

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

I.A.No.2 of 2018 in W.P.No.23334 of 2018,
I.A.No.2 of 2018 in W.P.No.30538 of 2018 ,
W.P.No.23334 of 2018,
W.P.No.30538 of 2018 &
C.C.No.2379 of 2018

COMMON ORDER:

I.A.Nos.2 of 2018 in W.P.No.23334 of 2018 and 2 of 2018 in W.P.No.30538 of 2018 are filed to vacate the orders dt.09-07-2018 in I.A.No.1 of 2018 in W.P.No.23334 of 2018 and dt.28-08-2018 in I.A.No.1 of 2018 in W.P.No.30538 of 2018.

2. Petitioner in both the Writ Petitions is one and the same.

3. It is not in dispute that he has been granted right to catch fish in Voora Cheruvu in Dabbakupalli village, Vatsavai Mandal, Krishna District, which is under jurisdiction of the Dabbakupalli Gram Panchayat (for short 'Gram Panchayat'), after an auction was conducted in the year 2015 for auction of leasehold rights, on 13-09-2015. The lease period was from 13-09-2015 to 30-08-2018.

4. It is not in dispute that there was no water in the said tank in 2015-16 and 2016-17 as can be seen from proceedings dt.28-06-2018 of the Divisional Panchayat Officer, Vijayawada.

5. This document is not disputed by Sri G.Seshadri, learned Standing Counsel for 7th respondent-Gram Panchayat.

6. Petitioner's grievance is that petitioner had paid the lease amount, that the lease was to expire on 30-08-2018, that as per

condition in the lease deed, he should release water only through the outlets provided for the tank and not by any other means; that on 15-06-2018, when he made arrangements to catch the fish by engaging fisher men and labour and was trying to open the sluice to let out the water from the tank, the Tahsildar, Vatsvavai Mandal, MPDO, Vatsvavai Mandal and the Executive Officer of the Gram Panchayat obstructed, closed the sluice with sand bags and stopping the petitioner from letting out the water and catching the fish. Petitioner contends that the Sarpanch of the Gram Panchayat issued No Objection Certificate permitting the petitioner to release the water through sluice and the action of the above officials of the Revenue and Panchayat Raj Department is arbitrary, illegal and violates Article 14 of the Constitution of India.

7. Petitioner filed W.P.No.23334 of 2018 to declare the action of the said officers in not allowing him to let out the water through sluice of the canal to enable the petitioner to catch the fish as illegal and contrary to the provisions of the A.P. Panchayat Raj Act, 1994 and to direct the respondents not to object the same.

8. On 09-07-2018, interim direction was granted directing the respondents not to resist the petitioner when he let out the water through the sluice and to enable him to catch the fish as per the lease terms and conditions, pending disposal of the main Writ Petition.

9. I.A.No.2 of 2018 is filed in the Writ Petition to vacate the said order by the Gram Panchayat.

10. It is contended by the Gram Panchayat that the petitioner deposited Rs.1,00,000/- on the date of the auction on 13-09-2015, that he paid Rs.2,25,000/- on 02-12-2017 with delay and therefore a decision was taken by the Panchayat not to open the sluice to let out the water from the tank on 15-06-2018. It is stated that the petitioner paid Rs.1,27,000/- and Rs.6,14,000/- on 28-06-2018 and 17-07-2018 and since the petitioner violated the auction conditions, the petitioner is not entitled to any relief in the Writ Petition.

11. It is not the case of the Gram Panchayat that any action was taken to terminate the lease granted to the petitioner on 13-09-2015 on the ground that the petitioner did not pay the lease amount. In fact, when the evidence on record indicates that there was no water in the tank for 2015-16 and 2016-17, the petitioner could not have been expected to make the payment for those two years. In any event, admittedly the petitioner made the full payment by 17-07-2018 even according to the respondents as per the terms of the lease deed. Therefore, the respondents could not have stopped the petitioner from conducting fishing operations by opening the sluice after receiving the loan amount in full. In para-8 of the counter filed in I.A.No.2 of 2018 in W.P.No.23334 of 2018, it is admitted that the Gram Panchayat officials stopped the petitioner from doing fishing on 15-06-2018 and also lodged a police complaint on 12-07-2018 against the petitioner.

12. When a question was put to the learned Standing Counsel as to how such a police complaint could be lodged in the light of the

order dt.09-07-2018 in I.A.No.1 of 2018 permitting the petitioner to catch the fish, the learned Standing Counsel stated that the Gram Panchayat officials were not aware of the High Court order.

13. This contention cannot be countenanced as the said interim order was passed in the presence of the learned Standing Counsel and therefore, his clients are deemed in law to aware of the said order. It is thus clear that having received the full lease amount from the petitioner, the respondents have prevented the petitioner from catching the fish during the currency of the lease agreement till 30-08-2018 and have blatantly violated the order dt.09-07-2018 in I.A.No.1 of 2018 passed by this Court in W.P.No.23334 of 2018.

14. It is not in dispute that on 28-06-2018, there was a proposal initiated by the Gram Panchayat Officer, Vijayawada, to conduct fresh auction of lease hold rights to catch fish in the said tank for two years 2018-19 and 2019-20.

15. To stop the said auction, petitioner filed W.P.No.30538 of 2018.

16. On 28-08-2018 in I.A.No.1 of 2018, this Court granted stay of the proposed auction and also directed the Executive Officer of the Gram Panchayat to show cause why proceedings of Contempt of Court shall not be initiated against him, for *prima facie* disobedience of the order dt.09-07-2018 in I.A.No.1 of 2018 in W.P.No.23334 of

2018. The *suo motu* Contempt Case is registered as C.C.No.2379 of 2018.

17. Same defence is taken in the Contempt Case as set out above by the Executive Officer of the Government Panchayat viz., that he was not aware of the interim order granted on 09-07-2018 in I.A.No.1 of 2018 in W.P.No.23334 of 2018. I.A.No.2 of 2018 is also filed to vacate the said order.

18. I have already held that the Gram Panchayat could not have prevented the petitioner from the catching the fish in the tank by operating the sluice after having received the entire lease amount that too after this Court granted interim order on 09-07-2018 in I.A.No.1 of 2018. Therefore, unless the petitioner is permitted to catch the fish by opening the sluice, the respondents cannot be allowed to conduct fresh auction of lease hold rights to catch fish in the above tank since that causes serious loss and prejudice to the petitioner.

19. Accordingly, both the Writ Petitions are allowed. The petitioner is granted time till 30-11-2018 to catch the fish in the subject tank and the Gram Panchayat and other respondents in both the Writ Petitions are restrained from interfering with the catching by fish by the petitioner and also operating of the sluice by the petitioner for letting out water to catch fish. The Executive Officer of the Gram Panchayat shall pay costs of Rs.3000/- (Rupees Three Thousand only) to the petitioner in both Writ Petitions.

20. Consequently, both the applications in I.A.No.2 of 2018 in W.P.No.23334 of 2018 and I.A.No.2 of 2018 in W.P.No.30538 of 2018 are dismissed.

21. For the above said reasons and with the directions, the Contempt Case is closed. No costs.

22. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 26-09-2018
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