
(1997) 01 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5698 of 1994

T. Narasinga Rao

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 31-01-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 3 ALT 224

Hon'ble Judges : Neelam Sanjiva Reddy, J;N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : P. Gangaiah Naidu, for the Appellant; Govt. Pleader for Revenue for Respondent Nos. 1 and 2 and V.V.S. Rao, for the Respondent

Judgement

N.Y. Hanumanthappa, J.—The petitioner has filed this writ petition seeking a writ, order or direction, declaring the order of respondent No. 2 in his proceedings No. D1/4436/92 dated 18-1-94, as illegal, unjust and violative of principles of natural justice, and further to direct respondent Nos. 1 and 2 to conduct inspection of the land in question and then cancel the pattas granted in favour of respondent No. 3-Association in Sy. No. 908 of Kukatpall village, if it is proved that the land in question is a tank bed land and overlapping Sy. No. 80 of Moosapet Village, Balanagar Mandal, Ranga Reddy District.

2. The case of the petitioner is that he is a resident of Moosapet Village and owns agricultural land under the ayacut known as "Kamuni Cheruvu" situated in Survey No. 80 of Moosapet village. Like him, there are about 100 other small farmers owning lands in Sy. No. 80 of Moosapet village, under the said ayacut and raising two paddy crops in a year. One Krishna Murthy and one Komaraiah claiming themselves as Secretary and President respectively of respondent No. 3-Association are trying to knock away a portion of the tank bed area under the guise that Government had allotted to them Ac.17-17 guntas in Sy. No. 908 of Kukatpally village which overlaps Sy. No. 80 of Moosapet village. According to the petitioner, the land in question is notified as "Sikkam" land and the respondent

No. 3-Association with the help of revenue officials was trying to grab the land illegally. The petitioner and respondent No. 4 made a representation to respondent No. 1 urging him to stop the illegal grabbing of land. Pursuant to the said application, the Revenue Divisional Officer, Ranga Reddy District was directed to conduct an enquiry and send his report. Accordingly, the Revenue Divisional Officer conducted enquiry and submitted his report stating that the land in Sy. No. 908 of Kukatpally village was not suitable for house-sites and the same cannot be assigned to anybody as it is a tank bed land. Basing on the enquiry report, the District Collector, Ranga Reddy District, directed the Revenue Divisional Officer to propose some other land for the purpose of house-sites. Accordingly, the Revenue Divisional Officer alongwith the Mandal Revenue Officer, Balanagar inspected some lands and reported that a portion of land in Sy. No. 908 which was at a high level including the hilly slopes, which was far away from the normal water spread area and that it would meet the requirement of respondent No. 3-Association. It was further reported that the area covering 666 plots was not coming under submersion during rainy season and suggested to consider allotment of 350 plots in the high level area to respondent No. 3-Association. It was also reported that though the entire high level area did not come under submergence, it was not advisable to allot the entire land as it would obstruct the passage of water from the kunta to Kamuni cheruvu, and requested that the opinion of the Executive Engineer, Panchayat Raj, be taken. Accordingly, the respondent No. 1 sought the opinion of the Executive Engineer, Panchayat Raj. However, the petitioner submits that the Executive Engineer was influenced by respondent No. 3 and favoured for grant of house-sites in its favour. The petitioner further submits that pattas were granted without any notice to the ryots of Kukatpally and Moosapet villages. Objecting to this the petitioner and others made representations to the District Collector to enquire into the matter.

3. The petitioner and 62 others filed WP No. 8346 of 1992 seeking directions to respondent No. 1 to consider the objections raised by them in respect of the patta granted in favour of respondent No. 3-Association in the tank bed area. During the pendency of the said writ petition, the Assistant Director, Survey and Land Records, Ranga Reddy District submitted his report stating that allotment of house-sites in Sy. No. 908 of Kukatpally village would affect the safety of the tank and its water, and therefore, suggested that pattas issued in the said survey number be cancelled as the plots fall under tank bed area. This Court by order dated 28-1-93 allowed the said writ petition and directed the respondent No. 1 to enquire into the matter and take appropriate steps. The Court further ordered that till a final decision is taken in the matter, status quo as to possession of the land in question has to be maintained by all concerned. As no enquiry was conducted and no action was taken, the petitioners filed Contempt Case No. 509 of 1993. It appears that the said contempt case was allowed by a learned single Judge by imposing a fine of Rs. 2,000/- as there was disobedience of the Court's order by respondent No. 3-Association. The said order is challenged by respondent No. 3-Association by filing Contempt Appeal No. 15 of 1994. Instead

of holding an enquiry as directed by this Court in WP No. 8346 of 1992, the respondent No. 2 passed an order dated 18-1-94, the operative portion of which reads as follows:

"In view of the above observations of the Hon"ble High Court and other material records it is clear that after settlement of boundary overlapping between Sy. No. 80 of Moosapet village and Sy. No. 908 of Kukatpally village then an extent of Ac.12-32 guntas remain in Sy. No. 908 as "Cherai", Kukatpally village, which does not overlap with that of Sy. No. 80 of Moosapet village and also covered by approved layout plan. Therefore, the extent of Ac.12-32 guntas in Sy. No. 908 of Kukatpally is not the part of Sy. No. 80 Shikam (tank bed) of Moosapet Village. The classification of the said extent is Cherai and the same is not reserved for any public purpose and the same is available for assignment, and therefore, the writ petitioners' objection is not tenable to the extent of Ac.12-32 guntas in Sy. No. 908 of Kukatpally. Further the house-sites pattas were already issued duly following the procedure. However, it is necessary to cancel the 40 house-site pattas issued which are falling in Sy. No. 80 of Moosapet village after deciding the boundaries overlapping. Therefore, the Revenue Divisional Officer, Chevella, is requested to take further action accordingly."

4. The above order passed by respondent No. 2 is challenged in this writ petition on the ground that it is contrary to the earlier order of this Court and the same is not in consonance with the principles of natural justice, and that it has been passed with a view to favour respondent No. 3-Association.

5. The Contempt Appeal No. 15 of 1994 was admitted on 9-11-94. The order of the learned single Judge was also suspended by this Court. On 28-7-95, this Court in Contempt Appeal directed the District Collector to submit his report as to the factual position. The District Collector, Ranga Reddy District on 2-9-96 submitted his report along with combined sketch showing the overlap in Sy. No. 80 of Moosapet village and Sy. No. 908 of Kukatpally village. The relevant portion of the report is extracted below:

"An extent of 4.25 acres out of 17.17 acres allotted to the Society is under submergence. However, I wish to bring it to the notice of this Hon"ble Court that the balance area of Ac.12-32 guntas also falls under the catchment area of Kamuni Cheruvu which is shown as "A" portion in the sketch and allotment of house-sites on this land would adversely affect water flow into Kamuni Cheruvu located in Sy. No. 80 of Moosapet village, and therefore, it is not desirable to issue house-site pattas even on these Ac.12-32 guntas of land. But, since the issue is sub judice before this Hon"ble Court, this Hon"ble Court may take appropriate decision."

6. On 9-9-1996 in CMP No. 8723 of 1996 in C.A. No. 15 of 1994 this Court appointed Mr. T. Amarnath Goud as Advocate Commissioner and other officials viz., the District Collector, Ranga Reddy District, the Executive Engineer (Irrigation), Ranga Reddy District, and the Joint Commissioner, Survey and Land

Records, to inspect the site in question and find out the truth or otherwise of the crop or storage of water in the area and submit its report. Accordingly, the District Collector, Ranga Reddy District, alongwith the officials named above inspected the site in question and submitted his report. The relevant portion of which is as under :

"We have visited the ayacut area of Kamuni Cheruvu. The tank bed area (i.e., Shikam) of Kamuni Cheruvu covered by Sy. No. 80 of Moosapet and Sy. No. 908 of Kukatpally is Ac. 51.35 gts. The capacity of tank (taking two fillings and MC Ft as dead storage) is 8.00 MC Ft. The present storage capacity (since the tank is surplussing) is 8.00 MC Ft. The total ayacut under the above source is Ac. 82.00 and the entire extent is under active cultivation of paddy crops and no structures are found in the ayacut area. Out of (104) ayacutdars under the source, (80) ayacutdars are small farmers holding small extents ranging from 0.02 guntas to 2.20 acres.

We have also verified the house-sites area where the following structures at different stages are found:

1. Roofless rooms without doors and window - 7.
2. Basements below 2 ft. level above the ground - 14.
3. Basement of 17 rooms about 300 Sq.yds. each - 1.
4. Half built brick wall rooms below 3 ft. height with 6 ft x 6 ft dimensions - 4.
5. Excavations for laying basement for house-sites - 29.
6. Completed single rooms with brick and mudwall and asbestos roof - 2.

At the time of inspection, the water level in the tank at the vier is 2 to 3 feet below the full tank level. The water logging area of the layout is shown in the map enclosed. According to the map, out of the total 488 plots, 268 plots are covered by the water logging area, 62 plots are covered by rocky area and only 158 plots are outside the water logging area below 2 to 3 feet of full tank level. Even these plots are located in the surplus course of the tank in Sy. No. 909 of Kukatpally which is adjoining the above location. Construction of houses on this land of 12.32 acres of Sy. No. 908 of Kukatpally village would adversely affect the water flow into Kamuni Cheruvu located in Sy. No. 80 of Moosapet village.

The topographical details are shown in the map enclosed. This report is prepared in consultation with the other officials."

7. On similar terms and almost on identical lines as that of the report of the District Collector, Mr. T. Amarnath Goud, who was appointed as Advocate Commissioner has filed his report. It is mentioned in the report of the Advocate Commissioner that at the time of inspection of the site all the officers appointed by this Court were present.

8. On 13-11-96 after hearing the learned Counsel for both sides for some time

we directed the District Collector, Ranga Reddy District, who was present in the Court, to verify the genuineness or otherwise of the members of the respondent No. 3-Association who are seeking house-sites and also to verify the availability of Government lands which are fit for dwelling purpose. The District Collector filed his report stating that in pursuance to the directions of this Court he instructed the Revenue Divisional Officer, Chevella Division, to conduct socio-economic survey of the members of the respondent No. 3-Association to select the eligible beneficiaries for issuing house-site pattas, and that the Revenue Divisional Officer, got the enquiry conducted through the Mandal Revenue Officer, Balanagar, who reported as follows :

"Out of 488 beneficiaries, only 38 beneficiaries are found to be eligible for being issued house-site pattas. An alternative land in Sy. No. 150 of Murthujaguda village of Moinabad Mandal which is suitable for house-sites has been identified and necessary instructions have been issued to the Mandal Revenue Officer, Moinabad to issue house-site pattas to 38 eligible beneficiaries duly following the procedure."

9. On receipt of the above report, we heard both sides. The learned Government Pleader reiterated what is stated in the report of the District Collector that the Government will identify some other vacant land belonging to the Government and allot the same to respondent No. 3-Association so that it can prepare sites and allot to the 38 beneficiaries. As far as the land in dispute is concerned, it will not be assigned to either the petitioner or the respondent No. 3-Association, or allow other ayacutdars to encroach upon any portion of the tank bed area. Sri P.Gangaiah Naidu, appearing for the petitioner, who in turn represents other ayacutdars made fair submission to the Court that none of the ayacutdars would encroach upon any portion of the tank bed as the ayacutdars are small farmers and depend on the water available in the tank for raising crops and that the tank is providing livelihood for them atleast some months in a year, and that encroaching any portion of the tank bed area by any of the ayacutdars would be suicidal to their livelihood and interest. Mr. V.V.S. Rao, learned Counsel appearing for respondent No. 3-Association submitted that the District Collector, Ranga Reddy District, may be directed to identify suitable land for allotment to the respondent No. 3-Association so that it can distribute to the 38 beneficiaries by issuing pattas. This submission made on behalf of respondent No. 3-Association will not hold good as the Collector himself has given an undertaking that alternative land in Sy. No. 150 of Murthujaguda village of Moinabad Mandal has been identified which is suitable for house-sites and that necessary instructions have been issued to the Mandal Revenue Officer, Moinabad to issue house-site pattas to the eligible beneficiaries of respondent No. 3-Association after following the procedure.

10. From the reports of the District Collector it becomes clear that the land in dispute is a tank bed land. The Government has agreed to allot alternative land to 38 beneficiaries of respondent No. 3-Association in Sy. No. 150 of

Murthujaguda village, Moinabad. Thus indirectly, the demand of the respondent No. 3-Association has been met by the Government (District Collector). The apprehension of the petitioner and other ayacutdars is also removed by the undertaking given by the District Collector that no portion of the tank bed area will be allotted to any one or allowed to be encroached upon or alienated. Hence no further orders are required to be passed in this writ petition. However, we dispose of the writ petition by making the following observations:

The tank bed area overlapping in Sy. No. 80 of Moosapet village and Sy. No. 908 of Kukatpally village to an extent of Ac.17.17 guntas shown in the sketch filed alongwith report dated 2-9-96 of the District Collector, shall be reserved as tank bed. No part of the said land shall be assigned to any one by of the District Collector. If any member of the respondent No. 3-Association has kept any building material in any portion of the tank bed area, he is at liberty to remove the same after informing the District Collector in writing. The District Collector in turn shall depute one of his local officers at the time of removal of such building material so as to prepare a panchanama. None of the ayacutdars shall make attempts to encroach upon any portion of the disputed land. Any encroachment either by ayacutdars or by any one else shall be dealt with seriously by the authorities concerned. The District Collector shall see that 38 beneficiaries who have been identified as eligible for allotment of house-sites in Sy. No. 150 of Murthujaguda village, Moinabad, are given house-site pattas at an early date through the Mandal Revenue Officer, Moinabad. The writ petition is accordingly disposed of.