

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
WVMP.No.2525 of 2016 in WPMP.No.951 / 2016 in WP.No.773 of 2016
and
WP.No.773 of 2016 &
C.C.No.381 of 2016 in WPMP.No.951 of 2016 in WP.No.773 of 2016

COMMON ORDER :

Heard the counsel for Writ Petitioner, the learned Government Pleader for Irrigation, for respondent nos.1, 4 and 5; and Sri V. Narasimha Goud, learned Standing Counsel for Hyderabad Metropolitan Development Authority, for respondent nos.2 and 3.

WP.No.773 of 2016 :

2. The petitioner is the owner of the subject land and it had executed an agreement of sale – cum – General Power of Attorney in favour of one V.K. Bhatt who is the deponent of the affidavit filed in support of the Writ Petition in respect of an extent of land Acs.3.27 guntas in Survey No.189 Part of Kondapur Village, Serilingampally Mandal, Ranga Reddy District.

3. The petitioner contends that the Executive Engineer of the Irrigation and Command Area Development, I.B. Division, Hyderabad, at the instance of the deponent had got conducted a survey through the Mandal Surveyor, Office of the Mandal Revenue Officer of the Serilingampally along with the Assistant Engineer of the Irrigation Department, and fixed the Full Tank Level (F.T.L.) pillars of the minor irrigation source of Kudikunta Sikham which is in

Survey No.189; that on 21.12.2006, the said Official had addressed a letter No.HD/2006/2007/1551 to the deponent stating that the land purchased by the deponent would not come within the F.T.L. Zone of the said minor irrigation source; and in spite of the same, the respondents are erecting fencing around the petitioner's land depriving the petitioner from the use of the said land. He contends that this action of the respondents is arbitrary, illegal and violative of Articles 14 and 300-A of the Constitution of India; and that the respondents cannot deprive the petitioner of his land without following due process of law. It is specifically alleged that on the night of 04.01.2016, labour were engaged by the respondents, that they dug holes in the earth for putting pillars, that they were going to put iron rods in the said holes and then erect a fencing; and they had not heeded to the objections of the petitioner including the letter dt.21.12.2006, referred to above.

4. This Court, on 06.01.2016, admitted the Writ Petition and granted interim direction restraining the respondents from interfering or putting any pillars and fencing in the petitioner's land, referred to above, pending disposal of the Writ Petition, in WPMP.No.951 of 2016 in WP.No.773 of 2016.

WVMP.No.2525 of 2016 :

5. WVMP.No.2525 of 2016 is filed by respondent nos.1, 4 and 5 to vacate the order dt.06.01.2016 in WPMP.No.951 of 2016 in WP.No.773 of 2016.

6. In the counter-affidavit / Vacate Stay Petition filed by them, it is stated that there is a tank by name Kudikunta of extent Acs.08.04 guntas in Survey Nos.187/P, 188/P and 189/P; that the irrigation department did not receive any request from the petitioner for fixing boundaries of his land vis-à-vis the said tank. It is stated that the tank comes under the jurisdiction of the Executive Engineer, North Tanks Division, Hyderabad from the year 2000, and is under the control of Hyderabad Lakes and Water Bodies Management Circle (H.L. & W.B.M.) constituted by the Government vide G.O.Ms.No.125 Irrigation & C.A.D. Department dt.31.08.2000; and that the petitioner did not approach the said office for inspection and demarcation of the F.T.L. boundary of the said tank. It is stated that for the first time detailed F.T.L. survey was done on 07.03.2014 and that no F.T.L. pillars were erected on the tank prior to protection works on 25.12.2015. It is stated that detailed F.T.L. boundary map was prepared and was displayed on the H.M.D.A. website vide notification dt.07.06.2014 and objections and suggestions were invited; and that no such objections and suggestions were received till the protection works were taken up on 25.12.2015. It is stated that the fencing work was carried out along with the F.T.L. boundary of the tank and not in the entire land of the petitioner and there was no necessity to issue notice to the petitioner. It is denied that there is any survey determining the F.T.L. boundary in the year 2006. It is stated that one day prior to this Court passing of the order on 05.11.2016, the fencing work towards North side of the tank was completed and a

measurement book is filed. It is therefore prayed that the order be vacated.

7. The learned Government Pleader for Irrigation, appearing on behalf of vacate stay petitioners, reiterated the said contentions.

8. I have noted the submissions of both sides.

9. It is pertinent to note that though the vacate stay petitioners deny that there is a survey in 2006 as is pleaded by the petitioner, the fact that the person who addressed the letter dt.21.12.2006 by name D. Narasimha Reddy, Executive Engineer, is employed in the Irrigation and Command Area Development Department of the State, is not denied.

10. No affidavit of the said person is filed to say that he did not cause a survey to be done in the year 2006 to demarcate the F.T.L. of the Kudikunta tank and addressed the letter dt.21.12.2006 to the petitioner.

11. Therefore, the story now set out in the Vacate Stay Petition that there was no such survey in 2006 as is alleged by the petitioner, conducted by the irrigation department officials as well as the Mandal Surveyor attached to the Office of the Mandal Revenue Officer, Serilingampally cannot be accepted and it is rejected.

12. Coming to the plea of the survey allegedly conducted in the year 2014, is concerned, before conducting such a survey it is not the

case of the vacate stay petitioners that the petitioner was given any notice.

13. Any such survey conducted behind the back of the petitioner to determine the F.T.L. cannot bind the petitioner.

14. The learned Government Pleader for Irrigation would say that they had no necessity to verify about the ownership of the land where the pillars are erected because it is Shikam land.

15. I do not agree with the said contention, because, it is the duty of the State to verify whether there are any land transactions in the neighbouring land which would be affected by the said survey, and it is the duty of the State to put such persons on notice before it conducts any survey affecting their rights.

16. Also, how any person is expected to check the website of HMDA for surveys affecting his land and question the same by filing objections, when he was not put to notice of said survey before it is done, is not explained by respondents.

17. Sri V. Narasimha Goud, learned Standing Counsel for Hyderabad Metropolitan Development Authority, for respondent nos.2 and 3, stated that the H.M.D.A. officials have not done anything in relation to the subject tank, and therefore, no counter-affidavit is filed on their behalf.

18. Reference to the Measurement Book No.134/09, filed by respondents, shows that for development and beautification of the Kudikunta Tank by providing a Chain Link Mesh Fencing, Mark Out was done on 21.11.2015, work was commenced on 25.12.2015, and was to be completed by 20.03.2016. The said Measurement Book, however, does not indicate when exactly the Chain Link Mesh Fencing was done around the petitioner's land though one entry indicates that on 05.01.2016, there was supply and fixing of G.I. Chain Link Mesh Fencing including tying the Chain Link Fencing to M.S. Vertical Ports. Therefore, I do not intend to express any opinion on its entries.

19. Since, there is no evidence to disprove the letter dt.21.12.2006, addressed by the Vacate Stay Petitioners, and since the said document clearly indicates that there was a survey done in 2006 in the presence of Mandal Surveyor, Mandal Revenue Officer of Serilingampally and Assistant Engineer, Irrigation Department, and since the said document indicated that the land claimed by petitioners is not coming under the F.T.L. Zone, and since the subsequent survey allegedly done by the vacate stay petitioners is behind the back of petitioners and therefore it does not bind the petitioner, the Writ Petition is allowed. The respondents are directed to remove forthwith the fencing erected by them around the land of petitioner admeasuring Acs.3.27 guntas in Survey No.189 Part of Kondapur Village, Serilingampally Mandal, Ranga Reddy District.

20. However, this will not preclude the respondents from conducting a survey after prior notice to petitioners to determine the F.T.L. of the said tank, and then take appropriate action in accordance with law.

21. This exercise shall be completed within a period of four (04) weeks from the date of receipt of a copy of the order.

22. Accordingly, the Writ Petition is allowed. Consequently, WVMP.No.2525 of 2016 in WPMP.No.951 of 2016 in WP.No.773 of 2016 is dismissed. No order as to costs.

23. In view of the orders passed in the Writ Petition, I do not intend to proceed with the Contempt Case. Accordingly, the Contempt Case No.381 of 2016 is closed.

24. As a sequel, miscellaneous petitions pending if any in this Contempt Case and Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 03-11-2017

Ndr/*