

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.32446 & 39314 OF 2018

Date: 02.11.2018

WP No.32446 of 2018:

Between:

The Potlur Rajaka Seva Sangham, rep.by its President,
K.Sreenivasa Rao, s/o. Venkata Rao, Aged about 45 years,
r/o.Potlur village, near Savalyapuram Mandal, Guntur
District.

.....Petitioner

and

The State of A.P., rep.by its Principal Secretary,
Panchayat Raj Department, Secretariat, Velagapudi,
Guntur district and others.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

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COMMON ORDER:

Petitioners in these writ petitions is Rajaka Seva Sangham of Potlur Gram Panchayat. The village has two minor irrigation tanks under the control of Gram Panchayat. The members of petitioners' society being Rjakas, they also used the Tanks for the purpose of washing clothes. Petitioner filed W.P.No.32446 of 2018 alleging that upset price is not fixed for grant of leasehold rights for two years commencing from 01.09.2018. During the pendency of said writ petition, by proceedings dated 17.09.2018, the Chairman of the Upset Price Fixing Committee fixed upset price as 80,000/- for the year 2018-2019 and 90,000/- for the year 2019-2020 for Gangaiahkunta; 3,65,000/- for the year 2018-2019 and 4,00,000/- for the year 2019-2020 for Uracheruvu tank. Thereafter, Gram Panchayat issued notice calling upon the petitioners' society to furnish details to show that society is entitled to leasehold rights without conducting public auction. It appears, there is a continuous correspondence between Society and Gram Panchayat. Alleging that society is non-responsive open auction notice is issued.

2. Alleging that issuing notice on 29.10.2018 to conduct public auction for leasing of fishery rights over Uracheruvu and Gangaiah tanks as illegal and to direct the respondents to allot Uracheruvu and Gangaiahkunta of Potluru Gram Panchayat for leasing of fishery rights for the years mentioned above to the petitioner's society, Writ Petition No.39314 of 2017 is filed.

3. Material on record would disclose that there was correspondence between the petitioners' society and the Gram Panchayat. According to Gram Panchayat, in spite of giving sufficient opportunity, all the required documents are not furnished and as petitioners' society was not responding to the notice issued to furnish all the required documents to establish that it is validly constituted society for the welfare of the members of the society, who are the village Rajakas, the Gram Panchayat had no option, but to conduct open public auction and, therefore, open auction was notified on 29.10.2018.

4. The same stand is expressed in the counter-affidavit filed in W.P.No.32446 of 2018.

5. Learned counsel for petitioners' society points out that society is registered under the Andhra Pradesh Societies Registration Act, 35 of 2001. The Certificate of Registration dated 23.07.2010 is enclosed as Exhibit-P2 at page No.13 of the writ petition paper book in W.P.No.39314 of 2018.

6. According to learned counsel for petitioners', all the required documents are already furnished. Exhibit-P9 at page No.35 of writ petition paper book contains signature of Panchayat Secretary, dated 27.10.2018 acknowledging furnishing of copy of resolution passed in General Body held in the presence of Election Officer. Similarly, acknowledgment dated 08.10.2010 issued by the Panchayat Secretary discloses the receipt of resolution of society dated 05.08.2018 and two resolutions of Gram Panchayat dated 30.05.2010. He would therefore submit that though petitioner

society is qualified and entitled to leasehold rights, the Gram Panchayat is illegally denying.

7. According to learned standing counsel representing Gram Panchayat, the Gram Panchayat ascertained information on registration of the petitioners' society with the B.C. Welfare Department and Fisheries Department. Both Departments have informed that petitioners' society is not registered with them. He also submits that society is not registered with the Gram Panchayat. He would therefore submit that petitioner society is not entitled to awarding of fishing rights and decision to conduct open auction was validly taken.

8. The controversy is with reference to the competence of petitioners' society to represent Rajaka people of the village to obtain leasehold rights for fishing operations in two village tanks based on the upset price already fixed by the competent authority.

9. Government notified Rules vide G.O.Ms.No.343 Panchayat Raj (Samithi.I) Department, dated 10.04.1978. The Rules prescribed the procedure to award leasehold rights for fishing operations in the village tanks. The Rules mandate granting of lease to Rajaka Seva Sangam or Fishermen Co-operative Society subject to complying with the fishing rights. Rules require the Executive Officer of the Gram Panchayat to issue notice indicating the upset price prescribed and requesting the society to respond and if the society responds and fulfils all the requirements, the leasehold rights have to be awarded to the society.

10. Though the correspondence on record would disclose that petitioners' society is demanding to award leasehold rights to them, the objection of Gram Panchayat appears that Society is not registered with the Gram Panchayat as well as with the B.C.Welfare Department and Fisheries Department and, therefore, not entitled to awarding of leasehold rights without conducting public auction.

11. *Prima facie*, reading of the Rules, Court is of the opinion that there is no such requirement of registration with those Departments as well as Gram Panchayat as a condition for consideration of Sangam request for assignment of leasehold rights for fishing operations in the village tanks. The stand of the respondent Gram Panchayat that petitioners' society did not respond to the various letters issued by them is contrary to material placed on record. For reasons best known Gram Panchayat is dodging the issue to award fishing rights to petitioners' society.

12. As apparently there is running feud between Gram Panchayat and petitioners' society, this Court deems it necessary to direct the District Panchayat Officer to deal with the issue of eligibility of petitioners' society to secure leasehold fishing rights in two village tanks. He shall issue notice to the petitioners' society to appear before him on the date fixed in advance and to produce all the relevant documents in support of their claim. The District Panchayat Officer shall verify the eligibility of society to obtain leasehold rights basing on the upset price fixed without conducting public auction. The date shall be fixed within a period of three

weeks from the date of receipt of copy of this order and petitioners' society shall appear on the date fixed with all supporting documents and shall file them before the District Panchayat Officer. On due consideration of eligibility of petitioners' society, the District Panchayat Officer shall take a decision within two weeks thereafter. If the District Panchayat Officer is satisfied that the petitioners' society fulfils all the requirements, he shall accordingly inform the same to the Panchayat Secretary and the Panchayat Secretary shall take consequential steps. If the District Panchayat Officer is not satisfied with the eligibility of petitioners' society, the same shall be informed in writing by a reasoned order. Until a decision is taken by the District Panchayat Officer, no public auction shall be conducted. This consideration of eligibility by the District Panchayat Officer is uninfluenced by the observations made herein above and shall be objectively made. Writ Petitions are accordingly disposed of. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 02.11.2018

Note: Issue C.C. in three days

(b/o.)

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