

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

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

&

HON'BLE MR. JUSTICE NINALA JAYASURYA

WRIT PETITION (PIL) No.45 OF 2023

(Through physical mode)

Shaik Yunus, son of late Subhani,
Aged about 40 years, Occupation: Cultivation,
A resident of #1-194, Pedakurapadu village
and Mandal, Guntur District.

..Petitioner

Versus

The State of Andhra Pradesh
Represented by its Principal Secretary,
Department of Panchayat Raj, Secretariat,
Velagapudi, Amaravati, Guntur District,
and others.

...Respondents

ORAL ORDER

Dt:18.04.2023

(per Prashant Kumar Mishra, CJ)

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

"For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus

declaring the inaction of the respondents in preventing the encroachments and removing the unauthorized illegal construction in the Government land situated in Survey No.335-1, 335-3, 335-4, 335-5 at Returu Village of Kakumanu Mandal of Guntur District, which is classified as Tank, is illegal, arbitrary and unconstitutional, and consequently, direct the respondents to take immediate action in removing the encroachments and the unauthorized illegal construction in the Government land situated in Survey Nos.335-1, 335-3, 335-4, 335-5 Kakumanu Mandal of Guntur District, which is classified as a Tank (Cheruvu) following due process of law in terms of common order of the Division Bench of High Court of A.P. in W.P.(PIL) Nos.150 of 2019 and 31 of 2022 and pass such other order or orders as this Hon'ble Court may deem fit, just and proper in the circumstances of the case."

2. 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.”

3. Despite the directions of the Hon’ble Supreme Court in **Jagpal Singh** (supra) as noted above, 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.

4. 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.

5. In view of the allegation that the encroachments/illegal constructions are made in the Government land (classified as Tank), following the judgment in W.P. (PIL) No.140 of 2022 and batch, we direct the respondents concerned to undertake and complete the exercise of identification of unauthorized occupations/constructions/ encroachments over the subject land (classified as Tank), within a period of two months from today, and thereafter, take steps for removal of such encroachments/unauthorized constructions 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.

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

PRASHANT KUMAR MISHRA, CJ

NINALA JAYASURYA, J

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**HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE NINALA JAYASURYA**

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