

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.19267 of 2016

and

CONTEMPT CASE No.1383 of 2016

COMMON ORDER:

Petitioner claims that he is the resident of Likhitapudi Village of Narsapur Mandal, West Godavari District. He asserts that there is an old temple, by name, Goddess Mutyalamma Ammavari Temple, situated in R.S.No.97/3 of Likhitapudi Village and it is under his trusteeship. He further asserts that they have renovated the temple recently and the Villagers are offering prayers regularly and adjacent to the said temple, there is a vacant Grama Kantam poramboke land and it was being used by the temple and the devotees and there are coconut trees existing thereon. He further asserts that while the things stood thus, respondents 5 and 6 encroached into the land admeasuring 140 sq.yards and highhandedly removed the said coconut trees, and started construction of a building thereon. He further asserts that on noticing the same, he lodged a complaint before the authorities of the third respondent Gram Panchayat against respondent Nos.5 and 6 alleging that they were making construction on the Grama Kantam land. Thereupon, the Gram Panchayat issued a notice, dated 28.04.2016 to respondent Nos.5

and 6 as to why action should not be taken against them for their proceeding with the construction on the subject land without obtaining permission from the Gram Panchayat and to produce documents evidencing their right in the subject land. In spite of the same, respondent Nos.5 and 6 were proceeding with the construction. He further asserts that on 06.06.2016, he again alerted the authorities of the Gram Panchayat. Thereupon, the third respondent issued a notice, dated 10.06.2016 to respondent Nos.5 and 6 directing them to vacate the site within seven days, failing which, necessary action would be taken against them in accordance with law. He also asserts that having found that respondent Nos.5 and 6 are in occupation of the Grama Kantam land, the third respondent except issuing notices to them as aforesaid, did not take any action. In these circumstances, he filed this Writ Petition seeking a mandamus declaring the action of respondent Nos.2 to 4 in not restraining respondent Nos.5 and 6 from proceeding with the illegal and unauthorized construction over the land to an extent of 140 sq.yards in R.S.No.97/3 of Likhitapudi Village, Narsapur Mandal, West Godavari District, without obtaining any permission from the Gram Panchayat as illegal, arbitrary and contrary to law and to consequently direct respondent Nos.2 to 4 to remove the said unauthorized

construction of respondent Nos.5 and 6 and restore the site to the Gram Panchayat.

On 21.06.2016, this Court on finding that the petitioner made out a *prima facie* case, ordered notice to the respondents and directed respondent Nos.2 to 4 to restrain respondent Nos.5 and 6 from proceeding with the alleged illegal and unauthorized construction on the subject land.

After receipt of the notice, respondent Nos.5 and 6 filed a vacate stay petition along with the counter-affidavit, in which, they asserted that they belong to S.C. Community and are agricultural labourers; that they are residing in a thatched house on the land admeasuring 242 sq.yards from time immemorial and at least to their knowledge, from the time of their grand father; that as a matter of fact, the Gram Panchayat assigned Door No.2-106; that the said thatched house was constructed by the fifth respondent's father, by name, Sri Kommula Surya Prakash @ Suraiah; that the fifth respondent sold the said bit to the sixth respondent through a registered sale deed, dated 30.03.2016; that they were also issued with a ration card in 1991 with house bearing No.3-28 which was later changed to 3-44 and presently, 2-106 and that they obtained electric meter with

Service Connection No.1533593108000503 from Eastern Power Distribution Company. They further asserted that though the land is a Grama Kantam or village poramboke, on account of the fact that they were living in the said land over decades, they have perfected their right by law of adverse possession and prescription. They also asserted that as a matter of fact, as many as 77 persons belonging to the downtrodden community are living in the said Grama Kantam land and they built houses longtime ago and none of them obtained any permission from the Gram Panchayat. It is only on account of jealousy and animosity, the petitioner filed the present Writ Petition with all false averments and in fact, the temple came into existence only in 2012. There are no bona fides on the part of the petitioner in filing this Writ Petition, which is accordingly, liable to be dismissed.

A counter-affidavit is filed on behalf of the third respondent by the Panchayat Secretary, who admitted that respondent Nos.5 and 6 and other similarly situated persons are living in the land belonging to the Gram Panchayat from time immemorial or for a long time and they have not obtained any permission for construction of thatched shed. He asserted that as

on the date of the Gram Panchayat passing resolution on 30.04.2016 to take action against respondent Nos.5 and 6, basement was raised and asbestos sheets were laid on the pillars and that though notices were issued to respondent Nos.5 and 6, they refused to receive the same. He further asserted that the construction that is sought to be made by respondent Nos.5 and 6, who have been residing in the said place for many years, only to protect themselves from the vagaries of nature, respondent Nos.5 and 6 are constructing a pucca house in the place of thatched shed. He further asserted that as a matter of fact, respondent Nos.5 and 6 had approached the revenue authorities seeking to regularize their occupation but as on date, no action is taken by the revenue authorities. He further asserted that the complaint of the petitioner that the respondent Gram Panchayat is not acting on his complaint is not true. He also asserted that it is a sensitive issue as a large number of dalith and poor people are residing in the Grama Kantam land and it requires to be handled carefully.

There is no reply affidavit filed by the petitioner denying the allegations and averments mentioned in the counter-affidavits filed by the respective parties.

Heard learned counsel for the petitioner, learned Standing Counsel for the Gram Panchayat and learned counsel for respondent Nos.5 and 6.

There is no dispute that respondent Nos.5 and 6 are residing in the subject land since a long time. The question as to whether they have perfected their right by way of adverse possession or prescription cannot be decided in the present Writ Petition. Admittedly, the petitioner is not claiming any right over the subject land. In any event, if the Gram Panchayat requires the subject land, it is for the Gram Panchayat to take necessary steps seeking to recover the same by following due process. With regard to not taking permission from the Gram Panchayat by respondent Nos.5 and 6, this Court takes judicial notice of the fact that many of the illiterate persons, who are in occupation and who constructed small thatched sheds, were not aware of the procedure with respect to the necessity of taking permission from the Gram Panchayat and that as there is a replacement of thatched shed with a pucca house, it is necessary for the Gram Panchayat to issue notice to the persons concerned. In view of the same and inasmuch as the asbestos sheets have already been laid on the pillars, this Court is of the opinion that interests of justice would

be served, if an opportunity is given to respondent Nos.5 and 6 to approach the Gram Panchayat for regularization of the construction said to have been made by them on the subject land. However, this shall not be construed as this Court is expressing any opinion with regard to the title to the subject land. So far as the petitioner is concerned, no relief can be granted in his favour.

Accordingly, the Writ Petition is dismissed granting liberty to respondent Nos.5 and 6 to approach the Gram Panchayat for regularization of the construction said to have been made by them on the subject land.

Consequent upon dismissal of the Writ Petition, considering the specific assertion of the third respondent in the counter-affidavit that as on the date of issuance of notice, dated 30.04.2016 by the Gram Panchayat, respondent Nos.5 and 6 had already raised basement and laid asbestos sheets on the pillars and in the absence of any specific material before this Court to come to a conclusion that the construction which is said to have been made by respondent Nos.5 and 6 was after this Court passing the interim order, this Court is of the opinion that there is no contempt on the part of the respondents.

Accordingly, the Contempt Case is dismissed.

Miscellaneous Petitions, if any pending shall stand dismissed.

CHALLA KODANDA RAM, J

23rd MARCH, 2018.

kvni

