

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

W.V.M.P.No.14 of 2015 in/and W.P.No.22969 of 2013

And

W.V.M.P.No.284 of 2015 in/and W.P. No.37286 of 2014

COMMON ORDER:

Since both the Writ Petitions relate to land in Sy.No.23/1 of Kurmanapalem village, Gajuwaka Mandal, Visakhapatnam District, they are being disposed of by this common order.

2. Petitioners in W.P.No.22969 of 2013 claim title to an extent of Ac.1.90 cents of land in the said survey number, while the petitioners in W.P.No.37286 of 2014 claim title to an extent of Ac.0.46 cents in the same survey number, which is disputed by the learned Government Pleader for Revenue appearing for respondent Nos.1 to 4 in W.P.No.37286 of 2014 and respondent Nos.1 to 3 in W.P.No.22969 of 2013.

3. Petitioners in W.P.No.22969 of 2013 have questioned the endorsement dt.02-07-2013 of the Tahsildar, Gajuwaka Mandal refusing to mutate their names in the revenue records on the ground that they have not produced the settlement patta issued to their predecessor in respect of the subject land.

4. Sri C.V. Mohan Reddy, learned Senior Counsel for petitioners in W.P.No.22969 of 2013 contends that the 1st petitioner in W.P.No.22969 of 2013 had filed O.S.No.243 of 2012 before the

Junior Civil Judge, Gajuwaka for permanent injunction restraining the Tahsildar, Gajuwaka, Revenue Divisional Officer of Collectorate, Visakhapatnam and District Collector, Visakhapatnam from interfering with her peaceful possession and enjoyment for an extent of Ac.0.27 cents in Sy.No.23/1 and to direct the defendants therein to incorporate her name in 10(1) and 10(3) adangal and other related records; that the said suit was decreed on 02-01-2013; that the Tahsildar, Gajuwaka, Revenue Divisional Officer, Visakhapatnam and the District Collector, Visakhapatnam questioned the same in A.S.No.4 of 2014 before the Principal Senior Civil Judge, Gajuwaka, who partly allowed the said appeal by holding that the direction given by the trial Court to the Revenue authorities to incorporate plaintiff's name therein is invalid and set aside the said direction; that this was done on the ground that the land ceased to be cultivable land and that it formed part of the Gajuwaka Municipality limits which was converted as Greater Visakhapatnam Municipal Corporation i.e. it ceased to be agricultural land; and in the light of this finding in A.S.No.4 of 2014 that the land in Sy.No.23/1 is no longer agricultural land, the Tahsildar, Gajuwaka Mandal has no jurisdiction to issue the impugned endorsement dt.02-07-2013.

5. Learned Government Pleader for Revenue states that the said endorsement had been given by the Tahsildar, Gajuwaka in implementing a direction given by this Court on 31-10-2012 in W.P.No.28043 of 2012 filed by 1st petitioner in W.P.No.22969 of

2013 directing the Tahsildar, Gajuwaka to finalise the action on the application submitted by the 1st petitioner for mutation of entries in respect of the land in Sy.No.23/1; and therefore, it cannot be said that Tahsildar, Gajuwaka had no jurisdiction to give the endorsement dt.02-07-2013.

6. Sri P.Venugopal, learned Senior Counsel for Sri T.C.D. Sekhar, learned counsel appearing for respondent Nos.5 to 7 in W.P.No.22969 of 2013, who are petitioners in W.P.No.37286 of 2014 contends that the claim of the Writ petitioners in W.P.No.22969 of 2013 to the subject land to the extent of Ac.0.46 cents in Sy.No.23/1 is not correct and it is respondent Nos.5 to 7 in W.P.No.22969 of 2013, who have right, title and interest in the property.

7. On 02-08-2013 in W.P.M.P.No.28181 of 2013 in W.P.No.22969 of 2013, this Court directed respondents not to interfere with the petitioners' possession of Ac.1.60 cents in Sy.No.23/1.

8. W.V.M.P.No.14 of 2015 has been filed by respondent Nos.5 to 7 to vacate the said order.

9. It is also pertinent to note that on 29-12-2014, in W.P.No.37286 of 2014 filed by respondent Nos.5 to 7 in W.P.No.22969 of 2013, this Court granted *status quo* orders, and W.V.M.P.No.284 of 2015 has been filed by M/s.Jai Sai Bhavani Constructions, the 8th respondent therein and 2nd petitioner in W.P.No.22969 of 2013, to vacate the said

order. The 8th respondent in W.P.No.37286 of 2014 is claiming title through the 1st petitioner in W.P.No.22969 of 2013.

10. I have noted the submissions of all the counsel.

11. First, I will consider the question whether the endorsement dt.02-07-2013 issued by Tahsildar, Gajuwaka Mandal refusing to mutate the name of 1st petitioner in W.P.No.22969 of 2013 is correct/ or not.

12. No doubt, the said endorsement has been given by the Tahsildar, Gajuwaka Mandal pursuant to order dt.30-10-2012 in W.P.No.28043 of 2012. The said Writ Petition has been filed by 1st petitioner in W.P.No.22969 of 2013 for a direction to the Tahsildar, Gajuwaka Mandal to effect mutation of entries in respect of extent of Ac.1.87 cents in Sy.No.23/1 and this Court disposed it of directing the Tahsildar, Gajuwaka Mandal to finalise the action on the application submitted by petitioner for mutation within six (06) weeks.

13. However, when the suit O.S.No.243 of 2012 filed by 1st petitioner in W.P.No.22969 of 2013 against the Tahsildar, Gajuwaka Mandal, Revenue Divisional Officer, Visakhapatnam and District Collector, Visakhapatnam was decreed on 02-01-2013 and the said Court had granted not only permanent injunction restraining the defendants from interfering with the possession of the suit schedule property of Ac.0.27 cents in Sy.No.23/1, but also directed them to incorporate the name of the 1st petitioner in W.P.No.22969 of 2013 in

10(1) and 10(3) adangal and other related records, the Tahsildar, Gajuwaka Mandal himself along with Revenue Divisional Officer, Visakhapatnam and District Collector, Visakhapatnam preferred A.S.No.4 of 2014 before the Principal Senior Civil Judge, Gajuwaka and the trial Court's judgment to the extent the trial Court directed mutation of 1st petitioner's name in W.P.No.22969 of 2013 in 10(1) and 10(3) adangal and other relates records was set aside, and it was clearly held therein that the land in Sy.No.23/1 was no longer cultivable land and it fell earlier within Gajuwaka Municipal limits and presently under the Greater Visakhapatnam Municipal Corporation limits.

14. The jurisdiction to effect mutation under the A.P. Rights in Land and Pattadar Pass Books Act, 1971 vests in the Tahsildar, provided the land is agricultural land and not when ceases to be such agricultural land.

15. Having taken a plea in the civil litigation filed by 1st petitioner in W.P.No.22969 of 2013 that the land is not agricultural land and having succeeded there, it is surprising how the Tahsildar had issued the impugned endorsement saying that he cannot effect mutation of the name of 1st petitioner in W.P.No.22969 of 2013 on the ground that she did not produce settlement patta of her predecessor.

16. The Tahsildar, Gajuwaka cannot blow hot and cold, exercise jurisdiction under the Act and say that he cannot affect mutation in the

impugned endorsement dt.02-07-2013, and take contrary plea in A.S.No.4 of 2014 that it is no longer agricultural land.

17. Having regard to the finding in the judgment dt.31-12-2014 in A.S.No.4 of 2014 of the Principal Senior Civil Judge, Gajuwaka that the land is no longer cultivable and has become urbanized, the endorsement dt.02-07-2013 of the Tahsildar, Gajuwaka is declared as one without jurisdiction.

18. This does not mean that this Court is expressing any opinion on the title of either petitioners in W.P.No.22969 of 2013 or of the State of Andhra Pradesh or petitioners in W.P.No.37286 of 2014. It is open to all the parties to take appropriate remedies in appropriate forum to establish their right, title and interest in the subject property.

19. Therefore, W.P.No.22969 of 2013 is allowed and the endorsement dt.02-07-2013 of the Tahsildar, Gajuwaka is set aside subject to the above observations. No costs.

20. Having regard to the above final order in W.P.No.22969 of 2013, no orders are necessary in W.V.M.P.No.14 of 2015 and the order dt.02-08-2013 in W.P.M.P.No.28181 of 2013 in W.P.No.22969 of 2013 is vacated.

21. Coming to W.P.No.39286 of 2016, since the order dt.02-08-2013 in W.P.M.P.No.28181 of 2013 in W.P.No.22969 of 2013 is vacated, the order dt.29-12-2014 in W.P.No.37286 of 2016 is also vacated, and W.V.M.P.No.284 of 2015 closed. W.P.No.37286 of 2014 is disposed

of directing the petitioners therein to agitate their right, title and interest in the subject property in appropriate forum. No costs.

22. As a sequel, miscellaneous pyetitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 14-12-2017

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