

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

THURSDAY, THE TWENTY NINTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE K. SARATH

WRIT PETITION NO: 5804 OF 2009

Between:

1. V. Narsimulu, S/o. Gundappa, Aged about 42 years, Occ: Painter, R/o. H.No.11-1-71, Chandra Shekar Colony, Nizamabad District.
2. V. Nagnath, S/o. Gundappa, aged about 40 years, Occ: Private Teacher, R/o. H.No.1-4-111, Beside Yellama Gudi, Zenda Galli, Nizamabad District

...PETITIONERS

AND

1. The District Collector, Medak District at Sangareddy.
2. The Executive Officer, R.W.S. Sada Sivapet, Medak District.
3. The Deputy Executive Executive, R.W.S. Narayanaked, Medak District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue appropriate Writ Order, or direction particularly one in the nature of Mandamus declaring the action of the respondents in constructing the water tanks in petitioner's Land i.e., in Sy.No.208 of Kangti Village and Mandal without paying compensation as arbitrary, illegal and violative of Article 14, 16, 21 of the constitution of India consequently direct the respondents to initiate Land Acquisition proceedings and pay compensation.

I.A. NO: 1 OF 2009(WPMP. NO: 7586 OF 2009)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct

the respondents to dispose of the representations dated 02-09-2004, 05-05-2005 and 15-02-2006, pending disposal of the Writ Petition.

IA NO: 1 OF 2021

Between:

1. The District Collector, Medak District at Sangareddy.
2. The Executive Officer, R.W.S. Sada Sivapet, Medak District.
3. The Deputy Executive Executive, R.W.S. Narayanaked, Medak District.

...PETITIONERS/RESPONDETS

AND

1. V. Narsimulu, S/o. Gundappa, Aged about 42 years, Occ:Painter, R/o. H.No.11-1-71, Chandra Shekar Colony, Nizamabad District.
2. V. Nagnath, S/o. Gundappa, aged about 40 years, Occ: Private Teacher, R/o. H.No.1-4-111, Beside Yellama Gudi, Zenda Galli, Nizamabad District

...RESPONDENTS/PETITIONERS

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim order dated 20/03/2009 in IA No 1 of 2009 (W. P. M. P No 7586 of 2009) In W.P No 5804 of 2009.

Counsel for the Petitioner: SRI K .GOVIND

**Counsel for the Respondents: GP FOR LAND ACQUISITION/
AGP FOR PANCHAYAT RAJ**

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE K.SARATH

WRIT PETITION No.5804 OF 2009

ORDER:

Heard learned counsel for the petitioners, learned Government Pleader for Land Acquisition and learned Assistant Government Pleader for Panchayat Raj and Rural Development for the respondents.

2. Learned counsel for the petitioners submits that the petitioners are the owners and possessors of Sy.No.208 of Kangti Village and Mandal, Medak District. Without following due process of law and without any land acquisition proceedings, the respondents constructed two water tanks in the lands of the petitioners. Aggrieved by the action of the respondents, the petitioners made a representation to the respondents and the petitioners got the land surveyed by the Deputy Inspector of Survey about the status of the land in Sy.No.208. Thereafter, the Deputy Inspector of Survey of Kangti Mandal conducted survey and the survey map shows that there are two water tanks in existence in Sy.No.208. The Panchayat Secretary also gave a certificate to that effect and the petitioners

have enclosed all the documents along with representation, dated 05.05.2005.

3. Learned counsel for the petitioners further submits that in spite of conducting survey and submitting representation to the respondents, the respondents have not taken any action for payment of compensation to the petitioners and the same is illegal, arbitrary and violative of human rights and the respondents cannot take away the lands without initiating land acquisition proceedings. It is well settled law that constructions shall not be made without paying compensation and without following due process of law. The learned counsel for the petitioners requested this Court to allow the writ petition by directing the respondents to initiate land acquisition proceedings and to pay compensation to the petitioners.

4. In support of his contentions, learned counsel for the petitioners placed reliance on the Judgment of the Hon'ble Apex Court in **Kalyani (Dead) Through Lrs. and Ors. V. Sulthan Bathery Municipality and Ors.**¹

¹ AIR 2022 SUPREME COURT 2073

5. On the other hand, learned Assistant Government Pleader for Panchayath Raj and Rural Development for the respondent No.3, basing on the counter-affidavit, submits that the water tanks were constructed in Sy.No.214 as per the possession given by the Gram Panchayat Kangti Sarpanch and Village Revenue Officer and the same is Government Land situated at Kangti Village. Moreover, the petitioners have not raised any objections at the time of construction of water tanks in the said Government land. After construction of water tanks, the petitioners filed the present writ petition on the ground that the respondents have constructed water tanks in the lands of the petitioners in Sy.No.208, and the petitioners filed the present writ petition after a lapse of considerable time, despite the title of the Government and the petitioners, without approaching the Civil Court, filed the present writ petition and the same is liable to be dismissed.

6. After hearing both the sides and perusing the entire material on record, this Court is of the considered view that the petitioners are in possession of the lands in Sy.No.208 and the petitioners got surveyed in their lands. The respondents

constructed two water tanks in the village and as per the Survey report and map, there are two existing water tanks in Sy.No.208 and in addition to that, the Panchayath Secretary issued certificate on 15.07.2004 stating that there are two water tanks in Sy.No.208.

7. The contention of the respondents is that they have constructed water tanks in Government lands in Sy.No.214 admeasuring to an extent of 0.04 ½ gts., Though, possession was handed over by the Gram Panchayat Kangti Sarpanch and Village Revenue Officer for construction of OHBR at Kangti Village, the respondents did not file any document to show that on which date the Gram Panchayat Kangti Sarpanch and Village Revenue Officer issued proceedings with regard to handing over the land to the respondents. A survey report filed along with the counter-affidavit shows that the land in Sy.No.214 clearly indicates about the endowments property but it is not mentioned whether the water tanks are existing in Sy.No.214 or not. On the other hand, the two water tanks are clearly shown in Sy.No.208 as per the survey conducted by the Mandal Surveyor, Kangti Mandal.

8. In addition to this, the Panchayath Secretary also issued a certificate stating that two water tanks are existing in Sy.No.208 of Kangti Village. This clearly shows that the respondent-authorities, without issuing any land acquisition proceedings, constructed water tanks in the private patta lands of the petitioners and the respondents intentionally contended that the petitioners have not made any objections at the time of construction, which is not a valid ground to reject the claim of the petitioners.

9. Learned Counsel for the petitioners relied on the judgment of the Hon'ble Apex Court in **Kalyani (Dead) Through Lrs. and Ors.(1 Supra)** clearly stated as follows:

"17. Sole question for consideration would be as to whether the appellants had voluntarily surrendered their land to the Panchayat free of cost without raising any claim for compensation or not. The Panchayat as also the PWD have failed to produce a single piece of document or evidence in any other form in support of their defense that the appellants have surrendered their land voluntarily. The consistent stand of the appellants, on the other hand, has been that they have not given their land to the Panchayat voluntarily and that they were assured that they would be suitably compensated. The PWD proceeded to construct the road upon the land made available by the Panchayat. No doubt, the road is in the ownership and possession of the Panchayat but the land over which the road was to be constructed or widened was neither in ownership nor possession of the Panchayat. The PWD did not care to take any further clarification from the Panchayat as to whether such land has been acquired, purchased or voluntarily given by the land

owners. The PWD has only stated that it received the land from Panchayat and that it was informed that such land has been made available voluntarily without any claim for compensation and free of cost."

10. The above Judgment squarely apply to the instant case and the respondents failed to produce the documents to show two water tanks constructed in Sy.No.214 situated in Kangti Village and Mandal. On the other hand, the petitioners submitted survey report and the certificate issued by the Panchayath Secretary, which clearly shows that the respondent-authorities constructed two water tanks in the land of the petitioners in Sy.No.208 situated in Kangti Village and Mandal and the petitioners are entitled to get land acquisition compensation, in view of construction of water tanks in their land without any acquisition proceedings.

11. In view of the above findings, the writ petition is disposed of directing the respondents to initiate land acquisition proceedings and pay compensation to the petitioners for acquiring the land for construction of two water tanks in Sy.No.208 situated at Kangti Village and Mandal, Medak District, within a period of three (03) months from the date of

receipt of a copy of this order. However, there shall be no order as to costs.

12. As sequel to it, Miscellaneous Petitions, if any pending, shall stand closed.

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SD/- T. VIJAY KUMAR
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The District Collector, Medak District at Sangareddy.
2. The Executive Officer, R.W.S. Sada Sivapet, Medak District.
3. The Deputy Executive Executive, R.W.S. Narayanaked, Medak District.
4. One CC to Sri K. Govind, Advocate [OPUC]
5. Two CCs to GP for Land Acquisition, High Court for the State of Telangana, at Hyderabad [OUT]
6. Two CCs to GP for Panchayat Raj, High Court for State of Telangana, at Hyderabad [OUT]
7. Two CD Copies

T J
GJP

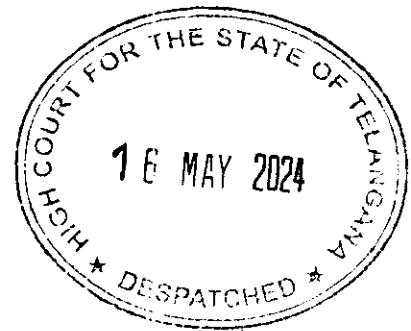


HIGH COURT

DATED:29/02/2024

ORDER

WP.No.5804 of 2009



DISPOSING OF THE WRIT PETITION
WITHOUT COSTS.

(M)
MBC
20/4