

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.Nos.24161 of 2018

ORDER:

This writ petition is filed under Article 226 of the Constitution of India for the following relief:

“To issue a Writ Order or Direction more particularly one in the nature of Writ of Mandamus declaring the proceedings Rc.No. 3331/2017/D1, dated 17 04 2017, Rc.No.803/2016/TO, dated 25-04-2017, Rc.No.3331/2017/D1, dated 28-04-2017 in trying to issue Errata publication to the Notification dt 14-5-1970 and trying to include the petitioners patta lands ie., Ac.0-30 cents in RS.No. 95/2, Ac.0-94 cents in RS.No.97, Ac.0-82 cents in RS.No.98/1, Ac.2-06 cents in RS.No.99/2, Ac.0-40 cents in RS.No.102/1, Ac.0-93 cents in RS.No.102/4, Ac.3-01 cents in RS.No.102/3, Ac.3-32 cents in RS.No.99/4, Ac.1-62 cents in RS.No.99/1 and Ac.4- 10 cents in RS.No.102/5 situated in Zami Navepothavaram village, Ibrahimpatneam Mandal, Krishna District into Navepothavaram Forest Block by altering the boundaries of Navepothavaram Forest Block as wholly illegal arbitrary and violative of Articles 14, 21 and 300-A of the Constitution of India and also violative of principles of natural justice and Without jurisdiction and consequently declare that the respondents are not entitled for changing the boundaries of Navepothavaram Forest Block by including the petitioners lands.”

2. Petitioners herein, who are twelve in number, claim to be the absolute owners of various extents of lands i.e., Ac.0-30 cents in RS.No. 95/2, Ac.0-94 cents in RS.No.97, Ac.0-82 cents in RS.No.98/1, Ac.2-06 cents in RS.No.99/2, Ac.0-40 cents in RS.No.102/1, Ac.0-93 cents in RS.No.102/4, Ac.3-01 cents in RS.No.102/3, Ac.3-32 cents in RS.No.99/4, Ac.1-62 cents in RS.No.99/1 and Ac.4- 10 cents in RS.No.102/5 situated in Zami Navepothavaram village, Ibrahimpatneam Mandal, Krishna District.

3. According to the petitioners herein, they are the pattadars and secured the said properties by way of various registered sale deeds. An extent of

Ac.858.00 cents of land in Navepothavaram village was declared as Forest Block under Section 4 of A.P. Forest Act, 1967 vide G.O.Ms.No.958, Food & Agriculture (For.III) Department, dated 14.05.1970 and the said notification was published in the A.P. Gazettee Supplement to Part-I Vide No.28D, dated 09.07.1970. It is further stated that according to the said notification the entire notified forest lands admeasuring Ac.858.00 cents is located in Navepothavaram village whereas the lands of the petitioners are located in Zami Navepothavaram village and that they are outside the Navepothavaram Forest Block. It is alleged in the affidavit filed in support of the writ petition that all of a sudden the officials of Forest Department came to the lands of the petitioners and took some measurements without informing the reasons for doing so and when they asked as to what was going on they informed the petitioners that they were conducting survey and they orally stated that the survey was being undertaken to modify the boundaries of Navepothavaram Forest Block and trying to include our patta lands into the said Navepothavaram Forest Block.

4. According to the petitioners, they obtained documents under the Right to Information Act and came to know that the forest authorities issued various proceedings dated 17.04.2017, 25.04.2017 and 28.04.2017. The Conservator of Forests, Rajahmundry Circle, Rajamahendravaram addressed a letter to the Divisional Forest Officer, Krishna Division to explain as to the missing of cairn numbers from 12 to 17 in the Navepothavaram Forest Block errata publication map and requested to re-examine the map with reference to the Joint Inspection report and rectify such omissions if any duly furnishing the justification report for deleting the cairns or adding the cairns and resubmit the proposals without giving scope for making queries by the head office. In response to the said letter, the Divisional Forest Officer, Krishna Division, Vijayawada, submitted his report after renumbering the cairns and

enclosing errata. Thereafter, the Conservator of Forest vide Rc.No.1331/2017/D1, dated 28.04.2017 addressed a letter to the Collector and District Magistrate, Krishna Machilapatnam pointing that the survey is required to be undertaken by the Revenue, Forest and Survey Settlement and Land Records officials for fixing of forest boundary in Navepothavaram Forest Block and to submit the forest errata notification proposals thereafter through the Principal Chief Conservator of Forests, Andhra Pradesh, Guntur for publication of errata notification.

5. In the above background, the present writ petition has been filed, questioning the above said proceedings dated 17.04.2017, 25.04.2017 and 28.04.2017. According to the learned counsel for the petitioners, the impugned action on the part of the respondent forest authorities is highly illegal, arbitrary and unreasonable and violative of Articles 14 and 300-A of the Constitution of India besides opposed to the very spirit and object of the provisions of the A.P. Forest Act, 1967 and violative of the principles of natural justice. It is further submitted by the learned counsel in elaboration that there is no provision for issuing errata either under the A.P. Forest Act or the Rules made thereunder and the impugned action is a deliberate attempt to give a go-bye to the mandatory provisions of A.P. Forest Act, which prescribe an elaborate procedure to be adhered to.

6. On the other hand, it is vehemently contended by the learned Government Pleader that absolutely there is no illegality nor there exists any procedural infirmity in the impugned action and in the absence of the same, the questioned action is not amenable for any judicial review under Article 226 of the Constitution of India. It is also the submission of the learned Government Pleader that earlier the Forest Settlement Officer was appointed and he submitted a report stating that no claims were received in 1987, as

such, it is not open for the petitioners herein to contend that without being preceded by any enquiry as contemplated under the Act and the Rules, the impugned action has been resorted to.

7. The information available before this Court, in clear and vivid terms, discloses that there is absolutely no dispute with regard to the ownership of the property of the petitioners herein. As per Section 4 of the A.P. Forest Act, 1967, it is incumbent on the part of the State Government to publish a notification in the A.P. Gazettee and the District Gazettee concerned specifying, as nearly as possible, the situation and the limits of such lands proposed to be reserved for reserve forest and it is also incumbent on the part of the State Government to appoint a Forest Settlement Officer to consider the objections if any against the declaration under Clause (b) and to enquire into and determine the existence, nature and extent of any rights claimed by, or alleged to exist in favour of, any person in or over any land comprised within such limits, or to any forest produce of such land, and to deal with the same as provided in the Chapter.

8. According to Section 6 of the Act, it is mandatory on the part of the Forest Settlement Officer to publish in the main language of the District Gazette concerned or where there is no such Gazette, in the Andhra Pradesh Gazette, and in the regional language in every town and village and at the headquarters of each taluk and at the office of the Gram Panchayat, in which any portion of land included in the said notification is situated, a proclamation, specifying, as nearly as possible, the situation and limits of the land proposed to be included within the reserved forest and to set forth the substance of the provisions of Section 7 explaining the consequences. It is also mandatory on his part to call for the objections within the period fixed and sub-Section (2) of Section 6, in clear and vivid terms, mandates the

Forest Officer to serve a copy of proclamation on every known or reputed owner or occupier of any land included in or adjoining the land proposed to be constituted as a reserved forest. Section 8 of the Act deals with the enquiry by the Forest Settlement Officer and according to the same he is obligated to consider every objection and to inquire into every claim made under Section 6, after recording in writing the statements made or evidence given in pursuance of the proclamation published or notice served under that section. According to sub-section (2) of Section 6, the Forest Settlement Officer needs to adopt the procedure contemplated under the Code of Civil Procedure for recording the evidence.

9. Section 11 deals with the claims to right of way and Section 12 deals with the compensation for rights. Under Section 13 of the Act whenever there is rejection of claim the party aggrieved has a right of appeal to the District Court.

10. The above provisions of law, clearly demonstrate that there is an elaborate procedure provided under the Statute to be strictly adhered to by the authorities while issuing notification and while conducting enquiry.

11. In the instant case, by completely giving a go-bye to the every mandatory requirements of law and without showing the petitioners lands in the notifications issued under Section 4 of the Act, by way of issuing an errata, the respondent authorities are trying to conclude the proceedings further by publication of notification under Section 15 of the Act. This procedure sought to be resorted to by the respondent authorities is in contravention of the mandatory requirements of law. In the considered opinion of this Court, the impugned action on the part of the respondent authorities is a patent violation of not only the mandatory provisions of the

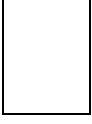
statute as mentioned *supra*, but also in violation of Articles 14 and 300-A of the Constitution of India.

12. For the aforesaid reasons, the writ petition is allowed, declaring the proceedings Rc.No.3331/2017/D1, dated 17-04-2017, Rc.No.803/2016/TO dated 25-04-2017 and Rc.No.3331/2017/D1 dated 28-04-2017 as wholly illegal, arbitrary and violative of Articles 14, 21 and 300-A of the Constitution of India and also violative of the principles of natural justice and without jurisdiction. However, it is open for the respondent authorities to proceed in accordance with law after issuing notification afresh under Section 4 of the Act to the extent of the lands of the petitioners herein and also to the extent of the lands not covered by the notification under Section 4 of the Act. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 01.10.2018
grk



A.V.SESHA SAI, J



THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.Nos.24161 of 2018

Dated: 01.10.2018

grk