

HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

WRIT PETITION No.21745 of 2023

ORDER:

This Writ Petition is filed seeking to declare the memo No.B/700/2023 dated 03.07.2023 issued by the respondent No.4 as illegal, arbitrary and unconstitutional and consequently prayed to direct the respondent No.4 not to proceed further in pursuance of survey conducted on 06.07.2023 in respect of land admeasuring Ac.2-28 gts in Sy.No.204 of Gundal Village, Doma Mandal, Vikarabad District and for other reliefs.

2. The petitioners are claiming that they are the pattedars and possessors of lands admeasuring Ac.18-34gts forming part of Sy.Nos.208, 213, 214, 220, 221 situated at Gundal Village, Doma Mandal, Vikarabad District, which are wet lands under the Ayacut Yeliyalakunta (pond). It is their case that the said pond is approximately covered over an extent of 28 Acres. It is their further case that under the said pond, there is an extent of Ac.87-15 gts of lands for cultivation. The Irrigation Department has recently strengthened the bund for proper storage of water fixing the Full Tank Level (FTL). It is further case of the petitioner that the respondent No.6 has issued notice for conducting survey of the land admeasuring Ac.2-28gts in Sy.No.204 which is part and

parcel of FTL of Yelliyalakunta tank (pond) and also Shikham land (tank bed). It is stated that soon after receipt of the notices, they have objected for conducting of the survey as the said survey would cause obstruction for enjoyment of their fields and also utilisation of the water for cultivation of their lands. It is further case of petitioners that in the absence of any report by the irrigation authorities, the respondent No.4 in collusion with respondent No.6 is intending to proceed with the survey under the guise that the land in Sy.No.204 is forming part of FTL/Shikham land of the Yelliyalakunta tank. It is also stated that questioning the said action, the petitioners also filed W.P.No.16374/2023 on the file of this Court and this Court vide orders dated 27.06.2023 directed the respondent No.4 therein to consider the objections for conducting survey and till the objections are decided, directed the parties to maintain *status quo*. It is further stated that after receipt of the objections filed by the petitioner, the Memo No.B/700/2023 dated 03.07.2023 was issued by the respondent No.4 for conducting survey on 06.07.2023 on the ground to safeguard the interest of the Government over the lands in Sy.No.204.

3. The respondent No.6 has filed counter affidavit denying the right and entitlement of the petitioners as pattedars and possessors of the land admeasuring Ac.18-34 gts in Sy.No.208,

203, 201, 220, 221, situated at Gundala Village, Doma Mandal, Vikarabad District. It is stated that Sy.No.204 is not covered by any water spread area of Yelliyalakunta pond. It is further stated that the Ayacut under Yelliyalakunta is irrigated both using pond water as well as tube wells. It is further stated that no FTL has been fixed to the said tank and the land admeasuring Ac.2-00gts in Sy.No.255/Ru/1 was assigned to the Yellappa, who is grandfather of respondent No.6, by following the procedure contemplated in law and it is not covered by the water spread area of Yelliyalakunta pond. It is further stated that land of respondent No.6 is before the water spread area and whereas the land of petitioners is beyond the bund of Yelliyalakunta pond. It is also case of the respondents that in compliance of the orders passed by this Court in W.P.No.16374 of 2023, the respondents have issued notice and conducted survey and demarcated the land in Sy.No.204 by fixing boundaries on 06.07.2023 and a report was also submitted to the R.D.O and the District Collector, vide proceedings in Lr.No.B/700/2023 dated 01.06.2023, showing the nature of lands forming part of Sy.No.204. It is also further stated that taking into consideration the directions issued by this Court, the respondent No.4 has issued impugned memo dated 03.07.2023 fixing the date of survey on 06.07.2023. Questioning the said

memo, the present writ petition has been filed by the petitioner and the same is misconceived and liable to be dismissed.

4. Pending adjudication of the writ petition, the petitioner filed a memo dated 07.02.2024 stating that on 09.01.2024, a joint inspection was conducted by the officials of Irrigation Department and Revenue Department in respect of the lands in Sy.Nos.204, 205, 206 total admeasuring Ac.28-10 gts, situated at Gumdal Village, Doma Mandal, Vikarabad District and demarcated the boundaries of Yelligelakunta by verifying the revenue records and maps and tippon. In the said joint inspection report dated 09.01.2024, it is stated that after verifying the topography sheet, the following observations were made:

“1. It is submit that a location sketch is prepared by showing FTL line with Sy.No.204, 205 and 206 and the same map attached herewith for your kind consideration.

2. As seen from the revenue records and after mark out the FTL boundary we found that total extent in Sy.No.204 is Ac.8-16 Guntas out of which Ac.8-00 Gts is covered under FTL Yelligela kunta, Gumdal village and remaining Ac.0-16gts out of FTL boundary as mentioned in location Sketch.

3. Further we submit that and find the information from revenue records remaining Sy.No.205 and 206 total extent Ac.19-34 Gts fully covered under FTL boundary of Yelligela kunta, gumdal village, doma Mandal.

4. As seen in GSI Toposheet E43R16, it is also observed that the above said mark is shown.

Hence the above mentioned land covered under FTL and clear Mark out shown in MAP.”

5. A careful examination of the aforesaid report would reveal that on the request of petitioner No.1 and other Ayacutdars to conduct survey and fixing Full Tank Level (FTL) of Yaliyalakunta in Sy.Nos.204, 205 and 206 with total extent of Ac.28-10 gts situated in Gumdal Village, Doma Mandal, Vikarabad District, the officials of Irrigation Department and Revenue Department have jointly inspected the Yelligela kunta and demarcated the boundaries by verifying with revenue records and maps with Tippon. As per the said joint inspection report, out of total extent in Sy.No.204 admeasuring Ac.8-16 gts, an extent of Ac.8-00gts is covered under FTL Yelligela kunta, Gumdal village and the balance area is only Ac.0-16 Gts. There is a serious dispute with regard to the identification and localisation of the lands forming part of Sy.No.204 and Sy.No.255/RU/1. According to the petitioners, the land in Sy.No.204 is forming part of FTL and the said contention is supported by the Joint Inspection Report dated 09.01.2024. The respondent No.6 claims that he is the assignee of the land forming part of Sy.No.255/RU/1 to an extent of Ac.2-00gts, which according to the petitioners is adjacent/abutting/overlapping/part of the Shikham land/tank bed or the same is in FTL. The State Government vide G.O.Ms.No.1406 Revenue Department dated

25.07.1958 has enunciated policy for assignment of Government lands to the landless poor persons. Under the said G.O, poramboke tank beds, foreshore of tank beds, cattle sheds, grazing lands and lands reserved for any specific purpose, sources of irrigation, town sites and the lands in the proximity of towns are prohibited for assignment. The Government subsequently issued G.O.Ms.No.1724 Revenue Department dated 26.03.1959 eliminating the poramboke lands from the category of prohibitory lands for assignment. Thereafter, the Government has constituted various assignment committees for allotment of lands to the landless poor persons. The paragraph 4 of the Board Standing Orders-16 also prohibits the assignment of the lands in the water bodies, water courses, kunta porambokes. The Government also issued Memo No.24140/Assignment-I(1)/03-3 dated 22.08.2003 directing the Chief Commissioner of Land Administration and also District Collectors that the tanks, kuntas, ponds, lakes etc., are the sources of irrigation and these water bodies are helping in maintenance of ecological balance including the scare resource of ground water and are indispensable for protection and required for environmental improvement and accordingly, these water sources were prohibited for assignment by imposing ban. The Hon'ble Apex Court in ***Himachal Tiwari vs. Kamala Devi***¹, held that the

¹ (2021) 6 SCC 496

land classified as 'water body' or 'poramboke tank', whether or not it defunct, should be maintained as a water body or irrigation tank and the land use cannot be changed.

6. In view of the above, since pending adjudication of the writ petition, the respondents have conducted joint inspection on 09.01.2024 and fixed the Full Tank Level of Yelliyalakunta, the cause in the writ petition no longer survives for adjudication. However, if any action is contemplated by the respondent No.4 basing on the said survey report, the same shall be preceded by notice/enquiry following the due process of law.

7. Accordingly, this Writ Petition is disposed of.

As a sequel, the miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Date: 30.07.2024
scs

C.V.BHASKAR REDDY, J