

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Mr. JUSTICE ABHINAND KUMAR SHAVILI

Writ Appeal No. 1585 of 2017

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P. No. 28816 of 2017 dated 28.08.2017. The appellant herein filed the said writ petition to declare the action of the Gram Panchayat in not conducting a survey of the tanks and water-bodies vested with them for the purpose of fixation of boundaries by removing the encroachments, despite the directions issued by the 3rd respondent in his proceedings dated 24.05.2017, as arbitrary and illegal. A consequential direction was sought to the 5th respondent to undertake a survey of the minor irrigation tanks and water-bodies vested with the Gram Panchayat for the purpose of fixation of boundaries by removing the encroachments.

By his order dated 28.08.2017, the learned Single Judge dismissed the writ petition holding that the petitioner could not invoke the jurisdiction of this Court, under Article 226 of the Constitution of India, directly seeking implementation of the order of the 3rd respondent; and any grievance they may have in this regard can only be made to the 3rd respondent seeking implementation of the order. Aggrieved thereby, the petitioner has invoked our jurisdiction under Clause 15 of the Letters Patent.

Sri M. Srinivas Reddy, learned counsel for the petitioner, would submit that, since the subject tanks are all minor irrigation tanks which vest in the Gram Panchayat, it is the duty of the Gram

Panchayat to ensure that there are no encroachments into the said tanks; this can only be achieved, if the boundaries of the tanks are earmarked after a survey; and since the Gram Panchayat had failed to discharge its statutory obligations, the petitioner is entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution.

Learned Government Pleader for Panchayat Raj would state that it is in compliance with Section 56 of the A. P. Panchayat Raj Act, 1994, that the 3rd respondent had addressed a letter to the Gram Panchayat; and the Gram Panchayat should earmark the boundaries of the minor irrigation tanks to prevent any encroachments thereinto. Sri G. Seshadri, learned standing counsel for the Gram Panchayat, would fairly state that the Gram Panchayat would undertake and complete the exercise of causing a survey of the subject tanks, and demarcate their boundaries.

Section 56 of the A. P. Panchayat Raj Act, 1994 relates to maintenance of irrigation works, execution of kudimaramat etc. Section 56 (1) (b) stipulates that, subject to such restriction and control as may be prescribed, the fishery rights in minor irrigation tanks and the right to auction weeds and reeds in such tanks and the rights to plant trees on the bunds of such tanks, enjoy the usufruct thereof, shall vest in the Gram Panchayat. Since fishery rights, the right to plant trees and enjoy the usufruct is vested in the Gram Panchayat in relation to minor irrigation tanks, it is only if the boundaries of the minor irrigation tanks are demarcated, can the Gram Panchayat enjoy such rights unhindered.

As all the learned counsel agree that a survey should be caused, and the boundaries of the minor irrigation tanks which

vest in the gram panchayat be demarcated, we direct the 5th respondent, under the guidance of respondents 2 and 3, to demarcate the boundaries of the minor irrigation tanks within its jurisdiction. The entire exercise shall be completed within six (6) months from the date of receipt of a copy of this order. Suffice it to make it clear that the issue of encroachments, if any, into the subject tanks can be agitated by the petitioner after the boundaries of the minor irrigation tanks are demarcated.

The Writ Appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(ABHINAND KUMAR SHAVILI, J)

30th October, 2017
cbs



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