



**IN THE HIGH COURT OF ANDHRA PRADESH**

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**W.P. No.28907 of 2014**

**Between:**

P.V.Lav Kumar Reddy  
S/o Venkatachalapathi Reddy, aged about 31 years  
Occupation : Cultivation  
R/o Gunjarlapalle Village  
Santhipuram Mandal, Chittoor District

.... Petitioner

AND

The State of Andhra Pradesh  
Rep. by its Secretary, Education Department  
Secretariat, Hyderabad, and seven others

.... Respondents

DATE OF JUDGMENT PRONOUNCED: **13.06.2022**

**SUBMITTED FOR APPROVAL:**

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

1. Whether Reporters of Local Newspapers  
may be allowed to see the judgment? Yes / No
2. Whether the copies of judgment may be  
marked to Law Reporters / Journals? Yes / No
3. Whether His Lordship wish to  
see the fair copy of the Judgment? Yes / No

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**U. DURGA PRASAD RAO, J**



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

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Secretariat, Hyderabad, and seven others ..... Respondents

**! Counsel for Petitioner** : Sri D.Krishna Murthy

**^ Counsel for Respondents** : Sri K.Raghuveer, Government  
Pleader for Higher Education for  
respondents 1, 2 and 6 to 8

**< Gist:**

**> Head Note:**

**? Cases referred:**

- 1) 2016 (5) ALT 5
- 2) MANU/AP/0742/2021
- 3) AIR 1953 Mad 279 = MANU/TN/0155/1953
- 4) 19 Mad 154
- 5) MANU/SC/0063/2009 = (2009) 3 SCC 571
- 6) MANU/AP/0048/1969 = AIR 1969 AP 136
- 7) MANU/TN/0202/1984 = AIR 1984 Mad 292
- 8) 17 Ind Cas 22
- 9) (1998) III MLJ 537 = MANU/TN/1215/1998
- 10) MANU/WB/0347/1928 = AIR 1929 Cal 542
- 11) MANU/UP/0064/1970 = AIR 1970 All 404
- 12) (2015) 6 ABR 29 = MANU/MH/0499/2015



- 13) MANU/KA/0136/1982 = AIR 1982 Kant 314
- 14) MANU/KE/0129/2006 = 2006 (2) KLT 636
- 15) MANU/BH/0032/1988 = AIR 1988 Pat 216
- 16) 2002 (1) SCC 134 = MANU/SC/0667/2001
- 17) AIR 1967 SC 993 = MANU/SC/0275/1966
- 18) (2004) 4 SCC 460 = MANU/SC/0307/2004
- 19) 2015 (15) SCC 1 = MANU/SC/1041/2015
- 20) MANU/AP/0742/2021



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

**Writ Petition No.28907 of 2014**

**ORDER:**

The petitioner prays for a mandamus declaring the inaction of the respondents 6 to 8 in implementing the orders of the respondents 2 & 3 in Rc.No.5545/B3/2013 dated 31.07.2014 and Roc.E5/9839/2012 dated 22.07.2014 as illegal, arbitrary and for a consequential direction to the respondents 6 to 8 to implement the aforesaid orders.

2. The petitioner's case succinctly is thus:

(a) The petitioner is the resident of Gunjarlapalle Village, Santhipuram Mandal, Chittoor District. He owns land of Ac.1.18 cents in Sy.No.120/2 of 28, Gundisettipalle Village of Santhipuram Mandal. There is a Cart Track existing in Sy.No.120/4 and 120/6 from times immemorial to reach the agricultural lands of the petitioner and others. The said Cart Track is recorded in the Village Map also.

(b) While so, the Government have alienated the land in Sy.No.120/4 and 120/6 in favour of the Zilla Parishad / respondent No.8 for construction of High School and Junior College. The 8<sup>th</sup> respondent accordingly constructed High School and Junior College in Sy.No.120/4 and 120/6 encroaching upon the existing age old Cart Track. Due to such encroachment now there is no other way to approach the lands of the petitioner and others.

(c) The petitioner submitted an application to 5<sup>th</sup> respondent on 11.04.2011 requesting to conduct survey of the land in Sy.No.120/4 and 120/6 and demarcate the boundaries to the existing Cart Track, High School and Junior College. In turn, the 5<sup>th</sup> respondent directed the Mandal Surveyor to conduct survey and submit



report regarding the status of the Cart Track. The Mandal Surveyor accordingly conducted survey and submitted report to 5<sup>th</sup> respondent stating that there was a Cart Track existing in an extent of Ac.0.40 cents in Sy.No.120/4 and that a school building was constructed encroaching upon the Cart Track. Thereafter the 5<sup>th</sup> respondent inspected land and submitted report to the District Collector, Chittoor / 3<sup>rd</sup> respondent vide proceedings in Roc.A/93/2011 dated 27.04.2011 stating that the school building and Junior College were constructed encroaching upon existing Cart Track. He further stated that the Cart Track can be restored by providing 12 feet width approach road in the land in between the High School building and Junior College building for which the permission of the District Educational Officer, Chittoor / 2<sup>nd</sup> respondent is required. Thereafter, the 3<sup>rd</sup> respondent in his letter in L.Dis.E5/4190/11 dated 09.05.2011 instructed 5<sup>th</sup> respondent to address letter to 2<sup>nd</sup> respondent seeking permission to provide Cart Track through the land in Sy.No.120/4. Accordingly, the Tahsildar addressed letter to the D.E.O. vide Roc.B/93/2011 dated 09.07.2012 for necessary permission. The 2<sup>nd</sup> respondent has granted permission to provide Cart Track and addressed letter to the Mandal Educational Officer, Santhipuram Mandal / 7<sup>th</sup> respondent informing about the grant of permission for providing Cart Track to a width of 12 feet through the land in between the High School building and Junior College building. However, the 7<sup>th</sup> respondent has not taken any action for providing the Cart Track as per the permission accorded by the 2<sup>nd</sup> respondent.

(d) That apart, the Sub-Collector / 4<sup>th</sup> respondent also inspected the site and submitted report to the 3<sup>rd</sup> respondent vide his office Roc.B1/9516/2012 dated 31.05.2013 requesting the District Collector, Chittoor to direct 2<sup>nd</sup> respondent and the 5<sup>th</sup> respondent to take steps to restore the Cart Track. The 3<sup>rd</sup> respondent vide



his office letter Roc.E5/9839/2012 dated 01.07.2013 directed the 2<sup>nd</sup> respondent to inspect the land and take necessary steps to restore the Cart Track. He also issued a reminder to 2<sup>nd</sup> respondent to take action in the matter. Pursuant thereto, the 2<sup>nd</sup> respondent addressed letter to the Head Master, Government High School and 6<sup>th</sup> respondent to take action in the matter immediately and report. However, no action has been taken so far. The inaction on the part of the respondents 6 to 8 is arbitrary and illegal and thereby the petitioner and other villagers are suffering great inconvenience due to closure of the long existed Cart Track. There is no other alternative way to approach their fields.

Hence, the writ petition.

3. The 2<sup>nd</sup> respondent filed counter opposing the writ petition and contended thus:

(a) The District Collector, Chittoor vide proceedings in Rc.No.E5/9839/2012 dated 22.07.2014 ordered the 2<sup>nd</sup> respondent to inspect the site of the Government High School and Government Junior College, Santhipuram along with Tahsildar, Santhipuram and submit report on sparing of 12 feet vacant land of the Government educational institutions in order to restore Cart Track in Sy.No.120/4 in Gudisettipalle Village. Pursuant to the said order, the 2<sup>nd</sup> respondent instructed the 6<sup>th</sup> respondent vide proceedings in Rc.No.5455/B3/2014 to inspect the site along with the respondents 5 & 7. Accordingly, the 6<sup>th</sup> respondent inspected the site along with respondents 5 & 7 and submitted his report vide letter in Rc.No.247/DYEO/CTR/2014 dated 06.08.2014. They submitted the report on the non-feasibility of sparing of land to lay Cart Track as the petitioner claimed the Cart Track without any legal right.



(b) It is submitted that the petitioner purchased the agricultural land nearby the Government High School, Santhipuram and Government Junior College, Santhipuram. Prior to his purchase of the land, already the school and college were established under Government sector in Sy.Nos.120/5 and 120/6. The Government have constructed educational institution which covers an extent of Ac.0.17 cents of the Government land and not belonging to the petitioner. The Government have established the High School and Junior College to cater the needs of public during the year 1998 by alienating the land in Sy.Nos.120/4 and 120/6 since the public was not using the said land for Cart Track purpose. At the time of alienation of the land and construction of the school and college, no one has objected and the public have cooperated for establishment of the school. Thus, the claim of the petitioner is nothing but to fulfill his personal ends.

(c) It is further submitted that sixteen years after the establishment of the school, the petitioner has purchased the land in Sy.No.120/2 and started demanding to provide Cart Track in Government land. No other agriculturist has demanded the restoration of old government track. At present the villagers are using Cart Track through Mattam Road. The Tahsildar, Santhipuram in consideration of the request of the petitioner, has conducted survey in Sy.Nos.120/4 and 120/6 and sent the proposal to 3<sup>rd</sup> respondent to spare 12 feet width approach road in the land between High School Building and Junior College building. The 3<sup>rd</sup> respondent in L.Dis.No.E5/4190/11 dated 09.05.2011 directed the 5<sup>th</sup> respondent to approach and get permission of the 2<sup>nd</sup> respondent to provide such a Cart Track. The 5<sup>th</sup> respondent has submitted said fact to 2<sup>nd</sup> respondent in his letter No.B/93/2011 dated 09.07.2012. The 2<sup>nd</sup> respondent in his turn vide proceedings No.B/93/2011 dated 09.07.2012 has accorded permission to 7<sup>th</sup> respondent for providing Cart



Track. However, the Chairman of the School Education Committee and public have opposed the decision to provide cart track in between the school and college building. The petitioner has entered school premises on the night of 20.10.2012 with JCB and demolished some part of the compound wall and cut down some trees in order to provide cart track in the Government land as against the decision of the Chairman of the School Education Committee. The Head Master of the Government High School made a complaint against the petitioner in Rallabudugur Police Station, Santhipuram Mandal, Chittoor District on 21.10.2012. The Sub Inspector of Police, Rallabudugur registered FIR No.69/2012 dated 21.10.2012 and the case is under investigation. The public revolted against the demolition of the school compound. Consequent to the incident, the 2<sup>nd</sup> respondent in his proceedings No.6492/B3/2012 dated 21.10.2012 has issued instructions to the Head Master, Government High School, Santhipuram and Mandal Educational Officer, Santhipuram not to take further action in providing cart track in between the school and college building and protect the school land. It is further submitted that the 4<sup>th</sup> respondent in his letter No.B1/9516/2012 dated 31.05.2013 submitted report to 3<sup>rd</sup> respondent to take steps to provide cart track in between the school and college building. In turn, the 3<sup>rd</sup> respondent in his letter in Roc.No.E5/9839/2012 dated 01.07.2013 directed the 2<sup>nd</sup> respondent to inspect the land and submit his report. The 2<sup>nd</sup> respondent asked 6<sup>th</sup> respondent in his proceedings in Rc.No.5455/B3/2013 dated 31.07.2014 instructed him to visit the school and submit his report. The respondents 6 & 7 visited the school on 02.08.2014 and submitted their report vide letter No.247/DYEO-CTR/2014 dated 06.08.2014. The 2<sup>nd</sup> respondent in his letter in Rc.No.5455/B3/2013 dated 14.08.2014 has submitted report to 3<sup>rd</sup> respondent stating that it is not possible to provide cart track in between the Government High School and Junior College,





Santhipuram since the students, Villagers and Chairman, School Education Committee have expressed that if the path is provided to him, there will be much disturbance to the school and college. It is further submitted that the villagers are not demanding for restoration of the cart track and no grievance was expressed by them on account of construction of the school building, except the petitioner for his personal needs. All the villagers and cultivators are utilizing the existing cart track from Mattam Road and every cultivator using the said Mattam road leading to fields and cultivating their lands except the petitioner. The Head Master and Chairman of the School Education Committee have stated that in case the petitioner's request is considered, it will be very difficult to conduct classes in peaceful atmosphere and there is a possibility of disturbance from anti social elements also. Hence, the writ petition may be dismissed.

4. The petitioner filed reply against the counter of 2<sup>nd</sup> respondent. It is stated that even according to the 2<sup>nd</sup> respondent, he addressed letter in Roc.B/93/2011 dated 09.07.2012 to the M.E.O, Santhipuram Mandal intimating about granting of permission for providing cart track to a width of 12 feet through the land in between the High School and Junior College buildings. As such, the 2<sup>nd</sup> respondent cannot now contend that cart track cannot be given. It is further submitted that there is absolutely no difficulty in providing cart track in between the school building and junior college building. If the adjoining Highway is not causing disturbance for the functioning of the school and college, the cart track also cannot be said to be the source of disturbance.

(a) It is further submitted that the school and junior college buildings were constructed encroaching upon the existing age old cart track with a promise to the



affected farmers that they would be provided alternate cart track in between the two buildings. The farmers believing the promise of the authorities, kept quiet when the cart track was encroached. The petitioner is concerned, he purchased the land from his vendor A.M.Gangappa S/o. Munaswamy on 10.02.2011. His vendor has informed him that the cart track will be provided through the vacant land lying in between the school building and the junior college building. On such information, the petitioner purchased the land. Added to it, the report of the revenue authorities established that there was an age old cart track existing in Sy.No.120/4. In fact, the 2<sup>nd</sup> respondent accorded permission for providing alternate cart track in between the high school and junior college building vide letter dated 09.07.2012. Now, the 2<sup>nd</sup> respondent cannot take U turn and say that nobody except the petitioner is claiming the cart track. The report dated 31.05.2013 of the 4<sup>th</sup> respondent to 3<sup>rd</sup> respondent clearly shows that the buildings were constructed encroaching upon the cart track existing in Sy.No.120/4 and it is causing inconvenience to the petitioner as well as other Ryots to reach their respective fields and also to reach Kuppam – Palamanair main road.

(b) The counter allegations that the public opposed to provide alternate cart track through the land in between school and college buildings is false. It is also false to allege that the petitioner trespassed into the school premises on 20.10.2012 and demolished compound wall with JCB. On the other hand, the Head Master filed a false complaint against the petitioner and the petitioner takes steps for quashing the FIR. The report of the Sub-Collector, Chittoor dated 31.05.2013 and the report of the Deputy Education Officer, Chittoor dated 06.08.2014 would clearly show that the compound wall was demolished by the school authorities for the purpose of facilitating the Rig mounted vehicle to enter the compound to dig a



bore well. The petitioner did not demolish the compound wall. The closure of the age old cart track causes much hardship to the petitioner and others.

Hence, the writ petition may be allowed.

5. Heard Sri D.Krishna Murthy, learned counsel for petitioner, and Sri K.Raghuveer, learned Government Pleader for Higher Education representing the respondents 1, 2 and 6 to 8.

6. Sri D.Krishna Murthy, learned counsel for petitioner would strenuously argue that the petitioner purchased Ac.1.18 cents of land in Sy.No.120/2 of 28, Gundisettipalle Village and abutting to this land there was Government land in Sy.Nos.120/5 and 120/6 wherein a Cart Track was in existence from time immemorial which was used by the cultivators to reach their lands from the village. Subsequently the Government have alienated land in Sy.Nos.120/5 and 120/6 to the Zilla Parishad, Chittoor District for construction of High School and Junior College and accordingly, while constructing the Junior College and High School, about Ac.0.17 cents of the Cart Track was encroached and a compound wall for the High School and Junior College was constructed and thereby the petitioner and other cultivators have been suffering a lot, for, they do not have other way to reach their lands. Learned counsel while denying the counter allegations that none of the villagers have ever raised any objection except the petitioner after 16 years, would submit that in fact when the school and college were under construction, the villagers of Santhipuram village have raised objection that the raising of buildings would intercept the Cart Track. On that the officials have promised that sufficient space would be left in between the school and college building to pave way for Cart Track for its smooth user by the public. On such promise only the villagers have not taken any legal action against the



construction of school and college. In that view and as the public have every right to use every inch of the public way the officials cannot efface the same even for the alleged public purpose. He would submit that public way has to be maintained for all the time for the user of the public and there can be no second thought about it. To buttress his argument he relied upon **Brothers Service Station (Indian Oil Dealer) rep. by its Managing Partner G.S.Narayana v. Vijayawada Municipal Corporation, rep. by its Commissioner<sup>1</sup>** and **Gadde Venkata Lakshamma v. The State of Andhra Pradesh<sup>2</sup>**.

7. In oppugnation, learned Government Pleader for Higher Education Sri K.Raghuveer would argue that the land in Sy.Nos.120/5 & 120/6 is a Government DKT patta land. On the western side of this land Kuppam – Palamanair main road is situated. To the eastern side of the Government land, the land covered by Sy.No.120/2 is situated. To its further east the land covered by Sy.No.120/4 is situated. He would submit that in the year 1987 the Government have sanctioned Government High School for the convenience of students of Santhipuram and surrounding villages vide G.O.Ms.No.555. The Government allotted an extent of Ac.1.56 cents in Sy.No.120/5 and Ac.0.95 cents in Sy.No.120/6 for construction of school building, playground and Junior College. In the year 1998, school building and junior college were constructed and compound wall was also constructed around them.

(a) Learned Government Pleader would further submit that Sy.No.120/2 is concerned, the present writ petitioner purchased Ac.1.18 cents in the year 2011. Long prior, the entire land in Sy.No.120 was vacant and lying between Mattam Village and Kuppam – Palamanair Highway road. As such the cultivators in order

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<sup>1</sup> 2016 (5) ALT 5

<sup>2</sup> MANU/AP/0742/2021



to reach their lands abutting to the Kuppam – Palamanair road, were taking their carts from Mattam village through the said vacant land and gradually a Cart Track was formed in Sy.Nos.120/4, 5 & 6. Since the Government had not put in use the land in Sy.Nos.120/5 and 120/6, it acquiesced the act of the villagers. However, the Government have neither declared the used cart track as a public rasta nor took up maintenance activities treating it as a public road. He would reiterate that the Government just did not object public using a part of the land in Sy.Nos.120/5 & 6 as a Cart Track since the said land was not otherwise used. However, considering the request of the local elders and representations of the politicians of the Santhipuram Mandal, the Government have alienated the land in Sy.Nos.120/5 & 6 in favour of 8<sup>th</sup> respondent for construction of High School and Junior College and accordingly, High School and college buildings were constructed in the year 1988 and those buildings and the appurtenant land were enveloped with the compound wall all around. None of the public belonging to the Gunjarlapalle village and other surrounding villages of Santhipuram Mandal raised any objection for allotment of the land in Sy.Nos.120/5 & 6 for construction of the buildings and subsequent construction of compound wall and thereby totally closing the so-called cart track. On the other hand, the public having known that they have no authority to claim right of way on one hand and that after a long time they got High School and college, did not make any protest for closure of the so-called cart track. He would thus emphasize that since 1998 the right of easement if any was extinguished. He would further submit that the petitioner purchased Ac.1.18 cents in Sy.No.120/2 only in 2011 i.e., long after the Cart Track was closed. He would argue that the conduct of the public would show that they abandoned the alleged right of easement if any in the year 1998 itself. The petitioner who purchased the land in 2011 i.e., long after the aforesaid incidents cannot claim any right over the



extincted easement. Therefore, the present writ petition is devoid of merit either on facts or in law and the citations relied upon by the petitioner have no relevancy. He thus prayed to dismiss the writ petition.

8. The points for consideration are as under:

**(1) What is the nature of the legal right if any exercised by the public in the subject Cart Track?**

**(2) Whether the petitioner is entitled to seek for restoration of the Cart Track after a long lapse of 16 years of its closure?**

**(3) To what relief?**

9. **Point No.1:** Unlike the Laissez Faire oriented State, in a welfare State, the Government performs multi tasks for achieving the welfare of the public. Not confining itself to protect the nation against external aggression, looking after the foreign trade and laying the foreign policies, minting currency, legislating laws, a welfare State undertakes vibrant spectrum of activities. It creates the infrastructure like building the Dams, Ports, Railway Stations, setting up industries, commissioning Education Institutions, Hospitals, generating employment, taking care of education, health, recreational facilities of its citizens and so on. To perform all these activities effectively, the Government at various levels, such as Panchayat, Municipality, Corporation and State, acquires properties such as natural resources and national wealth and maintains the same. The legal rights of the public, *qua* the aforesaid assets in the hands of the State, are broadly of two types.

(a) **Dedicated public property vis-à-vis Doctrine of Public Trust** : First type is concerned, the State sometimes dedicates certain properties at its disposal to public for their use. For instance, it lays roads, constructs bridges and Flyovers for passage of the public; it constructs hospitals, Government offices for discharging various public works; creates parks, museums, libraries and other resorts and



throws open to the public. In such instances, concerned assets or properties in the eye of law will belong to the citizens of the nation but vest in the State for due maintenance. The State holds such properties under the *Doctrine of Trust*. For instance, if a National Highway is constructed and dedicated to public, the members of public are considered to be the collective owners of the surface and the sub-soil whereas the said Highway vests in the concerned department of the State for proper maintenance as per the statutory rules. The public will have a right over every inch of the property for their use, subject to the regulations laid down by the concerned authority. Thus, in case of dedication of a property to the public for its use, the public will be considered as owners under law and the question of easementary right at such instance does not arise since there will be no *dominant and servient heritages* in it.

**10.** The conceptual difference between England and India, relating to the nature of the right exercised by the public over the public properties, particularly, public highways has been extensively dealt with in the case of **C.S.S. Motor Service, Tenkasi v. The State of Madras**<sup>3</sup>. In that case, the High Court of Madras was *inter alia* dealing with the prime question as to whether the citizen is entitled to ply transport vehicles for hire on public streets as a matter of right protected by Article 19(1)(g) of Constitution of India as contended by the petitioners or was it only a privilege but not a right falling under the said Article as contended by the respondents. In that context, the Division Bench speaking through Justice Venkatarama Ayyar, had comprehensively dealt with the aspect of right of way of the public with reference to England and India. It recorded the contentions of the respondents that public pathways vest in the State and the only right of the citizen over them is to *pass and re-pass* and the State as their owner, has a right to control

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<sup>3</sup> AIR 1953 Mad 279 = MANU/TN/0155/1953



their use in such a manner as they decide and that no citizen can claim a right to carry on business there except to the extent that the Government might permit. The Division Bench also recorded the traverse reply of the petitioners quoting passages from Halsbury's Laws of England, Vol.16, Page 185 to argue that the right over the Highways as dealt with in England in feudalistic manner to the effect that Crown has always been the owner of the highways and they were being used by the public to *pass and re-pass*, was not the common law of India. The petitioners cited **Municipal Commissioners of Madras v. Sarangapani Mudaliar**<sup>4</sup>, wherein it was observed thus:

"The English maxim '*once a highway always a highway*' is based on the theory that the property in a highway is in the owner of the soil subject to an easement in favour of the public. In the case before us, this legal fiction peculiar to English Law cannot arise, for there is no question of any easement whatever. The street itself and the soil thereof is vested in the municipality in trust for the public, so that there is no question of dominant or servient heritage."

Considering the above arguments, the Division Bench so far as people's right over the public streets and roads is concerned, observed thus:

"**24.** The true position is that all public streets and roads vest in the State but that the State holds them as trustee on behalf of the public. The members of the public are entitled as beneficiaries to use them as a matter of right and this right is limited only by the similar rights possessed by every other citizen to use the pathways. The State as trustees on behalf of the public is entitled to impose all such limitations on the character and extent of the user as may be requisite for protecting the rights of the public generally.....xxxx."

**11.** Again in the case of **Fomento Resorts and Hotels Ltd. v Minguel Martins**<sup>5</sup> when the construction of a Hotel blocked the way of people of Panaji to the Beach, the Supreme Court happened to expound the Doctrine of Public Trust.

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<sup>4</sup> 19 Mad 154

<sup>5</sup> MANU/SC/0063/2009 = (2009) 3 SCC 571





Referring to various decisions on the subject, the Apex Court, held thus:

“40. We reiterate that natural resources including forests, water bodies, rivers, sea shores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the Court can invoke the public trust doctrine and take affirmative action for protecting the right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural ecosystems.”

12. In **Movva Butchamma v. Movva Venkateswararao**<sup>6</sup>, a Division Bench of the High Court of Andhra Pradesh was dealing with the issue whether availability of enough space on the public street to afford a passage to men, cattle and carts despite the obstructions placed by the defendant could be a ground to deny the mandatory injunction for removal of obstructions. In that context, the Division Bench has observed thus:

“5. It is therefore clear that once a highway, the whole and every part of it is a highway and public right of way extends over every inch of the highway. A B C D having been found to be public street the defendant was not entitled to place any obstructions in plots 2(a) and 3(a) which were part of the public street. The defendant cannot be heard to say that the obstructions placed by him cannot be removed so long as he has left a men, cattle and carts to go. As we have said, the right of the public to pass and repass extends over every inch of the manner restrict the right and compel the plaintiff to confine herself to a part of the street of the choice of the defendant. The plaintiff is clearly entitled to the mandatory injunction for removal of obstruction and as rightly pointed out by Mr.Suryanarayana the permanent injunction granted by the lower Courts cannot have its full effect unless the mandatory injunction is granted too.”

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<sup>6</sup> MANU/AP/0048/1969 = AIR 1969 AP 136



**13.** In the case of **K.Sudarsan v. The Commissioner, Corporation of Madras**<sup>7</sup>, a learned single Judge of the High Court of Madras was dealing with the batch of writ petitions seeking mandamus directing the authorities to remove the hawkers and peddlers from Ranganathan Street, Madras 17 and also the pavements to render them free from obstruction for vehicles and pedestrians from access to the petitioners' shops. In that context, after referring several decisions, learned Judge enunciated certain principles regarding the rights of the public over the highways and public streets thus:

“**19.** From the above decisions the following principles emerge. Every member of the public has got a right to pass and repass over a highway or a public street. The said right of the public is a right to pass along the highway for the purpose of legitimate travel, not to be "on it" except to the extent their presence is attributable to a reasonable and proper user of the highway as such. The right of the public to pass and repass extends over the whole width of the highway or the street, in other words, over every inch of the street. A member of the public cannot be compelled to confine himself to a part of the street at the choice of another. The owner of a property adjacent to a highway or a public street has got a right of access to such highway or street at any point at which his land actually touches it. His right of access from his premises to the highway and vice versa is a private right. However, his right to use such highway or public street as soon as he is "on the highway" or the public street becomes a public right.....xxx.”

**14.** Thus, the above jurisprudential jurimetric would tell us that if a particular property i.e., to say a Highway or a public street is dedicated as such to the public by the State, then the public will have a right to pass and re-pass and make other lawful use over it. The property vests in the State under the Doctrine of Trust for its maintenance or upkeep and regulate the use by issuing certain rules. The above is the law if a particular property is notified and dedicated by the State as a public street or highway and thrown open to the public.

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<sup>7</sup> MANU/TN/0202/1984 = AIR 1984 Mad 292



**15. Easementary right** : There is a second type of right which the public will acquire over the property of the State which is not dedicated for public use. That right is an easement by way of prescription. If a Government property, let us say, land is not dedicated to public for any particular purpose, but preserved for future use and in the meanwhile, the members of the public for the beneficial enjoyment of their properties used the Government land in the manner of open, continuous and adverse [nec vi, nec clam, nec precario] to the interest of State for a prescribed period, the public will acquire easementary right over that Government land by prescription. Section 15 of the Indian Easements Act, 1882 deals with this right. It reads thus:

**“15. Acquisition by prescription.**—Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years,

and where support from one person’s land, or things affixed thereto, has been peaceably received by another person’s land subjected to artificial pressure or by things affixed thereto, as an easement, without interruption, and for twenty years,

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, support or other easement shall be absolute.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.”

*Explanation I.*—Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

*Explanation II.*—Nothing is an interruption within the meaning of this section unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorising the same to be made.

*Explanation III.*—Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

*Explanation IV.*—In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage.

When the property over which a right is claimed under this section belongs to [Government] this section shall be read as if, for the words “twenty years”, the words “[thirty years]” were substituted.”



(a) As can be seen, '*right of way*' is one such type of easements that can be acquired by the public over the Government land by an uninterrupted enjoyment of 30 years. People will be the dominant owners and Government will be the servient owner or servient heritage. The marked difference between first type of right and second one is that in the first category, the Government makes the dedication of a property for public use, whereas, in the second type such a dedication is absent but the Government by its acquiescence for the prescribed period of 30 years, concedes the right of easement to the public. In the light of such distinction, it has now to be seen what is the nature of the legal right, if any, was exercised by the public of Santhipuram and surrounding villages over the subject Cart Track.

**16.** In the above context, I bestowed my anxious consideration to the pleadings and material papers filed by either party. Pleadings are concerned, it is the prime case of the petitioner that a Cart Track has been in existence in Sy.Nos.120/4 and 120/6 of the Government land from time immemorial to reach the agricultural lands of the villagers. The said Cart Track was recorded in the village map also. It is his further plea that due to construction of High School and Junior College by encroaching upon a part of existing Cart Track, there is no other way to approach the agricultural fields and thereby the petitioner and other villagers are suffering great inconvenience. It should be noted that except pleading that there used to be a cart track, it is not his specific plea that the Government have dedicated the said track as a public street and took up its maintenance such as laying road, providing lighting and drainage facilities etc. to it. Even in his representation dated 11.04.2011 made to the District Collector, Chittoor / 3<sup>rd</sup> respondent, he only mentioned that he has Ac.1.18 cents in Sy.No.120/2 and a Cart Track was running from Mattam village to Kuppam – Palamanair highway road and in view of



construction of High School and compound wall across the Cart Track, the petitioner, whose land is only 100 feet away from the main road, could not able to use the Cart Track. He thus prayed to provide sufficient width of site through the school compound to enable the tractors to reach the Highway road. On his request, it appears, the Collector instructed the Tahsildar/5<sup>th</sup> respondent to conduct enquiry and submit report. The 5<sup>th</sup> respondent got surveyed the subject land through Mandal Surveyor who submitted his report. Basing on it, the Tahsildar submitted a report in Roc.A/93/2011 dated 27.04.2011 to 3<sup>rd</sup> respondent. He submitted that the petitioner's land of Ac.1.18 cents is situated in Sy.No.120/2 in Gundisettipalle Village. On its western side a Cart Track in an extent of Ac.0.40 cents was proceeding in Sy.No.120/4 in North South direction. He further stated that in an extent of Ac.0.95 cents in Sy.No.120/6 the Government school is in existence and compound wall was constructed around the school across the Cart Track. A part of the compound wall to an extent of 12 feet was removed by the school authorities for attending some repairs. It is stated that if the said gap in the compound wall is left, the Cart Track can be restored and for this purpose, the permission of D.E.O / 2<sup>nd</sup> respondent is required. Then on the instructions of 3<sup>rd</sup> respondent, the Tahsildar addressed letter to 2<sup>nd</sup> respondent seeking permission. Then the 2<sup>nd</sup> respondent in his letter dated 09.07.2012 to the M.E.O. / 7<sup>th</sup> respondent, on principle agreed to provide 12 feet width of the site in between the High School and college buildings for Cart Track.

**17.** While so, paralelly the Sub-Collector, Madanapalle / 4<sup>th</sup> respondent who was instructed by the District Collector, Chittoor to submit a detailed report on the report of 5<sup>th</sup> respondent, stated that he made an inspection and found that there was a Cart Track in Sy.No.120/4 and it was under the encroachment by the school and



college authorities by constructing a compound wall and recently a part of the compound wall was removed for arrival of bore well digging vehicle. The Sub-Collector opined that if the vacant land with a width of 12 feet is left by the authorities in between the college and school land for cart track purpose, it will be convenient for the petitioner and other ryots. He thus requested the Collector to instruct 2<sup>nd</sup> respondent to spare 12 feet vacant land by the school authorities. Subsequently, the 2<sup>nd</sup> respondent addressed a letter in Rc.No.5455/B3/2013 dated 14.08.2014 to 3<sup>rd</sup> respondent wherein he stated that the 6<sup>th</sup> respondent visited the school premises on 02.08.2014 in connection with the proposal of sparing Ac.0.40 cents to the petitioner and others for laying Cart Track and during the course of enquiry, students, teachers and parents have objected for granting permission to lay the Cart Track through the school and college premises on the ground that the peaceful atmosphere prevailing therein will be disturbed. The Chairman, School Education Committee, Santhipuram also disagreed with the proposal for restoration of the Cart Track and suggested to lay Cart Track outside the college compound towards Mattam village. The 2<sup>nd</sup> respondent thus requested 3<sup>rd</sup> respondent to drop proposals for restoration of the Cart Track.

**18.** Thus, above pleadings and correspondence would depict that a Cart Track was indeed in existence over the Government land between the Mattam village and Kuppam – Palamanair main road. It was not a dedicated and laid public street and not being maintained as such by the Government or the local bodies. On the other hand, while the Government set apart land in Sy.Nos.120/5 & 6 for future use, the people used to carry their carts through different survey numbers in Sy.No.120 including 120/5 & 6. Due to the acquiescence of the Government and the efflux of time an easement was created. Therefore, from the above facts and circumstances,



it can be concluded that the villagers of Santhipuram and other surrounding villages only enjoyed an easementary right over the Government land, but they have not enjoyed any right on a public street. This point is answered accordingly.

**19. Point No.2:** This point is concerned, admittedly the Government, by virtue of G.O.Ms.No.555, have sanctioned High School for Santhipuram and subsequently allotted an extent of Ac.1.50 cents in Sy.No.120/5 and Ac.0.95 cents in Sy.No.120/6 for school and college buildings and playground. In the year 1998, the buildings were constructed and a compound wall was also constructed around them and thereby the Cart Track through Sy.Nos.120/4, 5 & 6 was totally closed from 1998 onwards. Though it is contended by the petitioner that the villagers raised a protest and school authorities promised to provide Cart Track, but the fact remains that none of the villagers took up legal action in a Court of law for restoring the Cart Track. Be that it may, it appears, the petitioner purchased Ac.1.18 cents in Sy.No.120/2 in or around 2011 and gave representations for providing way for Cart Track through the school and college building and when ultimately his request was not fructified, he filed present writ petition in the year 2014. In this backdrop, whether he is legally entitled for restoration of extincted easement after 16 years is the prime question.

(a) Easement by prescription under Section 15 has some notable characters. Firstly, the person who claims easement must establish that he enjoyed such easement peacefully, uninterruptedly and as a right for 20 years (30 years against the Government). Secondly, however length of time a person may enjoy the easement it will not become absolute unless he establishes such enjoyment before a Court of law in a legal proceedings filed by him or by other party. Thirdly and most importantly, the claimant must establish the uninterrupted enjoyment of



easement for 20 years (30 years against Government) which period shall end within two years next before the institution of the suit. Meaning thereby, in case of obstruction the claimant shall institute the suit within two years and establish that he uninterruptedly enjoyed the easementary right for 20 years ending before the said two years.

**20.** (i) That the easement by prescription shall necessarily be declared by a Court of law is no more *res integra*. In **Sultan Ahmad v. Walliullah**<sup>8</sup>, the Allahabad High Court observed thus:

“3. It seems to me that the result of these findings is that the defence fails. The fifth paragraph of Section 15 of the Easements Act seems to render it impossible to acquire a statutory prescriptive title to an easement unless and until the claim thereto has been contested in a suit. The same has been held with reference to Sections 3 and 4 of the Prescription Act, 1832 [see the judgment of Lord Macnaghten in *Colls v. Home and Colonial Stores* (1904) A.C. 179 at p. 189 : 73 L.J. Ch. 484 : 90 L.T. 687 : 53 W.R. 30 : 20 T.L.R. 475 and *Hyman v. Van den Bergh* (1908) 1 Ch. 167 : 77 L.J. Ch. 154 : 98 L.T. 487. The circumstance that Section 3 of the Prescription Act relates to continuous easements only does not appear to affect the matter. The fifth paragraph of Section 15 of the Indian Easements Act applies to both continuous and discontinuous easements.”

(ii) Similar view was expressed by learned single Judge of the High Court of Madras in **Arjuna Udayar v. Munuswamy Naicker**<sup>9</sup>, wherein upon citing Goyle’s Law of Easements and Licenses – Second Edition 1996, learned Judge observed that the right of easement by prescription cannot be treated as absolute unless right has been contested.

(iii) In **Siti Kanta Pal v. Radha Gobinda Sen**<sup>10</sup> the High Court of Calcutta, considering Section 26 of the Limitation Act, 1908 (Section 26 is in *pari materia* with Section 25 of the Limitation Act, 1963) observed thus:

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<sup>8</sup> 17 Ind Cas 22

<sup>9</sup> (1998) III MLJ 537 = MANU/TN/1215/1998

<sup>10</sup> MANU/WB/0347/1928 = AIR 1929 Cal 542





“2. ....xxxx..... It has been authoritatively held that a title to easement is not complete merely upon the effluxion of the period mentioned in the Statute viz. 20 years and that however long the period of actual enjoyment may be, no absolute or indefeasible right can be acquired until the right is brought in question in some suit, and until it is so brought in question, the right is inchoate only and in order to establish it when brought in question, the enjoyment relied on, must be an enjoyment for 20 years upto within 2 years of the institution of the suit ....xxx.....”

(iv) In the same lines of **Siti Kanta Pal** (10 supra), the High Court of Allahabad in **Madan Lal v. Giri Lal**<sup>11</sup>, observed thus:

“4. ... xxx.... In view of the wording of this section (Sec.15), it cannot be said that enjoyment of an easement for any period of 20 consecutive years will create an absolute right-- the only period of 20 years' enjoyment that will do so is a period ending within two years next before the institution of a suit in which the claim to the easement is contested...xxx...”

(v) In **Pashmina Co-operative Housing Society Limited v. Subhash Amolakchand Gandhi**<sup>12</sup>, the High Court of Bombay, with regard to the need for filing the suit for establishing prescriptive easement and aspects to be considered therein, has observed thus:

“10 . The plaintiff must show the enjoyment of the easement of 20 years without interruption. The plaintiff must show the right of way. The period of 20 years is the period ending within two years next before the filing of the suit. The interruption contemplated in the first part of section must result in actual cessation of the enjoyment by the obstruction caused by the party contesting. This would be in a suit for claiming acquisition by prescription. (emphasis supplied)”

(vi) In **D.Ramanatha Gupta v. S.Razaack**<sup>13</sup>, the High Court of Karnataka observed thus:

9...xxx...An easement can be acquired by three known Modes: (1) by express or implied grant, (2) by user as of right for the statutory Period of 20 years under the Easements Act, i.e., by prescription and (3) by immemorial user

<sup>11</sup> MANU/UP/0064/1970 = AIR 1970 All 404

<sup>12</sup> (2015) 6 ABR 29 = MANU/MH/0499/2015

<sup>13</sup> MANU/KA/0136/1982 = AIR 1982 Kant 314



based upon the fiction of a lost grant. For the second mode of acquisition of easement under the Easements Act, it is necessary that the required period of 20 years or over must end within 2 years next before the institution of suit wherein the claim to the easement is contested. This necessarily implies that the right of easement by prescription under the Act cannot become absolute unless the right has been contested in a suit (emphasis supplied).”

**21.** The above judicial pronouncements extrapolate the statutory requirement of filing a suit to establish the prescriptive easement through a Court of law.

**22.** The next character is the time limitation within which legal proceedings have to be initiated to establish the prescriptive easement. Section 15 of the Easements Act lays down that 20 years period (30 years in case of Government) shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested. Section 25 of the Limitation Act which is in *pari materia* with Section 15 reads thus:

**“25. Acquisition of easements by prescription.—** (1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption, and for twenty years, and where any way or water course or the use of any water or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption and for twenty years, the right to such access and use of light or air, way, water course, use of water, or other easement shall be absolute and indefeasible.

(2) Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

(3) Where the property over which a right is claimed under sub-section (1) belongs to the Government that sub-section shall be read as if for the words “twenty years” the words “thirty years” were substituted.

*Explanation.—*Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorising the same to be made.”



**23.** Therefore, it is obvious that a suit for establishing the prescriptive easement shall be filed within two years of the obstruction caused to such easement. This aspect has been reiterated in a number of decisions.

(i) In **Badariya Madrassa Committee v. Antony Robert Breganza**<sup>14</sup>, when an action was brought four years after the obstruction of the easement, the Kerala High Court observed thus:

“**8** . Apart from the absence of such pleadings the finding of the trial court on the admitted facts reveals the following facts. The suit was filed only in 1987. In 1983 there was obstruction to the taking of vehicles at the instance of the defendants and Ext. B7 complaint was filed. The plaintiff also admitted that after 1983 till the filing of the suit that obstruction was never removed. Therefore even assuming that there was a right to take vehicles till 1983 it ceased to exist thereafter till 1987 when the suit was filed. Can it be said that "the right existed for twenty years within two years next before the institution of the suit" as required under Section 15 of the Act for the purpose of taking vehicles for which alone the entire 6 feet width of property is claimed. I think not.”

(ii) In **Arjuna Udayar** case (9 supra), the High Court of Madras considering the fact that the subject channel was obliterated in the year 1974 but the suit was instituted only in the year 1978 observed that as per the explanation to Section 15 of the Indian Easements Act, the suit must be filed within two years from the date of interruption and hence, the suit was barred and the plaintiff was not entitled to declaration sought for.

(iii) In **Anu Sundar v. Shiva Naraian Jaiswal**<sup>15</sup>, the High Court of Patna (Ranchi Bench) held thus:

“**23**. A plain reading of Section 25 of the Limitation Act shows that the suit ought to be filed within two years next from the date of the obstruction or discontinuance of that right which is claimed as an easementary right and the suit having not been filed within that period prescribed by Clause (2) of Section 25 of

<sup>14</sup> MANU/KE/0129/2006 = 2006 (2) KLT 636

<sup>15</sup> MANU/BH/0032/1988 = AIR 1988 Pat 216



the Limitation Act, it stands defeated and the suit must be held to be barred by law of limitation as laid down in Section 25(2) of the Limitation Act.”

**24.** Thus, the law pellucidly proclaims that an easement by prescription can be declared by a Court of law if the suit or legal proceedings are brought within two years from the date of obstruction of easementary right.

**25.** When the above law is applied to the case on hand, though admittedly a Cart Track was in existence over the Government land in Sy.Nos.120/4, 5 & 6 and villagers used the same for some period, there is no cogent material to establish that they enjoyed for a period of 30 years to claim easement by prescription. Even assuming that they enjoyed for 30 years, however, such easementary right was obstructed due to construction of school and college buildings and compound wall around them in the year 1998. As already stated, none of the villagers have instituted suit or other legal proceedings within two years from the date of obstruction for declaration of their easementary right. Therefore, their right to institute the suit is barred by limitation. The petitioner who is a subsequent purchaser of the land in Sy.No.120/2 around 2011 cannot have a better claim than his vendor whose right was already barred. No fresh period of limitation accrues to him. Hence, I find considerable force in the argument of the learned Government Pleader for Higher Education that the writ petition is belatedly filed 16 years after cessation of the easementary right and thus, not maintainable. It is needless to emphasize that Writ Courts loath to grant a relief when the writ petition is filed after a statutory period of limitation or after a long lapse of arising cause of auction vide **Veeraye Ammal v. Seeni Ammal**<sup>16</sup>, **K.V.Rajalakshmaiah Setty v.**

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<sup>16</sup> 2002 (1) SCC 134 = MANU/SC/0667/2001



**State of Mysore<sup>17</sup>, The Printers (Mysore) Ltd. v. M.A.Rasheed<sup>18</sup>, Prabhakar v. Joint Director Sericulture Department<sup>19</sup>**. Therefore, in my considered view, this writ petition does not merit consideration.

26. The decisions cited by the petitioner will not help his case. In **Brothers Service Station** (1 supra), the facts are that the subject road called Benz Circle road is a public road in Vijayawada Municipal Corporation. While so, at its some portion, when the Municipal Corporation proposed to construct Sulabh complex, the writ petitioners objected on the ground that the proposed construction was going to narrow the public road to a width of 15 to 20 feet resulting in a bottleneck at the relevant spot. It is in that context a learned single Judge of this Court having agreed with the contention of the petitioners that citizens have right to pass through public road and can make use of every inch of it for ingress and agrees and though public street vests in the Municipal Corporation, it has only the right to manage and maintain the same but cannot raise any structures, allowed the writ petition and directed the Municipal Corporation, Vijayawada to remove the Toilet Complex constructed at the subject spot. However, in the instant case as already stated, the subject Cart Track was not a dedicated public street and villagers never exercised any right over it as a public street. Further, unlike in the cited decision, the villagers have not brought any legal proceedings while the construction of the building and the compound wall was under way or immediately thereafter.

27. In **Gadde Venkata Lakshamma v. The State of Andhra Pradesh<sup>20</sup>** also the facts are different. There is a Donka poramboke leading from Kondapur to Kavali in Nellore District over which a black topped public road of 20 feet width

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<sup>17</sup> AIR 1967 SC 993 = MANU/SC/0275/1966

<sup>18</sup> (2004) 4 SCC 460 = MANU/SC/0307/2004

<sup>19</sup> 2015 (15) SCC 1 = MANU/SC/1041/2015

<sup>20</sup> MANU/AP/0742/2021



was laid about 50 to 60 years back. In between the petitioner's land and black topped road, there is a road margin which is used by the petitioner and others for ingress and egress to reach their lands. When the Tahsildar proposed to assign the site earmarked as road margin to the 5<sup>th</sup> respondent and his henchmen as house site, the petitioner filed the writ petition. The learned Judge of this Court relying upon the Supreme Court judgment in **Jagpal Singh v. State of Punjab [Civil Appeal No.1132/2013 @ SLP No.3109/2011]** held that even if the land is vested with the Government, it does not mean the villagers lost the right of common usage which they are entitled for protection. As already stated in that case the subject property was a road margin of the public street which was used by the petitioner and others for more than 15 years. In that context, writ petition was allowed. Further, unlike in the instant case, there was no cessation of right for a long period.

**28.** It should be noted that the initial approval of 2<sup>nd</sup> respondent to spare 12 feet to restore the Cart Track and later reverting back from his proposal in view of the objection by the students, teachers, parents and School Education Committee will not create any legal right to petitioner, for restoration of Cart Track, inasmuch as, he has no legal right to make any claim.

**29.** Thus, on a conspectus of facts and law, I find no merits in the writ petition.

Accordingly, this writ petition is dismissed. No costs.

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

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**U.DURGA PRASAD RAO, J**

13.06.2022  
MVA