

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No.1662 OF 2019

Between:

Sri Nagothu Thamasaiah & five others

... Petitioners

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 30.10.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes

SUREPALLI NANDA, J

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No.931 OF 2023

% 30.10.2023

Between:

Sri Nagothu Thamasaiiah & five others

... Petitioners

And

\$ The State of Telangana and others

... Respondents

< Gist:

> Head Note:

! Counsel for the Petitioners : Mr.S.Srinivas Reddy,

^ Counsel for Respondents : Asst.G.P. for Assignment

? Cases Referred:

(1) 2009 (12) SCC 40

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. NO. 1662 OF 2019

ORDER :

Heard the learned Senior Counsel Mr. S. Srinivas Reddy, appearing on behalf of the Petitioners and learned Assistant Government Pleader for Assignment appearing on behalf of the Respondents.

2. The petitioners have approached the Court, seeking the following relief:

"To issue a writ more in the nature of writ of Mandamus declaring the action of the 2nd respondent in issuing Memo in R.c.No.E3/3134/2014, dated 30.10.2015 and order in R.C.No.E3/3134/2014, dated 30.10.2015 refusing to hand over Ac.04.07 Guntas of land from out of Ac.05.00 Guntas of land belonging to us situated in Sy.No.262/1, Sarapaka Village, Burgumphad Mandal, Badradri-Kothagudam District (Khammam District), Telangana as arbitrary, illegal, unjust, without jurisdiction, violative of the Fundamental and Constitutional rights guaranteed to us under the Constitution of India, violative of principle of natural justice as well as contrary to the directions issued by this

Hon'ble Court in its Judgment dated 28.10.2014 in W.P.No.20239 of 2012, W.P.No.6316 of 2010 and C.C.No.859 of 2013 and issue a consequential direction to forthwith handover the aforesaid land admeasuring Ac.04.07 Guntas of land from out of Ac.05.00 Guntas belonging to us situated in Sy.No.262/1, Sarapaka village, Burgumphad Mandal, Badradri-Kothagudam District (Khammam District), Telangana."

PERUSED THE RECORD :

3. Copy of the order in Rc.No.E3/3134/2014, dated 30.10.2015, issued by the District Collector, Khammam, reads as under :

"ORDER:

The Hon'ble High court has passed the common orders dated.28.10.14 in WP Nos.20239/2012, 6316/2010 and CC No.859/2013 as follows:

'The petitioner's company i.e., ITC, PSPD, BPL, Sarapaka was allotted an extent of Acrs.487.07 gts in Sy.No.262 as per GO. Ms.No.1561, Revenue Department dt.26.11.1977, and also it was not clear whether the petitioner in WP No.6316/2010 had any land which is a part of Sy.No.262 and secondly the claim of the said petitioner contradicts the claim of the Government under the Encroachment proceeding taken up by them.' In view of the above observation, the Hon'ble High Court, Hyderabad ordered to set aside the impugned order in W.P.No.20239/2012 and accordingly directed as follows:

1. The District Collector, Khammam (though not a party to this writ petition, a copy of this order is being marked to him for communication and appropriate action) shall take appropriate steps, as directed hereunder and respondents 1 and 2 shall, thereafter, take up further action in accordance with law.
2. The Collector shall direct a superior officer of the Survey and Land Records Department, Telangana, to appoint an officer of the rank of Deputy Director of Survey to conduct survey and demarcate the land alienated to the petitioner company in terms of GO.Ms.No.1561 Revenue Department, dated 26.11.1977.
3. The Deputy Director shall also localize and demarcate the additional land, if any, in possession of the petitioner company.
4. The Deputy Director shall also ascertain and localize as to whether any additional land, if any, is the land belonging to the Government or any private party including the petitioner in W.P. No.6316 of 2010 as per the Revenue record.
5. The determination and demarcation of the land on the directions above, however, shall not amount to determination of title of any of the parties but shall be only a preliminary ascertainment of the *prime facie* title of the parties to the additional land, if any.
6. Based on the said report, the Collector shall direct the Revenue Divisional Officer, and the Tahsildar to take appropriate action in the matter and to take all necessary steps by duly following the procedure in accordance with law.
7. As and when the survey work is taken up, as per the directions above, all the parties herein shall be duly notified apart from any other person, who will be affected by the survey. The aforesaid exercise shall be completed, preferably, within a period of six (6) months from the date of a copy of this order by the Collector.

In view of above orders, the Director, Survey & Land Records, Telangana, Hyderabad was requested to appoint an officer of the Rank of Deputy Director of Survey to conduct survey.

In compliance to the above, the Regional Deputy Director, Survey and Land Records, Hyderabad has conducted survey and submitted report vide reference 2nd read above. The report reveals that:

An extent of Acsr.4.07 gts vacant additional land has been localized (shown as (a) in the sketch) and it is under enjoyment of ITC, PSPD, BPL Ltd, Sarapaka being used as Lorry yard. As per village map this additional land to an extent of Acsr.4.07 gts falls in Sy. No.262/1 is classified as Government land in Sethwar. As per Revenue record i.e., Pahani 2013-14, there are (5) land parcels claimed by (3) pattadars in Sy. No.262/1 with various notional subdivisions or sub-letters to an extent of Acsr.5.05 gts. These land parcels are different from this additional land. The Petitioner in W.P.No.6316/2010 is claiming this additional land to an extent of Acsr.5.00 gts, but his name was not found recorded in Sethwar and Pahani 2013-2014.

In order to comply the orders of the Hon'ble High Court, dt.28.10.2014 WP Nos.20239/2012, 6316/2010 and CC No.859/2013 and as per the report of the Regional Deputy Director, S&LR, Hyd, the Sub-Collector, Paloncha and Tahsildar, Burgamapadu were instructed to take further course of action for eviction of ITC, PSPD, BPL Ltd, Sarapaka who encroached an extent of Ac.4.07 gts of Govt., land in Sy.No.262/1 in Sarapaka Village as reported by the Regional Deputy Director, Hyderabad by giving reasonable opportunity to the petitioners in the above two WPs and other interested parties, duly following the procedure in accordance with the law.

vide reference 3rd cited, the Sub-Collector, Paloncha has submitted action taken report on the common Orders passed by the Hon'ble High Court, Hyderabad in WP Nos.20239/2012, 6316/2010 and CC No.859/2013, dt.28.10.2014 stating that Tahsildar, Burgampadu resumed back the land in

question on 09.10.2015 under cover of panchanama and put a sign board disclosing that the land belongs to Government of Telangana and the same was handed over to the Village Revenue Officer, Sarapaka for safe custody under personal supervision of Tahsildar, Burgamapahad Mandal.

Hence informed."

4. Copy of the Memo dated 30.10.2015 vide Rc.No.E3/3134/2014, issued by the 2nd respondent, reads as under:

"MEMO

Sub: - Court cases – Orders passed by Hon'ble High Court in W.P.No.6316/2010, W.P.No.20239/2012 & C.C.No.859/2013 – As per report of the RDD – Tahsildar, Durgampaud taken possession of land from the ITC PSPD to an extent of Ac.4-07 gts – Hand over the possession to the applicant – Issued Memo-Reg.

Ref: - 1. Application of the Sri.N.Chinnaiah, S/o. Thomasaiah, R/o. Sarapaka, Dt:26-10-2015.

2. Orders of the High Court in W.P.No.6316/2010, 20239/2012 & C.C.No.859/2013.

3. Lr.No.G/2009/2008, Dt: 13-10.2015 of the Sub Collector, Palwancha.

Please peruse the above references, vide reference 2nd cited, the Hon'ble High Court passed orders, as per the orders, the Regional Dy.Director, Hyderabad had conducted survey and reported as Govt. land where ITC BPL lorries are parking. The Sub-Collector, Palwancha reported that the Tahsildar had taken possession of such land in Sy.No.262/1 to an extent of Ac.4-07 guntas. Hence it is inform that the land his belongs to Govt., as such, the

possession of the land is not going to be handed over to you as requested by you vide reference 1st cited is rejected."

5. Copy of the Certificate dated 19.03.1984 bearing No. A/433/84, issued by the 4th respondent, reads as under:

C E R T I F I C A T E

On the basis of certification made by the Village Officer, Sarapaka and Revenue Inspector of Burgampad, this is to certify that Sri Nagotu Chinnaiah, R/o. Sarapaka of Burampahad Taluk is in possession of the land shown Sy.No.262 extent of Ac.5-00 is in possession since 1964 onwards, till-to-date."

6. Para 15 of the judgment dated 28.10.2014 passed in W.P.Nos. 20239/2012 and 6316/2010 and C.C.No.859/2013, reads as under:

"15. The writ petitions are disposed of with the following directions:

1. The District Collector, Khammam (though not a party to this writ petition, a copy of this order is being marked to him for communication and appropriate action) shall take appropriate steps, as directed hereunder and respondents 1 and 2 shall, thereafter, take up further action in accordance with law.

2. The Collector shall direct a superior officer of the Survey and Land Records Department, Telangana, to appoint an officer of the rank of Deputy Director of Survey to conduct

survey and demarcate the land alienated to the petitioner company in terms of G.O.Ms. No. 1561 Revenue Department dated 26.11.1977.

3. The Deputy Director shall also localize and demarcate the additional land, if any, in possession of the petitioner company.

4. The Deputy Director shall also ascertain and localize as to whether any additional land, if any, is the land belonging to the Government or any private party including the petitioner in. WP.No.6316 of 2010 as per the revenue record.

5. The determination and demarcation of the land on the directions above, however, shall not amount to determination of title of any of the parties but shall be only a preliminary ascertainment of the *prima facie* title of the parties to the additional land, if any.

6. Based on the said report, the Collector shall direct the Revenue Divisional Officer and the Tahsildar to take appropriate action in the matter and to take all necessary steps by duly following the procedure in accordance with law.

7. As and when the survey work is taken up, as per the directions above, all the parties herein shall be duly notified apart from any other person, who will be affected by the survey. The aforesaid exercise shall be completed, preferably, within a period of six (6) months from the date of receipt of a copy of this order by the Collector."

7. Copy of the letter in Rc.No.B/310/2010, dated 22.04.2010 issued by the 4th respondent, reads as under:

"As per instructions of the Sub Collector, Palvoncha the details of this case is that the individual i.e., Sri Nagothu Chennaiah, S/o. Thamasaiah has occupied the land located in Survey number 262/2 to an extent of Ac.5-00, the individual has cleared the forest growth in 1960 and made the land fit for cultivation, and this was entered in the B.Memo with effect from 1964-65 to 1993-94, the same land has been cultivated by the individual i.e., Sri Nagothu Chennaiah and his brother Sri Nagothu Papaiah, and the same land has been cultivated by both the brothers for a period of 30 years.

Basing on these records location has been prepared by the Surveyor the same sketch has been attested by the than Tahsildar, Burgampahad and issued a possession certificate vide file No.A/433/84.

As per instructions of the Sub Collector, Palvoncha I am submitting there with the Xeroc copies of B.Memos for the years 1964-65 to 1966-67, 1970-71 to 1971-72, 1973-1974 to 1974-75, 1976-77 to 1983-84, 1985-86 to 1991-92 and 1993-94 Xerox copies location sketch prepared by the Surveyor and Xeroc copies of possession certificate issued by the Tahsildar vide File No.A/433/84 for kind perusal of the Sub Collector, Palvoncha."

8. Copy of the proceedings in Rc.No.B/2909/2008, dated 26.12.2011 issued by the Revenue Divisional Officer, Palvoncha, reads as under:

"Sub:- PARISHKRUTHI - ITC PSPD Authorities try to illegally utilize the Nagothu Chinnaiah Land Sy. No. 262/2 extent of Ac.5-00 at Sarapaka Village, 262/2 Survey Boundaries are crossed for Allocating purpose for ITC Lorries and other vehicles entered report submitted - Regarding.

Ref:- 1. Petition filed by Sri. Nagothu Chinnaiah, S/o Thamasaiiah Dt: 18-12-2008 and 03-05-2011.

2. Tahsildar Burgampad Rc. No B/310/2010 Dated: 22-4-2010.

3. Tahsildar Burgampad Rc. No B/310/2010 Dated: 18-5-2010.

4. Sub Collector Office Palvoncha Rc.No B/2909/2008 Dt. 15-12-2008.

5. Report of the AD S&LR, Khammam, D. Dis No. A3/1618/2008, Dt. 31-1-2009.

6. The Honble High Court W. P. No: 6316 of 2010 Dt: 9-4-2010.

7. This office to B.P.D. Lr. No. B/2909/2008 Dated: 2-12-2010.

8. Representation to submit the Collector Parishkruthi P.P.No.281011-41539 marked and send R.D.O office, Palvoncha, dt. 28-10-2011.

* _ *

I invite your attention to the reference 1st cited, where in the Nagothu Chinnaiah submitted a petition

before the District Collector, in Parishkruthi stated that his land in Sy.No.262/2 to an extent of Ac.5.00 guntas situated in Sarapaka village of Burgampad Mandal. The ITC, BPL. Sarapaka trespassing and demarcation the stones to the said land to an extent of 0.03 guntas was encroached by Major Grama Panchayathi, Sarapaka and issued a notice to the petitioner.

Vide reference 2nd cited the Tahsildar, Burgampad in his report stated that the individual Sri Nagothu Chinniah S/o Thamasaiah occupied the land located in Sy. No. 262/2 extent of Ac. 5.00 he has cleared the Forest Growth in 1960 and made the land for cultivation and this was entered in the Revenue Records with effect from 1964 to 2002 basing on the revenue records location has been prepared by the surveyor the same location sketch has been attested by the then Tahsildar, Burgampad and issued a possession certificate vide Rc. No. A/433/84.

Vide Ref 3rd cited he was in the possession of land in Sy.No.262/2 to an extent of Ac.5.00 in the year 1960 onwards in Sarapaka Village of Burgampad Mandal. But the said land was illegally tried to be occupied by the ITC BPL, Sarapaka for allocating purpose they entered the Lorries and other vehicles and crossed the Demarcation stones of Sy.No.262/2 in the year 2008 due to this reason.

Vide Ref 4th cited Sub Collector, Palvoncha to Assistant Director of Survey & Land Records Khammam is requested to take – up survey to the AD (S &LR) Khammam.

Vide Ref 5th cited Assistant Director is deputed to Dy Inspector of Survey of this office conducted the survey and fixed the boundaries and submitted a report with location sketch.

Vide reference 6th cited, the individual filed a writ petition before the Hon'ble High Court W.P.No.6316/2010 granted interim stay to the authorities of the ITC BPL not to interfere with peaceful possession of the said land belongs to Nagothu Chinnaiah.

In view of the above circumstances it is submitted for favour of kind information."

9. Counter affidavit filed by the Respondent No.2, in particular, the relevant paras, reads as under:

"VII) The Sy.No.262 is big gut number to an extent of Ac.3163.03 gts including reserve forest to an extent of Ac.1904-00 gts and Sarkari land to an extent of Ac.1257-03 gts as per Pahani 2013-14. Several survey sub divisions have been created for alienation purpose from time to time. Large extent is under occupation of private persons and developed into residential area and all these names were not brought into the Revenue records.

3. It is respectfully submitted that, as per the report of the Regional Director, Hyderabad stated above, an extent of Ac.4.07 gts vacant additional land has been localized and is under the enjoyment of ITC BPBL and is being used as Lorry Yard by them. As per village map this additional

land to an extent of Ac.4-07 falls in Sy.No.262/1 and is classified as Govt. land in Sethwar.

12. Whereas, the writ petitioner belongs to OC community and he is in no way eligible for assignment of such occupied Govt. land and non-tribal assignment also violates 1/70 Act which is prevailing in Scheduled areas, as the village Sarapaka is located in scheduled area.

22. The Regional Deputy Director, Survey & Land Records, Hyderabad has performed survey as per the directions of the Hon'ble High Court, Hyderabad as above, and submitted a report in Lr.No.A5/34/2015, dt:21/4/2015. As per this report, the additional land in Sy.No.262/1 to an extent of Ac.4-07 gts is purely Government land.

23. It is also stated in this survey report that, as assumed by the Revenue Divisional Officer, Paloncha in his Lr.No.B/2909/2008, dt:26.12.2011 i.e., the subject land is in Sy.No.262/2 is not correct. As per the village map, the Sy.No.262/2 exists far distance from ITC BPL and at north side of "KayapuGutta" and west side of Patta Sy.No.49.

33. It is humbly submitted that, as per the reports of the Tahsildar, Burgampahad and Revenue Divisional Officer, Paloncha and on observation of their files, it is evident that, Sri Nagothu Chennaiah S/o. Thamasaiah has occupied the land in Sy.No.262/2 to an extent of Ac.5.00 gts., the individual has cleared the forest growth in the year 1960 and made land for cultivation and this was

entered in B.Memo with effect from 1964-65 to 1993-94, this land is cultivated by Sri. Nagothu Chennaiah and his brother Nagothu Papaiah for a period of (30) years.

34. Based on these records i.e., entry in 4C Register and issuance of B.Memos, the then Surveyor, Burgampahad has issued location sketch attested by the then Tahsildar, Burgampahad and also issued possession certificate by the then Tahsildar, Burgampahad vide file No.A/433/84.

35. It is submitted that, the certificate issued by the then Tahsildar, Burgampahad in simply stating that Sri Nagothu Chennaiah is in possession of Ac.5-00 gts in Sy.No.262 of Sarapaka Village, Burgampahad (M) and it is not valid or substantive to affirm the possession of the writ petitioner for the land in question. The illegal encroachers who are in occupation of Government lands are recorded in B-Memos and entered their details along with tax to be payable for using Government lands. Later on, their details are mentioned in 4C registers, which show the details of illegal encroachers in Government lands in respective mandals.

36. Whereas, the writ petitioner belongs to OC community and he is in no way eligible for assignment of such occupied Government land and assignment to non tribals in Scheduled areas violates 1/70 Act which is prevailing in Scheduled

areas, as the village Sarapaka is located in scheduled area.

39. As the subject land is Government land, it is resumed back and kept in custody of the Tahsildar, Burgampahad on 9/10/2015 under cover of Panchanama and put a sign board disclosing that the land belongs to the Government and memo was issued to the Writ petitioner Sri Nagothu Chennaiah in Rc.No.E3/3134/2014, dt:30.10.2015 that the subject land cannot be handed over to him, as it is Government land."

DISCUSSION AND CONCLUSION :

DISCUSSION :

10. It is the specific case of the Petitioners that Petitioner's father late Nagothu Chinnaiah and his brother late Papaiah used to reside in Nagineniprolu Reddypalem Village (now in Badradri Kothagudam District) from 1946 – 1958. A residential certificate dated 14.12.2007 is issued by the 4th Respondent in L.Dis.No.C/ 4892/2007 which certifies that the Petitioner's father late Nagothu Chinnaiah is residing in H.No.1-1-127, Sarapaka as on 14.12.2007 from 1946 to till as on 14.12.2007. The 4th Respondent in issuing the said residential certificate dated 14.12.2007 referred to the statement of 3 persons,

to the certificate issued by Gram Panchayat Iravendi, enquiry conducted by the Tahsildar and also the verification of the voters list by the 4th Respondent. After the demise of late Papaiah who died issueless the Petitioner's father alone was cultivating the said land and after the death of late Nagothu Chinnaiah the father of the Petitioners herein, the Petitioners who are the children had been cultivating the said land with dry crops and eking out their livelihood from the income derived from them.

11. It is further the case of the Petitioner that the name of the Petitioner's late father Nagothu Chinnaiah was recorded in the Revenue Records and the Cist receipts evidencing the fact of payment of cist regularly and further B-Memorandum Settlements, from the year 1964 – 1983, residential certificate all indicate the claim of the Petitioners to an extent of Ac.4.07 gts., of land, forming part of land in the present Sy.No.262 which was in possession and occupation of Petitioners family for over 6 decades. Ignoring all the above documents a notice had been issued by the 4th Respondent in February 1984 U/s.7

of the Land Encroachment Act, 1905 to the Petitioner's father calling upon him to show cause as to why he should not be evicted from an extent of Ac.0.04 gts., and upon the Petitioners late father producing all the relevant records, documents available with him before the 4th Respondent and the 4th Respondent after having gone through the record and having conducted survey and after being satisfied that the Petitioners late father had been in possession of the subject land issued a certificate dated 19.03.1984 bearing No. A/433/84 certifying that the Petitioner's late father Sri Nagothu Chinnaiah is in possession of the land shown in Sy.No.262 to an extent of Ac.5.00 in possession since 1964 onwards till to date.

12. It is further the case of the Petitioners, that the 4th Respondent vide Letter Rc.No.B/310/2010, dated 22.04.2010 addressed to the Sub-Collector, Palvoncha, forwarded the entire records including the possession certificate dated 19.03.1984 vide File No.A/433/84, and observed clearly in the said letter dated 22.04.2010 (referred to and extracted above) that Petitioners late father Sri Nagothu Chinnaiah had occupied the subject

land located in Sy.No.262/2, to an extent of Ac.5.00 and he had cleared the forest growth in 1960 and made the land fit for cultivation, and this was entered in the Memo with effect from 1964-65 to 1993-94, the same land has been cultivated by the individuals i.e., Petitioners father late Sri Nagothu Chinnaiah and his brother Sri Nagothu Papaiah, for a period of 30 years. Petitioners late father Nagothu Chinnaiah on an earlier occasion filed W.P.No.6316/2010 declaring the action of the Station House Officer, Burgampahad PS, Burgampahad, Khammam District, and the Tahsildar, Burgampahad, Khammam District in interfering with the liberty of the Petitioner in laying of fence to his land situated in Sy.No.262/2, to an extent of Ac.5.00 cents at Sarapaka Village, Burgampahad Mandal, Khammam District and this Court vide its order dated 09.04.2010 granted interim stay in favour of the Petitioner directing the respondents 3 and 4 there under not to interfere with the petitioner laying of fence to his land situated in Sy.No. 262/2 to an extent of Ac. 5.00 cents at Sarapaka Village, Burgampahad Mandal, Khammam District.

13. It is further the case of the Petitioner that the Revenue Divisional Officer, Palvoncha vide Rc.No.B/2909/2008, dated 26.12.2001 submitted a report to the District Collector, Khammam and the Revenue Divisional Officer, Palvoncha very clearly in his report referred to the Petition filed by Petitioners late father Nagothu Chinnaiah which pertain to the action of ITC PSPD Authorities in trying to illegally utilize his subject land to an extent of Ac.5.00 at Sarapaka Village, and further observed that the Tahsildar, Burgampahad, vide his report in Rc.No.B/310/2010, dated 22.04.2010 stated that the Petitioners late father Sri Nagothu Chinnaiah occupied the land located in Sy.No.262/2 to an extent of Ac.5.00 and cleared the forest growth in 1960 and made the land fit for cultivation and the same was entered in the Revenue Records w.e.f., from 1964-2002 and based on the said Revenue Records location has been prepared by the Surveyor and the location sketch had been attested by the then Tahsildar, Burgampahad, and a possession certificate vide Rc.No.A/433/84 was issued to the Petitioner. The said letter dated 26.12.2011 in Rc.No.B/2909/2008 of the Revenue Divisional Officer,

Palvoncha, addressed to the District Collector, Khammam also referred to the report of Tahsildar, Burgampahad vide Rc.No.B/310/2010, dated 18.05.2010 which also stated that the Petitioners late father was in possession of the land in Sy.No.262/2 to an extent of Ac.5.00 from the year 1960 onwards in Sarapaka Village of Burgampahad Mandal, and the said land was occupied illegally by IPC BPL Sarapaka and that their vehicles crossed the demarcation stones of Sy.No.262/2 in the year 2008 itself and further the said letter dated 26.12.2011 referred to the request of the Sub-Collector, Palvoncha addressed to the Asst. Director of Land Records, Khammam dated 15.12.2008, to take up survey of the subject land and the said letter dated 26.12.2011 also referred to the report of the ADS & LR, Khammam, dated 31.01.2009 who had conducted the survey and fixed the boundaries and submitted a report with location sketch.

14. It is further the case of the Petitioner that vide orders dated 28.10.2014 passed in W.P.Nos.20239/2012 and 6316/2010 and C.C. No.859/2013 specific directions were issued observing as under :

1. *The District Collector, Khammam (though not a party to this writ petition, a copy of this order is being marked to him for communication and appropriate action) shall take appropriate steps, as directed hereunder and respondents 1 and 2 shall, thereafter, take up further action in accordance with law.*
2. *The Collector shall direct a superior officer of the Survey and Land Records Department, Telangana, to appoint an officer of the rank of Deputy Director of Survey to conduct survey and demarcate the land alienated to the petitioner company in terms of G.O.Ms.No.1561 Revenue Department dated 26.11.1977.*
3. *The Deputy Director shall also localize and demarcate the additional land, if any, in possession of the petitioner company.*
4. *The Deputy Director shall also ascertain and localize as to whether any additional land, if any, is the land belonging to the Government or any private party including the petitioner to WP.No.6316 of 2010 as per the revenue record.*
5. *The determination and demarcation of the land on the directions above, however, shall not amount to determination of title of any of the parties but shall be only a preliminary ascertainment of the*

prima facie title of the parties to the additional land, if any.

6. Based on the said report, the Collector shall direct the Revenue Divisional Officer and the Tahsildar to take appropriate action in the matter and to take all necessary steps by duly following the procedure In accordance with law.
7. As and when the survey work is taken up, as per the directions above, all the parties herein shall be duly notified apart from any other person, who will be affected by the survey. The aforesaid exercise shall be completed, preferably, within a period of six (6) months from the date of receipt of a copy of this order by the Collector.

15. It is further the case of the Petitioner that in pursuance to the orders of this Court dated 28.10.2014 passed in W.P.No.20239/2012 and 6316/2010 and CC No. 859/2013, the District Collector, Khammam directed the Sub-Collector, Paloncha and the Tahsildar, Burgampahad, vide Rc.No.E3/3134/2014, dated 28.08.2015 to conduct the survey and implement the specific directions issued in the order dated 28.10.2014 by this Court.

16. It is further the case of the Petitioners in compliance to the orders of the Court dated 28.1.2014 passed in WP Nos.20239/2012 and 6316/2010 and CC No.859/2013 the present impugned Memo in Rc.No.E3/3134/2014, dated 30.10.2015 had been issued by the District Collector, Khammam informing the Petitioner that the Tahsildar has taken possession of the subject land in Sy.No.262/1 to an extent of Ac.4.07 gts., and that the subject land belongs to Government as such the possession of the subject land is not going to be handed over to the Petitioner herein and therefore the request of the Petitioner made vide Petitioners application dated 26.10.2015 is rejected. Further another impugned proceedings vide Rc.No.E3/3134/2014, dated 30.10.2015 was also issued by the District Collector, Khammam, the 2nd Respondent herein stating that in compliance of the orders of the Court dated 28.10.2014 passed in WP Nos.20239/2012 and 6316/2010 and CC No.859/2013, Tahsildar, Burgampahad, resumed back the land in question on 09.10.2015 under cover of panchanama and put a sign board disclosing that the land belongs to Government of Telangana and the same was handed over to the Village

Revenue Officer, Sarapaka, for safe custody under personal supervision of Tahsildar, Burgampahad Mandal. Aggrieved by the said Memo and proceedings dated 30.10.2015 issued by the District Collector, Khammam, the Petitioners filed the present writ petition.

17. The main contentions put-forth by the learned Senior Counsel are as under :

(i) The impugned Memo vide Rc.No.E3/3134/2014 dated 30.10.2015 and the impugned proceedings dated 30.10.2015 issued vide Rc.No.E3/3134/2014, of the District Collector, Khammam are in violation of principles of natural justice and not in the true spirit of the judgment of this Court dated 28.10.2014 passed in WP Nos.20239/2012 and 6316/2010 and CC No.859/2013.

(ii) The 2nd Respondent placed reliance on the report of the Regional Deputy Director, Survey & Land Records, Hyderabad, letter No.A5/34/2015, dated 24.04.2015 and did not apply his mind independently in passing the orders impugned.

(iii) The 2nd Respondent failed to consider the possession certificate, entries in the B-Memorandum Settlements, Report vide Rc.No.B/310/2010 dated 22.04.2010 of the Tahsildar, Burgampahad, and report vide Rc.No.B/310/2010 dated 18.05.2010 of the Tahsildar, Burgampahad, Residence Certificate, while

issuing the two impugned proceedings dated 30.10.2015, challenged by the Petitioners in the present writ petition.

(iv) The 2nd Respondent ignored his own proceedings in File No.Rev/129/2022-AOBDDKGM, dated 08.12.2022 addressed to the 4th Respondent stating that during the survey of AD(S&LR) the subject land is shown in Sy.No.262/2, extent Ac.4.07 gts., and during the RDO, Hyderabad, Survey the subject land fell in Sy.No.262/1, extent Ac.4.07 gts., which are same. The 4th Respondent in fact categorically stated in the said letter dated 08.12.2022 that the land situated in present Sy.No.262/1 co-related to old Sy.No.262/2 and therefore the allegations that the Petitioners are claiming land in Sy.No.262/2 as land in present Sy.No.262/1 and that the identity of land in question is in dispute are absolutely false.

The learned Senior Counsel for the Petitioner based on the above submissions contended that the Writ Petition should be allowed as prayed for.

18. The learned Assistant Government Pleader placed reliance on the counter affidavit filed by the 2nd Respondent and put forth the following submissions :

(i) That the Petitioner belongs to OC community and therefore he is not eligible for assignment of government land.

(ii) Assignment to non-tribals in scheduled areas violates 1/70 Act which is prevailing in scheduled areas as the village Sarapaka is located in scheduled area.

(iii) Subject land cannot be handed over to the Petitioner since it is government land.

(iv) The petitioner has no title over the property and is only in occupation of the premises and the same does not amount to determination of title of the party.

(v) As per the report dated 24.04.2015 of the Regional Deputy Director (Survey & Land Records) Hyderabad, the subject land is purely government land.

(vi) The two separate orders impugned in the present writ petition passed by the 2nd Respondent dated 30.10.2015 vide Rc.No.E3/3134/2014 are in compliance to the directions of this Court dated 28.10.2014 passed in W.P.Nos.20239/2012, 6316/2010 and CC No.859/2013.

(vii) As the subject land is government land it is resumed back and kept in the custody of Tahsildar, Burgampahad, on 09.10.2015 under cover of panchanama.

The learned Assistant Government Pleader on the basis of the above submissions contended that the writ petition has to be dismissed.

CONCLUSION

19. This Court is of the firm opinion that the Petitioner is entitled for the relief as prayed for in the present writ petition for the following reasons :

(a) A bare perusal of the proceedings in Rc.No.E3/3134/ 2014, dated 28.08.2015 of the District Collector, Khammam, addressed to the Sub-Collector, Paloncha and the Tahsildar, Burgampahadu, clearly indicate in the last paragraph as under :

"Thus in view of the orders of the Hon'ble High Court dated 28.10.2014 and as per the report of the RRD, S & LR, Hyderabad I request you to take further course of action for eviction of ITC, BPL, as it has encroached an extent of Ac.4.07 gts., of Government land in Sy.No.262/1 in Sarapaka Village by giving reasonable opportunity to the Petitioners in the above 2 writ petitions i.e., WP No.6316/2010 and WP No.20239/2012 and other interested parties duly following the procedure in accordance with law".

(b) This Court opines that the specific directions issued by the District Collector vide proceedings in Rc.No.E3/3134/2014, dated 28.08.2015 had not been followed and no reasonable opportunity was given to the Petitioners following the due procedure, in accordance

with law. The Petitioners could not place all the relevant records in support of their claim nor the said relevant documents were considered either by the Regional Deputy Director (S & LR) Hyderabad, nor the 2nd Respondent herein nor the Sub-Collector, Paloncha or the Tahsildar, Burgampahadu as directed by the District Collector, Khammam in Rc.No.E3/3134/2014, dated 28.08.2015.

(c) The report of the Tahsildar, Burgampahad Rc.No.B/310/2010, dated 22.04.2010 which clearly held that the Petitioners father late Sri Nagothu Chinnaiah had occupied the land located in Sy.No.262/2 to an extent of Ac.5.00 and had cleared the forest growth in 1960 and made the land fit for cultivation and the same was entered in the Revenue Records w.e.f., 1964-2002 and based on the said records location had been prepared by the Surveyor and the location sketch had even been attested by the Tahsildar, Burgampahad, and the possession certificate issued vide Rc.No.A/433/84 to the Petitioners father late Sri Nagothu Chinnaiah and the report of the Tahsildar, Burgampahad in Rc.No.B/310/2010, dated 18.05.2010 wherein it is clearly observed by the 4th

Respondent that Petitioners father late Nagothu Chinnaiah was in possession of the land in Sy.No.262/2 to an extent of Ac.5.00 from the year 1960 onwards in Sarpaka Village of Burgampahad Mandal had been totally ignored by the 2nd respondent.

(d) The two impugned proceedings dated 30.10.2015 in Rc.No.3134/2014 of the District Collector, Khammam, challenged by the Petitioners in the present writ petition are contrary to the true spirit of the specific directions issued by this Court vide its judgment dated 28.10.2014 passed in W.P.Nos.20239/2012, 6316/2010 and CC No.859/2013 which clearly indicated that the 2nd Respondent shall direct the Revenue Divisional Officer and the Tahsildar, to take appropriate action in the matter and to take all necessary steps by duly following the procedure in accordance with law duly notifying all the parties apart from any other person who will be effected by the survey, but in the present case admittedly the concerns of the Petitioners herein had not been considered at all either by the 2nd Respondent or by the Regional Deputy Director, Survey & Land Records,

Hyderabad nor the Sub-Collector, Paloncha nor Tahsildar, Burgampahad.

(e) The report of the Regional Dy. Director, Survey & Land Records, dated 24.04.2015 vide Rc.No.A5/34/2015, is inconclusive and did not take into consideration several documents relied upon by the Petitioners in support of Petitioners right and title over the said subject land and further merely on the basis of the entries in the Revenue Records for one year 2013-14 he had concluded that the said subject land is government land and that the name of the Petitioner in WP No.6316/2010 was not found recorded in Sethwar and Pahani 2013-14, though the said report at Para 8 were clearly observed that large extent in Sy.No.262 is under occupation of private persons and developed into residential area and that all these names were not brought into the Revenue Records.

(f) The 2nd Respondent failed to give credence to the report of the Tahsildar, Burgampahad, Rc.No.B/310/2010, dated 22.04.2010, the report of the Tahsildar, Burgampahad, Rc.No.B/310/2010, dated 18.05.2010, the letter dated 26.12.2011 vide Rc.No.B/2909/2008 of the

Revenue Divisional Officer, Paloncha, addressed to the District Collector, Khammam, which clearly referred and brought on record the two reports of the Tahsildar, Burgampahad, dated 22.04.2010 and 18.05.2010 and the same clearly indicates that the 2nd Respondent passed the two impugned orders dated 30.10.2015 vide Rc.No.E3/3134/2014, mechanically, hastily, placing reliance solely on the report of the Regional Dy. Director (Survey & Land Records) Hyderabad, letter No.A5/34/15, dated 24.04.2015 without applying his mind independently contrary to the observations of the Court in the judgment dated 28.10.2014 passed in W.P.Nos.20239/2012, 6316/2010 and CC No.859/2013, without following the due procedure and without passing appropriate orders in accordance to law.

(g) The 2nd Respondent did not consider his own observations made in File No.Revenue/129/2022-A0BDDKGM, dated 08.12.2022 addressed to the 4th Respondent herein which categorically stated that during the survey of AD (S and LR) the subject land is shown in Sy.No.262/2 extent Ac.4.07 guntas and during the RDD,

Hyderabad Survey the subject land fell in Sy.No.262/1 Ac.4.07 guntas which are same.

(h) A bare perusal of the averments in the counter affidavit filed by the 2nd respondent at paras 33, 34, 35 and 39 in fact, clearly support the case of the petitioners that the petitioners' father late Sri Nagoti Chinnaiah and his brother Nagoti Papaiah, wherein the possession of the subject land for a period of 30 years.

(i) The Apex Court in the Judgment reported in "Mohinder Singh Gill v. Chief Election Commissioner" reported in AIR 1978, Page No.851 observed at para '8' as under:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji*:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

This Court is of the firm view that the respondent cannot take the pleas in the counter affidavit which are not reflected in the two orders impugned in the present writ petition dated 30.10.2015 passed by the 2nd respondent and therefore, the pleas put-forth by the 2nd respondent in the counter affidavit at paras 12 and 36 that the petitioner belongs to OC community and therefore, he is not eligible for assignment of Government land are untenable and hence, rejected.

(j) The Apex Court in the judgment reported in (2009) 12 SCC 40 in Umanath Pandey & Others vs. State of Uttar Pradesh & Another at paras 10 & 11 observed as under :

Para 10 : The adherence to principles of natural justice as recognized by all civilized

States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the best limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vacate, interrogate and adjudicate". In the celebrated case of *Cooper v. Wandsworth Board*

of Works the principle was thus stated: (ER p. 420). "Even God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God), 'where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat?' Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

Para 11 : "Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice".

This Court opines that the petitioners ought to have been put on notice prior to issuing the present impugned Memo dated 30.10.2015 by the 2nd respondent and prior to passing the impugned order dated 30.10.2015 by the 2nd respondent in all fairness and admittedly as borne on record, the petitioners have not been heard prior to

passing of the orders impugned and therefore, the orders impugned are in clear violation of *audi alteram partem* rule.

20. Taking into consideration, the observations of the Apex Court in the Judgment reported in 2009 (12) SCC 40 in "UMANATH PANDEY AND OTHERS v. STATE OF UP AND OTHERS", and the Judgment of the Apex Court reported in AIR 1978, 851 in "MOHINDER SINGH GILL v. CHIEF ELECTION COMMISSIONER" the aforesaid facts and circumstances, the discussion and conclusion as arrived at as above, the writ petition is allowed as prayed for and the impugned Memo dated 30.10.2015 of the 2nd respondent in R.C.No.E3/3134/2014 is set aside and order in R.C.No.E3/3134/2014 dated 30.10.2015 of the 2nd respondent refusing to handover Ac.04.07 guntas of land from out of Ac.05.00 guntas of land situated in Sy.No.262/1, Sarapaka Village, Burgumpahad Mandal, Bhadradri-Kothagudem District (Khammam District), Telangana is also set aside and the respondents are directed to reconsider the request of the petitioners to handover possession of land to an extent of Ac.4.07 gts in

Sy.No.262/1, in accordance to law duly considering the entire material on record that is report dated 22.04.2010 of Tahsildar, Burgampahad, in Rc.B/310/2010, the report dated 18.05.2010, of Tahsildar, Burgampahad, in Rc.B/310/2010 (3) the proceedings dated 26.12.2011 vide Rc.No.B/2909/2008, of the Revenue Divisional Officer, Palvoncha addressed to the District Collector, Khammam, the letter of the District Collector, Bhadradi, Kothagudem, file No.Reve/129/2022, AO, BDDKGM, dated 8.12.2020 addressed to the Tahsildar, Burgampahad, by giving due notice and reasonable opportunity to the petitioners and pass appropriate reasoned orders in conformity with principles of natural justice, duly considering all the documents in support of the petitioners' claim i.e. residence certificate, possession certificate, cist receipts entries in B – Memorandum settlements etc, in accordance to law within a period of three weeks from the date of receipt of copy of the order and duly communicate the decision to the petitioners.

Till the exercise as stipulated above is initiated and concluded the respondents are directed to maintain status quo in respect of the subject land admeasuring Ac.04.07

guntas of land from out of Ac.05.00 guntas, situated in Sy.No.262/1, Sarapaka Village, Burgampahad Mandal, Badradri-Kothagudem District (Khammam), Telangana. However, there shall be no order as to costs.

Miscellaneous petition, if any pending, shall stand closed.

SUREPALLI NANDA, J

Date: 30.10.2023

Note : L.R. Copy to be marked.
(B/o) *Kvrm/Yvkr*

HON'BLE MRS. JUSTICE SUREPALLI NANDA

WRIT PETITION No.1662 OF 2019
(L.R.copy to be marked)

Date: 30.10.2023.

Kurm/ Yvkr