

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.22077 of 2012

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking the following relief/ s:

“...to issue a writ of mandamus or any other appropriate writ or direction declaring the action of the respondents 1 to 3 in alienating the land in Sy.No.951/A1C/108, 951/A1C/109, 951/A1C/110 admeasuring Ac.1.12 cents belonging to the 1st petitioner; Sy.No.951/A1C/101, 951/A1C/102, 951/A1C/103 admeasuring Ac.2.68 cents belonging to 2nd petitioner and Sy.No.951/A1C/104 admeasuring 0.97 cents belonging to the 3rd petitioner situated in Kanupuru village, Venkatachalam mandal, SPSR Nellore District in favour of the 4th respondent without initiating any proceeding under Land Acquisition Act as illegal arbitrary and pass such other or further orders as the Hon'ble Court feels deem fit and proper in the facts and circumstances of the case.”

2. I have heard the submissions of *Sri O. Manohar Reddy*, learned senior counsel appearing for the petitioners, of the learned Government Pleader for Assignment appearing for the respondents 1 to 3, of the learned standing counsel appearing for the 5th respondent, A.P.Tourism Development Corporation Limited, which is impleaded as per orders, dated 06.06.2014, in WPMP.No.42902 of 2012; and of the learned Government Pleader for Revenue appearing for the 6th respondent (impleaded as per orders, dated 22.06.2016, in WPMP.No.10965 of 2016).

3. The case of the writ petitioners as per the pleadings and the submissions made before this Court, in brief, is as follows:

The petitioners purchased various extents of land viz., Ac.0.15 cents in Sy.No.951/ A1C/ 108; Ac.0.27 cents in Sy.No.951/ A1C/ 109, Ac.0.15 cents in Sy.No.951/ A1C/ 108, Ac.1.00 cents each in Sy.No.951/ A1C/ 101 & 951/ A1C/ 103, Ac.0.68 cents in Sy.No.951/ A1C/ 102 and Ac.0.97 cents in Sy.No.951/ A1C/ 104

under various registered sale deeds. Pattadar pass books and title deed books were also issued in favour of the vendors of the petitioners. Even before the purchase of the land from the vendors, an application was made to the Tahasildar concerned and he has issued a certificate in favour of the vendors in L.Dis.(b).437/ 2008, dated 29.01.2009, *inter alia*, stating therein that the vendors submitted an application expressing their intention to sell or mortgage the property in Kanupuru village, Venkatachalam Mandal, Nellore, and requested for clearance and that on the basis of said representation, the certificate was being issued. In the said certificate it is stated that as verified from the connected records such as permanent 'A' register, 10(1) accounts, adangals etcetera, the petitioners are having lands mentioned therein which are classified as patta dry lands and that the same are neither assigned nor Government lands. After such certificate was issued, the petitioners purchased the properties under regular registered sale deeds and are continuing in possession of the same since the dates of the respective purchases of the said respective extents of properties. While so, the 4th respondent entered into the property, on 17.07.2012, and started digging pits. Enquiries revealed that the Principal Secretary to the Government, Tourism, was said to have requested the 1st respondent herein, District Collector, SPSR Nellore, to select an extent of Ac.10.78 cents of land for establishment of Indian Institute of Tourism Management and send proposal to the Chief Commissioner, Land Administration, A.P., Hyderabad, for approval and that basing on the said request, the 2nd respondent, RDO, submitted a report stating that the land belonging to the petitioners is identified and to give permission to handover the same and that on the basis of the said report, the 1st respondent directed the 3rd respondent, Tahasildar, to handover possession of the land belonging to the petitioners to the 4th respondent. The said action of the respondents 1 to 3 is wholly illegal. Tahasildar had in-fact issued a certificate, on 29.01.2009, stating that the lands are neither assigned lands nor Government lands. The

records including revenue records show that the lands are patta lands. No notice was issued to the vendors of the petitioners or the petitioners at any point of time. No proceedings for acquisition of the property were initiated. The 3rd respondent cannot handover the land belonging to the petitioners without initiating land acquisition proceedings. Even assuming that the land is an assigned land, a notice as contemplated under the provisions of A.P. Assigned Lands (Prohibition of Transfer), Act, 1977, has to be issued and the procedure under the provisions of the said Act has to be followed for taking possession of the property. Neither a notice was issued nor an enquiry was conducted for taking possession of the property. Taking advantage of the dominant position, the members of staff of the 4th respondent are threatening to interfere with the possession of the petitioners over their lands illegally and arbitrarily. Hence the writ petition is filed.

4. The case of the respondents 1 to 3 as stated in the counter affidavit filed by the 3rd respondent, Tahasildar, Venkatachalam Mandal, SPSR Nellore District, and the submissions made on their behalf, in brief, are as follows:

The Joint Collector, SPSR Nellore, instructed to identify Government lands abutting NH-5 for alienation in favour of Tourism department for establishment of National Hereditary Tourism Complex. Accordingly, 4 sites were identified in Venkatachalam Mandal; and, *vide* proceedings, dated 23.05.2008, preliminary proposals were submitted to the District Collector. Out of the land identified, an extent of Ac.6.43 cents in Sy.No.951 of Kanupur Bit-I, Venkatachalam Mandal was originally assigned to landless poor persons. Enquiries also revealed that the assignees alienated the said land to Mavilla Adishesha Reddy and Nandimandalam Govinda Raju, who are residents of Nellore town. The said transactions are in violation of the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Rules, 1977. Notices were issued to the said assignees as well as the alienees calling for their explanations. The assignees refused to receive the notices. The whereabouts of the alienees are

not known as they are residents of Nellore city. Hence, a substitute service was affected. No explanation was offered to the notices. Orders were passed *vide* proceedings in Rc.B.220/ 2008, dated 04.09.2008, resuming the land. Since then, the land vested with the Government. The orders of the Tahasildar have become final as no appeal has been preferred within the stipulated time. The District Collector, in his proceedings, dated 29.09.2008, issued instructions to submit regular alienation proposals in respect of certain lands viz., Ac.3.14 cents in Sy.No.680/ 5, Ac.0.92 cents in Sy.No.951/ A1c/ 101A; Ac.0.63 cents in Sy.No.951/ A1c/ 102A part; Ac.0.94 cents in Sy.No.951/ A1c/ 103A part; Ac.0.87 cents in Sy.No.951/ A1c/ 104A; Ac.0.49 cents in Sy.No.951/ A1c/ 105A; Ac.0.52 cents in Sy.No.951/ A1c/ 106A; Ac.1.38 cents in Sy.no.951/ A1c/ 107A; Ac.0.80 cents in Sy.No.951/ A1c/ 108 and Ac.0.13 cents in Sy.No.951/ A1c/ 109A in Kanupur Bit-I of Venkatachalam Mandal, SPSR Nellore District, in favour of Tourism department for establishment of the said complex. The District Collector, in his further proceedings, dated 20.11.2008, issued instructions to handover the advance possession of the land pending finalisation of regular alienation proposals. Physical possession of the above lands was handed over to the District Tourism Officer, Nellore, on 21.11.2008; and, *vide* proceedings, dated 10.12.2008, proposals for alienation were thereafter submitted to the District Collector. The District Collector in his proceedings, dated 16.12.2008, submitted the alienation proposals to the Chief Commissioner of Land Administration, A.P., Hyderabad, recommending market value @ Rs.2,00,000/- per acre. The Chief Commissioner in turn, *vide* proceedings, dated 10.02.2009, submitted proposals to the Government; and, orders are awaited from the Government. The District Collector again, *vide* proceedings, dated 03.02.2010, instructed the Tahasildar to take possession of the land from the District Tourism officer and handover the land to the Professor, Indian Institute of Tourism and Travel management (IIITM) at Gwalior. On 21.11.2008, physical possession of the above lands was handed over for setting up South Centre of

Indian Institute of Tourism and Travel Management at Nellore. Now the land is under the control of Tourism Department. While so, petitioners 2 & 3 and one M. Vijayasanthi, who have purchased the other lands (subject land) from M. Adishesha Reddy and N. Govinda Raju filed representation before the District Collector, on 25.08.2010, enclosing the certificate, dated 29.01.2009, allegedly issued by the office of the Tahasildar. On that the records were verified. It was found that the said certificate was fabricated and was not issued by the office of the Tahasildar and that the said certificate was issued with regard to lands in Kasumur village. The then Tahasildar of Venkatachalam informed that the certificate certifying the lands as patta lands is fabricated and is a bogus certificate. In view of the said fact, the District Collector instructed the Tahasildar to initiate criminal action against the culprits who have fabricated the bogus certificate. Accordingly a complaint was lodged with the Station House Officer, Venkatachalam Police Station and a case in Crime No.142 of 2011 was registered, on 14.10.2011, and the said crime is under investigation. The claim of the petitioners is therefore not genuine. Hence, the writ petition may be dismissed.

5. Before advertng to the further pleadings of the parties and contentions, it is pertinent to note that on the filing of the above counter affidavit, this Court, on 13.10.2017, passed the following order:

‘Learned Government Pleader (Assignment) requests time till 30.10.2017 to produce all the records, namely, Darkast register, the file in which sub-divisions have been effected, the file relating to cancellation of assignment and resumption of land in Sy.No.951A. Post on 30.10.2017 under the caption ‘for production of record.’

Later, when the matter is listed on 15.02.2018, this Court passed the following order:

‘Original record is produced. Learned counsel for the petitioner was permitted to peruse the original record. On perusal, learned counsel for petitioner states that the photo copies furnished to the petitioner

are tallying to the original records. Original copies of adangals are also perused.

Learned Assistant Government Pleader submits that she is required to produce assignment proceedings, which may be available in the Old Taluk Office and that the officers are trying to search and secure the same and requested short adjournment. At her request list on 26.2.2018.'

Further, on 26.02.2018, this Court passed the following order:

'Learned Government Pleader reports to the Court that the assignment proceedings are not available in the old Taluk office and requests short adjournment for filing an affidavit to place on record the position obtaining from the Taluk office. At his request, post on 05.03.2018.'

On 05.03.2018, the matter was adjourned by one week for filing affidavit to place on record the position obtaining from the Taluk office regarding assignment proceedings.

On 15.03.2018, learned Government Pleader submitted to this Court that the cause in the writ petition may not survive since subsequently the Government has allotted some other extent of land to the Indian Institute of Travel and Tourism Management and that in view of the said allotment the earlier allotment made on 06.02.2010 was not enforced. Be that as it may.

5.1 In the further counter affidavit filed by the Tahasildar concerned, it is stated that since the assignments were made during the tenure of erstwhile Taluk in the year 1980-81, that is, before formation of Mandals, the assignment/ DKT files are not available in the office of the Tahsildar, Venkatachalam and that a thorough search made in the record room revealed that the files bearing No.F.Dis.No.177/ 1990 to 185/ 1990 of Nellore Taluk were not available in his office. In the further counter affidavit filed by the Tahasildar concerned, it is stated that in view of the facts and circumstances stated in the affidavit, there is no proposal for alienating above mentioned land of an extent of Ac.9.82 cents as being claimed by the petitioners to the

Tourism Department since already other lands in Anikepally village, Venkatachalam Mandal, Nellore District, were allotted to the said department.

6. In the background of the pleadings, submissions and chronology of events, learned senior counsel appearing for the petitioners would submit as follows: -‘The petitioners approached this court when there is a proposal to handover the petitioners lands by the respondents 1 to 3 to the 4th respondent. However, the respondents 1 to 3 have now fairly conceded and affirmed that some other alternate land in Anikepally village was allotted to the Tourism Department and that there is no proposal for alienating the lands of the petitioners and other lands in a total extent of Ac.9.82 cents.’ He further alternatively contended that even assuming that the land in question is an assigned land, respondents 1 to 3 are required to follow the procedure contemplated under the provisions of the A.P. Assigned Lands (Prohibition of Transfer) Act, 1977, before taking possession of the subject land of the petitioners and that, therefore, without going into the merits of the matter as regards the ownership of the petitioners, the writ petition may be disposed of directing the respondents 1 to 3 not to interfere with the peaceful possession and enjoyment of the petitioners over the subject lands except by following the procedure established by law.

7. Learned Government Pleader while fairly submitting that since alternative land is allotted to the Tourism Department and as at present there is no proposal to alienate the land over which the petitioners are making a claim and as in this writ petition filed invoking the Article 226 of the Constitution of India, the question of title cannot be decided and as there was also no necessity for doing so in the facts and circumstances of the case, requested that the writ petition may be disposed of, however, without prejudice to the rights and contentions of the respondents.

8. Recording the submissions and without going into the question of the title of the subject land and its nature, the Writ Petition is disposed of directing the respondents 1 to 3 not to interfere with the peaceful possession and enjoyment of the subject lands viz., Sy.No.951/ A1C/ 108, 951/ A1C/ 109, 951/ A1C/ 110 admeasuring Ac.1.12 cents said to be belonging to the 1st petitioner; sy.No.951/ A1C/ 101, 951/ A1C/ 102, 951/ A1C/ 103 admeasuring Ac.2.68 cents said to be belonging to 2nd petitioner and Sy.No.951/ A1C/ 104 admeasuring Ac.0.97 cents said to be belonging to the 3rd petitioner situated in Kanupuru village, Venkatachalam Mandal, SPSR Nellore District except by following the procedure established by law.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

08.06.2018
Vjl



M. SEETHARAMA MURTI, J