

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition Nos.19296, 19310, 19556 of 2003
& 21223 of 2011

(Dated: 21-08-2012)

Between:

A.Bheem Reddy S/o late Malla Reddy
(Petitioner in W.P.No.19296 of 2003)

P.Balaiah S/o late Narsaiah
(Petitioner in W.P.No.19310 of 2003)

Md. Babu Miya (since died) rep. by LRs.
Md. Gori Bee and others
(Petitioners in W.P.No.19556 of 2003)

Mohd. Khaza Miya and another
(Petitioners in W.P.No.21223 of 2011)

....Petitioners

A n d

The State of Andhra Pradesh, rep. by its
Principal Secretary, Revenue Department and others

...Respondents

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition Nos.19296, 19310, 19556 of 2003
& 21223 of 2011

COMMON ORDER:

Common question arises in this batch of writ petitions and hence, they are heard together and are being disposed of by this common order.

2. Palle Balaiah is the petitioner in Writ Petition No.19310 of 2003. He claims that land in Plot No.2 admeasuring Ac.1-20 guntas comprising Survey No.117 of Tattiannaram village, Hayatnagar Mandal, Ranga Reddy District has been in possession of members of his family for the last thirty years. Md. Baba Miya, Md. Gori Bee, Md. Khaza Miya and Md. Jahangir are the petitioners in W.P.No.19556 of 2003. They claim that the members of their family have been in possession of Plot Nos. 117/7, 117/6, 117/5 and 117/4 respectively, admeasuring Ac.0-30 guntas each, comprising Sy.No.117 for the last thirty years. A.Bhim Reddy is the petitioner in W.P.No.19296 of 2003. He claim that plot No.3 admeasuring Ac.1-20 guntas comprising Sy.No.117 situated at Thattiannaram village, Hayatnagar Mandal, Ranga Reddy District has been in possession of members of his family for the last thirty years. The petitioners in W.P.Nos.19296 of 2003, 19310 of 2003 and 19556 of 2003 submitted applications to the Collector, Ranga Reddy District for alienation of the lands in their occupation on payment of market value. The Deputy Collector and

Mandal Revenue Officer, Hayat Nagar Mandal, under letter dated 25-3-2003 informed the Special Deputy Collector and Revenue Divisional Officer, Ranga Reddy District, East Division that the lands are being cultivated by the applicants for the last thirty years. On further information called for by the Collector, Ranga Reddy District; the Deputy Collector and Mandal Revenue Officer, Ranga Reddy District inspected the land and found that the earlier report dated 25.3.2003 was not in accordance with the ground position and therefore, informed the Collector under letter dated 12.9.2003 to reject the applications filed by the petitioners for alienation of the lands. For better appreciation, I may refer the relevant portion of the letter dated 12.9.2003 addressed to the Collector, Ranga Reddy District at Hyderabad by the Deputy Collector and Mandal Revenue Officer, Hayatnagar Mandal, R.R.District and it reads thus:-

“ In this regard, vide reference 3rd cited (copy enclosed), the Panchayat Secretary of Tattiannaram village has reported that the Government land in Sy.No.117 to an extent of 6-00 acres is kept fallow since last so many years and there are no encroachers or possessors in the above Government land and no crops have been raised by anybody.

Further, I have personally visited the spot on 12-09-2003 in Sy.No.117 of Tattiannaram village, which is proposed for Open Auction and recorded the statement of Smt. Aruna, Sarpanch of Tattiannaram village (copy enclosed). The Sarpanch of Tattiannaram village in her statement stated that the land in Sy.No.117, extent 6-00 acres is recorded as Government Land in their Village Record which is under the possession of Government and there are no encroachers or possessors on the above Government land, it is kept fallow and no agricultural activities have taken place in the said land till today. I have also enquired about the request S/Sri Pale Balaiah and (5) others, who have applied for alienation of Government Land in Sy.No.117 of Tattiannaram village. The enquiry reveals that (1) Sri Pale Balaiah (2) Sri Bheem Reddy (3) Sri Mohd. Jahangir, (4) Sri Khaja Miya (5) Babu Miya and (6) Smt. Gore Bee, are not eligible for alienation of

Government Land in Sy.No.117 of Tattiannaram village for the following reasons:

1. They do not come under Below Poverty Line.
2. The above Government Land is situated in a prime location and also very highly valuable land. In the interest of the Government it cannot be alienated to any person(s).
3. This Government land in Sy.No.117 to an extent of 6-00 acres situated at Tattiannaram village is earmarked for Open Auction by the Collector, R.R.District on 17-9-2003. Hence the question of alienation to Private persons does not arise.
4. The above individuals are also not in physical possession of the said land at present.

In the above circumstances, it is clearly evident that there no encroachers or possessors over the Government land in Sy.No.117 to an extent of 6-00 acres of Tattiannaram village since last so many years. Therefore, I request kindly to set aside the previous report furnished dated 23-03-2003 and reject the report of the appellants, who have applied for alienation of Government land in Sy.No.117 of Tattiannaram village and pass necessary orders rejecting the request of the individuals for alienation. Any delay in the matter of the above land may lead to legal complications.”

3. Basing on the report of the Deputy Collector and Mandal Revenue Officer, Hayatnagar, the applications of the writ petitioners came to be rejected by the District Collector, Ranga Reddy District under Proceeding No.E4/6946/2003, dt.16.09.2003. The District Collector notified the sale of the plots by publishing in “Eenadu” daily dated 06.9.2003. The petitioners in the above-referred three writ petitions assailed the action of the District Collector, Ranga Reddy District-2nd respondent in putting the plots to sale by way of public auction. The three writ petitions ended in dismissal at the admission stage. The petitioners carried the matter in appeal and the Writ Appeals came to be allowed directing hearing of the writ petitions on merits.

4. The respondents filed counter resisting the claim of the petitioners. In the counter affidavit filed on behalf of the official respondents, it is stated that the land in question is a valuable land, situated nearer to Nagole and adjacent to Geological Survey of India. It is also stated in the counter affidavit that pursuant to the applications made by the petitioners to the District Collector for alienation of the said land in their favour, a report was called for, but however, as the first report was not correctly prepared, subsequently, inspection was conducted by the Revenue Divisional Officer and thereafter, request of the petitioners for alienation of the land was considered and rejected by order dated 16-9-2003. Further it is stated in the counter affidavit that in view of the instructions of the Government, the land was sold in public auction to mobilize the funds for construction of Government building and that pursuant to the public auction conducted on 17-9-2003, the bidders have deposited substantial amount. Possession of the petitioners over the land in question is disputed. For better appreciation, I may refer paragraphs (7) and (8) of the counter affidavit in W.P.No.19556 of 2003 and they read thus:-

“7. It is submitted that thereafter, the Mandal Revenue Officer vide letter No.C/861/2003, dt.12.9.2003 has submitted a report to the District Collector, stating that the petitioner is not in physical possession of the land and the land is in prime location and valuable and requested the District Collector, to set aside the previous report submitted from his office on 25.3.2003 and further requested to reject the application for alienation of the Government land admeasuring Ac.1.20 guntas in Sy.No.117 (The copy of the same is filed herewith an annexure No.6).

8. It is submitted that the District Collector after considering the report of the Mandal Revenue Officer has passed orders rejecting the application of the Petitioner for alienation of the land admeasuring Ac.1-20 guntas in S.No.117 on payment of market value, however observed that as the lands are put for public auction on 17.9.2003 the

petitioners are at liberty to participate in the open auction proceedings vide Proceedings No.E4/6946/2003, dt.16.9.2003 (The copy of the same is filed herewith as annexure No.7). The copy of the orders was sought to be served on the Petitioner by the Additional Mandal Revenue Inspector and Panchayat Secretary, Tattiannaram village, but the petitioner has refused to receive the same and as such they pasted the same on the door of the Petitioner in the presence of village elders Sri N.Rama Goud, Baslamani and Sri N.Babu Goud (The copy of the same is filed herewith as annexure No.8)."

5. The auction purchasers, namely, V.Narender Reddy (Respondent No.5 in W.P.No.19310 of 2011) and Yerram Narasimha Rao (respondent No.6 in W.P.No.19310 of 2003) came on record as respondents on their own applications. Initially, the Division Bench while disposing of the Writ Appeals, granted *status quo* and the *status quo* came to be extended from time to time. Thereupon, the respondents moved vacate stay petitions and the vacate stay petitions came to be allowed vacating the order of *status quo*. V.Narender Reddy, who is one of the auction purchaser, submitted representation to the Government to accept the balance bid amount after waiving the interest. The District Collector sought for clarification from the Government. Thereupon, the Government waived the interest and permitted V.Narender Reddy to pay balance bid amount under Memo No.35019/Assn.V(1)/2008, dated 28.01.2009. For better appreciation, I may refer the relevant portion of the Memo, which reads as hereunder;-

" In the reference second cited, the Spl. CS & Chief Commissioner of Land Administration, Hyderabad, has observed that the auction purchaser by name Sri B.Narender Reddy is not a party in W.P.No.9310/2003, 19296/2003 and 19556/2003. The orders of the status-quo is only that effect, not to disturb the persons in possession of the property and at no stage, the auction purchaser is prevented from

depositing balance auction amount, in fact, the correspondence made by the auction purchaser go to show that under the pretext of pending writ petition he postponed the deposit of balance amount. In other words the auction purchaser has failed to fulfill the terms of the auction i.e., he has to pay the balance amount within one month from the date of auction. It appears the auction purchaser himself got added as a party to one of the Writ Petitions in order to bring to the notice of the Hon'ble High Court that he had already deposited huge amounts towards initial deposit. The auction purchaser cannot take shelter under the observation of the Hon'ble High Court that the land in question was sold in public auction and bidders have deposited substantial amount" in spite of the above lapses on the part of the auction purchaser in payment of balance purchase money the Collector, Ranga Reddy District allowed him to pay the balance of Rs.67,00,000/- on 21-04-2008. The Collector, Ranga Reddy District ought to have asked this office for necessary clarification before receiving the said amount from the bidder.

In the reference third and fourth cited, Sri V.Narender Reddy, who was highest bidder, has made a representation stating that to exempt from payment of interest on the balance sale consideration as there is no fault from his side. He has not paid the balance amount due to the court litigation pending in the High Court. It was finally vacated only after he impleaded in the case and he has paid the amount immediately, after stay orders are vacated.

After careful examination of the matter, Government have accepted the request of Sri V.Narender Reddy, to pay the balance amount of bid amount without interest. The Collector, Ranga Reddy District is directed to take necessary action accordingly for handing over the possession after collecting the balance of the bid amount".

Mohd. Khaza Miya and Palle Balaiah filed Writ Petition No.21223 of 2011 assailing the above-referred Government Memo.

6. Heard *Sri O.Manohar Reddy*, learned counsel appearing for the petitioners in W.P.No.19310, 19296 & 19556 of 2003 and *Sri*

K.Venkat Reddy, learned counsel appearing for the petitioner in W.P.No.21223 of 2011 and *Smt. Neeraja Reddy*, learned counsel appearing for V.Narender Reddy(auction purchaser- respondent No.5 in W.P.No.19310 of 2011) and *Sri C.Upendra*, learned counsel appearing for Yerram Narasimha Rao (auction purchaser- respondent No.6 in W.P.No.19310 of 2003), learned Government Pleader for Revenue appearing for respondents 1 to 4 in all the writ petitions and learned Government Pleader for Forest appearing on behalf of respondent No.6 in W.P.No.19296 of 2003 and respondent No.7 in W.P.No.19556 of 2003.

7. *Sri O.Manohar Reddy*, learned counsel submits that the land notified for public auction is a forest land and unless it is de-notified, the District Collector has no power to proceed with the auction of the land. It is also contended by him that the lands in possession of the petitioners cannot be put to auction without dispossessing them from the lands in their occupation by taking recourse to law. Learned counsel refers the report of the Deputy Collector and Mandal Revenue Officer, Hayatnagar-4th respondent in support of his contention that the land proposed to be auctioned is in possession of the writ petitioners. It is also contended by him that acceptance of the balance bid amount beyond the period stipulated in the auction notice amounts to infraction of the terms and conditions of the auction notice in which case, Memo No.35019/Assn.V(1)/2008, dated 28.01.2009 issued by the Government cannot be sustained.

8. *Per contra*; it is contended by *Smt. P.Neeraja Reddy* that the request of the petitioners has been turned down by the District Collector under Memo dt.16-09-2003 and no proceeding has been taken out by the writ petitioner questioning the said memo, in which

case, it is impermissible for the writ petitioners to assail the auction notice issued by the District Collector. It is also contended by her that the Curator, National Parks, Hyderabad has specifically stated in the counter filed in W.P.No.21223 of 2011 that the Forest Department is no way connected with the action of the Revenue Department in auctioning the area in Survey No.117. Learned counsel further contends that substantial amounts have been paid by the unofficial respondents and sales in their favour have been confirmed and unless and until sales are set aside, the petitioners are not entitled for any relief.

9. Learned Government Pleader for Forests submit that the land notified for auction is not a forest land and therefore, Forest Department is no way connected with the action of the Revenue Department in auctioning of the area comprising Survey No.117.

10. The issues that call for adjudication are:-

1. Whether the lands notified for sale by the District Collector in the auction notice dated 06.9.2003 are forest lands?
2. Whether the petitioners are able to make out a case for issuance of a *mandamus*?

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11. **ISSUE No.1:** This issue can be resolved by referring the counter affidavit filed by the Chief Conservator of Forests, Andhra Pradesh, Hyderabad (Respondent No.5 in W.P.No.21223 of 2011). G.Krishna Murthy, Curator, National Parks, Aranya Bhavan, Saifabad, Hyderabad, has sworn to the counter affidavit. It is stated in the counter that the Forest Department is no way connected with the action of the Revenue Department in auctioning of the area in Sy.No.117. For better appreciation, I may refer the relevant portion of

the counter which reads as hereunder:-

“ In reply to para 10 & 11, it is submitted that it is not correct to say that the said land was handed over without the consent and proper order from Forest Dept and Government of A.P. The fact is that through G.O.Ms.No.117 Forest & Rural Development, dt.04.02.1978 entire area of Sy.No.117 of Thattiannaram village (206.32 acres) was handed over to Geological Survey of India on 14.2.1978. Later on, 100.00 acres of land was taken back from GSI and handed over another 100.00 acres of land from Sy.No.1271/1 of Thattiannaram village to Geological Survey of India as the area handed over to them was dividing the forest land into two bits without continuity as per Govt. Memo No.55288/For.I/79-2, dt.3.3.1980. Therefore the area of Sy.No.117 of Thattiannaram village was handed over before 1980 i.e., on 14.2.1978. The area in the possession of Forest Dept of Sy.No.117 of Thattiannaram is intact and fenced. The Forest Department is no way connected with the action of the Revenue Department of auctioning of area in Sy.No.117 as the area was handed over to Geological Survey of India on 14.2.1978”.

In view of the counter affidavit filed by the Forest Department, the contention of the petitioner that the land notified for public auction is a forest land, has no substance. Accordingly, this issue is decided against the petitioners.

12. **ISSUE No.2:** For maintainability of a writ seeking a writ of mandamus, the petitioners have to substantiate the following conditions:-

- a) Statutory duty cast against the respondents
- b) Corresponding right in favour of the petitioners seeking enforcement of such right.

Therefore, in order that a writ of *mandamus* may be issued, there must be legal right, which the party asking for the writ to compel the

performance of some statutory duty cast upon the authorities. It is the contention of the petitioners that the lands claimed by them have been in their possession from the time of their forefathers. Except one entry relating to the year 1984-1985 in the pahani, there is no other entry in the pahani or the revenue record to speak of the petitioners being in possession of the lands notified for auction. Indeed, the Special Deputy Collector and Mandal Revenue Officer, Hayatnagar made personal inspection of the lands and submitted report stating that the lands are vacant and no cultivation activity has been carried on. Basing on the report submitted by the Special Deputy Collector and Mandal Revenue Officer, Hayatnagar, the District Collector issued proceeding dated 16.9.2003 rejecting the applications submitted by the petitioners for alienation of the land on market value. The petitioners having taken a stand that the properties belong to the Government cannot be permitted to plead that the lands are forest lands and therefore, the Government has no authority to notify the same for auction. When the petitioners failed to prove of their being in possession of the land, they cannot have any claim over the same. Therefore, they are not entitled for a writ of *mandamus* against the respondents. In view of the above discussion, this issue is answered against the petitioners.

13. In the result, all the writ petitions are devoid of merits and accordingly, they are hereby dismissed. As a sequel to it, the orders dated 15.12.2003 and 21.6.2005 granted in W.P.M.P.No.24195 of 2003 and W.P.M.P.No.24527 of 2003 in W.P.No.19556 of 2003 respectively shall stand vacated. No order as to costs.

B.SESHASAYANA REDDY, J

Dt.21-08-2012
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