

THE HON'BLE THE ACTING CHIEF JUSTICE
SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HONOURABLE DR.JUSTICE SHAMEEM AKTHER

WRIT PETITION No.11946 OF 2019

ORDER: (Per the Hon'ble the Acting Chief Justice)

In compliance of the order dt.15.06.2019 Mr.M.Raja Ramana Reddy, the Divisional Forest Officer, Mr.Dilip Kumar, the District Tribunal Development Officer, Komarambheem District, have produced not only the heads of 16 families, but also a few tribal women, including a pregnant woman before this Court.

2. This Court has spoken to Sidam Pavu and to Athram Bheemu, the two tribal persons who were rounded up by the Forest Officers.

3. This Court has heard their statements, which have been translated by Mr.Devrao, a member of the Gond Tribe. Mr.Devrao has appeared before this Court along with Mr.Jayadheer Tirumala Rao, Emeritus Professor, Potti Sriramulu Telugu University, and Mrs.Guduru Manoja, Professor, Palamuru University, who were directed to assist this Court by order dt.15.06.2019.

4. Sidam Pavu claims that he, his family, and others have been cultivating the forest land for the last 50 years. He further states that although notices were given earlier to him and to his few families, since the notices were in Telugu language, a language unknown to the tribal population, they could not understand the contents of the notices. Moreover, prior to 12.06.2019, they were informed that they will be entitled to land and compensation, and they were asked to put their thumb impression on the notices. Therefore, they placed their thumb impression on certain

documents, whose contents were not understood by them. He further states that on 12.06.2019 officers of the Forest Department came to the settlement where the alleged detenues were living. The officers demolished their houses while the alleged detenues were busy praying to their local deity, Jangubai. They were rounded up by the Forest Department officers, and brought to the Forest Timber Depot at Vempally. Moreover, according to him, they are not permitted to leave the depot. They were given a meal once in a day. Since there is no dwelling there, 67 alleged detenues have to live under the sky.

5. Mr.Bheem, on the other hand, informs this Court that the alleged detenues have been cultivating their lands, they grow course food grains, such as millet, and live on the crop that they grow in their settlement. According to him, on 12.06.2019, the Forest Officers demolished their homes and rounded them up; they were brought to the Forest Depot at Vempally. However, according to him, they are permitted to leave the depot in the morning and to come back. According to him, two meals are served to them. But, even according to him, they have been told to live under the sky.

6. On the other hand, Mr. Dilip Kumar, the District Tribal Development Officer, informs this Court that the Integrated Tribal Development Authority has a rehabilitation policy. Under the said rehabilitation policy, the detenues would be entitled to a house and a parcel of land. The parcel of land has already been identified at Wankidi, but the houses are yet to be constructed. According to him, the children belonging to the alleged detenues have already been housed in hostels and in schools. According to him and according to Mr. M.Raja Ramana Reddy, the Divisional Forest

Officer, even medical facilities are being given to the alleged detenues in order to take care of their medical needs. Since one of the women is a pregnant lady, according to him, a special medical care is being given to her. However, Mr. Bheem claims that doctors have come only for two days, and do not come on daily basis.

7. Furthermore, Mr. Dilip Kumar informs this Court that since the dwelling houses have not been constructed, so far, by the Government, during the period of construction of the dwelling houses, the alleged detenues shall be kept and maintained at a hostel at Wankidi. According to him, the hostel has sufficient accommodation to accommodate about 100 persons. While the alleged detenues are kept there, they shall be provided with sufficient ration and water facilities to ensure that they are comfortable at the hostel. He further informs this Court that they have certain schemes for financially rehabilitating the alleged detenues so that they would have a source of livelihood.

8. The learned counsel for the Forest Department, Mrs. D. Pramada has pleaded that the alleged detenues are in fact the encroachers into a Reserve Forest Area. According to her, under the Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 those who were cultivating the land, and living within the forest, till 13.12.2005 are entitled to certain forest rights. However, the alleged detenues entered the reserve forest area in 2013. Therefore, as far as the Forest Department is concerned, they are encroachers in the forest area. Moreover, according to her, due to agricultural activities of the alleged detenues and their likes, the forests are being cleared and

the area under the green cover is being systematically reduced within the state. This is a cause of concern for the forest department. It is the foremost duty of the forest department to preserve and protect the forest of the State. Therefore, according to her, the action taken by the forest department is legally justified. Hence, keeping of the alleged detainees at the depot is not an illegal detention. Lastly, according to her, the alleged detainees were rounded up and were brought to the depot strictly on humanitarian grounds; since 12.06.2019 they are being well looked after by the forest personnel. Therefore, their custody cannot be said to be an illegal one.

9. Heard the learned Government Pleader for Home for respondents 1, 7 and 8, Mrs.D.Pramada, learned counsel for respondents 2 to 6, and considered the statements made by Sidam Pavu, Athram Bheemu, Mr.Dilip Kumar and Mr.M.Raja Ramana Reddy.

10. Admittedly, the State has a large tribal population both in the North, at Adilabad and surrounding districts, and in the East, in Warangal District. Being a welfare State, it is the foremost duty of the State to look after its tribal population. Undoubtedly, a large portion of the tribal population lives in the forest area, where they and their ancestors have spent their lives for decades, if not for centuries. Since the tribal population is rooted in the dense forest and in the mountains and rivers of the State, they are wedded to their land, both physically and psychologically. For their tribal beliefs, and faith emanate from their surroundings. Hence, their entire life revolves around the forest, and its wildlife, and its environs.

11. How to deal with the tribal population is a delicate issue which has no simple answer. On the one hand, the tribal population has a right to live within its habitat, and according to its culture and social norms. Yet, on the other hand, considering their constitutional rights, which have been bestowed upon them, the State is duty bound to protect, promote and implement their fundamental rights. Hence, the State may feel that it is justified in modernising the tribal population and in bringing them within the mainstream of the nation. Thus, there is a dichotomy between the traditional way of life, and the modern forces which impinge on the tribal population.

12. Article 21 of the Constitution has been interpreted creatively by the Apex Court that right to live would necessarily include the right to preserve not only one's own life, but preserve one's own culture, and tradition, and social norms and one's faith. Thus, before the tribal population is uprooted from its natural surrounding careful steps need to be taken by the State as not to wrench the tribal population and to throw them into a vacuum.

13. According to Sidam Pavu and Athram Bheemu the alleged detenues were rounded up after their houses were demolished by the Forest Officers. Therefore, the plea raised by the Learned Counsel for the Forest Department that the alleged detenues have been brought "on humanitarian grounds" is clearly untenable. Moreover, even if the alleged detenues are permitted to go in and out of the Depot, their custody within the Depot is not sanctioned by Law. Hence, their detention is an illegal one.

14. Although, Mr. Dilip Kumar and Mr. Raja Ramana Reddy claim that there is a rehabilitation policy which would entitle the alleged detenues not only to a dwelling house, but also to a certain extent of land, yet the fact remains that the dwelling houses have not been constructed, so far, and only the land has been identified for being allotted to the alleged detenues.

15. Although, Mr. Dilip Kumar claims that there is a hostel accommodation where the alleged detenues can be accommodated, but nonetheless, so far, the alleged detenues have not been settled into the accommodation. In fact, from 12.06.2019 till today they continued to be holed up in the depot.

16. Therefore, considering the above facts, this Court directs the State Government and Forest Department to release the alleged detenues; to ensure that the alleged detenues are settled in the hotel accommodation situated at Wankhidi immediately. But, before they are housed in the accommodation, sufficient quantity of food grains, food items and sufficient quantity of water should be ensured at the hostel accommodation. Even during their stay, it is the duty of the State to ensure that constant supply of food and water is given to them. The alleged detenues shall be kept in the hostel accommodation till the dwelling houses are constructed by the Government under the Integrated Tribal Development Authority. During their stay, the medical needs, which may arise and which is necessary shall be looked after by the State. Since one of the alleged detainee is a pregnant lady, the State shall look after her medical requirements. Further, the educational needs of the children, if any, should be taken care of by the State. The State should also try to rehabilitate the alleged detenues by

upgrading their skills or teaching them new trade so that in the interim period, before the dwelling houses are ready, the alleged detenues can be taught ways and means to earn a livelihood. Moreover, the land which has been identified for their benefit should be demarcated, and assigned to the 16 families, which have been rounded up. The Land shall be assigned strictly in accordance with the scheme promulgated by the State Government. Since alleged detenues have become homeless, it is the duty of the State to ensure that while granting them the land, sufficient means of irrigation for cultivation is put in place. The Irrigation Department shall guarantee the same. Furthermore, other means, such as cattle and sheep, or agricultural implements, should also be provided to the alleged detenues. These directions are being issued as Mr.Dilip Kumar and Mr.M.Raja Ramana Reddy have given an undertaking that the respondents shall carry out these directions.

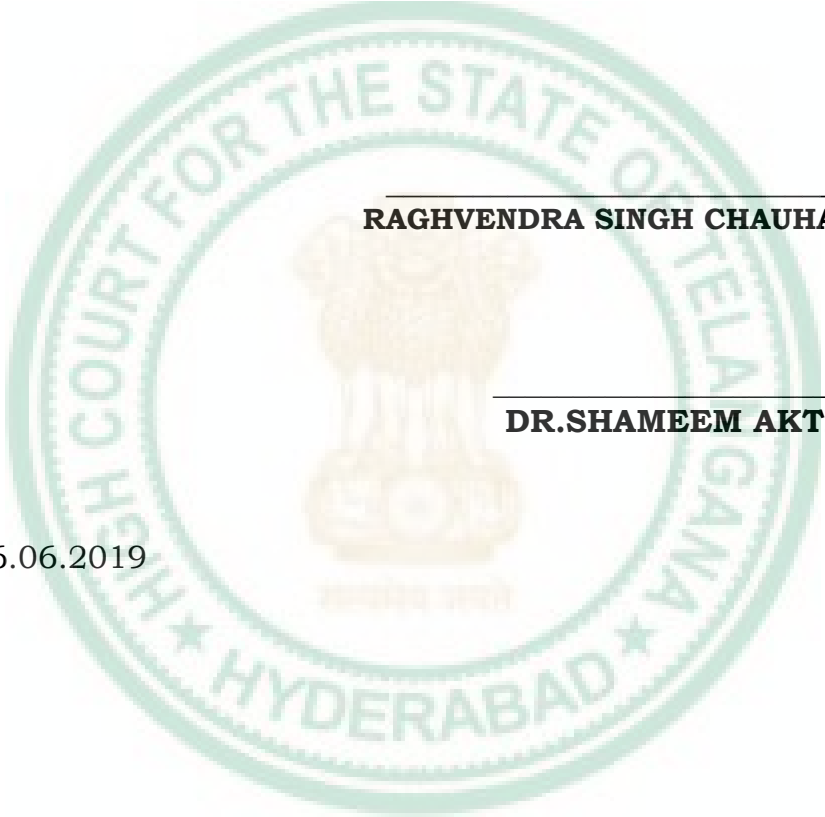
17. The District Collector, Asifabad is directed to assign the land to the alleged detunes within a period of six months and the Government is directed to construct the dwelling houses positively within a period of one year from today. Once the houses are constructed, they shall be assigned to each of the 16 individual families for their shelter.

18. It is further clarified that in case the directions given by this Court are not followed by the respondents, any one of the alleged detenues or the petitioner himself (Prof. Gaddam Laxman) would be free immediately to file a contempt petition before this Court.

19. Before ending, this Court would like to appreciate the help extended by Mr.Jayadheer Tirumala Rao, Mrs.Guduru Manoja and Mr.Devrao, without whose assistance it would not have been possible for this Court to interact with Sidam Pavu and Athram Bheemu.

20. With the directions as above, the writ petition is disposed of. There shall be no order as to costs.

Pending Miscellaneous Petitions, if any, stand closed.



RAGHVENDRA SINGH CHAUHAN, ACJ

DR.SHAMEEM AKTHER, J

Date:16.06.2019
Tk/grk

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