

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NO.19380 OF 2007

ORDER :

This Writ Petition is filed seeking to declare the action of the 2nd respondent – Commissioner, Greater Visakha Municipal Corporation, (GVMC), Visakhapatnam and the 3rd respondent –Mandal Revenue Officer/ Tahasildar (Rural), Chinnagadili Mandal, Visakhapatnam, in making preparations for construction of houses in agriculture lands allotted to the petitioners for cultivation, as illegal and arbitrary.+++++

2. The brief facts of the case, according to the petitioners, are that the father of the 1st petitioner, petitioners 2, 3 and 4 and the father of the 5th petitioner have occupied the subject poramboke lands situated in Survey Nos.136/1 (in prayer portion it is mentioned as Sy.No.136/2), 77/1 (in prayer portion it is mentioned as Sy.No.77/2), 119, 136/4 and 137/4 of Kommadi village respectively in the year 1953 and the Mandal Revenue Officer issued provisional pattas to them in the year 1983; on 12.08.2007 the authorities of the respondents 2 and 3 brought Surveyors and made markings in the petitioners lands to acquire the same for construction of 6000 houses in Kommadi village under the scheme of Jawaharlal Nehru National Urban Renewal Mission (JNNURM) without acquiring the same by following due process of law. Hence, they filed the present Writ Petition.

3. Counter affidavit has been filed by the Tahsildar, stating that the lands in Survey Nos.77/2, 119, 136/2, 136/4 and 137/4, admeasuring Ac.3.88 cents, Ac.19.57 cents, Ac.0.91 cents, Ac.5.00 cents and Ac.1.50 cents respectively are classified as Government lands and neither the petitioners nor their forefathers were issued any provisional pattas

assigning the said lands and their names were not found place in the revenue records showing that they were assigned Government lands; though the land to an extent of Ac.5-00 in Sy.No.136/4 was assigned to one Adari Appalanaidu and Ac.1.50 cents in Survey No.137/4 was assigned to one Popuri Brahmaiah, subsequently both the assignments were cancelled due to violation of assignment conditions and resumed the lands to the Government and later they were handed over to GVMC, Visakhapatnam for construction of houses to weaker sections under JNNURM Scheme; the land in Survey No.77/2 is proposed to be handed over to VUDA for development purpose and the lands in Survey Nos.119 and 136/2 were handed over to GVMC, Visakhapatnam for construction of houses to weaker sections under JNNURM Scheme; G.V.M.C. might have inspected the subject lands as the same were handed over to the G.V.M.C; in the field inspection made by the Tahsildar on 07.02.2011, it was found that Survey No.136/4 is consisting of trees reported to be under occupation of Sri Adari Peda Ramana and Sivaramu; in Sy.No.137/4 JNNURM building work is in progress and in Sy.No.119/9 Ecliptic trees are reported to be under the occupation of Baipalli Bapayamma; in Sy.No.77/2, admeasuring Ac.1.50 cents, some plants are reported to be under the occupation of Golagani Dali, Guntuboyina Appadu and Durgasi Bangaru Patrudu and due process of law will be followed for eviction of the said encroachments over the lands.

4. Counter affidavit is also filed by the Commissioner, G.V.M.C. stating that the subject lands mentioned in the Survey numbers were handed over to the G.V.M.C. for construction of 5792 houses for weaker sections, by cancelling the provisional pattas granted to the petitioners.

5. Learned Standing Counsel for G.V.M.C. has produced the written instructions, stating that as per the orders of the District Collector, Visakhapatnam, dated 04.11.2006, the Mandal Revenue Officer has handed over the said land to the District Manager, A.P. State Housing Corporation, Visakhapatnam, for grounding work under JNNURM Scheme for construction of housing colony to the weaker section people.

6. Reply affidavit has been filed by the petitioners denying the averments made in the counters and stating that the assignment pattas were granted to them in the year 1983; due to fire accident in the village the pattas of the petitioners 2 and 3 were burnt; except the petitioners 4 and 5, the petitioners 1 to 3 are in possession of the lands assigned to them; the petitioners 4 and 5 were forcibly evicted from the lands without following due process of law; the respondents have no authority to resume the lands without resorting to the provisions of the Land Acquisition Act and without payment of compensation.

7. Heard learned counsel for the petitioners, learned Standing Counsel for G.V.M.C. and learned Assistant Government Pleader for Revenue.

8. An order of *status quo* was granted on 01.11.2007 with regard to the possession as on that day. Learned counsel for the petitioners submits that assignment pattas were given to the petitioners and that petitioners 4 and 5 were forcibly evicted. He also contends that the endorsement from Tahsildar office was received by him on 23.06.2016 under the Right to Information Act, stating that settlement fair adnagal pertaining to Komadi Village is not available in the office. He also seeks to rely upon the report submitted by the Tahsildar dated 07.02.2011, whereunder the Tahsildar categorically stated that pursuant to the orders of the High Court in the

present Writ Petition he submitted the said report. As seen from the record, no such direction was given to the Tahsildar to give any report and the subject lands were not assigned to the petitioners and in fact the revenue records show the same as “Gayalu” “Vagu” and “AWD” lands.

9. In the counter affidavit it is categorically stated that the subject lands are Government lands. Insofar as the lands in Sy.Nos.77/2, 119 and 136/2 are concerned it is categorically stated that the lands are Government lands and no assignment was given either to the petitioners or to anybody. Insofar as the lands in Sy.No.136/4 and Sy.No.137/4 are concerned, though the said lands were previously assigned to one Appala Naidu and Popuri Brahmaiah, subsequently the said assignments were cancelled and the lands were resumed to the Government as the said persons violated the assignment conditions.

10. As seen from the record, it is clear that the said lands were handed over to the A.P. State Housing Corporation for grounding work under JNNURM scheme for construction of the housing colonies to the weaker sections, pursuant to the proceedings of the Collector dated 04.11.2006. The Writ Petition is filed in September, 2007, by which date the subject lands were already handed over to A.P. State Housing Corporation. As the subject lands were already handed over to the A.P. Housing Corporation and the construction of the housing colony for weaker sections has already been started, pursuant to the orders of the Collector dated 04.11.2006, and as a specific plea was taken in the counter affidavit stating that the subject lands are Government lands and not assigned to anybody, no orders can be passed in the present Writ Petition. It is the admitted case of the petitioners in their reply affidavit that except petitioners 4 and 5, petitioners 1 to 3 are still in possession of the lands.

If that is so, the respondent authorities are at liberty to evict them from the lands after following due process of law. However, if the petitioners were granted provisional pattas they are at liberty to avail the alternative remedies available to them under law, if they are so advised.

11. In the result, The Writ Petition is dismissed. No orders as to costs. The Miscellaneous petitions pending, if any, shall stand closed.

KONGARA VI JAYA LAKSHMI, J

Dated 25.07.2018

JR/ Nsr



HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI



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25th July, 2018

JR