

\*HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

+W.P.No.5312 of 2013

%30.09.2013

# T. Mallikarjuna and three others

.. Petitioners

Vs.

\$ The State of Andhra Pradesh,  
Represented by its District Collector,  
Chittoor District, Chittoor  
and eight others

.. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioners: Sri P.S. Rajasekhar

^ Counsel for respondent Nos.1 to 4 and 7 : Assistant  
Government

Pleader for Revenue

Counsel for respondent Nos.5, 8 and 9 : None

appeared

Counsel for respondent No.6 : Sri Sitaram Chaparla

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?CASES REFERRED:

Nil

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HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P.No.5312 of 2013

Dated:30.09.2013

Between:

T. Mallikarjuna and three others

.. Petitioners

And

The State of Andhra Pradesh,  
Represented by its District Collector,  
Chittoor District, Chittoor  
and eight others

.. Respondents

Counsel for petitioners: Sri P.S. Rajasekhar  
Counsel for respondent Nos.1 to 4 and 7 : Assistant  
Government

Pleader for Revenue

Counsel for respondent Nos.5, 8 and 9 : None appeared

Counsel for respondent No.6 : Sri Sitaram Chaparla

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The Court made the following :

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**ORDER:**

This Writ Petition is filed for a *Mandamus* to set-aside proceedings in Roc.No.B/985/2011, dated 06.10.2012, of respondent No.4 and proceedings, dated 18-3-2012, changing the entry in 1-B Register maintained under the provisions of the Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971 (for short “the Act”), in respect of Acs.2-81 cents of land in Survey No.142/2 of Bodumalluvaripalle Village, Pileru Mandal, Chittoor District (for short ‘the subject land’). The petitioners also sought for a direction to the parties to workout their remedies in the pending civil litigation i.e., O.S.Nos.74/2011 and 98/2011 on the file of the learned Senior Civil Judge, Pileru.

The brief background leading to the filing of this

Writ Petition is stated hereunder:

The petitioners pleaded that they derived title to the subject land in the following manner. One K. Hanumantu was the original owner of the subject land. Under partition deed No.15930/1920, dated 2-12-1920 taken place among the legal heirs of K. Hanumanthu, an extent of Ac.1-00 fell to the share of K. Sanjeevaiah s/o. K. Naganna and the remaining extent of Ac.1-81 cents fell to the share of one Smt. Padmavathamma d/o. K. Venkatappa. K. Sanjeevaiah sold his share of Ac.1-00 under registered sale deed to one P. Subbanna under registered sale deed dated 29-6-1926. Under partition deed dated 24-9-1931, P. Ramaiah s/o. Subbaiah succeeded to the said land of Ac.1-00. Under sale deed dated 17-6-1964, P. Ramaiah sold the said land to Tarikonda Krishna Murthy, the grand father of the petitioners.

As regards the other extent of Ac.1-81 cents out of the subject land, the same fell to the share of Smt. P. Padmavathamma d/o. K. Venkatappa under partition taken place in the year 1920. Smt. P. Padmavathamma sold the said land to T. Krishna Murthy, the grand father of petitioner Nos.1 to 3 and one Siddavatam Chengaiah in equal shares. On 4-12-1980, Siddavatam Chengaiah sold his share of land to T. Chengappa, the father of petitioner Nos.1 to 3 and the husband of petitioner No.4. The names of the predecessors-in-interest of the petitioners were recorded in the Adangals/Pahanies and later the name of the T. Chengappa was recorded till Fasli 1421 (2011-12).

The petitioners pleaded that after the death of their father, they have succeeded to the said property and have been in continuous possession and enjoyment

of the same. The petitioners filed copies of No.3 Adangals in support of this plea. When respondent No.6 sought to interfere with the petitioners' possession, they have filed O.S.No.74/2011 in the Court of the learned Senior Civil Judge, Pileru for permanent injunction. Respondent No.6 filed O.S.No.98/2011 in the Court of the learned Senior Civil Judge, Pileru against petitioner No.1 and respondent Nos.2 and 3 for declaration of title and permanent injunction. Both these suits are pending.

While so, respondent No.6 approached respondent No.3 by way of an appeal, purportedly under Section 5(5) of the Act seeking setting aside of the pattadar passbook and title deed issued in favour of the petitioners' father. The petitioners contested the said appeal. However, respondent No.3, by his order dated 3-3-2012, allowed the said appeal. Aggrieved by the said order, the petitioners filed a Revision Petition under Section 9 of the Act before respondent No.2. The petitioners sought for interim stay of the said order. The Revision Petition along with the stay application have been pending before respondent No.2.

The petitioners alleged that even before the expiry of the limitation period of 30 days for filing Revision Petition before respondent No.2, respondent No.4 issued pattadar pass book and title deed in favour of respondent No.6 and issued written instructions in ROC No.B/985/2011 dated 6-10-2012 to respondent No.5 to render Police protection to respondent No.6. That with the aid of respondent No.5, respondent No.6 has been interfering with the petitioners' peaceful possession and enjoyment of the land.

When the Writ Petition came up for admission and hearing before a learned single Judge, the learned

counsel for the petitioners alleged that at the instance of respondent No.4, the Police officials were attempting to forcibly evict the petitioners from the subject land and have destroyed the red-gram crop. The learned Judge has taken a very serious view of the conduct of respondent No.7 in interfering in the civil dispute between the petitioners on one side and respondent No.6 on the other and passed certain interlocutory orders in this process. It is relevant to reproduce these orders hereunder :

22-03-2013:

“The petitioner’s allegation was that, at the instance of the Tahsildar, the respondent police officials are forcibly evicting them from the subject land, though a redgram crop had been raised thereupon.

Learned Government Pleader for Home, on written instructions from the Sub-Inspector of Police, Piler dated 22-02-2013, would submit that the Tahsildar, Piler had addressed a letter to the Sub-Inspector of Police, Piler on 06-10-2012 requesting him to render police protection to the 6<sup>th</sup> respondent (who was issued pattadar pass book by the then Tahsildar, Piler) from the petitioner herein; and even though the Tahsildar had addressed the said letter, he did not provide police protection to Sri S.A. Ahamad till date.

Along with an additional affidavit, the petitioner has enclosed photographs of destruction of the existing crop one of which shows a lady police officer on the subject land. *Prima facie*, it appears that the instructions given to the Learned Government Pleader for Home, by the Sub-Inspector of Police, Piler, is false. No provision of law which confers power on the Tahsildar, Piler to provide police protection to the 6<sup>th</sup> respondent from the petitioner has been brought to my

notice. I consider it appropriate therefore to direct that both respondents 4 and 5 be personally present in Court, along with the entire records, on 260-2-2013 at 10.30 A.M.

Learned Government Pleader for Revenue (Andhra and Rayalaseema) and Learned Government Pleader for Home are present in Court and undertake to inform the Tahsildar and the Sub-Inspector of Police respectively of their obligations under this order.”

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5-3-2013 :

The Sub-Inspector of Police, and the Assistant Sub-Inspector of Police, who was present at the site, are present in Court today. The Tahsildar is also present.

The Tahsildar, who issued the proceedings dated 06-10-2012 calling upon the Sub-Inspector of Police, Pileru to provide police protection to the 6<sup>th</sup> respondent, now submits that the petitioners had raised the crop which was removed; and he had, subsequently, orally informed the Sub-Inspector of Police not to interfere in the matter. As to why he chose not to inform the Sub-Inspector of Police in writing, asking him not to interfere in the matter, as he did earlier on 06-10-2012, is not clear.

The Sub-Inspector of Police, Pileru, who is present in Court today, would admit that the photograph, which shows that a JCB was being operated to level the land in the presence of a lady police officer, is that of the Assistant Sub-Inspector of Police. He would submit that, on being informed by the Assistant Sub-Inspector of Police that there was a quarrel at the site, he had asked her to go and pacify both the parties. As to why the Sub-Inspector of Police did not register any complaint either before or after the

Assistant Sub-Inspector of Police visited the site, and came back is not known.

The petitioners' case is to the contrary. It is their allegation that, with police protection, the crop raised by them was destroyed and was thrown beyond the subject land; and the Circle Inspector of Police had called both parties, and had asked them to arrive at a settlement. The consequence of the arbitrary and high-handed acts of respondents 4 and 5 is that the entire crop, admittedly raised by the petitioners, has been completely destroyed.

Sri P. Rajasekhar, learned counsel for the petitioners, would submit that the subject land is vacant as on today. The Tahsildar, who is present in Court, also states that the subject land is vacant.

The District Collector, Chittoor, shall cause an enquiry as to how the Tahsildar could have addressed a letter to the Sub-Inspector of Police asking him to provide police protection; which provision of law conferred power on the Tahsildar to do so; and the role of the Circle Inspector of Police, the Sub-Inspector of Police and the Assistant Sub-Inspector of Police-Smt.G.Girija in the aforesaid incident which was resulted in complete damage of the petitioners' crops. The District Collector shall submit his report to this Court within three weeks from today."

The District Collector, Chittoor, submitted a report in compliance with the order of this Court, wherein he has stated that respondent No.7 ought not to have directed rendering of Police assistance to respondent No.6 and that this action was evidently taken *bona fide* instead of initiating the proceedings under Section 145 Cr.P.C.

At the hearing, it has come out that after the filing of this Writ Petition, the Police have not been

interfering with the petitioners' possession over the subject land.

Sri P. Rajasekhar, the learned counsel for the petitioners, however, lamented that respondent Nos.7 to 9 have acted high-handedly and in a lawless manner by interfering with the petitioners' possession over the subject land and damaged the crop.

Sri Sitaram Chaparla, learned Counsel for respondent No.6, stated that his client is in possession of the subject land.

As regards the change of entries in 1-B Register by respondent No.7, the learned counsel for the petitioners submitted that a Revision Petition filed by the petitioners is pending before respondent No.2.

Respondent No.7 filed an affidavit wherein he has stated that he has no personal interest towards respondent No.6 and that as pattadar passbook and title deed were issued in his favour, he has addressed respondent No.5 for rendering protection to respondent No.6. While tendering unconditional apology, respondent No.7 stated that he has withdrawn his proceedings dated 6-10-2012 by issuing proceedings dated 28-2-2013.

It is not in dispute that respondent No.7 has no authority in law to direct granting of police protection in favour of any private party. As rightly conceded by the District Collector, Chittoor and also Sri Sitaram Chaparla, at the most, respondent No.7 has power to initiate proceedings under Section 145 Cr.P.C., if the ingredients of the said provision are satisfied based on the ground realities. That does not appear to be the case here. There was no warrant even for initiation of the proceedings under Section 145 Cr.P.C., more so, when two civil suits are pending between the parties.

Therefore, I have no hesitation to hold that respondent No.7 has acted beyond his powers and in excess of his authority. For such action, he is saddled with costs of Rs.10,000/- (Rupees Ten thousand only) payable to the petitioners from his personal funds. Respondent No.7 shall not claim the said costs from the Government. An entry shall be made in the Service Register of respondent No.7 with respect to payment of costs.

With regard to respondent Nos.5, 8 and 9, there is a serious dispute as to who has damaged the crop in the subject land. The District Collector, Chittoor, in his report has opined that the Police are not responsible for damage of the crop in the subject land. However, this aspect is seriously disputed by the learned counsel for the petitioners.

When this Writ Petition was heard on 01.08.2013, initially, an order was dictated in the open Court under the impression that notices were served and the acknowledgments were received from respondent Nos.8 and 9. However, it has come out that the acknowledgment of notices on respondent Nos.8 and 9 have not been filed. Therefore, the order dictated in the open Court on 01.08.2013 was recalled by order, dated 20.08.2013, with the direction to the Registry to post the Writ Petition after filing proof of service of notices on respondent Nos.8 and 9 by the learned counsel for the petitioners.

Today, the case has been posted along with the memos of proof of service on respondent Nos.8 and 9 filed by the learned counsel for the petitioners, vide U.S.R.No.10512, dated 17.09.2013 and U.S.R.No.11411, dated 27.09.2013.

In the memo, dated 17.09.2013, it is stated by the learned counsel for the petitioners that as per the order,

dated 12.04.2013, of this Court, he has taken out the notices to respondent Nos.8 and 9 on 20.04.2013 by way of registered post with acknowledgment due; that as no acknowledgments were received from respondent Nos.8 and 9, fresh notices were sent on 21.08.2013; and that respondent No.8 (the Circle Inspector of Police) has received the registered cover, but the acknowledgment was returned without the signature of respondent No.8. He has further stated that he has tracked the despatch particulars of registered article through internet, which showed that the despatch was made on 23.08.2013 itself and that the Circle Inspector has got knowledge of the present Writ Petition. The learned counsel has filed a copy of acknowledgment received by him without the signature of respondent No.9 (the Circle Inspector of Police impleaded in his personal capacity) and the postal stamp. He has also filed copies of track result of both the notices showing that the Hyderabad Jubilee Head Office has despatched two notices on 21.08.2013 itself. Along with memo No.11411, dated 27.09.2013, he has submitted copies of two letters, dated 26.09.2013, addressed by the Post Master, Hyderabad Jubilee Head Office to him, wherein it is mentioned that the articles were delivered to the addressees on 24.08.2013.

From this material, this Court is convinced that respondent No.8, who is impleaded as *eo nomine* party as respondent No.9, has received the notice sent by the learned counsel for the petitioners, but failed to respond. He has not entered appearance either through the learned Government Pleader for Home or any private counsel.

From the fact that respondent Nos.5, 8 and 9 have not even entered appearance and controverted

the allegations made in the affidavit, filed in support of the Writ Petition, this Court has no option other than accepting the allegations made by the petitioners in their affidavit. The District Collector, Chittoor shall issue notices to the petitioners and respondent Nos.5 and 9 and on the basis of the material produced by the petitioners, he shall assess the quantum of damages suffered by the petitioners in respect of the crop within a period of two months from the date of receipt of a copy of this order. On such assessment, the damages shall be equally apportioned among respondent Nos.5 and 9, to be paid to the petitioners within a period of two weeks from the date of assessment by the District Collector. The award of damages against respondent Nos.5 and 9 shall be entered in their respective Service Registers. It is made clear that in view of the serious dispute raised by the learned counsel for respondent No.6 about the possession of the subject land, the observations made in this order relating to the same shall not weigh with the civil Court in deciding the above-mentioned civil suits. The petitioners are entitled to pursue the Revision Petition filed before respondent No.2. Pending the Revision Petition, status quo as on today shall be maintained with respect to physical possession of the land.

Subject to the above directions and observations, the Writ Petition is allowed to the extent indicated above.

As a sequel to the disposal of the Writ Petition, WVMP.No.1740 of 2013 is dismissed as infructuous.

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JUSTICE C.V.NAGARJUNA REDDY

*30<sup>th</sup> September, 2013*

*L.R. copies*  
*DR/AM*