

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.20902 OF 2006

ORDER:

This writ petition is filed, seeking to quash the proceedings No.Rc.B.154/2006, dated 12-09-2006, of the Mandal Revenue Officer, Bantumilli Mandal, Krishna District as arbitrary and illegal.

2. The grievance of the petitioners, who are in twelve (12) number, in this writ petition is that they are agriculturists and by the time they acquired the lands, they are covered by fish tanks; and that their lands are situated at a distance of more than 30 kilometers away from the sea and, therefore, is not governed by any Regulations and in all the 25 years of the existence of their tanks, there was no accidental seepage or effectuation of the neighbouring lands. Further, the contention of the petitioners is that basing on the complaints of the disgruntled elements and at the behest of some persons of Communist Party of India, the Assistant Executive Engineer, Irrigation Department, Bantumilli caused an enquiry and submitted a report to the 2nd respondent-Mandal Revenue Officer, Bantumilli to the effect that lands of the petitioners, covered by the fish tanks, are not in encroachment and they are in no way causing any hardship to any neighbouring lands. While the things stood thus, on 12-09-2006 the 2nd respondent issued the proceedings, impugned herein, bearing Rc.B.154/2006, directing the petitioners to remove their fish tanks within a period of seven (7) days from the date of receipt

of a copy of the order for removal of nuisance under Section 133(b) of the Code of Criminal Procedure, 1973.

3. Heard the learned counsel for the petitioner as well as learned Government Pleader for Revenue.

4. The learned counsel for the petitioner reiterated the contentions urged in the writ affidavit. On the other hand, the learned Government Pleader for Revenue argued that in view of invocation of Section. 133(b) Cr.P.C, the 2nd respondent was compelled to pass the impugned order.

5. It is apparent from the face of the impugned order that it was passed unilaterally without giving any show cause notice, and giving opportunity of personal hearing to the petitioners. Further, the report of the Assistant Executive Engineer, Irrigation Department, Bantumilli, who caused an enquiry basing on the complaints being made by neighbours of petitioners, shows that lands of the petitioners covered by the tanks are not in encroachment and they are in no way causing any hardship to any neighbouring lands. Therefore, it is crystal clear that the impugned order is passed without application of mind and more so in gross violation of Doctrine of *audi alteram partem*. Therefore, for the above said reasons, the writ petition is liable to be allowed by setting aside the impugned order.

Accordingly, the writ petition is allowed by setting aside the impugned order of the Mandal Revenue Officer, Bantumilli Mandal, Krishna District- 2nd respondent in proceedings No.Rc.B.154/2006, dated 12-09-2006. No costs. As a sequel, the miscellaneous petitions, pending if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 06-07-2018.
TSNR

