



HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE SIXTEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY

PRESENT

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO
WRIT PETITION NO: 1517 OF 2020

Between:

1. Bayya. Mahadeva Sastry, S/o. Late Narasimha Sharma,
Aged about 50years, Occ. Agriculture,
R/o D.No. 15-12-19/1, Seetha Vilas, Next to Sagar Durga Hospital,
Maharanipeta, Visakhapatnam
2. Guthavilli. Eshwara Rao , S/o Late Gowthu Naidu,
Aged about 60years, Occ. Cultivation,
R/o Pachipenta Village, Pachipenta Mandal,
Vizianagaram.

...PETITIONER(S)

AND:

1. The State of Andhra Pradesh, Rep. by its Principal Secretary (Panchayat Department) Velagapudi, Guntur District.
3. The District Collector, Vizianagaram.
4. The Divisional Panchayat Officer, Parvathpuram Division, Parvathpuram, Vizianagaram.
5. The Pachipenta Grama Panchayat, Rep. by its Scretary, Pachipenta Village, Pachipenta Mandal, Vizianagaram, District.
6. The Panchayat Secretary, Pachipenta Village, Pachipenta Mandal, Vizianagaram, District.
7. The Tahsildar, Pachipenta Village, Pachipenta Mandal, Vizianagaram ,District

...RESPONDENTS

Counsel for the Petitioner(s): E V V S RAVI KUMAR

Counsel for the Respondents: GP FOR PANCHAYAT RAJ RURAL DEV (AP)

The Court made the following: ORDER



*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ WRIT PETITION No.1517 OF 2020

% 16.06.2020

WRIT PETITION No.1517 OF 2020:

Between:

- 1) Bayya Mahadeva Sastry,
S/o. Late Narasimha Sharma, 50 years,
Occupation Agriculture, R/o.D.No.15-12-19/1,
Seetha Vilas, Next to Sagar Durga Hospital,
Maharanipeta, Visakhapatnam & **other**

...Petitioners

And

- 1) The State of Andhra Pradesh, rep.
By its Principal Secretary, (Panchayat Department),
Velagapudi, Amaravathi,
Guntur District & **five others.**

...Respondents

! Counsel for Petitioners : Sri E.V.V.S. Ravi Kumar

^ Counsel for Respondents : 1) GP for Panchayat Raj for
R1 & R3.
2) GP for Revenue for
R2 & R6
3) Sri I. Koti Reddy, SC for
R4 & R5.

< **Gist:**

> **Head Note:**

? **Cases referred:**

- 1) 2015 (4) ALT 296
- 2) (1959) 2 MLJ 513 = MANU/TN/0492/1959
- 3) (2004) 2 MLJ 708 = MANU/TN/0517/2004
- 4) MANU/AP/0500/2012
- 5) 2015 (4) ALT 296
- 6) 2007 (4) ALT 550 = MANU/AP/0212/2007

This court made the following :

**THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO****WRIT PETITION No.1517 OF 2020****ORDER:**

The petitioners pray for Writ of *Mandamus* declaring the action of respondent Nos.4 and 5 in issuing the notice dated 13.01.2020 to the 2nd petitioner claiming the subject property near bus stand, Chintha Chettu previously known as Thane House as Gramakantam lying in S.No.240/1 and directing the petitioner to stop the construction of the compound wall as illegal, arbitrary, unjust and violation of provisions of Andhra Pradesh Panchayat Raj Act, 1994 and Articles 14, 21 and 300-A of Constitution of India and for a consequential order to set aside the aforementioned notice issued by the 5th respondent.

2. The petitioners' case is thus:

(a) The petitioners' forefathers purchased a portion of Pachipenta Zamindari Estate and some other properties under two Registered Sale Deeds dated 26.04.1927 and 30.10.1928 and enjoyed the same. Subsequently, the petitioner and his brother succeeded their estate and 1st petitioner being elder brother, managing the properties.

(b) When during the lifetime of their father Bayya Narasimha Sarma, some disputes arose with private parties, their parents filed O.S.No.37 of 1996 on the file of Subordinate Judge, Bobbili for permanent injunction. Initially, the said suit was dismissed and later the appeal A.S.No.59 of 2003 filed by the petitioners on the file of



II Addl. District Judge (Fast Track) Court, Parvathipuram, was allowed and perpetual injunction decree was granted in favour of the plaintiff and the same attained finality.

(c) The 2nd petitioner who is a local person assists the 1st petitioner as his agent and looks after the property i.e., the subject property. Initially, there was an old tiled building which was subsequently dilapidated and removed. Therefore, to protect the property the petitioners started to construct a compound wall in the month of January, 2020. At that juncture, the 5th respondent issued notice dated 13.01.2020 to the 2nd petitioner claiming that the said property is a Gramakantam and the same is required for constructing Grama Sachivalayam and erected a sign board on 20.01.2020 proclaiming that the property is situated in S.No.240/1 and demanded the petitioners to stop construction and submit objections if any to the Tahsildar. Accordingly, the petitioners approached the Tahsildar along with their documents, but he informed that he had nothing to do with the subject land as it is within the jurisdiction of Grama Panchayat. The petitioners' family has been in possession of the subject property since 1927 and therefore the respondent Nos.4 and 5 have nothing to do with the said property. It never vested with the government. The notice issued by the 4th respondent is illegal, arbitrary and contrary to the provisions of A.P. Grama Panchayat Act, 1994.

Hence, the writ petition.



3. The 4th respondent filed counter opposing the writ petition *inter alia* contending thus.

(a) The subject property is the site of Grama Panchayat classified as Gramakantam covered by S.No.240/1 in an extent of Ac.0.22 ½ cents bounded by East – CC road, West – Durga Devi Temple, South – Library and North – Bypass road. The Pachipenta Grama Panchayat proposed to construct Village Secretariat in the said site and got surveyed the land with the help of Mandal Revenue Surveyor, who after survey fixed the boundaries.

(b) While so, the 4th respondent came to know that the petitioners have encroached the subject land and started constructing a compound wall illegally without the permission of 4th respondent. Hence, a notice was issued on 13.01.2020 directing the petitioners to stop construction and submit their records. However, as of now, they did not submit any explanation and produce documents showing their title over the subject site. The documents filed along with material papers in the instant writ petition do not disclose survey numbers to identify the land. Therefore, those documents do not relate to the subject land. The petitioners having suppressed the material facts, filed instant writ petition with the help some unconnected and irrelevant papers.

Hence, the writ petition is liable to be dismissed.

4. Heard learned counsel for petitioners Sri E.V.V.S. Ravi Kumar, learned Government Pleader for Panchayat Raj representing respondent Nos.1 and 3, learned Government Pleader for Revenue representing



respondent Nos.2 and 6 and Sri I. Koti Reddy, learned Standing Counsel representing respondent No.4 and 5.

5. Severely castigating the impugned notice dated 13.01.2020 issued by 5th respondent, learned counsel for petitioners Sri E.V.V.S. Ravi Kumar would argue that the impugned notice is illegal in as much as the 5th respondent Gram Panchayat has no right to claim the property as the petitioners are the title holders of the same by virtue of the two registered sale deeds dated 26.04.1927 and 30.10.1928 obtained by the forefathers of the 1st petitioner and generations together the petitioners have been in continuous possession and enjoyment of the same. Learned counsel would further submit that when some private persons interfered with the peaceful possession and enjoyment of the petitioners, the parents of the 1st petitioner filed suit O.S.No.37 of 1996 on the file of Subordinate Judge, Bobbili seeking perpetual injunction decree and the said suit was erroneously dismissed. However, the plaintiffs succeeded in A.S.No.55 of 2003 on the file of II Additional District Judge (Fast Tract Court), Parvathipuram and the said decree attained finality. As such, the possession of the parents of the plaintiffs in respect of the subject vacant land and some other properties was judicially recognized and confirmed. Learned counsel would strenuously argue that though the 5th respondent – Grama Panchayat and other respondents were not parties to the said suit, still the possession of the plaintiffs' family in respect of subject vacant land and



other properties can be taken into consideration by this court by virtue of the decree and judgment in A.S.No.55 of 2003.

He would strenuously argue that except claiming the subject vacant land as part of Gramakantam (village site), the respondents could not put up any valid title or possession thereof. He would alternatively argue that even assuming the subject vacant land and its appurtenants are part of Gramakantam, still neither the government nor the Grama Panchayat can claim any title in respect thereof. He would argue that it is settled law that Gramakantam land which is earmarked for construction of houses does not vest in the government or local bodies such as Grama Panchayats. To buttress his argument, he placed reliance on the decision in *Sigadapu Vijaya vs. State of Andhra Pradesh, rep. by its Principal Secretary, Revenue Department and others*¹. He would thus argue that either way, the respondent No.5 or the other respondents cannot interdict the petitioners' possession and enjoyment of the subject vacant land in S.No.240/1 and cannot interfere with construction of the compound wall by the petitioners. He thus, prayed to allow the writ petition.

6. *Per contra*, Sri I. Koti Reddy, learned Standing Counsel for 5th respondent would argue that the subject land is a part of Gramakantam which was occupied by the petitioners without any manner of right. While so, the Revenue and Grama Panchayat while searching for a suitable vacant place for construction of Grama

¹ 2015 (4) ALT 296



Sachivalayam (Village Secretariat), after conducting survey, found that the subject land is a part of Gramakantam which is in illegal possession of the petitioners, who were constructing a compound wall therein. Hence, notice dated 13.01.2020 was issued to the 2nd petitioner stating that the subject land is a part of the Gramakantam which is identified for construction of Grama Sachivalayam and petitioners were constructing a compound wall without approval of plan which they have to stop and submit their explanation before the 6th respondent as to why action should not be taken against them. Learned Standing Counsel would argue that without submitting any explanation, the petitioners have directly filed the writ petition and hence the same is liable to be dismissed in limini. He would further contend that the respondents were not parties in the earlier litigation referred to by the petitioners and hence the decree in A.S.No.55 of 2003 is not binding on them.

7. The point for consideration is whether there are merits in the writ petition to allow?

8. This court gave anxious consideration to the above respective submissions. While the petitioners' claim that the subject vacant land and its appurtenant house property belongs to the 1st petitioner as the same is purchased by his forefathers under two Registered Sale Deeds, the contention of respondents in turn is that the subject land is a part of Gramakantam which is vested in the Revenue and Grama Panchayat and they identified the same for construction of Grama Sachivalayam



(Village Secretariat) and therefore the petitioners cannot make any constructions on it.

9. In this context, a perusal of the material papers filed along with writ petition would show that the father and grand-mother of 1st petitioner namely Bayya Narasimha Sarma and Janakamma filed O.S.No.37 of 1996 on the file of Subordinate Judge, Bobbili, Vizianagaram District against the Nalli Ramulu and others seeking perpetual injunction decree in respect of two items of property i.e., Item No.1- Vacant site with old tiled house covered by D.No.14/126 which was used as Thane office and Item No.2- Vacant site which was used as shandy place and both items are situated in Pachipenta Village. Their case was that the above items of property was part of Pachipenta Zamindari and a suit was filed by Maharaja of Bobbili against the Zamindars of Pachipenta in O.S.No.1 of 1903 on the file of District Court, Visakhapatnam for recovery of Mortgage money and the said suit was decreed and some of the properties of Pachipenta estate were sold in public auction in E.P.No.20 of 1906 which were purchased by Zamindars of Tuni and obtained possession in E.A.No.238 of 1908. The remaining properties of Pachipenta Zamindari were also auctioned and sold under different proceedings. The property purchased in auction was called Kaspachipenta consisting of the entire village of Pachipenta including the Thane Kacheri and shandy place etc. According to the writ petitioner, the subject land is a part of Item No.1 of O.S.No.37 of 1996.



10. Be that it may, the record would further show that the said suit was dismissed and A.S.No.55 of 2003 filed by the plaintiffs was allowed. The appellate court in Para Nos.9 & 10 of its judgment observed that plaint schedule Item No.1 corresponds with the Ex.A2-Sale Deed and Item No.2 of the plaint schedule corresponds with Ex.A1-Sale Deed and since those Sale Deeds were obtained by ancestors of the plaintiffs in 1927 and 1928 by which time there were no disputes between the families of the plaintiffs and defendants and Ex-Zamindar of Pachipenta, due weight can be given to those Sale Deeds. The appellate court further observed that the defendants in the suit did not claim any interest in the suit schedule property except contending that the said property belonged to some third parties. Accordingly, the appellate court held that the plaintiffs were the owners of the suit schedule property and they were in possession and decreed the suit by allowing the appeal. It appears, no further appeal was filed and hence the aforesaid judgment attained finality. It is true that the present respondents in the writ petition were not parties to the above proceedings and hence the said decree is not binding on them. However, it must be noted that it is not the case of respondents that the above decree was obtained by the father of the 1st writ petitioner in collusion with the defendants therein. On the other hand, the judgment in A.S.No.55 of 2003 shows that it was a hotly contested litigation between the parties. Therefore, though the said judgment is not binding on the present respondents, still the observations in the said suit that the



plaintiffs therein were in lawful possession and enjoyment of the subject property will militate against the contention of the respondents herein that the writ petitioners and his ancestors have illegally occupied a part of Gramakantam land. Therefore, the said contention of the respondents cannot be countenanced.

11. Then, the alternative argument of learned counsel for petitioners is concerned, as rightly submitted by him even assuming for arguments sake that the petitioners have occupied a portion of the Gramakantam and constructed house on a part of it, still, neither the government nor the Grama Panchayat can lay any claim over the Gramakantam land, for, it is trite law that Gramakantam land which is intended for construction of the houses does not vest in the government or Grama Panchayat.

12. Regarding the title of government over Gramakantam lands, way back in 1959 the High Court of Madras negatively held. In ***S. Rengaraja Iyengar and others vs. Achikannu Ammal and others***² it was observed that neither under the provisions of Madras Estates (Abolition and Conversion into Ryotwari) Act, (Madras Act XXVI of 1948) nor under the provisions of Madras Land Encroachment Act, 1905 (Madras Act III of 1905), did, Gramakantam vest in the government. It was held thus:

9. The learned Subordinate Judge held that under Section 3(b) the land to which this appeal relates became transferred to the Government and that the title of the plaintiffs' vendors got extinguished. I do not consider that the view can be supported. A

² (1959) 2 MLJ 513 = MANU/TN/0492/1959



house-site owned by a person in what is generally known as gramanatham is not, under Madras Act III of 1905, property of the Government. Section 2 of Madras Act III 1905 says, in regard to lands which are not covered by Clauses (a) to (e) of Sub-section (1) of Section 2, that those lands are and are hereby declared to be the property of the Government, save in so far as they are temple-site or owned as house-site or backyard. In order that a land may properly be described as house-site within the meaning of that expression in Section 2 of Madras Act III of 1905, it is not necessary that there should be a residential building actually constructed and standing on that site. A person may in a village habitation own a house in a street and a site on the outskirts of the habitation but within the limits of the gramanatham, which he uses for the purpose of storing his hay and manure, if he is an agriculturist, or as a smithy, if he is a smith, or as a brick-kiln if he is a brick-maker or as a place for weaving if he is a weaver. On such sites, buildings or sheds may when necessary be constructed. But whether such buildings or sheds are constructed or not, such sites are, in my opinion, house-sites within the meaning of that expression in Section 2 of the Madras Act III of 1905. Madras Act III of 1905 is made applicable to an estate when it is notified under Madras Act XXVI of 1948. The provision as to vesting under Section 3(b) of Madras Act XXVI of 1948 should be read so as to be in consonance with the provisions regarding the applicability of the enactments relating to ryotwari areas which are expressly made applicable to estates notified under the Act.

12. I hold that Section 3(b) of Madras Act XXVI of 1948 does not have the effect of transferring to the Government title to a house-site within a gramanatham belonging to a person other than the landholder when the estate in which the house-site is situate is taken over under a notification issued under the Act.

13. In *The Executive Officer, Kadathur Town Panchayat vs. V. Swaminathan and others*³, a Division Bench of High Court of Madras on referring several judgments including *S. Rengaraja Iyengar* in the context of resolving the issue whether Gramanatham land occupied by the petitioners vested with the government or the Town Panchayat, held as follows:

12. Further, 'Grama Natham' is defined in the Law Lexicon as "ground set apart on which the house of village may be built". Similarly, Natham land is described in Tamil lexicon published under the authority of University of Madras to the effect that it is a residential portion of a village; or portion of a village inhabited by the non-Brahmins; or land reserved as house sites; etc.

³ (2004) 2 MLJ 708 = MANU/TN/0517/2004



13. In the light of the above and in view of the fact that the admitted classification of the land being a 'Grama Natham', it is obvious that the land was never vested with the Government or the Town Panchayat. Inasmuch as the petitioners and their ancestors were in exclusive possession of the lands in question for the past 40 years, the impugned order of the third respondent in cancelling the pattas with a view to evict them summarily at the instance of the resolution passed by the Panchayat is not sustainable. Further such a summarily eviction is not permissible in law when the disputed question of title is involved for adjudications as laid down by the Apex Court in number of decisions.

14. As far as our High Court is concerned, in *Nagarala Nirvasithula Welfare Association vs. The Government of Andhra Pradesh and others*⁴, a learned Single Judge dealt with the issue whether the petitioners who occupied Gramakantam land and constructed houses were entitled to compensation against acquisition of their homesteads which were subjected to submergence due to construction of irrigation project. The government contended that the place where the houses were constructed being Gramakantam vests in the government and thus the question of paying compensation for the government land does not arise. It was in that context, learned Judge relying upon *S. Rengaraja Iyengar* and *The Executive Officer, Kadathur Town Panchayat* held that Gramakantam land does not vest with the government.

15. Recently in *Segadapu Vijaya v. State of Andhra Pradesh, rep. by its Principal Secretary, Revenue Department and others*⁵, a learned Judge of High Court of Andhra Pradesh upon considering the provisions of Survey and Boundaries Act, 1923, Board Standing Orders 21 (Part-IV) and several decisions, has held that the occupied

⁴ MANU/AP/0500/2012

⁵ 2015 (4) ALT 296



Gramakantam by its nature or classification does not belong to the government to include the Gramakantam in the Prohibitory List under Section 22-A of Registration Act. He further held that under Madras Estates Land Act, 1908 and Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 exceptions have been carved out and Gramakantam is one of the categories of the land which is not included in the government lands. Learned Judge ultimately held that refusal on the part of registration department to register the document on the ground that subject property was classified as Gramakantam amounts to illegal refusal.

16. In *Banne Gandhi and others vs. District Collector and others*⁶, a learned Single Judge of this court having considered Section 58 of A.P. Panchayatraj Act, 1994 held that Gramakantam land does not vest in Grama Panchayat. Learned Judge observed thus:

9. A perusal of Sub-section (1) of Section 58 of the Act would show that only certain classes of lands described therein which are not required by the Government for any specific purpose shall vest in the Gram Panchayat. The village site poramboke/Gramakantam land is conspicuous by its absence in the category of lands enumerated in Sub-section (1) of Section 58 of the Act. Therefore, Section 58(1) of the Act is not attracted. In an unreported judgment, being W.P. No. 18865 of 2006, dated 25.9.2006, this Court has considered this aspect having regard to the Sarpanch, Polakala Gram Panchayat, Irala Mandal, Chittoor District v. District Collector, Chittoor (supra), and also Board Standing Order 15 of the Andhra Pradesh Board of Revenue Standing Orders. This Court rejected a similar contention observing as under:

A bare perusal of Section 58 of the Act would show that grazing grounds, threshing floors, burning and burial grounds, cattle stands, carts tanks and topes at the disposal of the Government vests in the Gram Panchayat. If the Government requires these lands for

⁶ 2007 (4) ALT 550 = MANU/AP/0212/2007



any specific purpose, Sub-section (2) of Section 58 of the Act requires the Government to direct that the poramboke land referred to hereinabove is mentioned in Section 58(1) of the Act and shall cease to vest in the Gram Panchayat. When only specific items of land find place in Sub-section (1) of Section 58 of the Act, it is not possible to enlarge these items by including the Government land classified as Gramakantam land. Learned Counsel for petitioner placed reliance on judgment of this Court in Sarpanch, Polakala Gram Panchayat, Irala Mandal, Chittoor District v. District Collector, Chittoor and Ors. (supra). The judgment appears to have been rendered per incuriam without noticing Sub-section (1) of Section 58 of the Act and there is no discussion or reference to any precedent. Therefore, the judgment being subsilentio is not binding precedent. Secondly under Paras 2 and 3 to BSO 15 of the Andhra Pradesh Board of Revenue Standing Orders, village site poramboke land (grama natham area/Gramakantam land) always vests in the Government and is intended for being allotted as house sites in future.

Thus, from the above jurisprudence on the subject in issue, it can be delineated that the Gramakantam land whereon the houses are constructed or intended to be constructed does not vest with either the government or the Grama Panchayat. In that view, even if the argument of the respondents is accepted that the subject land is a Gramakantam and occupied by the petitioners, that fact will not enure to the benefit of respondents to confer any title on them. Thus, either way the respondents cannot meddle with the possession and enjoyment of the petitioners in respect of the subject land and their construction of compound wall.

17. In the result, this writ petition is allowed and the impugned notice dated 13.01.2020 issued by the respondent Nos.4 and 5 to the petitioners is held to be without any power or jurisdiction and consequently the respondents are directed not to interfere with the



possession and enjoyment of the petitioners including their construction of compound wall in the subject property situated near Bus Stand, Chintha Chettu, previously known as Thane House, Pachipenta Village and Mandal, Vizianagaram District. No costs.

As a sequel, interlocutory applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Dt:16.06.2020

Note: LR copy to be marked.
B/o.MS