to the house less poor and still 200 plots were available to provide house sites to the house less poor. Therefore, to avoid pollution to the drinking water tank, a letter was addressed by the Grampanchayat to the Tahsildar, Akiveedu, recommending the names of the encroachers over the drinking water tank including the petitioners names to allot the remaining plots in their favour and the same is under consideration. Hence, the petitioners will be provided alternative house sites for their residential purpose.”

The statements of respondents 2, 3, 4 and 5 are accepted. To meet the ends of justice, while encouraging respondents to preserve water bodies, this Court considers it appropriate to direct respondents to provide house sites to petitioners, who are from weaker sections.

The petitioners, yet to receive allotment of house sites, are given liberty to represent 4th respondent requesting the 4th respondent to provide house sites to them and further state in the representation that they agreeing to vacate the possession of tank bund area after allotment and possession thereof is handed over to

them. The 4th respondent calls for a report from 3rd and 5th respondents and issues necessary directions not only for granting pattas, but also delivery of vacant possession of huts/houses in subject tank. As stated in the counter affidavit, the respondents accommodate petitioners by providing houses under one or the other ongoing welfare schemes. After the orders are passed, the petitioners are under obligation to vacate the encroachment of tank bund/tank area and deliver to 3rd respondent. The 3rd respondent is directed firstly to prevent further encroachments of tank bed/bund in Survey No.209/1, 2, 3, 4 and 5, and as stated in the counter affidavit, take all steps that are required to complete the development activities for preserving the water body. The exercise referred to above shall be undertaken and carried out within three months from the date of receipt of a copy of this order. This Court while disposing of the writ petition having regard to alternative submission made by the learned counsel for the petitioners, has not adverted to other submissions made on merits either in fact or law much less expressing view.

The writ petition is disposed of. No order as to costs.

Miscellaneous petitions pending if any shall stand closed.

S. V. BHATT, J

Date:18.01.2017

Note:

C.C. in one week.

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