

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**WRIT PETITION No. 24767 of 2015**

**ORDER:**

This Writ Petition filed by the petitioners under Article 226 of the Constitution of India, seeking the following relief:

“.....to issue a writ order or direction more particularly in the nature of Writ of Mandamus, declaring the proposed action of the respondents in trying to dispossess the petitioners from the schedule land measuring Ac. 2-00 cents in R.S. No. 558, Ac. 1-50 cents in R.S. No. 558, Ac. 1-50 cents in R.S. No. 323, Ac. 1-00 cents in R.S. No. 323, Ac. 1-50 cents in R.S. No. 323, AC. 1-00 cents in R.S.No. 323, Ac. 1-50 cents in R.S. No. 558, Ac.2-00 cents in R.S.No. 323, Ac. 1-00 cents in R.S. No. 323, Ac.1-00 cents in R.S.No. 323, Ac. 1-00 cents in R.S.No. 323; Ac. 1-50 cents in R.S.No. 558, Ac.1-50 cents in R.S.No. 323, Ac.0-80 cents in R.S.No. 323, Ac 1-50 cents in R.S.No. 323, Ac. 1-00 cents in R.S. No. 323 and Ac. 1-00 cents in R.S.No.323 of G Yerrampalem and Gokavaram villages in Gokavaram Mandal, East Godavari District pending consideration of representations dated 20.05.2015 without due process of law as illegal, null and void, violative of principles of natural justice and also Article 19 and 21 of Constitution of India and consequently issue order directing the respondents to drop all further proceedings with regard to dispossession of the petitioners from the schedule land admeasuring Ac. 2-00 cents in R.S. No. 558, Ac. 1-50 cents in R.S. No. 558, Ac. 1-50 cents in R.S. No. 323, Ac. 1-00 cents in R.S. No. 323, Ac. 1-50 cents in R.S. No. 323, AC. 1-00 cents in R.S.No. 323, Ac. 1-50 cents in R.S. No. 558, Ac.2-00 cents in R.S.No. 323, Ac. 1-00 cents in R.S. No. 323, Ac.1-00 cents in R.S.No. 323, Ac. 1-00 cents in R.S.No. 323, Ac. 1-50 cents in R.S.No. 558, Ac.1-50 cents in R.S.No. 323, Ac.0-80 cents in R.S.No. 323, Ac 1-50 cents in R.S.No. 323, Ac. 1-00 cents in R.S. No. 323 and Ac. 1-00 cents in R.S.No.323 of G Yerrampalem and Gokavaram villages in Gokavaram Mandal, East Godavari District and to pass such other order”

2. The case of the petitioners in nutshell is that the petitioners are permanent residents of Pentapalli village, Gokavaram Mandal, East Godavari District, eking out their livelihood by coolie work and they are in possession of following small extents of land:-

Ac.2-00 cents in R. S. No. 558, Ac. 1-50 cents in R. S. No .558, Ac.1-50 cents in R. S. No. 323, Ac. 1-00 cents in R. S. No .323, Ac.1-50 cents in R. S. No. 323, Ac. 1-00 cents in R. S. No. 323, Ac.1-50 cents in R. S. No. 558, Ac. 2-00 cents in R. S. No. 323, Ac.1-00 cents in R. S. No. 323, Ac. 1-00 cents in R. S. No. 323, Ac.1-00 cents in R. S. No. 323, Ac. 1-50 cents in R. S. No. 558, Ac.1-50 cents in R. S. No. 323, Ac. 0-80 cents in R. S. No. 323, Ac.1-50 cents in R. S. No. 323, Ac. 1-00 cents in R.S. No. 323 and Ac.1-00 cents in R. S. No. 323 G. Yerrampalem village, Gokavaram Mandal, East Godavari District for several decades, which belongs to Government.

3. The petitioners are in continuous possession of the said land and raising paddy crop. Apart from the petitioners, there are more than 100 coolies cultivating the land by dividing the same into small pieces to maintain their respective families. Therefore, they formed into an Association by name Sri Anjaneya Small Farmers Welfare Association, Pentapalli, consisting of about 107 members and the same is registered under the Societies Registration Act.

4. The petitioners produced tax receipts, evidencing payment of land revenue to the Government for the lands in their occupation, which substantiate the contention of the petitioners that they are in possession and enjoyment of the said land.

5. They made a representation dated 20.05.2015 to respondent No.2/ District Collector for grant of pattas in their favour. But, the respondents are trying to dispossess the petitioners without following due process of law, and therefore, they are requested to grant relief as claimed in this Writ Petition.

6. Learned Assistant Government Pleader submits that the petitioners have encroached 'Raju tank', and they are not entitled to continue in possession of the same. The submission made by the learned Assistant Government Pleader is suffice that the petitioners are in possession of the property i.e, "Raju tank". Though encroachment is prohibited, till the petitioners are evicted by the respondents by following due process of law from the encroached portion of Raju tank, they are entitled to protection. Hence, the claim of these petitioners are accepted in view of the submission made by

the counsel and a direction is to be given to the respondents not to dispossess the petitioners except by following due process of law.

7. Learned Government Pleader for Revenue submits that in a similar matter i.e, W.P.No.16228 of 2015, following order was passed on 21.12.2021:

“This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“to issue a writ, order or direction more particularly in the nature of Writ of Mandamus, declaring the proposed action of the respondents in trying to dispossess the petitioners from the schedule land measuring Ac.1- 20 cents in RS No.558; Ac.1-00 cents in RS No.323, Ac.1-50 cents in RS. No.558 and Ac.0-50 cents in RS No.558 of G.Yerrampalem Village, Gokaravaram Mandal, East Godavari District pending consideration of representations dated 20.05.2015 without due process of law as illegal, null and void and violative of principles of natural justice and also Article 19 and 21 of Constitution of India and consequential order directing the respondents to drop all further proceedings with regard to the dispossession of the petitioners from the schedule land measuring Ac.1-20 cents in RS No 558, Ac.1-00 cents in RS No.323, Ac.1-50 cents in RS No.558 and Ac.0-50 cents in RS No.558 of G.Yerrampalem Village, Gokaravaram Mandal, East Godavari District.”

The case of the petitioners, in brief, is that the petitioners are residents of Pentapalli Village, Gokavaram Mandal, East Godavari District. Petitioner No.1 is in possession of Ac.1-20 cents in RS No 558, petitioner No.2 is in possession of Ac.1-00 cents in RS No.323, petitioner No.3 is in possession of Ac.1-50 cents in RS No.558 and petitioner No.4 is in possession of Ac.0-50 cents in RS No.558 of G.Yerrampalem Village for the last several decades, which belongs to Government. The petitioners are continuing in possession of the said land and raising paddy crop. Apart from the petitioners, they are more than 100 coolies cultivating the land by dividing the same into small pieces of land to maintain their respective families. Therefore, they formed into an association by name Sri Anjaneya Small Farmers Welfare Association, Pentapalli consisting of about 107 members and the same is registered under the Societies Registration Act. They made a representation dated 20.05.2015 to respondent No.2 for grant of pattas in their favour. But the respondents are trying to dispossess the petitioners without following due process of law, requested to grant relief as claimed in the writ petition.

Respondent No.3 filed counter admitting about the encroachment of land by the petitioners and other coolies in an extent of Ac.36.48 cents in R.S.No.323 of Pentapalli H/o R.Yerrampalem and an extent of Ac.47.67 cents in R.S.No.558 of Gokavaram Villages, which are classified as Tank poramboke in Revenue records. The extents in R.S.No.323 of Pentapalli H/O R.Yerrampalem and R.S.No.558 of Gokavaram villages were registered as “Veerlankapalli Raju Tank ” and “ Raju Tank” in revenue records and the local name of the tank is “ Raju Tank“. It is an irrigation tank with an ayacut of about 500 acres and many ryots are cultivating their lands, depending on, with the water drawn from the said tank for the last several years. Not only that, it is only the Tank existing on ground, for the use of nearby surrounding Villages also for the cultivation purpose but also for drinking water for the Villagers and cattle. The petitioners have encroached the tank bed lands unauthorizedly and due to the

encroachments, the ayacut ryots are facing many problems every year and hence, they are submitting representations frequently to the Revenue Authorities to carry out the evictions.

It is further contended that the Government have issued a publication, launching the "Neeru-Chettu" programme and in accordance with the notification, the Collector, East Godavari, Kakinada has issued instructions in ref.D7/1026/2015, dated 28.04.2015 and as such the "Raju Tank" was taken up for the repairs and work of removal of silt from the tank on 70:30 ratio, as desired by the Government policy, duly observing the formalities. Unfortunately, due the obstruction of the petitioners and others, who said to have been encroached the land, the proposed "Neeru-Chettu" program was not succeeded and after the incident, the petitioners approached this Court and filed the writ petition. It is further stated that the petitioners encroached the land about 15 to 20 years ago and not 80 years ago as pleaded by them. Therefore, the petitioners are trying to remove the encroachments to implement "Neeru-Chettu" programme but not otherwise. Hence, the petitioners being encroachers are not entitled to claim writ of Mandamus, requested to dismiss the writ petition.

During hearing, learned counsel for the petitioners and learned Government Pleader for Revenue reiterated the contentions urged in the petition and counter respectively.

The consistent case of the petitioners from the beginning is that petitioner No.1 is in possession of Ac.1-20 cents in RS No 558, petitioner No.2 is in possession of Ac.1-00 cents in RS No.323, petitioner No.3 is in possession of Ac.1-50 cents in RS No.558 and petitioner No.4 is in possession of Ac.0-50 cents in RS No.558 of G.Yerrampalem Village. The said fact is admitted by the respondents while contending that they encroached the land about 15 to 20 years ago vide paragraph No.4 of the counter-affidavit and also admitted about the raising objection by the respondents and the petitioners making representations for grant of D-Form patta. But the tank bed land cannot be assigned under Board Standing Order 15, but that is not the issue before this Court. However, the only dispute is illegal attempt of the respondents to dispossess the petitioners. Admittedly, when the petitioners are in possession being the encroachers, the respondents are entitled to take appropriate steps to remove the encroachments on tank bed land by following due procedure since it is the duty of the State to protect the water bodies, but the petitioners cannot be dispossessed without following procedure prescribed under law in view of the law declared by the Apex Court in **"Rame Gowda (dead) by L.Rs. v. M.Varadappa Naidu (Dead) by L.Rs.1"**.

In the result, the writ petition is allowed declaring the action of the respondents in trying to dispossess the petitioners from the land without following due procedure is illegal and arbitrary. The respondents are directed, not to dispossess the petitioners from the land, except by due process of law. No costs.

However, this order will not preclude the respondents to take appropriate action for removal of encroachments immediately strictly adhering to the procedure prescribed under law. The miscellaneous petitions pending, if any, shall also stand closed.

<sup>1</sup> 2004 (1) SCC 769"

8. Keeping in view the facts and circumstances of the case and following the orders passed in the aforementioned Writ Petition, this Writ petition is disposed of declaring the action of the respondents in trying to

dispossess the petitioners from the land without following due procedure is illegal and arbitrary. The respondents are directed, not to dispossess the petitioners from the land, except by due process of law. However, this order will not preclude the respondents to take appropriate action for removal of encroachments strictly adhering to the procedure prescribed under law. There shall be no order as to costs.

9. The miscellaneous petitions pending, if any, shall also stand closed.

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**JUSTICE M. SATYANARAYANA MURTHY**

Date: 31.12.2021

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**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**(Disposed of)**

**WRIT PETITION No.24767 of 2015**

Date: 31-12-2021

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