

**HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE P. KESHAVA RAO**

WRIT APPEAL No.645 of 2017

JUDGMENT: (per the Hon'ble Sri Justice P. Keshava Rao)

Heard both sides.

The present writ appeal is filed against the orders passed by the learned Single Judge in dismissing W.P.No.14419 of 2012 dated 10.04.2017.

The facts of the case are that the 1st appellant, deceased, was in possession of land admeasuring Acs.2.05 cents in Sy.Nos.242/3 and 243/3 situated at G.Vemavaram Village, I Polavaram Mandal, East Godavari District. He claimed the above said land on the basis of Eksaal lease given by the Mandal Revenue Officer. However, a complaint is said to have been lodged by the adjoining ryots since grant of lease was causing obstruction for free flow of drain water from their agricultural lands. After enquiry, the said Eksaal lease was cancelled. Questioning the same, the 1st appellant filed W.P.No.161 of 2002 before this Court. The said writ petition came to be disposed of directing the respondents therein to consider the application made by the 1st appellant within a period of eight weeks. The matter was re-examined and it was found that no lease can be granted since the subject property is a government poramboke vide orders dated 17.07.2005 by the Mandal Revenue Officer, I Polavaram. The

said orders were questioned in W.P.No.2513 of 2007 before this Court. The said writ petition also came to be disposed of on 14.10.2009 with a direction that the respondent therein shall consider the representation of the 1st appellant and pass appropriate orders in accordance with law within a period of two months from the date of receipt of a copy of the order. It is further directed that if the 1st appellant is in possession, status quo as on the said date was directed to be maintained till the disposal of the representation. The Tahsildar, I Polavaram, after conducting an enquiry, passed orders once again rejecting the request of the 1st appellant on 15.02.2010 solely on the ground that there cannot be any lease of the lands falling within the limits of water bodies. Against the said orders, the 1st appellant preferred an appeal before the Revenue Divisional Officer, Amalapuram. Pursuant thereto, the said authority inspected the lands on 26.02.2011 and observed that the subject property is causing obstruction to free flow of drain water and therefore rejected the claim of the 1st appellant on 08.04.2011. Challenging the said orders, an appeal was filed before the Joint Collector, East Godavari District. However, the said appeal also came to be dismissed by orders dated 25.02.2012 and the Tahsildar, I Polavaram, was directed to take immediate steps for removal of all encroachments on the drain poramboke and protect the drain poramboke. The said order was challenged before the Chief Commissioner of Land Administration, A.P., vide

BCW3/165/2012. After hearing, the said authority rejected the request by orders dated 25.04.2012. Against the said orders, the present writ petition being W.P.No.14419 of 2012 is filed before this Court.

Respondent No.4 filed a counter affidavit on his behalf and on behalf of respondent Nos.1 to 3 denying the material allegations made in the affidavit filed in support of the writ petition and contended *inter alia* that the subject property was classified as “drain poramboke” in village accounts. Out of Ac.2.05 cents, an extent of Ac.1.05 cents was given to the 1st appellant under Eksaal lease patta by the then Mandal Revenue Officer pursuant to the orders of the District Collector. But, on the complaints made by the adjacent ryots, an enquiry was conducted and the Mandal Revenue Officer, I Polavaram, was instructed to cancel the lease granted in favour of the 1st appellant and to keep the land vacant without allowing any encroachments. The 3rd respondent also stated that earlier there were two rounds of litigation in this Court in the form of W.P.Nos.161 of 2002 and 2513 of 2007. It is specifically mentioned that the allegation of the 1st appellant that he is in possession of the subject property and applied for renewal of lease in the year 2005 is not correct, as the Eksaal lease patta granted in the year 2000 was cancelled in the very same year and therefore the question of he being in possession does not arise. No pattas are granted relating

to drain poramboke to any other individual and the said land has been in possession of the Government.

Respondent No.6, who is an adjacent ryot, also filed a counter affidavit reiterating the facts stated in the counter affidavit of respondent No.4. He also filed an additional counter affidavit, wherein he stated that suppressing all the information, as stated supra, the son of the 1st appellant filed W.P.No.28682 of 2016 before this Court and obtained interim orders on 25.09.2016.

The 5th appellant filed reply affidavit stating that their family has no other source of income except the income derived from the subject property. They have raised coconut trees and other plants and eking out their livelihood on the income generated from them.

The learned Single Judge, after hearing all the parties and appreciating all the facts on record, dismissed the writ petition on 10.04.2017. Against the said orders, the present writ appeal is filed.

Learned counsel appearing for the appellants contended that the learned Single Judge failed to appreciate that the appellants are in lawful possession of the subject property. The neighbouring ryots raised objection since the occupation of the subject property by the appellants is obstructing the free flow of the drain water during rainy season and therefore, non-renewal of Eksaal lease is not legal and valid. He also contended that since there is a dispute as to whether the

entire extent of land is necessary or not for free flow of the drain water, the learned Single Judge ought to have ascertain the same by appointing a Court Commissioner.

The learned Government Pleader reiterated the contents stated in the counter affidavit filed by the 4th respondent.

Having heard both the counsel and from a perusal of the material on record, the admitted facts are that the 1st appellant was given an extent of Ac.1.05 cents out of Ac.2.05 cents in Sy.Nos.242/3 and 243/3 under Eksaal lease patta by the then Mandal Revenue Officer under the orders of the District Collector. However, on the complaint lodged by the neighbouring ryots stating that there is no way to drain out the excess water from their patta fields, the Joint Collector and the Revenue Divisional Officer, Amalapuram, conducted an enquiry and recommended for cancellation of the lease and instructed the Mandal Revenue Officer, I Polavaram, to cancel the lease. Accordingly, the lease was cancelled. In the counter affidavit it is specifically stated that the appellants are not in possession of the subject property as the 1st appellant has not applied for renewal of the lease in the year 2005. Since the Eksaal lease patta was cancelled in the year 2000 itself, the question of appellants being in possession of the subject property does not arise. That apart, when the subject property is falling within the limits of the water bodies, which fact was not denied by the appellants, there cannot be any grant of lease relating to drain poramboke. It

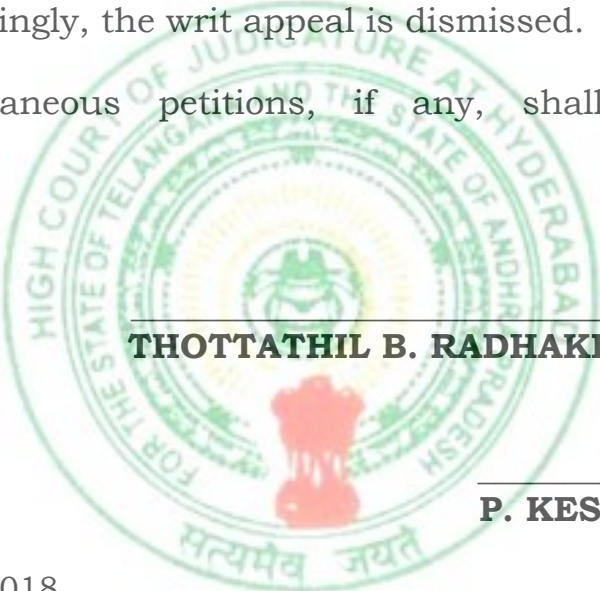
is relevant here to mention that the Revenue Divisional Officer, Amalapuram, inspected the subject property on 26.02.2011 and opined that occupation of the subject property would cause obstruction of free flow of drain water during the rainy season. The appellants have also not placed any material before the learned Single Judge to prove that they are in possession of the subject property.

From a further perusal of the material on record, it is also disclosed that the 1st appellant and thereafter his legal representatives are in the habit of filing one writ petition or the other and under the guise of obtaining interim orders, trying to establish that they are in possession of the subject property. In the counter affidavit filed by the 6th respondent, it is specifically mentioned that the 5th appellant, suppressing the facts stated supra, filed W.P.No.28682 of 2016 and obtained interim order on 25.09.2016 as if the appellants are in possession of the subject property. The said writ petition is the fourth round of litigation before this Court. From this it appears that the appellants are bent open to get back the subject property under the guise of approaching this Court again and again. Further, though the appellants have taken a specific stand that the neighbouring land owners have occupied the drain poramboke and no action has been taken, they have no filed any material before this Court to substantiate the same. Even the additional material papers filed by the appellants also will not help them to prove that

they are in possession of the subject property. Since all the revenue authorities from Mandal Revenue Officer, I Polavaram, to the Chief Commissioner of Land Administration have consistently held that the subject property is a drain poramboke and falls within the limits of water bodies, the appellants are not entitled for grant of Eksaal lease. Therefore, this Court is of the opinion that there is no irregularity or illegality in the impugned order passed by the learned Single Judge rejecting the claim of the appellants.

Accordingly, the writ appeal is dismissed. No costs.

Miscellaneous petitions, if any, shall also stand dismissed.



THOTTATHIL B. RADHAKRISHNAN, CJ

P. KESHA RAO, J

Date: 06.12.2018.
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