

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

WRIT PETITION No.398 of 2023

Between:-

Chava Kamalamma

.... Petitioner

And

The State of Andhra Pradesh,
Rep.by its Principal Secretary,
Revenue Department,
and Others.

..... Respondents

Counsel for the Petitioner : Mr.Marri Venkata Ramana

Counsel for the Respondents : G.P. for Revenue

ORDER:

Heard learned counsel for the petitioner and learned Assistant Government Pleader for Revenue, who placed a copy of the written instructions dated 23.01.2023 received from the 4th respondent for perusal of this Court.

2. The Writ Petition is filed seeking to declare the inaction on the part of the respondents in following the procedure prescribed by Law for demarcation of boundaries and rejecting the application of the petitioner by Endorsement dated 15.11.2022 is illegal, arbitrary and contrary to Board Standing Order(for short 'B.S.O.') 34-A Paragraph 20 r/w Circular instructions Rc.No.N1/6543/99 dated 25.07.2001 issued by the Special Commissioner and Director Survey, Settlements and Land Records and for a direction to the respondents to demarcate the subject matter land of

an extent of Ac.4.52 cents in Survey No.212-1, Morsapudi Village, Nuzvidu Mandal, Eluru District.

3. Learned counsel for the petitioner with reference to the averments made in the Writ Petition and on the basis of the B.S.O.34-A Paragraph 20 r/w Circular instructions Rc.No.N1/6543/99 dated 25.07.2001 contended that the reasons assigned by the 4th respondent in rejecting the petitioner's application for fixing the boundaries on the premise that sub-division in respect of the subject matter property, has not taken place and further that the abutting land owners are not cooperating for demarcation of boundaries is not sustainable in Law. He submits that the endorsement of the 4th respondent is also not tenable inasmuch as no opportunity was afforded to the petitioner before rejecting the petitioner's request. He submits that even as per the Circular instructions referred to above, nowhere it is stated that sub-division and demarcation of boundaries can be refused on the ground of non cooperation of abutting land owners or on the ground that sub-division of the lands was not done. Learned counsel for the petitioner also submits that once survey was conducted, demarcation cannot be refused on any ground. He also places reliance on the decision of a learned Judge dated 11.08.2022 in W.P.No.24265 of 2022 etc. Making the said submissions, the learned counsel seeks to set aside the impugned endorsement and issuance of appropriate directions.

4. Learned Assistant Government Pleader for Revenue while opposing the said submissions contended that if the petitioner's application filed under the Survey & Boundaries Act is rejected, he has to avail the alternative remedies as contemplated in the said Act and the Writ Petition is not maintainable. He, therefore submits that the Writ Petition is liable to be dismissed.

5. This Court has considered the submissions made, perused the material on record and finds merit in the contentions raised by the counsel for the petitioner. Board Standing Order 34-A Paragraph 20 r/w Circular instructions Rc.No.N1/6543/99 dated 25.07.2001, on which much reliance is placed, provides as follows:

“5. (i) Demarcation of land being the primary duty of the Mandal Surveyors, petitions for demarcation of boundaries from the private parties shall be entertained by the concerned Mandal Revenue Officers only and Mandal Surveyors shall conduct demarcation after written approval of the Mandal Revenue Officers concerned as per Board Standing Orders and Mandal pattern of administration.”

6. As rightly contended by the learned counsel for the petitioner, nowhere it is provided that survey/demarcation of boundaries may be refused, if the neighbouring owners object or not cooperate with the same. Further, in the decision relied on by the learned counsel for the petitioner, the learned Judge while appreciating similar contentions, was

pleased to dispose of the Writ Petition referred to supra, by setting aside the endorsement rejecting the petitioner's application. Para No.7 of the order, which is relevant to the present context reads thus:

"7.....In fact as per B.S.O.No.34 circular was issued by the Special Commissioner and Director Survey, Settlements and Land Records on 25.7.2001 prescribing certain principles to be followed for considering the applications. According to the said instructions it clearly states that demarcation of the land being the primary duty of the Mandal Surveyors, for demarcation of boundaries from the private parties shall be entertained by the concerned revenue officers only and Mandal Surveyors shall conduct demarcation after written approval of the Mandal Revenue Officers concerned."

7. Taking into consideration the Board Standing Orders referred to above, wherein the procedure for conduct of survey is clearly provided, this Court is of the opinion that the impugned Endorsement dated 15.11.2022 is not sustainable.

8. Accordingly, the same is set aside and the matter is remanded to the 4th respondent to take action on the request of the petitioner for demarcation of boundaries in respect of the property in question, after giving due notice under proper acknowledgment to the petitioner and the concerned parties and pass appropriate orders, within a period of six (6) weeks from the date of receipt of a copy of the order.

9. Accordingly the Writ Petition is allowed to the extent indicated above. There shall be no order as to costs.

As a sequel, all the pending miscellaneous applications in the above writ petition, if any, shall stand closed.

NINALA JAYASURYA, J.

Date: 27.01.2023

BLV

HONOURABLE SRI JUSTICE NINALA JAYASURYA

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Date: 27.01.2023

BLV