

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.43687 of 2017

ORDER:

In this writ petition, under Article 226 of the Constitution of India, the petitioner is challenging the action of the respondents 1 to 4 in treating the petitioner's village viz., Thuthaklingannapet, Enkoor Mandal of Bhadradi Kothagudem District, as a Tribal Village (Scheduled Area); and, the further action in issuing the notice, dated 08.11.2017, in LTR Case No.75/2017/ENK as unconstitutional, without jurisdiction and violative of Articles 244(1) & 372 of the Constitution of India and paragraph 6(1), Part-C, of Schedule V to the Constitution of India. A consequential declaration that the petitioner's subject village is not a notified Tribal Village is also sought in the writ petition.

2. I have heard the submissions of Sri V.V. Anil Kumar, learned counsel appearing for the writ petitioner, of the learned Government Pleader for Social Welfare appearing for the respondents 1 to 3, and of Sri C. Raghu, learned counsel appearing for the 5th respondent. I have perused the material record.

3. From the pleadings, submissions made, and the contents of the material documents, the following facts are noticeable: 'The village, Thuthaklingannapet, [hereinafter referred to as the subject village] was not declared as a Scheduled Area village by the President of India under paragraph 6(1), Part-C, of Schedule V to the Constitution of India and the said village is not included in C.O.No.26 made by the President, which was published for general information in the Gazette of India, dated 07.12.1950 or in the notification No.2, dated 16.11.1949 (16th Dai, 1359, Fasli), which was issued by

the then Raj Pramukh, that is, His Exalted Highness (HEH) The Nizam. The subject village was at Sl.No.129 in the list of Madhira Taluq villages published in the year 1950, but, was not in Palvoncha Taluq of the then Warangal District. The subject village has not been notified in the notification no.2, dated 16.11.1949, which was sent to the Union Government in the month of December, 1949, which was in force even after the Constitution of India came into force. The said fact is evident from notification no.14, dated 02.02.1954. Initially, the subject village formed part of Madhira Taluq of Warangal District, as on the date of issuance of notification no.2, dated 16.11.1949, issued in exercise of the power conferred under the Tribal Area Regulation, 1359 F. The said notification reflects that neither Madhira Taluq nor the subject village in Madhira Taluq was declared as a Scheduled Area. Subsequently, the Government of Hyderabad issued notification no.21, dated 21.04.1950, re-organizing the Taluqs in Warangal District. In such re-organisation, 39 villages of the then Madhira Taluq were transferred to Palvanha Taluq on administrative grounds and/or for administrative convenience. Thereupon, certain villages became part of Chandragonda Girdawar circle of Palvanha Taluq. The said Circle was also not declared as a notified tribal area or scheduled area. The said fact is evident from the above said notification no.21, which was issued in exercise of the power conferred by Section 5 of Hyderabad Land Revenue Act 8 of 1317 F. The alterations or re-organizations of villages were affected only for administrative convenience and on administrative grounds and on such alterations of the boundaries, the village, which was not originally Scheduled Area or a specified part of Scheduled Area does not acquire the status of a Scheduled Area or a Tribal Village. The relevant

contents of the Presidential Order in C.O.No.26, dated 07.12.1950 contain a reproduction verbatim and adaptation of notification no.2, dated 16.11.1949, whereunder the subject village was not notified as a Tribal Village; the said village being in Madhira Taluq of Warangal District. The villages which were notified as Tribal Villages by notification no.2 are only Tribal Villages and come within the Scheduled Areas as the said notification was adopted by the President of India as per the provision of the relevant Article of the Constitution of India and the subject village was not included in the notification no.2/1949.'

4. In this backdrop, the petitioner contends that the subject village is not a Scheduled Area or a part of a Scheduled area and is not a Tribal Village and that mere shifting of village from one Taluq to another Taluq does not change the nature and character of the village and that by any such alteration a non Scheduled Area or any part of it will not acquire the status of a Scheduled Area; and, similarly a Scheduled Area or part of it shall not cease to be a Scheduled Area by mere alteration by way of notification of boundaries of taluqs or villages; and, that since the subject village was not included in the notification no.2/49 and as C.O.No.26 made by the President which was published for general information in the Gazette of India, dated 07.12.1950, is nothing but an adaptation of the notification no.2/49, the official respondents are not entitled to treat the subject village as a Tribal Village.

5. At this stage, it is to be noted that this Court, on 21.12.2017, while admitting this writ petition, granted the following interim order in WPMP.No.54158 of 2017: - **'This Court in similar circumstances, having**

regard to *prima facie* case granted interim stay of proceedings, in the case pending before the 3rd respondent. Hence, there shall be interim stay of all further proceedings in LTR Case No.75/2017/ENK, dated 08.11.2017.'

6. Respondents 1 to 3 filed IA.No.2 of 2018 requesting to vacate the afore-stated interim order. The case of the said respondents as stated in the counter affidavit of the Special Deputy Collector, in brief, is this: - 'The subject village presently in Enkoor Mandal of Khammam District initially formed part of Madhira Taluq of Warangal District. Khammam District was formed in the year 1956 after bifurcation from Warangal District. The Government of Hyderabad issued notification no.21, dated 21.04.1950, re-organizing the Taluqs in Warangal District; and, 40 villages of Madhira Taluq were transferred to Palvancho Taluq on administrative grounds. Later, the villages formed part of Chandrugonda Girdawar circle of Palvancho Taluq. The Schedule Area Part B States Order, dated 07.12.1950, in S.R.No.1031 in Presidential Order C.O-26 specified and declared the Scheduled Areas in the State. As per the said order, all the villages of Yellandu Taluq of Warangal District excluding Yellandu, Singareni and Sirpur villages and town of Kothagudem are excluded from the Scheduled Areas. The Government of Hyderabad, Revenue Department Notification no.1, dated 21.04.1950, shows Girdawar circle villages in the said circle. The subject village is one of the villages in the said circle at Sl.No.108. Simply because of bifurcation of District and change of villages from one Taluq to another Taluq, there will not be change of the status of the Scheduled Area into Non-Scheduled Area. There must be a specific notification and order for exclusion of the villages from Scheduled Areas. As such the subject village is in

Scheduled area only. As per notification no.20, dated 21.04.1950, issued by HEH Nizam showing the Districts, divisions and taluqs, Warangal District is divided into 4 divisions namely Warangal, Mahabubabad, Khammam and Kothagudem Divisions. Khammam division is divided into two taluqs, Khammam & Madhira. Kothagudem division is divided into Yellandu, Palvoncha and Burgamphad Taluqs. The petitioner also admits that the subject village along with 39 other villages was shifted to Palvancha taluq. The Scheduled Area Part B Order 1950, dated 07.12.1950, clearly shows the Scheduled Villages in the States. The subject village is not excluded from the Scheduled Area. The Presidential Order in C.O.No.26, dated 07.12.1950 clearly shows the Scheduled Villages in the States. As per the said order, all villages of Palvoncha Taluq of Warangal District excluding Palvoncha, Burgamphad, Aswaraopeta, Dammapeta, Kukunoor, and Nellipaka villages and Samsthan Palvoncha are Scheduled Areas. Therefore, as per the said Presidential Order, the subject village is not excluded and it is situated in Scheduled Area only.'

7. The 5th respondent, who also filed a vacate petition requesting to vacate the interim order, contended as follows:

The Presidential Order in C.O.No.26, dated 07.12.1950, clearly shows the villages which are exempted villages in the State. As per the said notification, all the villages of Palvoncha Taluq of Warangal District excluding Palvoncha, Burgamphad, Aswaraopeta, Dammapeta, Kukunoor and Nellipaka villages and Samasthan Palvoncha are Scheduled Areas. As per the said Presidential Order, Julurphad of Palvoncha Taluq is not excluded and it is within the Scheduled Area only. Basing on the petition submitted by the 5th

respondent, who is a Tribal, the LTR proceedings are initiated as the subject village is within the Scheduled Area. The petitioner without submitting any explanation approached this Court. Hence, the writ petition is liable for dismissal.

8. I have given earnest consideration to the facts and submissions.

8.1 In the considered view of this Court, the issue involved for adjudication in the writ petition is squarely covered by an order, dated 17.04.2014, passed by a learned single Judge of this Court in WP.Nos.15688 of 2011 and 19085 of 2013 (between Mandava Rama Krishna and others v. State of Andhra Pradesh and others)¹. In the said writ petitions, the challenge was to the action of the official respondents in treating Mangapet Mandal, Warangal District, as a Scheduled Area and in reserving all offices of Gram Panchayats therein in favour of STs. The said challenge was made on the grounds that such treatment of Mangapet Mandal of Warangal District as a Scheduled Area is arbitrary, illegal, violative of Articles 14, 21 and para 6(1) of Schedule V to the Constitution of India and as contrary to the judgment of this Court in WP.No.1413 of 1973, dated 30.11.1973. The facts of the above said writ petitions reflect that the Nizam of Hyderabad State, by notification dated 21.04.1950, divided Hyderabad State into 16 districts; thereby all the 23 villages, which were in Mangapet Mandal were deleted from Palvoncha taluq and included in Mulug taluq; thereafter the President of India issued notification, dated 07.12.1950 under Para 6(1) of the V Schedule to the Constitution excluding 23 villages in Mulug Taluq from the list of Scheduled Areas; all the 23 villages in Mangapet Mandal were in Mulug taluq on the date of issuance of

¹ 2014(5) ALD 181

the Presidential Order, dated 07.12.1950; while specifying other villages in Mulug Taluq as Scheduled Areas, 23 villages were not notified as such in the Presidential Order. This Court in the said writ petition noted and considered the contention that the notification, dated 21.04.1950, is limited to the determination of the boundaries of the respective taluqs and identification of villages included in it and that the mere fact that a particular set of villages were removed from one taluq and merged with another would not result in their cessation as notified tribal areas. In the background of facts and contentions, this Court held as follows:

As the power to declare an area as a 'Scheduled Area', and the power to declare that the whole or any specified part of a Scheduled area shall cease to be a 'Scheduled Area' or a part of such area or to alter, by way of rectification of boundaries, any Scheduled Area vested exclusively in the President under Para 6(1) and 6(2)(a)&(b) of the V Schedule to the Constitution, and on no one else, HEH the Nizam, as the Rajpramukh of the Part-B State of Hyderabad, could not have been unaware, when he issued the notification dated 21.04.1950, that he lacked jurisdiction to declare that these 23 villages would cease to be tribal areas. Inclusion of the subject 23 villages, hitherto located in Paloncha Taluq, in the Mulug Taluq of Warangal District was, evidently, only for the purposes of the Hyderabad Land Revenue Act, 1317 Fasli, and not to direct that their notified tribal area status had ceased.

9. On an analogy the ratio in the above stated decision that the power to declare an area as a Scheduled Area vests exclusively in the President under Para 6(1) and 6(2) (a)&(b) of the V Schedule to the Constitution and no one else and that the status of a Non-Scheduled Area will not change as a Scheduled Area by way of rectification of boundaries or by mere re-organization of taluqs and inclusion of villages hitherto located in one taluq in another taluq applies to the facts of the instant case. Further, the mere fact that a particular group of villages were removed from one taluq and were merged with another taluq would not result in their cessation as notified tribal areas if they were originally notified tribal areas. In other words, the mere fact that a

particular set of villages were removed from one taluq and merged with another taluq would not result in their acquiring status of notified tribal areas when those villages were not originally notified tribal areas.

10. In view of the afore-stated decision of the learned single Judge and the undisputed facts of the present case, this Court is of the considered view that this writ petition deserves to be allowed. However, learned Government Pleader submitted that against the afore-said order of the learned single Judge, a writ appeal has been preferred. In reply, learned counsel for the petitioner submitted that till the disposal of the writ appeal, this writ petition need not be kept pending.

11. Having regard to the facts and submissions and as this Court is in agreement with the ratio in the afore-stated decision of the learned single Judge of this Court that the power to declare an area as a Scheduled Area vests exclusively in the President under para 6(1) and 6(2)(a)&(b) of the V Schedule to the Constitution, this Court finds that the writ petition deserves to be allowed.

12. In the result, the Writ Petition is allowed as prayed for.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

03.08.2018

Vjl