

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

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

&

HON'BLE MR. JUSTICE D.V.S.S. SOMAYAJULU

W.P (PIL) Nos.108 of 2022; W.P (PIL) Nos.29, 218 & 334 of 2017; W.P.Nos.33722 of 2017 and 37098 of 2018; W.P.(PIL) Nos.121, 151, 163 of 2019; W.P.No.3535 of 2019; W.P. (PIL) Nos.227, 299 of 2020; 128, 139, 142, 148, 157 & 165 of 2021; W.P.No.25115 of 2021; W.P.(PIL) Nos.3, 16, 19, 51, 105, 110, 146 of 2022, W.P.No.32177 of 2022 and W.A.No.546 of 2022.

(Through physical mode)

ORAL ORDER (COMMON)

Dt:20.10.2022

(per Prashant Kumar Mishra, CJ)

1. These writ petitions, except W.A.No.546 of 2022, have been filed aggrieved by the inaction of the State and its authorities in removing the encroachments over the subject government lands viz., tank lands and road poramboke.
2. W.A.No.546 of 2022 has been preferred against the order dated 05.05.2022 passed by the learned single Judge in W.P.No.6987 of 2022 directing the respondents therein to stop all further constructions and to remove the constructions made for the Grama Sachivalayam and Rytu Bharosa Kendram at the earliest and also directing respondent No.4 therein to ensure restoration of the tank.

3. Since the issue involved in these cases is common, they are heard together and are being disposed of by this common order.

4. The issue of encroachment of government lands/public utility lands vested in the State, which are meant for common benefit of individuals, was considered in detail by the Hon'ble Supreme Court in **Jagpal Singh v. State of Punjab** reported in **(2011) 11 SCC 396**, while dealing with a case of encroachment of village pond. In the said judgment, the Hon'ble Supreme Court, having noted its earlier decisions in **M.I. Builders (P) Ltd. v. Radhey Shyam Sahu** reported in **1999 (6) SCC 464**; **Friends Colony Development Committee v. State of Orissa** reported in **2004 (8) SCC 733** and **Hinch Lal Tiwari v. Kamala Devi** reported in **AIR 2001 SC 3215** (followed by the Madras High Court in **L. Krishnan v. State of Tamil Nadu [2005 (4) CTC 1 Madras]**), issued the following directions as contained in paragraph 22 of the judgment, which reads thus:

"22. Before parting with this case, we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose, the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the

Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land."

5. It is to be noted that pursuant to the aforesaid directions issued by the Hon'ble Supreme Court, the State Government of Andhra Pradesh framed the Andhra Pradesh Gram Panchayats (Protection of Property) Rules, 2011 (for short, 'the Rules of 2011'), notified vide G.O.Ms.No.188, Panchayat Raj & Rural Development (Pts.IV) Department, dated 21.07.2011. The said Rules provide for the procedure to be followed for protection of Gram Panchayat properties and eviction of encroachments.

6. Despite the directions of the Hon'ble Supreme Court in **Jagpal Singh** (supra) as noted above and despite framing the Rules of 2011, no steps are taken by the authorities of the Gram Panchayat to protect the Gram Panchayat lands from encroachment, and similarly, no steps are being taken by the Government and its authorities in protecting the

government lands. As the public authorities are failing in their duties in protecting the government lands, which are meant for the common use of general public, despite bringing to their notice, public spirited persons are approaching this Court to intervene and direct the public authorities to protect the government lands from encroachments.

7. In identical matters i.e., W.P (PIL) No.140 of 2022 and batch, which were filed alleging inaction of the State and its authorities in protecting the government lands of different classifications, viz., tank land/grama kantham/burial ground/forest land/road margin/play ground/cart track/hill poramboke/coastal areas/grazing land etc., this Court placing reliance on the aforesaid judgment of the Hon'ble Supreme Court and the Andhra Pradesh Gram Panchayats (Protection of Property) Rules, 2011, issued the following directions:

(i) The executive authority, i.e., Panchayat Secretary, of the respective Gram Panchayats in the State shall identify the Gram Panchayat lands, which are unauthorizedly occupied/encroached, and take steps for removal of such encroachments by issuing notice and providing opportunity of hearing to the unauthorized occupants/encroachers in terms of the procedure prescribed in Rules of 2011. This complete exercise shall be done within a period of six months from today.

(ii) So far as the encroachments over the lands concerning the Municipalities/Forest Department/Revenue Department are concerned, even if no separate Rules have been framed prescribing the procedure to be followed in the matter of removal of encroachments over those lands, the officials of the concerned Departments, i.e., the Departments of Municipal Administration, Forest and Revenue, shall also undertake and complete the exercise of identification of unauthorized occupations/ encroachments over the lands belonging to their respective Departments, within a period of two months from today, and thereafter, take steps for removal of such encroachments by following the principles of natural justice, i.e., issuing notice and providing opportunity of hearing to the unauthorized occupants/ encroachers, within a further period of four months.

8. In view of the fact that the encroachments alleged in the present cases are over the tank lands/government land/road poramboke and the similar issue was dealt with in W.P. (PIL) No.140 of 2022 and batch, we deem it appropriate to dispose of these cases in terms of the judgment in W.P.(PIL) No.140 of 2022 and batch, with the following directions:

“(i) The executive authority, i.e., Panchayat Secretary, of the respective Gram Panchayats shall identify the Gram Panchayat lands/tank lands/road poramboke, which are unauthorizedly occupied/encroached, and take steps for removal of such encroachments by issuing notice and providing opportunity of hearing to the unauthorized occupants/encroachers in terms of the procedure prescribed in Rules of 2011. This complete exercise shall be done within a period of six months from today.

(ii) So far as the encroachments over the lands concerning the Municipalities/Forest Department/Revenue Department are concerned, even if no separate Rules have been framed prescribing the procedure to be followed in the matter of removal of encroachments over those lands, the officials of the concerned Departments, i.e., the Departments of Municipal Administration, Forest and Revenue, shall also undertake and complete the exercise of identification of unauthorized occupations/encroachments over the lands belonging to their respective Departments, within a period of two months from today, and thereafter, take steps for removal of such encroachments by following the principles of natural justice, i.e., issuing notice and

providing opportunity of hearing to the unauthorized occupants/ encroachers, within a further period of four months.”

9. With the above directions, the Writ Petitions and writ appeal are disposed of. No costs. Pending miscellaneous applications, if any, shall stand closed.

PRASHANT KUMAR MISHRA, CJ

D.V.S.S. SOMAYAJULU, J

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