

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

WRIT APPEAL No. 1972 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.V.M.P. No. 4687 of 2017 in W.P.M.P. No.16101 of 2017 in W.P.No.12960 of 2017 dated 23.11.2017. The appellant herein filed W.P. No. 12960 of 2017 seeking a Writ of Certiorari to call for the records of the 2nd respondent (District Collector) dated 31.3.2017 and to quash the same.

The District Collector, in the order impugned in the Writ Petition, observed that auctions were being conducted ever since 1974 for the subject tank; it was evident from the fair adangal register that the subject tank was classified as 'poramboku cheruvu'; for the past 40 years, the said tank was in possession of the Gram Panchayat; the petitioner had never objected thereto; after more than 40 years, he had raised this sort of an objection with false evidence; more over his son had also participated in the auction conducted by the Gram Panchayat in the year 1980-81 and 1981-82, and had knocked down the same being the highest bidder; the petitioner had no right upon the subject tank; and his representation was, therefore, rejected.

If the appellant-writ petitioner's son had participated in the auction conducted by the Gram Panchayat in the year 1980-81 and 1981-82, it does not stand to reason that the appellant-writ petitioner should, after a lapse of more than 37 years, now be heard to contend that the subject tank is a private tank, and belongs to him.

When we asked Sri E.V.V.S. Ravi Kumar, learned counsel for the appellant, whether the assertion in paragraph-6 of the writ affidavit that the appellant-writ petitioner's son never participated in the auction in the year 1980 was true and, if so, we would direct the respondents to

produce the records, learned counsel would submit that the averment is only that the petitioner does not have knowledge of his son having participated in the auction. In the counter-affidavit filed in the Writ Petition by the Gram Panchayat, it is stated that an auction took place on 28.12.1980 and 8.2.1981 wherein the appellant-petitioner's son participated (i.e., Sri Venkateswara Rao, whose name is reflected in the register). We see no reason to disbelieve the averments in the counter-affidavit that the petitioner's son participated in the auction held in the year 1980-81. As all public tanks vest in the Gram Panchayat, it is only if the subject tanks were public tanks could they have been put to auction. The petitioner's conduct, 36 years after his son participated in the auction in 1981, in now contending that the subject tank is a private tank does not inspire confidence.

Since this appeal is preferred only against an interlocutory order, suffice it, while dismissing the Writ Appeal, to make it clear that the observation made by us in this order is only on the basis of the material placed before us, and shall not disable the appellant-writ petitioner from filing a reply affidavit before the learned Single Judge, and produce evidence to establish his contention that his son did not participate in the auction held in the years 1980-81.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, ACJ

GUDISEVA SHYAM PRASAD, J

22nd December, 2017.

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