

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No.627 of 2018

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

Heard Sri V.S.R.Anjaneyulu, learned counsel for the appellants-writ petitioners, learned Government Pleader for Revenue, learned Government Pleader for Irrigation and Sri Ravi Cheemalapati, learned Standing Counsel for Gram Panchayats and, with their consent, the Writ Appeal is disposed of at the stage of admission.

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.10827 of 2018 dated 12.04.2018 wherein the appellants-writ petitioners had sought a mandamus to direct the respondents to take action for removal of the encroachments in the drainage kodu in R.S.No.44 of Rayalam Village, Bhimavaram Mandal, West Godavari District, declaring their inaction as illegal and ultra vires Articles 14 and 300-A of the Constitution of India; and to direct the respondents to maintain the drainage kodu.

The learned Government Pleader for Irrigation had placed before the Learned Single Judge a copy of the letter dated 04.04.2018 addressed by the Assistant Engineer, Yandagandi Section, Bhimavaram to the Tahsildar, Bhimavaram Mandal informing him as under:

"I am submitting that, on receipt of the plaint petition to this office, the Assistant Engineer, Irrigation, Yendagandi Section along with staff has inspected the site and noticed that, it is an Irrigation-cum-Drainage field bodhi which is passing through the RS.No.44 of Rayalam Village of Bhimavaram Mandal. The villagers of Rayalam village are occupied an extent of 0.05 cents in RS.No.44 out of total extent of Ac.2.08 Cts, and trying to construct a religious building. On that situation the Irrigation (Water Resources) Department has warn them to stop the construction and evict the place.

In this connection, I further submit that, the Irrigation Department was made efforts to stop the encroachment with the

help of concerned VRO, Panchayathi Secretary and the President, Water Users Association, China-Amirem, as such so many villagers are involved in this issue. Even though, this office has prepared a general notice and the same is published at the schedule site. Whenever the staff going to the said site, the encroachers are vanishing from that place and the villagers i.e encroachers are wilfully constructing in the odd hours. However, this office has published the notice under Section 7 of AP Land Encroachment Act III of 1905 at the schedule site.

In this context, I am further submit that, the site where the religious building is constructing is an Irrigation Poramboke and it is highly objectionable and the encroachers should be evicted from that place. Repeated notices published in the scheduled place, but the encroachers have paid deaf ear and continuing the construction. The petitioners stated in their petition due to the construction of the religious building, they have no path way for ingress and egress and also obstructed to flow of water supply to their fields. This is not correct that there is a plenty of path way for ingress and egress to the pedestrians and vehicular traffic. Moreover, the spouse of the 1st petitioner and father of the 2nd petitioner herein has laid foundation stone to the said religious building and also he is one of the members in the group.

In this juncture, I further submit that, this office has followed and take all measures to stop the encroachment as per A.P.Enct., Act, 1905 and all the measures are taking to evict as per rules and the Irrigation Department is not showing any wilful negligence in this issue.”

Placing the said letter on record, the Learned Single Judge disposed of the writ petition directing the respondents to take appropriate action, strictly in accordance with law.

Sri V.S.R.Anjaneyulu, learned counsel for the appellants-writ petitioners, would submit that, if the respondent-officials take their own time to stop construction, the entire structure would be completed and put to use depriving needy farmers of water to meet their irrigation requirements, and their only source of drainage for all times to come.

On the other hand, the learned Government Pleader for Revenue would submit that the foundation stone for the subject religious structure was laid by the husband of the 1st appellant-writ petitioner, and the father of the 2nd appellant-writ petitioner, and it is they who are responsible for

this construction. While Sri V.S.R.Anjaneyulu, learned counsel for the appellants-writ petitioners, would deny the involvement of the appellants-writ petitioners in the construction of the unauthorised religious structure, it is wholly unnecessary for us to examine all these aspects, as it is evident from the letter addressed by the Assistant Engineer, to the Tahsildar, that many villagers were involved in the issue.

While a general notice was prepared and published on the schedule site, the letter dated 04.04.2018 discloses encroachers as allegedly having vanished from the place whenever the staff went to the site, and to be wilfully constructing at odd hours. The letter of the Assistant Engineer also states that the site, where the religious structure is being constructed, is said to be an irrigation poramboke; it is highly objectionable; the encroachers should be evicted from that place; the appellants-writ petitioners had stated in their petition that, due to construction of the religious building, there is no path way for the ingress and egress, and flow of water supply to their fields was also being obstructed; while this may not be correct, as there is plenty of path way for ingress and egress of pedestrians and vehicular traffic, their office had taken all measures to stop construction as per the A.P. Land Encroachment act, 1905; all measures were taken to evict the encroachers as per rules; and there was no negligence on the part of the Irrigation Department.

While it would be wholly inappropriate for us to direct demolition of the subject structure, without giving those who are involved in its construction an opportunity of being heard, suffice it, in the light of the letter addressed by the Assistant Engineer, Irrigation Department to the Tahsildar, Bhimavaram on 04.04.2018, to direct that, as the structure being raised is unauthorised and would affect the flow of water in the irrigation channel, the respondent officials shall ensure that no further construction is made regarding the subject structure.

The order under appeal is set aside, and the Writ Petition is restored to file. The order now passed by us, directing the respondents to ensure that there is no further construction, shall be the interim order in W.P.No.10827 of 2018. The appellants-writ petitioners shall implead those who are involved in construction of the subject building as respondents in the Writ Petition; and, after giving all the official respondents, and the respondents to be impleaded, an opportunity of being heard, the Writ Petition shall be disposed of in accordance with law.

With the aforesaid observations, the Writ Appeal is disposed of. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

19th April, 2018

Note: Issue C.C. by 21.04.2018.

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Date: 19.04.2018