

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.1869 of 2017

ORDER:

The Writ Petition, under Article 226 of the Constitution of India, is filed seeking a Writ of Mandamus declaring the action of the respondents 2 to 4 in constructing the Electrical Sub-Station over the shikham land of Vadapalem Gram Panchayat Dakshina Cheruvu by removing the Shivalayam (Shiva temple), as arbitrary and illegal, and a consequential direction to the respondents to stop the construction of the said sub-station over the said land.

On 31.01.2017, this Court, having ordered notice, directed the Writ Petition to be listed after three weeks and also directed that, in the meanwhile, there shall be no constructions in the subject property. Thereafter, a vacate petition is filed.

I have heard the submissions of Sri T.Koteshwara Prasad, learned counsel appearing for the writ petitioner, of the learned Government Pleader for Panchayat Raj & Rural Development, appearing for respondents 1 and 2, of Sri Ravi Cheemalapaty, learned Standing Counsel for the 3rd respondent, and of Sri N.Siva Reddy, learned Standing Counsel for the Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL), appearing for the 4th respondent.

I have perused the material record.

Having given detailed consideration, this Court is of the considered view that, instead of the Interlocutory Applications, the Writ Petition can be disposed of, having regard to the subject matter and the scope of the proceeding.

The case of the petitioner and the submissions made on his behalf, in brief, are as follows:

The petitioner is a resident of Vadapalem Village; he is the former Sarpanch of the Village; there is a Gram Panchayat Tank called, "Dakshina Cheruvu" ('Tank' or 'Cheruvu' for short), in the Village; over the shikham land of the said tank, there is a "Swayambhu Sivalingam" since past several years; the said temple is there since times immemorial; the villagers of his Village and the neighbouring villages worship Lord Shiva at that place; due to village politics, some people wanted to use the panchayat tank land as well as the land, where the temple is located, for construction of electrical sub-station; there are several alternative Government lands available in the Village; the Panchayat Secretary of the Gram Panchayat and the Assistant Engineer of the A.P.Transco, acting at the behest of local politicians, proposed to construct the sub-station in the said shikham land of the said Dakshina Cheruvu; if the sub-station is constructed, it hurts the religious feelings of the major section of the villagers; the writ petitioner along with others, objected for the construction of the sub-station adjacent to the Temple; it causes danger to the devotees, being hazardous; it is also hazardous to the fishermen, who rear and catch fish in the

tank; and, infact, no resolution is also passed by the Gram Panchayat for construction of the sub-station, though such requirement is mandatory.'

No counter affidavit has been filed by the Secretary of the Gram Panchayat. However, on written instructions, the learned Standing Counsel submitted that, the proposed land is the Government land; it did not vest in the Gram Panchayat; and, therefore, the Gram Panchayat is not concerned with the proposed activity in the Government land; and, that, if the Government wants the sub-station to be constructed in the land proposed, the Gram Panchayat has no concern or objection.

The case of the APSPDCL, as stated in the affidavit of the Additional Assistant Engineer concerned, and as per the submissions made on its behalf, in brief, is as follows:

The present writ petitioner has no *locus standi* to maintain the Writ Petition. He has no personal interest in the matter. The present Writ Petition is not filed as a Public Interest Litigation Case. Therefore, the Writ Petition is liable to be dismissed with exemplary costs. The petitioner, did not come to the Court with clean hands; he did not state the correct facts. An extent of Ac.0.40 cents in R.S.No.730 of Vadapalem Village of Machilipatnam Mandal, was identified for construction of 33/11 KV sub-station in public interest. A requisition, in the stipulated proforma, was submitted by the Superintending Engineer, Operation, APSPDCL, Vijayawada, to

the second respondent requesting to alienate the said land in the said survey number. The second respondent called for a report from the field staff. The Tahasildar submitted the alienation proposals by reporting to the effect that an extent of Ac.0.17 cents is only available in R.S.No.749-6, as per the new sub-division. The Revenue Divisional Officer, by his letter, dated 26.04.2017, informed the Superintending Engineer, Operation, APSPDCL, to file fresh proposals for alienation of land of an extent of Ac.0.17 cents in R.S.No.749-6 of Vadapalem Village. Accordingly, the Chief Engineer, APSPDCL, Vijayawada Zone, submitted the said proposals, in the stipulated proforma, for alienation of the said land for construction of sub-station. The alienation proceedings are still pending with the authorities. The Tahasildar submitted a report, dated 31.03.2017, to the Collector recommending for consideration of the request for alienation of the land for construction of sub-station. On account of the pendency of the present Writ Petition, the proposals for alienation of land are stalled. Therefore, the power consumers in the Villages concerned are facing much hardship. The allegations that on account of village politics, the proposal was made to construct the sub-station in the shikham land adjacent to the place where the temple is situated, etcetera are false. The Writ Petition is filed with a *mala fide* intention. There is no truth in the statement that the sub-station is being proposed to be constructed in the shikam land of Dakshina Cheruvu. The writ petitioner

approached this Court even before the requisition was made by the APSPDCL to the revenue authorities for alienation of the land for construction of sub-station. The Writ Petition is premature. The decision to alienate the land for construction of the sub-station is not yet taken by the authority concerned. Hence, the writ petition is liable to be dismissed.'

In the counter affidavit of the Additional Assistant Engineer, the various prominent reasons, which necessitated the construction of the sub-station in the proposed site of the village, are also stated.

I have given earnest consideration to the facts and submissions.

From the facts and submissions, the following facts & aspects are discernible: There is a proposal to construct the electrical sub-station in Vadapalem village i.e., in Ac.0.17 cents of land in R.S.No.749-6 as per new sub division. As per the first report of the Tahasildar, a requisition was made in that regard by the officer concerned of the APSPDCL for alienation of the said land for the desired purpose. The Tahasildar also recommended for consideration of the said request of the said officer of APSPDCL. The said request is pending consideration before the authority concerned, who is said to be the District Collector, Krishna District at Machilipatnam. A decision is not yet taken by the said authority with regard to alienation of the said land to the APSPDCL for construction of electrical sub-

station as proposed by it. According to the submissions of the respondents, since this writ petition is pending, the required decision could not be taken in the matter by the District Collector. Since the writ petition is filed before a requisition is made and a decision is taken in the matter, the APSPDCL contends that the writ petition is premature. However, the writ petitioner contends that the writ petition is not premature since a favourable recommendation for consideration of the request of the APSPDCL is already made by the Tahasildar. The apprehension of the writ petitioner and some other villagers, who according to the petitioner are objecting along with him for construction of the sub-station in the Shikham land, is that the District Collector is likely to accord permission for alienation as desired by the APSPDCL in view of the recommendation made by the revenue officers. Coming to the contention of the APSPDCL that the petitioner has no *locus standi* as he has no personal interest in the matter and that since the present Writ Petition is not filed as a Public Interest Litigation Case, the Writ Petition is liable to be dismissed with exemplary costs, be it noted that according to the petitioner, he is the former Sarpanch and that not only he but also some other villagers are also objecting and that since the proposed land is a Shikham land he has got locus standi to raise valid objections for any construction activity in Shikham land of Cheruvu, more particularly, as the proposed construction site is adjacent to a Swayambhu Shivalingam, which is being worshiped by the

villagers of the village and neighbouring villages and temple of Lord Shiva, which is situate therein. The District Collector has to examine the matter and consider as to whether the proposed land is Shikham land or a land within the area of the Tank. Be that as it may. Shikham land is a land on the banks of a Tank and is Tank shore area is not in dispute. If the proposed land is a Shikham land and is within the Full Tank Level or Tank and Tank Bed Area including bunds of the Tank and is a part of the tank (be it, FTL, Tank Bed, Shikham land or Tank with its bunds), the petitioner, being one of the villagers and the former Sarpanch, is entitled to raise an objection for according permission for alienation of such land and for construction of electrical sub-station in such land.

Having regard to the issue involved, it is apt to refer to the following observations of the Supreme Court (vide paragraphs 13 and 14) in **Hinch Lal Tiwari v. Kamala Devi**¹, which are as follows:

13. It is important to note that material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enable people to enjoy a quality life which is essence of the guaranteed right under Article 21 of the Constitution. The Government, including revenue authorities, i.e. respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the

¹ AIR 2001 SC 3215

benefit of public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.

14. For the aforementioned reasons, we set aside the order of the High Court, restore the order of the Additional Collector dated February 25, 1999 confirmed by the Commissioner on March 12, 1999. Consequently, respondents 1 to 10 shall vacate the land, which was allotted to them, within six months from today. They will, however, be permitted to take away the material of the houses which they have constructed on the said land. If respondents 1 to 10 do not vacate the land within the said period the official respondents i.e. respondents 11 to 13 shall demolish the construction and get possession of the said land in accordance with law. The State including respondents 11 to 13 shall restore the pond, develop and maintain the same as a recreational spot which will undoubtedly be in the best interest of the villagers. Further it will also help in maintaining ecological balance and protecting environment in regard to which this Court has repeatedly expressed its concern. Such measures must begin at the grass-root level if they were to become the nation's pride.

Thus, the contention of the petitioner that the proposed land is part of a Shikham land of Dakshina Cheruvu, is true or not is a contention which requires detailed examination before a considered decision is taken by the District Collector in the matter. Hence, in the considered view of this Court, when an objection is raised by the petitioner along with a group of villagers, it cannot be said that the writ petition is premature or that he has no *locus standi* to file the Writ Petition, in the facts & circumstances of the case. The contention of the petitioner that in that area of the proposed land, there is a Swayambhu

Shivalingam and temple of Lord Shiva and that people are offering worship at that place also requires examination keeping in view the interests of the villagers of the village and the neighbouring villages. Therefore, it follows that the authority concerned, namely, the District Collector, Krishna District, at Machilipatnam, is required to bestow his attention to the relevant aspects of the matter before according permission for alienation of the subject land for the desired purpose, viz., construction of sub-station.

On the above analysis, this Court is of the considered view that this Writ Petition can be disposed of with appropriate directions.

In the result, the Writ Petition is disposed of directing the District Collector, Krishna District at Machilipatnam, to examine all the relevant aspects including the aspects stated in the preceding paragraph before taking a considered decision in the matter and to take a decision accordingly, however, after considering the objections of the petitioner and others, if any, filed before him. It is made clear that the petitioner is also at liberty to submit a fresh copy of the objections to the District Collector under proper acknowledgment forthwith for appropriate consideration by the District Collector. Nonetheless, the District Collector shall complete the necessary exercise in the above regard within four weeks from the date of receipt of a copy of this order.

The miscellaneous petitions pending in this Writ Petition,
if any, shall stand closed. There shall be no order as to costs.

M.SEETHARAMA MURTI, J

13.07.2018

Note: Issue C.C by 16.07.2018.

B/o.

vs

