

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE

&

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

WRIT PETITION (PIL) No.12 OF 2023

(Through physical mode)

Sugali Bhaskar, S/o Sugali Hanume Naik,
Hindu, Aged about 47 years,
R/o D.No.3-23, Mangapuram,
Penukonda, Sri Sathya Sai District,
Andhra Pradesh – 515 110 and others.

..Petitioners

Versus

The State of Andhra Pradesh,
Represented by its Principal Secretary to Government,
Municipal Administration and Urban Development Department,
A.P.Secretariat, Velagapudi, Amaravathi,
Guntur District, Andhra Pradesh 522 238 and others.

...Respondents

ORAL ORDER

Dt:27.01.2023

(per Prashant Kumar Mishra, CJ)

This writ petition in the nature of public interest litigation has been preferred seeking the following relief:

"...to issue a writ, declaration, order or a direction, more particularly, in the nature of Writ of Mandamus or any other appropriate writ:

(A) declaring the inaction of the Official Respondents and their omissions and commissions and statutory violations and in not taking any action against the illegal encroachment of the road situated in Sy.No.681 of Penukonda Nagara Panchayat, which is existing since more than 100 years, by the 18th

Respondent herein, by illegally defacing the existing road, is illegal arbitrary and in dereliction of their statutory duties;

(B) to declare that the 18th Respondent had encroached on the existing road situated in Sy.No.681 of Penukonda Nagara Panchayat which is existing since more than 100 years, and the Panchayat Poramboke situated along the road, and the Panchayat Borewell site, and to further direct the Official Respondents herein to remove the encroachments and to restore the road;

(C) to further declare that the non-consideration of the objections of the Petitioners herein and other local persons made to the Official Respondents against the illegal encroachments, as being dereliction of their statutory duties;

(D) to further declare that the non-consideration of the request made by the Petitioners to take measures to protect the existing road, Panchayat Poramboke, Panchayat Borewell site, as being dereliction of their statutory duties;

(E) to further declare that the actions complained of, as above-mentioned are in violation of Article 14, 21, 48A, 51A of the Constitution of India; and in violation of Sections 37, 136, 137, 241, 340 and 340-A of the Andhra Pradesh Municipalities Act, 1965; G.O.Ms.No.188 Panchayat Raj and Rural Development (Pts.) Department dated 21.07.2011;

(F) to further declare that the omissions and commissions on the part of the Official Respondents herein, acting in an arbitrary and mala fide manner in

connivance with Respondent No.18 herein is in gross violation of the most salutary principles laid down by the Hon'ble Supreme Court, namely: Principle of 'Polluter Pays', 'Intergenerational Equity', 'Public Trust Doctrine', 'Precautionary Principle' and 'Sustainable Development' and,

(G) to pass any such other order.....”

2. We have heard the learned counsel for the parties and perused the material available on record.

3. The issue of encroachment of government lands/public utility lands vested in the State, which are meant for common benefit of individuals, was considered in detail by the Hon'ble Supreme Court in **Jagpal Singh v. State of Punjab** reported in **(2011) 11 SCC 396**, while dealing with a case of encroachment of village pond. In the said judgment, the Hon'ble Supreme Court, having noted its earlier decisions in **M.I. Builders (P) Ltd. v. Radhey Shyam Sahu** reported in **1999 (6) SCC 464**; **Friends Colony Development Committee v. State of Orissa** reported in **2004 (8) SCC 733** and **Hinch Lal Tiwari v. Kamala Devi** reported in **AIR 2001 SC 3215** (followed by the Madras High Court in **L. Krishnan v. State of Tamil Nadu [2005 (4) CTC 1 Madras]**), issued the following directions as contained in paragraph 22 of the judgment, which reads thus:

“22. Before parting with this case, we give directions to all the State Governments in the country that

they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/ Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose, the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land."

4. It is to be noted that pursuant to the aforesaid directions issued by the Hon'ble Supreme Court, the State Government of Andhra Pradesh framed the Andhra Pradesh Gram Panchayats (Protection of Property) Rules, 2011 (for short, 'the Rules of 2011'), notified vide G.O.Ms.No.188, Panchayat Raj & Rural Development (Pts.IV) Department, dated 21.07.2011. The said Rules provide for the

procedure to be followed for protection of Gram Panchayat properties and eviction of encroachments.

5. Despite the directions of the Hon'ble Supreme Court in **Jagpal Singh** (supra) as noted above and despite framing the Rules of 2011, no steps are taken by the authorities of the Gram Panchayat to protect the Gram Panchayat lands from encroachment, and similarly, no steps are being taken by the Government and its authorities in protecting the government lands. As the public authorities are failing in their duties in protecting the government lands, which are meant for the common use of general public, despite bringing to their notice, public spirited persons are approaching this Court to intervene and direct the public authorities to protect the government lands from encroachments.

6. In identical matters i.e., W.P (PIL) No.140 of 2022 and batch, which were filed alleging inaction of the State and its authorities in protecting the government lands of different classifications, viz., tank land/grama kantham/burial ground/forest land/road margin/play ground/cart track/hill poramboke/coastal areas/grazing land etc., this Court placing reliance on the aforesaid judgment of the Hon'ble Supreme Court and the Andhra Pradesh Gram Panchayats (Protection of Property) Rules, 2011, issued the following directions:

- (i) The executive authority, i.e., Panchayat Secretary, of the respective Gram Panchayats in the State

shall identify the Gram Panchayat lands, which are unauthorizedly occupied/encroached, and take steps for removal of such encroachments by issuing notice and providing opportunity of hearing to the unauthorized occupants/encroachers in terms of the procedure prescribed in Rules of 2011. This complete exercise shall be done within a period of six months from today.

(ii) So far as the encroachments over the lands concerning the Municipalities/Forest Department/Revenue Department are concerned, even if no separate Rules have been framed prescribing the procedure to be followed in the matter of removal of encroachments over those lands, the officials of the concerned Departments, i.e., the Departments of Municipal Administration, Forest and Revenue, shall also undertake and complete the exercise of identification of unauthorized occupations/encroachments over the lands belonging to their respective Departments, within a period of two months from today, and thereafter, take steps for removal of such encroachments by following the principles of natural justice, i.e., issuing notice and providing opportunity of hearing to the unauthorized

occupants/ encroachers, within a further period of four months.

7. In view of the fact that the encroachments alleged in the present writ petition are over the public road, Panchayat Poramboke situated along the road and the Panchayat Borewell site, and following the directions issued in the similar matter i.e. W.P. (PIL) No.140 of 2022 and batch, we deem it appropriate to direct the respondent authorities to undertake and complete the exercise of identification of unauthorized occupations/encroachments over the subject land and any other land belonging to the Penukonda Nagara Panchayat, within a period of two months from today, and thereafter, take steps for removal of such encroachments by following the relevant rules and the principles of natural justice i.e. issuing notice and providing opportunity of hearing to the unauthorized occupants/encroachers, within a further period of four months.

8. With the above direction, the Writ Petition (PIL) is allowed. No costs. Pending miscellaneous applications, if any, shall stand closed.

PRASHANT KUMAR MISHRA, CJ

VENKATA JYOTHIRMAI PRATAPA,J

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