

(2005) 12 AP CK 0052
In the Andhra Pradesh High Court
Case No : Writ Petition No. 24561 of 1996

K. Hemasekar

APPELLANT

Vs

Group Executive Officer and Another

RESPONDENT

Date of Decision : 26-12-2005

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1984 — Section 80

Citation : (2006) 2 ALD 413

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : P. Gangaiah Naidu, for the Appellant; Government Pleader for Panchayat Raj, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—The case of the petitioner is that Brahmanacheruvu of Cherlopalli was assigned to G. Venkataswami Reddy and seven others in the year 1916 by the then Special Settlement Officer, Madras, and that the assignees have been enjoying fishing rights in the said tank by paying rentals fixed by the Government, and when the Surpanch of Thenabanda Village had in 1974 issued a notice to show-cause why pattas should not be cancelled, O.S.No.121/84 in the Court of the Principal District Munsif, Chittoor was filed seeking a decree of perpetual injunction, which was decreed on 13-8-1990 and that that decree has become final. But on 7-10-1996 the Gram Panchayat, Cherlopalli, passed a resolution in resolution No.1, to put the fishing rights in Brahmanacheruvu to public auction, ignoring the decree of the civil Court, and so he and others got issued a legal notice to the respondents i.e. The Group Executive Officer and District Panchayat Officer, but ignoring the said notice the fishing right in the Brahmanacheruvu is being put to auction on 20-11-1996 and so resolution No.1 dated 7-10-1996 of the Gram Panchayat, Cherlopalli may be quashed, and the proposed auction may be stayed.

2. On behalf of the respondents, second respondent filed his counter-affidavits,

inter alia contending that fishing rights in Brahmanacheruvu were given for 30 years in 1916 to some people as per the rates mentioned therein, and after the coming into force of the A.P. Gram Panchayat Act, 1964 Brahmanacheruvu stood vested in the Gram Panchayat and so it has a right to put the fishing rights in that tank to auction. Since the then Sarpanch was interested in the plaintiffs in O.S.No.121 of 1986 he did not properly contest the said O.S.No.121 of 1986 referred to in the affidavit filed in support of the petition. After O.S.No.121 of 1986 was passed, the Gram Panchayat passed a resolution to put the fishing right to public auction in terms of G.O.Ms.No.343, Panchayat Raj dated 10-4-1978, and in terms of the judgment dated 24-3-1988 in O.S.No.375/1980 of the Principal District Munisif, Chittoor, that fishing rights in the minor irrigation tanks automatically vest in the Gram Panchayat subject to restrictions imposed by the Government. The Gram Panchayat in fact issued a notice in ROC No.1050/87 A5 (Pts) dated 6-11-1996 prior to the cancellation of the patta, to afford an opportunity to the pattadars. Though the said notice was served on the petitioner, he did not send a reply. Notice to some others pattadars could not be served as they were not residing in the village, and so the petitioner is not entitled to any relief.

3. The main contention of the learned Counsel for the petitioner is that respondents putting the fishing rights to auction in the teeth of the decree of the civil Court is highly irregular. It is his contention that since in W.P.M.P. No.30330 of 1996 a learned Judge, while admitting this petition heard on 20-11-1996 gave an interim direction not to put the fishing rights to auction and since no document is produced to show that the grant to the original assignees was only for a period of 30 years, as contended in the counter-affidavit filed on behalf of the respondents and since no notice in fact is served on the petitioner and since no document to show that the patta granted is cancelled petitioner is entitled to the relief sought.

4. The contention of the learned assistant Government Pleader is that since the Gram Panchayat is not a party to O.S. No.121/1986 and since that suit was filed against the Surpanch of Thenabanda Gram Panchayat, Bahanbada, Chittoor the decree therein does not bind the Gram Panchayat, and in view of the provisions of A.P. Gram Panchayat Act, 1964 and A.P. Panchayat Raj Act, 1984 tanks vest in the Gram Panchayat, and so the Gram Panchayat has absolute right to auction the fishing rights in tanks and when the gram Panchayat by invoking such power, passes a resolution to put the fishing right in the Brahmanacheruvu to auction and since the petitioner approached this Court by suppressing the fact that he was served with a show-cause notice to show-cause for cancellation of patta and obtained an interim order and since the petitioner did not file a reply affidavit traversing the allegations in the counter- affidavit of the second respondent filed on behalf of the respondents, petitioner is not entitled to any relief.

5. The relief sought in the petition is to declare the resolution No.1, dated 7-10-19% of the Gram Panchayat, Gherlopalli, Chittoor Mandal and District

resolving to put UK fishing rights of Brahmanacheruvu of Cherlopalli to public auction is illegal and without jurisdiction etc. The parties of the writ petition are the Group Executive Officer, Cherlopalli Gram Panchayat and the District Panchayat Officer, Chittoor, who have no role to play in passing of the resolution No. 1 dated 7-10-1996 of the Cherlopalli Gram Panchayat. For reasons best known to the petitioner, he did not make the Gram Panchayat, Cherlopalli a party to the writ petition. Since the Gram Panchayat, Cherlopalli is not a party to the writ petition relief to declare its resolution No.1 dated 7-10-1996 cannot be granted, for the petitioner's failure to make the Gram Panchayat, a party to the petition. For that reason alone this petition deserves to be dismissed.

6. Even otherwise also, the contention that in view of the decree in O.S.No. 121 of 1984 the Gram Panchayat cannot put the fishing rights of Brahmanacheruvu to auction cannot be accepted, because the defendant in the said suit is the Surpanch, Thenabanda Village, Cherlopalli. Since the Gram Panchayat of Cherlopalli is not a party to the said suit that decree does not bind on the Gram Panchayat, Cherlopalli. Therefore, I feel it unnecessary to go into the question whether the original grant was for 30 years only. That apart since minor irrigation tanks etc. vest in the Gram Panchayat by virtue of Section 80 of the A.P. Panchayat Raj Act, 1984, Gram Panchayat has the right to put the fishing rights in the tanks to auction.

7. All the above, apart petitioner, who claims a patta in respect of Brahmana Cheruvu, failed to produce that patta to establish his prima facie right therein. For that reason also he cannot be granted the relief sought in this petition.

8. As rightly contended by the learned Assistant Government Pleader though second respondent specifically alleged in his counter-affidavit that a show-cause notice given to the petitioner was served on him and that he did not send any reply thereto petitioner did not choose to file a reply affidavit, traversing the said fact. So merely on the basis of the oral assertion made by the learned Counsel for the petitioner that petitioner was not served with any notice it cannot be said that petitioner was not served with a show-cause notice. Moreover question whether petitioner was served with any show-cause notice or not, is not relevant for disposal of this petition, because the petition is bad for non-joinder of necessary parties i.e., the Gram Panchayat of Cherlopalli whose resolution is questioned in this petition.

9. When the Group Executive Officer and the District Panchayat Officer, who have no role to play in the passing of the impugned resolution by the Gram Panchayat, any order passed in this petition concerning the resolution impugned would not bind the Gram Panchayat when it is not a party to this petition. This Court cannot be asked to pass futile order and so petitioner cannot be granted the relief sought in this petition.

10. Hence, the petition is dismissed with costs.