

**(2007) 03 AP CK 0059**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 19419 of 2006**

Ganpathi Thirupathaiah

APPELLANT

Vs

District Panchayat Officer and Others

RESPONDENT

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**Date of Decision : 29-03-2007**

**Acts Referred:**

Andhra Pradesh Panchayat Raj Act, 1994 — Section 246  
Andhra Pradesh Panchayat Raj Rules — Rule 1, 2, 4

**Citation : (2007) 3 ALT 613**

**Hon'ble Judges : V. Eswaraiah, J**

**Bench : Single Bench**

**Advocate :** Seetha Ram Chaparla, for the Appellant; G.P., for Panchayat Raj and Rural Development for Respondent No. 1, Mokkapati Prabhakara Rao, S.C. for Gram Panchayat for Respondent Nos. 2 and 3 and P. Venugopal, for the Respondent

**Final Decision : Dismissed**

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## **Judgement**

V. Eswaraiah, J.—Petitioner is a resident of Padamaraveerayapalem of Kurichedu Mandal of Prakasam District. There are three water tanks namely, Papirayudu Cheruvu, Venkaiah Cheruvu and Omkara Cheruvu in the third respondent Gram Panchayat of West Veerayapalem. The third respondent-gram Panchayat decided to put public auction on 7-7-2006 for a period of three years commencing from 2006-2007, 2007-2008 to 2008-2009. Accordingly the gram Panchayat passed a resolution stipulating the terms and conditions to conduct the public auction to lease out the fishing rights. The Gram Panchayat fixed the upset price at Rs. 40,000/- per annum for a period of three years insofar as Papirayudu Cheruvu is concerned and the prospective bidder has to deposit a sum of Rs. 2,000/- for participating in the auction. The petitioner offered an amount of Rs. 45,000/- in respect of the Papirayudu Cheruvu, which was knocked down in his favour on 7-7-2006 and accordingly the petitioner deposited a sum of Rs. 15,000/- towards first installment of the first year and a receipt was also issued by the third respondent to that effect.

2. Learned Counsel for the petitioner submits that after taking possession of the said Papirayudu Cheruvu, the petitioner invested huge amounts in order to purchase the fish seeds and he scattered the same in the said Cheruvu and raised fish by giving time to time supplements. While so, the third respondent gram Panchayat again passed a resolution dated 1-9-2006 proposing to conduct auction in respect of the said Cheruvu and requested the Government to fix the upset price. It is stated that he also made a representation to the concerned authorities stating that he is the leaseholder in respect of the said Cheruvu and the lease is subsisting up to 2009, therefore, no auction can be conducted in respect of the said cheruvu. It is stated that the action of the respondents is illegal and arbitrary in proceeding to conduct auction in respect of the said cheruvu. It is further stated that the conduct of re-auction without cancelling the earlier auction dated 7-7-2006 by the third respondent is illegal, immoral and unethical. Accordingly, this writ petition has been filed on 18-9-2006 seeking a Writ of Mandamus to declare the action of the respondents in proposing to conduct auction pursuant to the resolution dated 1-9-2006 passed by the third respondent gram Panchayat without cancelling the petitioner's leasehold rights in respect of said cheruvu situated in Sy. No. 331, admeasuring Ac. 80.77 cents of Padamara Veerayapalem Gram Panchayat, Kurichedu Mandal, Prakasam District as illegal and arbitrary and to direct the respondents not to conduct re-auction.

3. Counter has been filed by the first respondent stating that it is false to state that the third respondent has put an auction on 7-7-2006 with regard to the fishing rights for a period of three years pertaining to the three water tanks namely, Papirayudu Cheruvu, Venkaiah Cheruvu and Omkara Cheruvu admeasuring Ac. 80.77 cents in Sy. No. 331 of West Veerayapalem Gram Panchayat. As per the rules made in G.O.Ms. No. 343 of 1978 and G.O.Ms. No. 499 of 1998 the third respondent represented by its Secretary has no power to lease out fish tanks on his own accord without obtaining upset price from the District Panchayat Officer. The Gram Panchayat has not followed the rules and thus violated the prescribed procedure, therefore, the action of the then Sarpanch and the Panchayat Secretary is highly illegal and contrary to the rules. Hence, the petitioner cannot ask for enforcement of an illegal order of the then Sarpanch. The then Sarpanch has leased out the tank for a period of three years just one month before the end of his tenure without jurisdiction.

It is stated that the fishing rights were auctioned regularly till 2003 but after 2003 no auction has been conducted and the present auction was conducted without obtaining the upset price and without giving any notification in any newspaper. Thus, the alleged auction conducted itself is improper, illegal and the said orders of the Sarpanch and Panchayat Secretary cannot be enforced. It is stated that the tank was not at all handed over to the petitioner, as such, there is no scope for the petitioner to invest huge amount in respect of the said tank. Immediately after the commencement of the newly elected body of the Panchayat on 2-8-2006, a resolution was passed on 1-9-2006 to get the auction

conducted to lease out the fish tank. The newly elected body obtained the approval of the District Panchayat Officer by following due process of law and the upset price was fixed by the District Panchayat Officer vide proceedings dated 23-9-2006 for all the said tanks. Before auctioning the fishing rights, the Gram Panchayat has to obtain permission from the District Panchayat Officer for fixation of the upset price in pursuance of G.O.Ms. No. 499 of 1998 and G.O.Ms. No. 343 of 1978, as the procedure was not followed the alleged auction cannot be considered as valid auction and it is non-est in law. The letter of the third respondent gram Panchayat dated 1-9-2006 requesting the District Panchayat Officer for fixing the upset price for three years, through the Mandal Parishad Development Officer has been considered and upset price has also been fixed.

4. The newly elected Sarpanch got herself impleaded as fourth respondent to the writ petition stating that she is the elected Sarpanch to the third respondent gram Panchayat in the elections held on 2-8-2006. The contentions of the petitioner that the fishing rights were disposed by way of public auction on 7-7-2006 for a period of three years; that the upset price has been fixed at Rs. 40,000/- per annum and that the petitioner deposited a sum of Rs. 15,000/- towards first installment are false and incorrect. It is sated that the newly elected body has taken charge and immediately passed a resolution dated 1-9-2006 to fix the upset price and therefore, the question of passing any resolution on 7-7-2006 by the previous Sarpanch does not arise as the election code was in force as the election notification itself has been issued on 10-6-2006 and the question of passing resolution after election code came into force that too on 7-7-2006 does not arise. The resolution is manipulated and invented for the purpose of getting the fishing rights by one way or other.

It is further stated that the so-called deposit of Rs. 2,000/- by the petitioner was also fabricated and invented for the purpose filing the writ petition, it is further stated that admittedly the previous elected body has fixed the upset price not in accordance with the rules issued in the aforesaid Government orders and therefore, the so-called resolution of the earlier gram Panchayat is non-est in law.

5. The Mandal Parishad Development Officer also filed a counter stating that the outgoing Sarpanch for political reasons tried to lease out the fishing right of the three water tanks in favour of the petitioner in contravention of the rules and the procedure prescribed in the aforesaid Government Orders. As per the rules mentioned in the aforesaid Government Orders the Gram Panchayat has to make a request to the District Panchayat Officer to fix the upset price to put the fishing rights in public auction. The District Panchayat Officer in consultation with the fisheries department and the concerned Mandal Development Officer has to fix the upset price and then Gram Panchayat has to notify the same in local newspapers fixing the date of auction with a clear 7 days time for such auction. But in the instant case, the Gram Panchayat never made a request to the District Panchayat Officer through Divisional Panchayat Officer for fixing the upset price. The Gram Panchayat by its own fixed the upset price by way of a resolution and

passed an order in favour of the petitioner conferring the rights as if an auction was conducted and the petitioner became the highest bidder in the alleged public auction. In fact, no notification was given in the local newspapers calling the bidders as contemplated in the aforesaid Government Orders. In fact, when the alleged auction was said to have been conducted on 7-7-2006 the election code was in force as the election notification was already issued. Therefore, the action of the erstwhile Sarpanch and Secretary is highly irregular, illegal and contrary to the prescribed rules. The petitioner is not entitled to get enforcement of the illegal orders of the erstwhile Sarpanch and Secretary of the Gram Panchayat. The Gram Panchayat has no power to fix the upset price and also has no power to conduct the auction without giving any notification.

It is stated that the action of the erstwhile Sarpanch and Secretary is scandalous for the way in which they have made an attempt to grant fishing rights in favour of the petitioner for an upset price of Rs. 40,000/- per annum for three years, which would create a huge loss to the exchequer of the Gram Panchayat. The newly elected Sarpanch and the elected committee passed a resolution on 1-9-2006 requesting the concerned authorities to fix the upset price and accordingly the upset price for the aforesaid three tanks was fixed at Rs. 80,000/-, Rs. 40,000/- and Rs. 20,000/- respectively vide proceedings dated 23-9-2006. There is no illegality or irregularity in passing the resolution by the newly elected committee of the third respondent gram Panchayat and there is no subsisting between the Gram Panchayat and the petitioner. Therefore, the proposed action of the Gram Panchayat is perfectly valid and the same is to save the public money.

6. The writ petitioner filed reply affidavits dated 3-11-2006 and on 19-2-2007 stating that the Gram Panchayat conducted auction on 7-7-2006 and he became the highest bidder and he was also allowed to raise the fish crop, therefore, it is not open to the respondents to pass another resolution for auction of the leasehold rights of the fish tanks. It is stated that pursuant to the resolution of the Gram Panchayat only the auction was conducted and to suspend or cancel the said resolution due procedure of law has to be followed. u/s 246 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short "the Act") either suo motu or on a reference made to them by the Executive Officer or Mandal Parishad Development Officer as the case may be, the Government has the power to cancel or suspend a resolution of a Gram Panchayat. It is stated that the resolution of the Gram Panchayat dated 7-7-2006 may be irregular but it cannot be said that it is illegal. Even if it is illegal the said illegal resolution has to be cancelled or suspended in accordance with Section 246 of the Act only but they cannot ignore the said resolution. It is stated that the auction was conducted on 7-7-2006 granting lease hold rights and as long as the said resolution is not cancelled as contemplated u/s 246 of the Act the fixation of upset price by the Gram Panchayat and auctioning of the leasehold rights for a sum of Rs. 45,000/- cannot be set aside. It is further stated that the petitioner paid a sum of Rs. 20,000/- in favour of the third respondent on 24-7-2006 and he raised fish by

purchasing seeds worth Rs. 1,70,000/- for that he incurred heavy expenditure to engage labour to look after the fish and weed out unwanted shrubs. Therefore, there is no justification on the part of the respondents to conduct auction to lease out the fishing rights. It is further stated that he purchased supplements of thowudu for a sum of Rs. 21,000/- on 22-9-2006 and for a sum of Rs. 27,200/- on 1-11-2006 and also purchased fishing seeds worth Rs. 1,70,000/-.

7. Heard the rival contentions of the respective counsel.

8. It is not in dispute that as per the rules in G.O.Ms. No. 343 Panchayat Raj dated 10-4-1978; as per Rule 1 the Gram Panchayat shall develop fisheries in Minor Irrigation tanks by purchasing seed from the Fisheries Department. Under Rule 2 before the fishery rights in the tank or other sources are leased out/auctioned by the gram Panchayat, the executive authority of the gram Panchayat, shall make an application to the Divisional Panchayat Officer concerned furnishing therewith the particulars of revenue on such lease of minor irrigation tanks during the past five years together with the costs and quality and other relevant factors to fix an upset price. The Divisional Panchayat Officer shall within five days from the date of receipt of application fix the upset price duly considering the revenue of the previous years, market value and other factors and communicate the same to the Extension Officer of the Gram Panchayat. As per Rule 4(b) the Executive Authority shall fix suitable time, date and place of public auction and shall give wide publicity to it by beat of torn torn and other means of publicity in and around the village so as to attract the maximum number of bidders. He shall also intimate the same to the Extension Officer (Panchayats) concerned either by certificate of posting or by registered post so as to reach him in not less than seven days prior to the date of auction marking a copy thereof to the Divisional Officer. The Executive Authority shall conduct auction at the appointed time, day and place. The Extension Officer shall also be present and the details of the auction shall be sent to the authorities to confirm the sale.

9. Government also issued G.O.Ms. No. 499 Panchayat Raj and Rural Development (Panchayats-IV) Department dated 25-11-1998 appointing a committee to assess the value of the fish in the minor irrigation tanks in the gram Panchayat. Accordingly, a committee was constituted with Divisional Panchayat Officer as its Chairman; Mandal Development Officer and Sarpanch of Gram Panchayat as its Members and the Fisheries Development Officer as Convener. The committee shall follow the guidelines issued in the said order while dealing with the disposal of the tanks for fishery culture. The committee shall take into consideration the average income for the past three years, productivity of the tank as per the norms scientifically fixed by the Fisheries Department, nature of the tank -short seasonal, long seasonal, perennial etc; nature of permissible culture practices (intensive, semi-intensive, natural etc.) depending on the end use of the water in the tank, water-spread area of the tank, actual income of the previous year to the fish culturist of the tank and

actual lease amount paid to the Panchayat in the previous year.

10. A perusal of the resolution dated 7-7-2006 alleged to have been passed by the erstwhile committee of the third respondent Gram Panchayat in the presence of the Panchayat Secretary goes to show that they have decided to auction the aforesaid three tanks on 7-7-2006 for a period of three years; that the intending bidder has to deposit a sum of Rs. 2,000/- to participate in the auction and the upset price was fixed at Rs. 40,000/- and that the petitioner has offered Rs. 45,000/- towards highest bid. Admittedly, there is no prior resolution taking a decision to lease out the fish tanks and no notice has been issued and upset price was also not fixed or approved by the concerned Divisional Panchayat Officer. There is no dispute that the erstwhile committee has not at all followed the aforesaid rules framed in G.O.Ms. No. 343 relating to the lease of fishing rights in respect of minor irrigation tanks of the Gram Panchayat. The resolution passed by the present committee dated 1-9-2006 goes to show that all the committee members have met on 1-9-2006 and discussed various subjects. The subjects at SI.Nos.3 to 5 relate to fixing of upset price for the aforesaid tanks and the Sarpanch and all other committee members as well as the Panchayat Secretary have signed the said resolution. Pursuant to the said resolution the gram Panchayat addressed a letter to fix the upset price and accordingly the District Panchayat Officer vide proceedings dated 23-9-2006 fixed the upset price of the aforesaid tanks at Rs. 80,000/-, Rs. 40,000/- and Rs. 20,000/- respectively .

11. It is stated that for the illegality committed by the erstwhile Panchayat Secretary of the Gram Panchayat a charge memo dated 23-9-2006 was issued stating that there was no notice for conducting auction on 7-7-2006 and the alleged auction to lease the fishing rights in respect of the aforesaid tanks is non-est in law; the said Panchayat Secretary was called upon to submit an explanation. It is stated that the said Panchayat Secretary was suspended and disciplinary action has been initiated against him.

12. Learned Counsel for the petitioner submits that u/s 246 of the Act any resolution of the Gram Panchayat may be cancelled or suspended, if the said resolution is not legal or passed in excess or abuse of the powers conferred under the Act, by the Government either suo motu or on a reference made to the Government by the Executive Authority or Mandal Parishad Development Officer but in the instant case, the resolution dated 7-7-2006 has not at all been cancelled or suspended, therefore, the question of ignoring the said auction and fixing the upset price and taking steps to auction the fishing rights does not arise.

13. I am unable to accept the said contention as admittedly the outgoing Sarpanch of the third respondent Gram Panchayat in collusion with the Panchayat Secretary manipulated to pass the resolution dated 7-7-2006 which is non-est in law, as admittedly the Gram Panchayat has not passed any prior resolution deciding to conduct auction on 7-7-2006 and no seven days notice has been issued as contemplated under the rules to attract maximum number of bidders

and no steps have been taken to fix the upset price by the committee constituted as per G.O.Ms. No. 499. Therefore, the said resolution dated 7-7-2006 cannot be construed as a resolution. However, the resolution itself is illegal and the question of approving the said resolution does not arise as it amounts to approving an illegal action. The principles of natural justice would have no application if an illegal action is going to be restored.

14. Learned Counsel for the petitioner submits that the petitioner is entitled at least to a notice calling upon him as to why the auction said to have been conducted pursuant to the resolution dated 7-7-2006 shall not be cancelled. As admittedly there was no prior resolution or prior notice or fixation of upset price and the manner in which the leasehold rights were said to be disposed, there appears that fraud has been played in the matter of conducting the public auction dated 7-7-2006 and the mandatory rules have not been followed. Fraud vitiates all the aforesaid proceedings therefore; it is not open to the petitioner to contend that he is entitled to a notice before ignoring the said resolution, when the same is non-est in law and when it is not at all a resolution. Therefore, I am of the opinion that the newly elected committee rightly ignored the said resolution and passed a fresh resolution by following due procedure prescribed under law in fixing the upset price for conducting public auction in respect of the leasehold rights by giving a clear 7 days notice to attract maximum number of bidders in the interest of public at large to make use of the sale proceeds for the development of the Gram Panchayat.

Having regard to the facts and circumstances of the case, the writ petition is accordingly dismissed. However, the admitted amounts, if any, deposited with the third respondent shall be refunded to the petitioner and if there are any disputed amounts, it is open for the petitioner to take appropriate legal action to receive the said amounts. There shall be no order as to costs.