

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

I.A. No.1 of 2019

in/and

WRIT PETITION No.39226 of 2017

and

Contempt Case No.3215 of 2018

COMMON ORDER:

The petitioners are small farmers owning small extents of agricultural dry lands at Garmilla Sivar Village, Mancherial Mandal of Mancherial District. The lands owned by them are as under:

Name of the petitioner	Survey Number Ac.Gts	Extent	Situated at
1. Kolluri Anjaiah, S/o Kolluri Ramaiah	729/1/B Dry 719/4 Dry 721/4 Dry 722/1 Dry	0-34 0-30 ½ 1-00 ½ 3-22 ¾	Garimella Sivar, Mancherial Mandal
2. Bolishetti Hanmanthu, S/o Bolishetti Pochaiah	718/A Dry	7-33	
3. Bolishetti Srinivas, S/o Ramaiah	712 Dry 716 Dry 721 Dry 719 Dry	1-28 6-29 0-01 2-29	
4. Kothuri Sathamma, W/o Lachanna	719/4 Dry	0-30 ½ 1-00 ½ 3-22 ½	

The plea of the Petitioners

2. Petitioners contend that agriculture is the only source of their livelihood; that there is a cart track public road 10 feet width and 1350 feet length existing in Sy. Nos.707 and 708, which the revenue authorities claimed to be a Government land; that this cart track is existing for more than 20 years and all the farmers who are owning

agricultural lands to an extent of 150 acres of land in Sy. Nos.716, 717, 719, 721 and 722 are using the cart track in Sy. Nos.707 and 708. The petitioners contend that this cart track is the only road/path way available to reach their lands as well as those lands of other farmers in the above survey numbers and that the cart track begins in Sy. Nos.707 and 708 and passes through private patta lands in Sy. Nos.716, 717, 719, 721 and 722 of Garmilla village to reach the old Mancherial Road.

3. According to them, a news item had published on 22.07.2016 in Namasthe Telangana newspaper, local edition under the caption “*a way was formed in Sy. Nos.707 and 708 pertains to Bhoodan lands*”; and on the basis of the said news item, the Tahsildar Mancherial (5th respondent) closed the cart track by putting barbed wire fence across the cart track road on 25.07.2016 allegedly on the oral instructions of the then District Collector, Adilabad and then the Joint Collector, Adilabad.

4. Petitioners contend that they made representation on 25.07.2016 to the then District Collector, Adilabad and Joint Collector Adilabad and the latter made an endorsement on the petitioners’ representation to look into the matter.

5. Thereafter, the 5th respondent directed the Mandal Revenue Inspector – I, Mancherial Mandal (6th respondent) to conduct enquiry

on the spot and submit a report and the 6th respondent conducted such enquiry and submitted a report on 14.08.2016 to the 5th respondent.

6. The 5th respondent then submitted a report to the Revenue Divisional Officer, Mancherial (4th respondent) on 19.08.2016 and the report of the 5th respondent clearly recorded that *a road was formed in Sy. Nos.707 and 708 long back before 15 to 20 years and was being the farmers for daily use*; that closure of the road/path way had caused difficulties to the farmers to attend to their agricultural field works and the farmers had requested for removal of the fencing and requested to open the way.

7. The 4th respondent then submitted a report to the District Collector, Adilabad in letter Rc. No.G/4178/2016 dt.23.08.2016 and the later issued oral instructions to the 5th respondent *to restore the cart track road* by removing barbed wire fence.

8. The 5th respondent then informed the District Collector, Mancherial (2nd respondent) that *the cart track has been reopened on 21.11.2016* by proceedings B/2392/2016 dt.23.11.2016.

9. Petitioners contend that again the cart track was closed in August, 2017 by digging trenches and representation was made by the farmers on 21.08.2017 to the 2nd respondent, but no action was taken thereon.

10. Petitioners contend that except this cart track in Sy. Nos.707 and 708, there is no other road to reach their agricultural fields; that

the village revenue map prepared by revenue officials (filed along with page 18 of the reply affidavit) shows the cart track in an extent of 0.105 and 0.125 in Sy. Nos.707 and 708 respectively. According to the petitioners, they obtained the village map by applying under the Right to Information Act, 2005 to the 5th respondent and he had issued it on 11.09.2017.

11. Petitioners, therefore, prayed for the following reliefs:

(i). To direct the respondents 2 to 6 to restore the Cart Track Road which was existing for the last more than 20 years in Sy. Nos.707 and 708 situated at Garmilla Shivar Mancherial Mandal, Mancherial Mandal and also to allow them to use the same to reach their agricultural fields;

(ii). To declare the action of the respondents 2 to 6 in closing the Cart Track Road which has been existing for the last more than 20 years in Sy. Nos.707 and 708 situated at Garmilla Shivar Mancherial Mandal, and thereby depriving them to use the same to reach their agricultural fields by digging the trenches at the entrance of the cart track road (which was earlier closed and after taking into consideration of the problems, which they were facing to reach their agricultural fields, restored on the oral instructions of the District Collector, Adilabad) is nothing but arbitrary, illegal, unjustified and also violation of Articles 14 and 21 of Constitution of India apart from being contrary to the well settled principles of law laid down under

Easements Act, 1882 and pass such further or other orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

WPMP No.48654 of 2017

12. Petitioners also filed WPMP No.48654 of 2017 to direct the respondents 2 to 6 to restore the cart track road and to allow the petitioners to use the same to reach their agricultural fields pending disposal of the Writ Petition.

13. On 21.11.2017, this Court granted interim direction in WPMP No.48654 of 2017.

C.C. No.3215 of 2018

14. Alleging that this order was not complied with, though a legal notice was issued on 18.07.2018 to respondents 2, 5 and 6 enclosing copy of the said interim order, C.C. No.3215 of 2018 has been filed by the petitioners.

15. It is the contention of the petitioners that there is a willful disobedience of the said interim order.

16. I.A. No.1 of 2019 is filed by the respondents 1 to 4 to vacate the said order.

17. It is contended in the counter-affidavit that there never existed any road or cart track in Sy. Nos.707 and 708 of Garmilla village, but, on what basis such assertion is made in the light of the information

supplied under the Right to Information Act, 2005 to the petitioners enclosing copy of the village map showing the existence of the cart track road is not mentioned. The petitioners had filed the 5th respondent's proceedings Rc. No.8/2392/2016 dt.19.08.2016 (Ex.P-3) addressed to the 4th respondent which referred to the enquiry by the 6th respondent, and the report of the 6th respondent dt.14.08.2016 wherein it was found that the *road was formed in Sy. Nos.707 and 708 long back and was being used by farmers for their daily use*. It was on the basis of this letter that in 2016, the District Collector, Mancherial had directed *reopening of the cart track* and the proceedings B/2392/2016 dt.23.11.2016 (Ex.P-5) shows that the 5th respondent had informed the 2nd respondent about the reopening of the road also.

18. On the basis of an alleged panchanama conducted on 02.07.2019, the respondents are now seeking to contend that there was no road in Sy. Nos.707 and 708 and that some of the petitioners have also agreed that there was no road.

19. The contents of this panchanama dt.02.07.2019 cannot be believed in the light of the proceedings Exs.P-3 and P-5 referred to above and it appears that one of the petitioners were threatened to state that there was no such road which was recorded in the panchnama, after the filing of the Contempt Case by the respondents.

20. It is next contended in the counter-affidavit that certain records show that the petitioners' predecessors-in-title had lands in Sy.

Nos.716, 717, 719 and 721 of Garmilla Shivar, which were agricultural lands, and Sy. No.722 was purely non-agricultural land, and commercial villas were developed adjacent to Sy. Nos.707 and 708 and the realtors had mentioned about the road connectivity to that developed property. It is hinted that the petitioners are front men of the realtors, but not a single document is filed by respondents to prove this. It is obvious that this allegation is only made to malign the petitioners.

21. An attempt is made in the counter affidavit to also discredit Ex.P-3 on the ground that the Mandal Revenue Inspector, Mancherial – I did not verify the village topography map and did not conduct field inspection before submitting his report to the Tahsildar. This plea is without any merit because village map procured by the petitioners under the Right to Information Act, 2005 clearly shows the existence of the cart track.

22. Having admitted the existence of the cart track road in 2016 and having reopened the cart track road, certain Google maps screen shots allegedly taken on 25.11.2004 are referred to in para 8 of the counter to show that there was no cart track in Sy. Nos.707 and 708. But, it is not explained how the village maps maintained by the revenue authorities gets falsified by those Google map screen shots.

23. Reference is also made to a report dt.19.04.2018 allegedly given by the Assistant Director, Survey and Land Records. But this alleged

report is not shown to have been prepared after giving any notice to the petitioners and this report or the map annexed to it cannot override the village map filed by the petitioners which shows the existence of the cart track road.

24. Lastly, it is contended by the Special Government Pleader that petitioners are seeking to enforce an Easementary right, that such a right has to be adjudicated before a civil Court and that it is a disputed question of fact. Reliance is also placed on the judgment of the Supreme Court in **Prestige Lights Ltd. v. State Bank of India**¹ and it is contended that the petitioners having approached the Court with unclean hands, they should be denied relief. Reference is also made to **Nivedita Sharma v. Cellular Operators Assn. of India**², **Dorab Cawasji Warden v. Coomi Sorab Warden**³, **Authorized Officer, State Bank of Travancore v. Mathew K.C.**⁴ and **Thansingh Nathal; Onkarmal Jawalaprasad; Indrachand Premsuch; Ramdeo Satyanarayan; Shewpratap Tantia v. Superintendent of Taxes, Dhubri, Superintendent of Taxes, Dhubri, Superintendent of Taxes, Dhubri**⁵ to contend that the petitioners are only avail the remedy in the civil court.

25. In my considered opinion, firstly the petitioners had not suppressed any facts. They had produced the village map copy issued to them under the Right to Information Act by the office of the 5th

¹ (2007) 8 SCC 449

² 2011 (12) Laws (SC) 42

³ 1990 (2) Laws (SC) 2

⁴ Judgment of the SC in Civil Appeal No.1281 of 2018

⁵ 1964 (2) Laws (SC) 11

respondent on 11.09.2017 and it is the respondents who, as explained above, were trying to mislead the Court by relying on a map prepared by the Assistant Director, Survey and Land Records on 19.04.2018 and trying to malign the petitioners by contending that they have been set up by certain real-estate persons without any basis.

26. No doubt the petitioners do have alternative remedy, but in my opinion it is not an effective alternative remedy, since the petitioners who are farmers cannot be compelled to avail the “lengthy, dilatory and expensive process” which is inherent in a civil suit.

27. In **Real Estate Agencies vs. State of Goa and others**⁶, the Supreme Court held, relying on the decision in **ABL International Limited vs. Export Credit Guarantee Corporation of India Ltd**⁷ that there is no absolute rule that in all cases involving disputed questions of fact, the parties should be relegated to a Civil Court; and that it is the duty of the High Court, while entertaining a Writ Petition, to see whether there is any substance in the claim of the State or its entity or such a plea of alternative remedy has been raised merely to relegate the petitioner to a more “lengthy, dilatory and expensive process” that is inherent in a civil suit.

28. In my opinion, the whole intention of the respondents in the instant case appears to be to drive the petitioner to such lengthy, dilatory and expensive process of a civil suit.

⁶ (2012) 12 SCC 170

⁷ (2004) 3 SCC 553

29. The Supreme Court in **State of Tamil Nadu v. Elephant G. Rajendran**⁸ held that power given to the High Court under Article 226 of the Constitution of India is power of very wide nature which does not contain any fetter except self-imposed restrictions.

30. In my considered opinion merely because the respondents raised a dispute in regard to the facts of the case, this Court is not bound to relegate the parties to a suit, where the action of the respondents is clearly arbitrary and unreasonable and violates Article 14 of the Constitution of India like in the instant case and deprives poor farmers of access to their agricultural lands and from ekeing out their livelihood, thereby violating Article 21 of the Constitution of India. This Court is entitled to entertain the Writ Petition and grant relief to the petitioners.

31. Accordingly, I.A. No.1 of 2019 in W.P. No.39226 of 2017 is dismissed and W.P. No.39226 is allowed as prayed for, with costs of Rs.2,000/- (Rupees two thousand only) to be paid by the 1st respondent to the petitioners.

Contempt Case No.3215 of 2018:

32. Having regard to the order passed above in the Writ Petition, the respondents in the Contempt Case are granted four weeks time to comply with the order in the Writ Petition and restore the cart track in Sy. Nos.707 and 708 for the use of the petitioners. If not respondents

⁸ 2019 (3) ALT 83 (SC)

2, 3 and 4 shall suffer Simple Imprisonment of two months and fine of Rs.2,000/- (Rupees two thousand only).

33. Contempt Case is allowed as above. No costs.

34. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 25.10.2019

MRKR

