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28/4/13

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From
Sri Ch. Rama Murthy,
Assistant Engineer,
Minor Irrigation Section,
Guntur.

To
The Tahsildar,
Guntur Rural Mandal,
Guntur.

Letter No. AE/MI/GNT/ 201 dated 26/04/2013

Sir,

Sub:- Minor Irrigation – Guntur – Talab Tank in Jonnalagadda Village of Guntur Rural Mandal – Unauthorized occupation of Tank Bund area by Sri Mahaganapathi Kodanda Rama Swamy Devasthanam – Implementation of Court Orders – Requested – Regarding.

Ref:- Orders of Hon'ble High Court of Andhra Pradesh in W.P.No. 27809 of 2012, dated 07.10.2012/31.10.2012.

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While enclosing a copy of Court Orders under above reference, I submit the following report on the above subject.

The Talab Tank in Jonnalagadda Village of Guntur Rural Mandal is in this sectional jurisdiction of Minor Irrigation Department which was transferred from Panchayat Raj Department during 2005 and no ayacut is existing for this tank.

The outer area of tank bund in the village towards Vejendla road was encroached by Temple authorities to some extent and the same was objected and stopped the laying of pillars for Kalyanamandapam by this office and village officers.

A representation received from Sri I. Ankama Rao of Jonnalagadda Village alleging about encroachment through the District Panchayat Officer and the site was inspected by Executive Engineer, Deputy Executive Engineer, and Assistant Engineer of Irrigation Department in the presence of petitioner, Panchayat Secretary of village and instructed the temple authorities to remove the encroachment duly giving one week time. After lapse of given time a notice was issued by Assistant Engineer, Minor Irrigation, Guntur to the temple committee for urgent removal which was questioned as illegal in the Hon'ble Court of Law. While giving stay orders the court has instructed to file replies and the same was attended.

The Hon'ble High Court of Andhra Pradesh has issued orders to this office to approach the Tahsildar concerned for initiation of proceedings under the A.P. Land Encroachment Act 1905.

Hence in view of the circumstances explained above, I request the Tahsildar to take necessary action for eviction of encroachment of Government Property in Jonnalagadda Village at the earliest possible.

The copies of correspondence on the above subject are enclosed herewith for information.

Yours faithfully,

Soh ~~xxx~~
Assistant Engineer,
Minor Irrigation Section,
Guntur.

*Copy along with copies of Court orders submitted to the Deputy Executive Engineer, Guntur Sub-division
Granted for favour & information*

Ramulu
26/4/13
Assistant Engineer

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IN THE HIGH COURT OF JUDICATURI
AT HYDERABAD
(Special Original Juri)

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WEDNESDAY, THE SEVENTEEN, OCTOBER
TWO THOUSAND AND TWELVE

PRESENT

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO: 27809 OF 2012

Between:

Sri Mahaganapathi Kodandarama Swamivari Devastanam, Jonnalagadda Village, Guntur Rural Mandal, Guntur District, Rep by the Chairman, Vanga Narayana Reddy, S/o.Chinnappa Reddy, Age 37 years, R/o.Jonnalagadda Post, Guntur Rural Mandal, Guntur District.

.....PETITIONER

AND

- 1 The Executive Engineer, Irrigation Guntur Division, Collectorate Road, Guntur.
- 2 The Deputy Executive Engineer, Guntur Sub-Division, Minor Irrigation Section, Collectorate Road, Guntur.
- 3 The Assistant Engineer, Minor Irrigation Section, Collectorate Road, Guntur.
- 4 The Panchayat Secretary, Jonnalagadda Panchayat, Guntur District.

.....RESPONDENTS

Petition Under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue the order/s or writ/s one more particularly in the nature of Writ of Mandamus, declaring the proceedings letter No.27 M dated 17/08/2012 issued by the 3rd respondent as illegal, arbitrary and unconstitutional and consequently set -aside the proceedings letter No. 27M dated 17/08/2012 issued by the 3rd respondent and to grant such other relief or reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case.

WPMP NO: 35404 OF 2012

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the writ petition, the High Court may be pleased to stay all further proceedings pursuant to the proceedings letter no. 27 M dated 17/08/2012 issued by the 3rd respondent pending disposal of this writ petition.

Counsel for the Petitioner : Sri.Syed Khader Mastan

Counsel for Respondent Nos.1 to 3 : AGP For Irrigation & Comm Area Dev

Counsel for Respondent No.4 : None Appeared

The Court made the following Order :-

ORDER:

This Writ Petition is filed for a mandamus to set-aside letter No.27-M, dated 17-8-2012, of respondent No.3 whereby the petitioner was asked to remove the unauthorized structures raised over the land which purportedly belongs to the Irrigation Department.

The petitioner has tried to trace its right to the land in question to a resolution dated 31-3-2011 stated to have been passed by the Jonnalagadda Gram Panchayat. The petitioner also submitted that respondent No.3 has no power or jurisdiction to issue the impugned notice.

A counter-affidavit is filed on behalf of respondent Nos.1 to 4 wherein it is inter alia stated that the land over which the petitioner seeking to raise construction belongs to the Irrigation Department that the same is in unauthorized occupation. It is further stated that on 13-8-2009, the then Mandal Revenue Officer has removed encroachments on the instructions from the District Watch Committee and the petitioner was warned not to make any construction over the tank bund and its surrounding land. It is further averred that the District Panchayat Officer issued letter dated 19-7-2012 directing initiation of appropriate action against the encroachers; that accordingly respondent Nos.1 to 4 inspected the encroached site on 2-8-2012 and instructed the temple management to remove all the illegal constructions by 5-8-2012 and that thereafter respondent No.3 has issued the impugned letter. The counter-affidavit denied any right of the petitioner to the land in question.

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to be in possession of the land under the resolution of the Gram Panchayat which has merely conveyed 'no objection' for the former to enjoy the property.

As regards the resolution of the Gram Panchayat, it is not the pleaded case of the petitioner that the land in question is vested in the Gram Panchayat. The said resolution has only conveyed 'no objection' for the land to be given to the petitioner and a copy of the same was sent to the Tahsildar, Guntur Rural, with a request to him to take necessary steps accordingly. If the land is vested in the Irrigation Department, it is not permissible for the Gram Panchayat or the Tahsildar to give away the same to the petitioner. The petitioner has therefore not established any legal right over the property in question.

With regard to the power of respondent No.3 to issue the impugned notice, in my opinion, no such power inheres in him to evict a person in unauthorized occupation of the public property. Respondent No.3 can only approach the Tahsildar concerned for initiation of proceedings under the A.P. Land Encroachment Act, 1905.

Accordingly, subject to the right of respondent Nos.1 to 3 to evict the petitioner from the land in question by following the due procedure of law, the Writ Petition is disposed of.

As a sequel, interim order dated 5-9-2012 is vacated and WPMP No.35404/2012 is disposed of as infructuous.

SD/-B.BALAVENKAT REDDY
ASSISTANT REGISTRAR

//TRUE COPY//


SECTION OFFICER

To

1. The Executive Engineer, Irrigation Guntur Division, Collectorate Road, Guntur.
2. The Deputy Executive Engineer, Guntur Sub-Division, Minor Irrigation Section, Collectorate Road, Guntur.
3. The Assistant Engineer, Minor Irrigation Section, Collectorate Road, Guntur.
4. The Panchayat Secretary, Jonnalagadda Panchayat, Guntur District.
5. Two CCs to G.P. For Irrigation & Comm Area Dev, High Court of Andhra Pradesh, Hyderabad (OUT)
6. One CC to Sri.Syed Khader Mastan, Advocate (OPUC)
7. Two C.D. Copies

SA



HIGH COURT
DATED: 15/10/2012

ORDER
WP.NO.27809 OF 2012

DISPOSING OF THE W.P
WITHOUT COSTS.

Endt No: DEC 1 G.S.O GNT 158 DT

copy forwarded to A.E.I.O.U Section, G
for informal and necessary action.

18/PDJ
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31/10/12

Dy. EXECUTIVE ENGINE
GUNTUR SUB-DIVISION
GUNTUR

6/10/12