HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 36529 of 2018

ORDER:

1) The writ petitioner entered into an agreement with the owner and possessor of the land by name Capt. D.K.Giri, Smt. Vidyavathi Giri and Chetan Giri on 25.10.2016, admeasuring Ac.90.00 situated at Darapalem and Pathamallempet Village, Golugonda Mandal, Visakhapatnam District. The owners claimed to have purchased the said land through registered sale deeds vide document Nos.1013 and 1014 of 2013, dated 21.01.2003. Basing on the agreement referred to above, the petitioner made an application before the authorities seeking permission to fell and transport the teak trees raised by him therein. Pursuant thereto, the Tahsildar visited the said land, enquired into the ownership and title and issued Form-B certificate (Certificate of ownership) and also addressed a letter to the Divisional Forest Officer (fifth respondent) on 23.03.2017, to accord permission to fell and transport 504 existing teak trees. Later, the fifth respondent addressed a letter to the sixth respondent herein vide letter dated 07.04.2017, requesting him to inspect the teak trees, who inturn inspected the same. In view of the report, the fifth respondent granted permission to fell and transport the said teak trees. Pursuant to which, the petitioner is said to have

fell about 150 teak trees, from the date of giving permission. At that moment, the third respondent-the Revenue Divisional Officer, issued letters to the Tahsildar and Divisional Forest Officer, requesting them to look into the permission and take appropriate action. Basing on the letter given by the third respondent, the fifth respondent issued a memo to the sixth respondent, to take action for shifting and cutting of the trees and enquire into the matter. Aggrieved by the action of the authorities in issuing the memo, the petitioner filed W.P.No.19633 of 2017. In the said writ petition, the petitioner also filed W.P.M.P.Nos. 23960 and 23961 of 2017, seeking permission to fell and transport the trees. In the said writ petition, this Court directed the Revenue Divisional Officer, to dispose of the ROR Appeal within four weeks from the date of receipt of order after hearing the persons concerned with the issue. Aggrieved by the order passed in W.P.No.19633 of 2017, the petitioner preferred Writ Appeal No.653 of 2018, which was dismissed, directing the respondents 5 and 6 to conduct enquiry and complete the same expeditiously. Pursuant thereto, the fifth respondent issued a notice directing the petitioner to appear before him on 25.07.2018. On appearance, the fifth respondent vide his proceedings Rc.No.477/2017/N3(I), dated 13.08.2018, informed the petitioner that the third respondent has

disposed of R.O.R.Case No.200 of 2017 directing the Tahsildar to put the lands in the above survey numbers in Web Land Dispute Register and directed all the parties to approach the civil Court to prove their title over the land. Basing on the order of the Revenue Divisional Officer and as there is a dispute over the title of the lands in survey numbers, in which permission for felling the trees is accorded, the petitioner was informed that soon after receipt of the report from the Tahsildar, over the title, necessary action would be taken as per Rules. Challenging the same the present Writ Petition came to be filed.

2) The main grievance of the petitioner appears to be that without deciding the eligibility of the petitioner for felling of trees and simply relying on the order of the sixth respondent dated 16.04.2018 and further calling for a report from the fourth respondent with regard to survey numbers referred to above, the fifth respondent postponed the matter. It is stated that the petitioner is not a party to the proceedings before the Revenue Divisional Officer and that the said order is not binding on the petitioner. Even otherwise, it was held that the Revenue Divisional Officer is not the competent authority to decide the dispute and directed the parties to approach the civil Court. The counsel further submits that though the suit in O.S.No.209 of 2011 on the file of the Principal District

Judge, Visakhapatnam, came to be decreed in the month of July, 2012, directing the defendants to execute a regular sale deed in favour of the plaintiffs on deposit of the balance sale consideration of Rs.5,00,000/- within one month from the date of this judgment by the plaintiffs, in the name of the defendants 3 and 4 being minors represented by their mother 2nd defendant, by way of taking fixed deposits in any Nationalised Bank and on failure to do so, the plaintiffs were given liberty to approach this Court to obtain regular sale deed under due process of law, but the defendants therein preferred R.O.R. appeal nearly five years later seeking the following reliefs:

a) to declare the issuance of pass books and title deeds in favour of the respondents 1 to 5 is arbitrary, illegal and capricious and without any manner of right, title over the schedule property;

b) to recall the pass books issued by the Tahsildar, Golugonda mandal in favour of respondents 1 to 5 and cancel them;

c) to direct the Tahsildar, Golugonda mandal to hold a regular enquiry with regard to the right, title over the schedule property and issue pass books in favour of the appellants in confirmation of the enquiry under the provisions of ROR Act and effect mutation in the name of the appellants in online accounts in all the revenue records.

3) A counter came to be filed by the fifth respondent disputing the contents of the affidavit filed in support of the writ petition except to the extent admitted by them. While referring to the procedure to be followed for cutting of teak trees, the fifth respondent in the counter categorically states that the petitioner is the agreement holder of Capt.D.K.Giri and two others and that he is not the owner of the land. It is stated that in the earlier writ petition filed by the petitioner vide W.P.No.19633 of 2017, one Bandaru Venkata Nageswara Rao and Reddy Venkata Ramana, were impleaded as respondents 7 and 8, who raised a dispute with regard to possession and ownership of the land under the Record of Rights Act. It is further stated that pursuant to an order passed by this Court in Writ Appeal No.653/2018, dated 13.06.2018, the Divisional Forest Officer, after giving an opportunity to the writ petitioner, conducted enquiry and passed an order on 13.08.2018. The averments in the counter further show that though the permission has been granted to the owner of the land for felling and transporting the teak trees, but one Malla Dara Malleshwara Rao brought to their notice an order of the Principal District Judge, Visakhapatnam, passed in his favour in respect of the suit schedule property and as such requested for cancellation of the order in the above survey numbers. It is further stated

that the lands where permission was accorded for felling of the trees are under dispute. Having regard to the orders passed by the Revenue Divisional Officer, Narsipatnam, in Rc.No.200/2017/C, dated 17.07.2018, directing the Tahsildar, to put the lands in survey numbers mentioned therein in the Web Land Dispute Register, it is pleaded that it may not be proper to accord permission, more so when title is under dispute and muchless under multiple litigations. It is further pleaded that the land owner can take permission for felling of trees but the petitioner is not the owner of the land and is only an agreement holder. Hence, he cannot challenge the order of the authorities in preventing felling of the trees.

4) The question that falls for consideration is whether the authorities were justified in refusing to permit the petitioner to cut and take away the teak trees?

5) It is to be noted here that a procedure is prescribed for cutting and carrying the teak trees vide circular No.1-A/2003 issued by the Principal Chief Conservator of Forest, Andhra Pradesh in Rc.No.5357/2003/F5, dated 22.04.2006, Consolidated guidelines are issued as to the procedure to be followed for grant of transit permit for removal of timber and other produce from the patta lands. If a person intends to cut and transport a tree growth existing on a patta land, he shall make an application seeking permission from the concerned

territorial Divisional Officer in the proforma prescribed in Annexure-I along with necessary information. On receipt of such an application, with a certificate of title issued by the Mandal Revenue Officer/Tahsildar, as prescribed under Rule 5 (3) of the Andhra Pradesh Forest Produce (Transit) Rules, 1970, the Divisional Forest Officer, shall send a copy of the Form along with Map of the patta lands to the Forest Range Officer for field verification and on receipt of a report from the Forest Range Officer, the Divisional Forest Officer, shall accord permission for felling of tree growth, fixing time limit for execution of the task. It is categorically stated that the land owner shall take up felling of the trees only after the permission is granted.

6) It is no doubt true that earlier permission was granted, pursuant to which the land owner by name Capt. D.K.Giri, is said to have entered into an agreement with the writ petitioner, for cutting and transporting of the teak trees in the subject land. Thereafter, the land owner never came into picture and it is only the agreement holder, who is pursuing the litigation.

7) As observed earlier, O.S.No.209 of 2011 came to be filed by Bandaru Venkata Nageswara Rao and Reddy Venkata Ramana, for specific performance of agreement of sale dated 11.07.2005 executed by the defendants therein namely Malla

Dara Malleswara Rao and three others in favour of the plaintiffs, after receiving the balance sale consideration. The said suit was decreed on 19.07.2012 directing the defendants to execute a regular sale deed in favour of the plaintiffs on deposit of balance sale consideration of Rs.5,00,000/- within one month from the date of this judgment by the plaintiffs in the name of the defendants 3 and 4 being minors represented by their mother 2nd defendant, by way of fixed deposits in any Nationalised Bank and on failure to do so on the part of defendants, the plaintiffs were given liberty to approach the said Court to obtain regular sale deed under due process of law.

8) It is also true that in the said proceedings neither the petitioner nor the persons with whom the petitioner entered into an agreement parties were parties. But it is to be noted that the land which is subject matter of dispute in the suit takes within its fold the land covered in the writ petition.

9) It is no doubt true that the defendants, who lost the suit preferred R.O.R. appeal before the Revenue Divisional Officer, vide Rc.No.200/2017. In the said proceedings there is a reference to W.P.No.19633 of 2017 filed by the petitioner herein seeking suspension of the orders of the Divisional Forest Officer and for disposal of the R.O.R. case filed before the Revenue Divisional Officer by the defendants in the suit.

After referring to the plea taken in the writ petition, the Revenue Divisional Officer, Narsipatnam, directed the Tahsildar to put the lands in Web Land Dispute Register as the lands are under multiple litigations. Pursuant to the order passed in Writ Appeal No.653 of 2018, the Divisional Forest Officer, was directed to conduct an enquiry with regard to lands in dispute after giving a notice to the petitioner. The proceedings dated 13.08.2018 in Rc.No. 477/.2017/N3 (i), show that as per the report of the Revenue Divisional Officer, Narsipatnam, the lands which are subject matter of dispute in the writ petition are also under dispute. The order impugned refers to the representation made by the petitioner, wherein he submitted that he purchased teak trees from Chetan Giri, vide agreement dated 25.11.2016. He further states that Chetan Giri has purchased the lands to an extent of Ac.24.49 cents in Sy.No.3-4 etc., of Darapalem Village, from Aubrey Daniel vide document No.1014/2013, who inturn purchased the said land from G.V.Narasimharaju, vide document No.40/96, dated 11.01.1996. Copy of the Web Land Adangal issued in favour of Chetan Giri was also referred to. Hence, he sought for permission for felling up of teak trees, but the order of the Revenue Divisional Officer, Narsipatnam dated 16.04.2018, would show that the Tahsildar, Golugonda, was directed to put the lands in Web Land Dispute Register and

the survey numbers, where permission has been granted earlier were also included in the above reference. Since the revenue department is competent authority to decide the issue and as the Revenue Divisional Officer, Narsipatnam, has directed the parties to approach the civil Court, the Divisional Forest Officer, refused to grant permission.

10) From the above, it is clear that as against the permission granted earlier, there lies material evidence with regard to dispute over the title. It is not as if that the teak trees are likely to perish if not cut, on the other hand as they grow old they attain more value.

11) Be that as it may, a perusal of the material on record would show that Sterling Tree Magnum Company Limited has come up with a plea that the said company has purchased lands admeasuring Ac.100.00 in the year 1995-96, in the name of its employees ie. K.S.Ravi Shankar, D.D.Selva Raj, Aubrey Danial on behalf of S.T.MCompany with the funds of the company and later planted teak trees by spending huge amounts in the said land. It is said that in the year 2002-2003, the lands of the company were irregularly transferred to Capt. D.K.Giri, Smt. Vidyavathi Giri and Chetan Giri by the employees of the company in collusion with the above three persons, without knowledge of company and created fake and forged documents. The record also shows that Rakshana

Consumers Association filed a representation with a request to stop cutting of the trees, as the investors of S.T.M.Company have approached the Company for redemption of their trees certificates as they got matured and on coming to know that the said lands are under litigation. There is also a title dispute vide O.S.No.545 of 2012 between Vusirika Srinivasa Reddy and Malla Dara Malleswara Rao and 22 others before the Court of II Additional Senior Civil Judge, Visakhapatnam. Apart from that the record also refers to some dispute raised by Geddam Nanaji and other local people who occupied nearly Ac.30.00 cents of land.

12) In view of the above disputes, this Court is of the view that if the petitioner is allowed to cut the trees, it would lead to further complications. Hence, it may not be proper for this Court to allow to cutting of the teak trees.

13) Accordingly, the writ petition is dismissed, giving liberty to the petitioner to avail the appropriate remedy before the civil Court. However, if any of the teak trees are cut, lying in the said land and if the trees are mature enough for sale, the Forest Department shall either auction the same in the presence of all concerned and deposit the said amount in the Government Treasury or keep the same in their godown after following due procedure.

14) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

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JUSTICE C. PRAVEEN KUMAR

15.12.2018
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