

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.38040 of 2017

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner-Sri Radhakantha Swamy Vari Temple requesting to issue a writ of *mandamus* declaring the proceedings of the 2nd respondent-District Collector, Visakhapatnam District, in Pc.no.652/2017/D2, dated 24.06.2017, directing the Tahasildar, Madugula, to delete from the records the name of deity "Sri Radhakantha Swamy Varu" pertaining to land admeasuring Ac.98.22 cents covered by Sy.no.324/ 2, 329/ 1 to 329/ 5, 337, 338/ 1, 2, 339, 340/ 1 and 341 of Madugula village & Mandal and restoring the names of respondents 3 to 7, as bad, illegal, arbitrary and violative of principles of natural justice and Article 300-A of the Indian Constitution.

2. I have heard the submissions of *Smt. K.Lalitha*, learned standing counsel appearing for the petitioner/institution; of learned Government Pleader for Revenue appearing for respondents 1 & 2; and, of *Sri Sai Gangadhar Chamarthy*, learned counsel appearing for the respondents 3 to 7. I have perused the material record.

3. Having regard to the narrow scope of the subject matter and the issue involved, this writ petition need not detain this Court for long.

4. The unofficial respondents, who claim title to the subject property contend *inter alia* as under: 'After partition of the properties among the family members of the unofficial respondents *vide* a registered partition deed, dated 30.05.2013, the unofficial respondents in due course got certain extents of land and that their respective names

appeared in Form 1-B ROR till 03.08.2015. However, thereafter, their names were deleted and the name of the petitioner-temple was recorded. Therefore, they submitted applications, on 11.01.2016 and 23.05.2016, to the Tahasildar for rectification of the same. In fact, when the above said representations were not considered, they filed W.P.No.21289 of 2016 before this Court. This Court, without going into the merits of the matter and while observing that since enquiry has already been initiated by the 4th respondent-Tahasildar on the applications of the unofficial respondents held that it is for the 4th respondent to consider the submissions in the applications of the petitioners after issuing notice to the 5th respondent therein, that is, the petitioner herein, and take a decision in accordance with law.'

5. Thus, this Court by its order, dated 19.07.2016, disposed of the said writ petition directing the Tahasildar to consider the aforesaid representations of the respondents 3 to 7 after issuance of notice to the petitioner/ temple herein and take into account the objections filed by it and dispose of the same within the time frame mentioned in the said orders. However, instead of the Tahasildar, the District Collector has taken up the matter and passed the order, which is impugned in the present writ petition. Admittedly, though notice is served on the Executive Officer of the temple, he did not attend the enquiry before the District Collector. Therefore, the order impugned has come to be passed after hearing the unofficial respondents and considering the documents said to have been produced by them.

6. learned counsel for the respondents 3 to 7 submits that till the year 2015, the names of the unofficial respondents appeared in the revenue records and that the proceedings earlier initiated before the

Civil Court culminated in dismissal of the civil proceedings on the ground that the civil Court lacked jurisdiction to deal with the subject land, which is an inam land, and that, therefore, the matter requires to be examined by the Tahasildar afresh as per the directions in the orders of this Court in the aforementioned earlier writ proceedings. The learned standing counsel appearing for the petitioner-temple while requesting to set aside the order impugned endorses the submissions of the learned counsel for the respondents 3 to 7 that the matter has to be examined afresh and in a proper manner by the Tahasildar.

7. Thus, the learned standing counsel appearing for the petitioner temple and the learned counsel for the unofficial respondents are in agreement that it is for the Tahasildar to take a considered decision on the representations of the unofficial respondents as directed in the orders of this Court in the aforesaid earlier writ petition and that to enable the Tahasildar to undertake the said exercise, it is necessary to set aside the order impugned. However, both the learned counsel are also in agreement that in view of the limitations on the jurisdiction of the Tahasildar, he shall not go into the question of title.

8. Recording the submissions, the Writ Petition is partly allowed and the impugned order is set aside and the Tahasildar, Madugula, is directed to consider and dispose of the representations, dated 11.01.2016 and 23.05.2016, of the unofficial respondents 3 to 7, within eight weeks from the date of receipt of a copy of this order, however, in strict accordance with the procedure established by law and after giving an opportunity of filing the documents & hearing to both the parties. However, he shall keep in view the jurisdictional limits while passing appropriate reasoned orders on the aforesaid representations of the

unofficial respondents. Till the exercise as afore directed is completed by the Tahasildar, both the parties shall maintain absolute *status quo*, existing as on 13.11.2017, on which date interim order was granted by this Court in the instant writ petition.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

M. SEETHARAMA MURTI, J

11.07.2018
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Dated: 11-07-2018