

B. Veera Reddy Swamy Vs Station House Officer, Kolimigundla Police Station, Kurnool and another

Court: Andhra Pradesh High Court

Date of Decision: Nov. 15, 2000

Acts Referred: Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1960 â€” Section 2, 30(1), 4, 5(2), 6

Constitution of India, 1950 â€” Article 226, 25, 26

Penal Code, 1860 (IPC) â€” Section 120, 147, 148, 149, 302

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 â€” Section 3

Citation: AIR 2001 AP 136 : (2001) 1 ALD 9 : (2001) 1 ALT 83

Hon'ble Judges: V.V.S. Rao, J

Bench: Single Bench

Advocate: Mr. Raja Koneti, Mr. K. Muralidhar Reddy, Avds, for the Appellant; Government Pleader for Home, Mr. Nandigamu Krishna Rao, APTDC, for the Respondent

Judgement

1. In all these writ petitions, one B. Veera Reddy Swamy is the petitioner. He is aggrieved by the action of the respondents in interfering with his

alleged right and interest in "Belum Caves" situated at Belum village of erstwhile Koilkuntla Taluk in Kurnool District, which, after bifurcation, is

now within the Revenue jurisdiction of Kolimigundla Mandal. It is, therefore, proper to dispose of all the writ petitions by a common order.

2. Briefly stated, the facts relevant for considering the controversy raised by the petitioner are as follows: One Englishman Mr. Robert Bruce Foote

surveyed the Caves in Belum village in 1884, as recorded by Geological Survey of India, Calcutta, 1884. Extensive research was conducted by

that Englishman, which was followed by a survey to a length of 300 metres into the Cave by one Krishna Murthy in 1914. In 1981-82, a German

team of Geologists and in 1983-84 a Seismologist Herbert Daniel Gebauer explored the "Belum Caves" to a length of 3,225 meters. After this, the

Department of Archaeology, Government of Andhra Pradesh, so as to protect the Caves from vandalism posted a Watchman in 1985. The

petitioner claiming to be a spiritual person with unproved penance in Himalayas filed WP No.27648 of 1998 praying for a direction against Station

House Officer (SHO), Kolimigundla PS and the Circle Inspector of Police, Koyalakuntla, not to interfere with his alleged religious and spiritual

activities like "Pooja", religious discourses, allegedly being conducted in "Belum Caves" by the petitioner. He also sought an interim direction to the

police not to interfere with his alleged religious and spiritual activities. While admitting the writ petition on 6-10-1998, on the same day, this Court

granted interim direction for four weeks. Later, the same was not extended and, therefore, the petitioner approached this Court by way of a

petition being WP MP No.22404 of 1999 and sought the case to be listed for being mentioned. The said miscellaneous application was disposed

of by this Court as unnecessary, as "the interim order granted by this Court on 6-10-1998 was only for a period of four weeks and that interim

order stood expired on 6-11-1998". The matter was directed to be listed for final hearing on 14-3-2000.

3. The petitioner filed another writ petition being WP No.20012 of 1999 on 23-9-1999. In this writ petition, he stated that the Government filed

counter in WP No.27648 of 1998 stating that the Government of Andhra Pradesh issued a Notification vide G.O. Rt. No. 1847, dated 8-11-

1989 by declaring the "Belum Caves" as protected monuments under sub-section (3) of Section 4 of A.P. Ancient and Historical Monuments and

Archaeological Sites and Remains Act, 1960 (Act VII of 1960) ("the Act" for brevity), that the said provisions of the Act were not followed

properly and that no notice as contemplated u/s 4(1) and 4(3) of the Act was given to the petitioner. He sought for a declaration that the action of

the respondents in interfering with peaceful and religious and spiritual activities of the petitioner and his devotees to perform "Pooja", meditation,

religious discourses at "Belum Caves", without acquiring any right or power under the Act and the Andhra Pradesh Ancient and Historical

Monuments and Archaeological Sites and Remains Rules, 1961 ("the Rules" for brevity). This Court initially issued notice before admission on 24-

9-1999 and the matter was admitted on 18-8-2000 and was ordered to be listed along with WP No.27468 of 1998.

4. The third writ petition being WP No.21096 of 1999 is filed by the petitioner praying for a writ of mandamus declaring the action of the Revenue

and Police officials in locking the entrance gate of "Belum Caves" as illegal and for a consequential direction to the officials to open the entrance

gate to the "Belum Caves" and not to cause obstruction to religious and spiritual activities allegedly being conducted by the petitioner at "Belum

Caves". He alleged that the procedure contemplated under the Act is not followed by affixing the notification u/s 4(1) (preliminary notification) in a

conspicuous place near the proposed monument, that the petitioner was denied a right to submit objections to the Government, that the State

Government did not take any steps for communicating the GO and, therefore, "Belum Caves" have not been validly declared as protected

monument. The writ petition was filed on 7-10-1999 and the same was admitted on 8-10-1999 and on the premise that the notification u/s 5(2) of

the Act was not issued declaring the Director of Archaeology as the owner and guardian of the monument, this Court directed the Mandal

Revenue Officer, Kolimigundla (3rd respondent in this writ petition) to remove the locks of "Belum Caves". The Government came forward with

an application being WV MP No.3508 of 1999 praying to vacate the interim order dated 8-10-1999. Then, I directed the Office to post this

WVMP as well as other writ petitions for hearing.

5. After the matters were listed for hearing, the petitioner filed yet another writ petition being WP No.17817 of 2000 on 20-9-2000. The same

was admitted on 22-9-2000 and a direction was given to post the same along with WP Nos.20012 of 1999 and 21096 of 1999. In this writ

petition, the petitioner sought a declaration that the action of the respondents-Government, Commissioner of Archaeology and Museums, District

Collector, Mandal Revenue Officer and Station House Officer, - in not permitting the petitioner and his followers to perform Pooja and other

religious activities as illegal. He also sought for declaration that "Belum Caves" have not been properly described in the Annexure to preliminary

notification u/s 4(1) and final notification u/s 4(3) of the Act.

6. In all the writ petitions, the Government has filed counter affidavits. It is only necessary to refer to the counter affidavits filed by the

Commissioner of Archaeology and Museums and the A.P. State Tourism Development Corporation (hereinafter called "Tourism Corporation"),

which was impleaded as 8th respondent at their instance.

7. The summary of the contents in the counter-affidavit by the Commissioner as well as Tourism Corporation is as follows:- "Belum Caves" are

protected monuments as per the provisions of the Act. A notification u/s 4(1) of the Act was issued and published in A.P. Gazette No.24 Part-I

dated 16-6-1988 to declare "Belum Caves" as protected monument. The copy of the notification was sent to the office of the Director of

Archaeology for display in front of the "Belum Caves" and other conspicuous places in the village. The Registering Officer accordingly displayed

notification in front of the "Belum Caves". No objections were received by the Department within the time stipulated in the notification u/s 4(1) of

the Act. Therefore, a final notification under sub-section (3) of Section 4 was issued vide G.O. Rt. No. 1847, Education (A&M) Department,

dated 8-11-1989 declaring the "Belum Caves" as ancient monuments. The said declaration was published in A.P. Gazette No.V, Part-1, dated 1-

2-1990. After the declaration, proposals were sent to the Mandal Revenue Officer requesting to hand over the land in Survey No. 125

admeasuring Ac.90.00 where the "Belum Caves" are located, to the Technical Assistant of the office of the Registering Officer, Archaeology and

Museums. The possession was duly handed over and after that, the Department of Archaeology erected gates to the Caves and also engaged a

part-time Watchman. The said Watchman was removed as per the decision of the Government to remove all the part-time employees. When there

was no proper watch and ward staff near the gate, the petitioner who is a resident of Belum Singavaram village, which is adjacent village to Belum

village, gained access and entry into the Caves by breaking open the locks. The petitioner, it is alleged, has criminal history and he- is involved in

number of criminal cases u/s 302 of the Indian Penal Code and other offences. Crime No.84 of 1996 under Sections 147, 148 302 read with

Sections 149 and 120B IPC and Sections 3 and 5 of Explosive Substances Act, Crime No.17 of 1997 u/s 5 of Explosive Substances Act, Crime

No.76 of 1996 u/s 3(i)(x) of the SC and ST (Prevention of Atrocities) Act and Crime Nos.55 of 1999 and 169 of 1999 u/s 447 of the IPC and

Section 30(1) of A.P. Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1960, are pending against the petitioner, in

which he is shown as prime accused. In some of the cases, the petitioner was acquitted but other cases are pending. The petitioner, it is stated, has

suppressed these facts and approached this Court with unclean hands.

8. It is also stated that "Belum Caves" are situated at a distance of 2 kilometres on the western side of the village and the Caves are

archaeologically known as subterranean passages characterised by enormous sediments comprising clays, stalagmites, stalactites and limestone

forming breccisia and huge boulders with ripple marks. The earliest archaeological investigations brought to light specimens of Middle-Paleolithic

Tool Kit and Proto-historic Pot Shreds. It is a longest Cave passage so far discovered, running to a length of more than 2 kilometers.

Anthropologically, culturally and historically "Belum Caves" assume significant importance in the study of human kind. Therefore, "Belum Caves"

were declared as protected monuments. The respondents categorically denied the allegations of the petitioner that there are rock formations

resembling Hindu Gods and stated that there are no idols anywhere in the Caves. The petitioner himself installed idols after gaining entry into the

Caves and using it for storing explosives as found by the Mandal Revenue Officer.

9. The State Government has identified an extent of Ac.23-00 of land for the purpose of development of Tourism Centre as the Caves have the

distinction of being second biggest Caves in Asia. The land surrounding the Caves in Survey No.125 is a Government land and the petitioner has

no right. He tried to encroach into the Caves but he was removed by the officials. The respondent also denied the allegation that the petitioner

purchased an extent of Ac.5-20 cents in Survey No.124/1 and Ac.2-50 cents in Survey No.124/2 stating that these lands are adjacent to the

Caves and they are nothing to do with the "Belum Caves" in Survey No.125. The action of the Government in declaring the "Belum Caves" as

protected monuments is justified with reference to the provisions of the Act.

10. The counter affidavit filed by the Managing Director of Tourism Corporation discloses that Corporation is taking steps to make the Caves as a

place of tourist attraction and prepared a project for development of "Belum Caves" in the year 2000-2001. It is proposed to spend an amount of

Rs.74 lakhs, including the Central Government contribution of Rs.62 lakhs. The Caves is a natural geological formation in the nature's evolution

and, therefore, any activity of the petitioner in interfering with the Caves in the guise of religious and spiritual activity, would adversely affect the

environment and natural process.

11. The learned Counsel for the petitioner Sri K. Muralidhar Reddy submits that the petitioner has purchased the property including the Caves in

extent of Ac.7.70 cents in Survey Nos.124/1 and 124/2 from one Pratap Reddy. However, this line of argument is not pursued seriously. This is

having regard to the statement and the abundant unimpeachable documentary evidence placed before the Court that "Belum Caves" form part of

Survey No.124 and that the land allegedly purchased by the petitioner is adjacent to the Caves. Secondly, it is submitted by the learned Counsel

for the petitioner that preliminary notification u/s 4(1) and final notification u/s 4(3) of the Act suffer from incurable defects and are vitiated by

procedural ultra vires. Lastly, it is submitted that though the preliminary notification was issued in the year 1989, either the State Government or the

Director of Archaeology or the Tourism Corporation have not taken any steps. The petitioner being a resident of Belum Singavaram village, which

is adjacent to Belum village, is interested in the development of the area. It is only fair to observe that the learned Counsel for the petitioner has not

pressed the argument raised in all the writ petitions that the petitioner has a religious right to perform "poojas" and other religious activities in

"Belum Caves".

12. The learned Government Pleader and the learned Standing Counsel for the Tourism Corporation have placed reliance on various Notifications

and Mimeographs published by various authorities on "Belum Caves" and submit that "Belum Caves" have assumed greatest anthropological,

geological and historical importance being unique in their natural evolution and formation. Having the distinction of being the second largest natural

cave formation, there is a great potential for developing the area as a tourism centre. Therefore, besides taking action in the direction of protection

of the monuments "Belum Caves", the State Government has also entrusted the area to the Tourism Corporation by proposing to acquire about

Ac.25-00 of land surrounding the area. The petitioner who is a busy body and a meddlesome interloper has resorted to filing repeated writ

petitions before this Court and stalled any further development. When the interim orders expired in one case, the petitioner went on filing cases

after cases. The conduct of the petitioner entails in dismissing the writ petitions in limine.

13. Before considering the controversy as to the validity of the notifications issued under the Act, this Court is compelled to observe that the

conduct of the petitioner who claims to be a religious person is most untrustworthy and detestable. Writ after writ is filed for the same relief. Even

when three writ petitions were listed before me, another writ petition being WP No.17817 of 2000 was filed for similar relief. The table below

would disclose the same:

Writ Petition No. Date of Date on Date of Relief prayed for in the W.P.

filing of which Admission

the writ notice of the

petition before W.P.

Admission

issued

27648 of 1998 24-9- - 6-10- Mandamus to the respondents not to interfere with the

1998 1998 alleged religious and spiritual activities of the petitionet

at "Belum Caves".

20012 of 1999 23-9- 24-9-1999 18-8- Mandamus to the respondents not to interfere with the

1999 1999 alleged religious and spiritual activities of the petitioner

at "Betum Caves".

21096 of 1999 7-10- - 8-10- Mandamus declaring the action of the Revenue and

1999 1999 police officials in seizing the entrance gate of "Belurtt

Caves" and not to obstruct the petitioner from

conducting spiritual and religious activities including

"pooja" and meditation.

17817 of 2000 20-9- - 22-9- Mandamus declaring the action of the respondents in

2000 2000 not permitting the petitioner and his followers for the

purpose of performing spiritual activities of "pooja",

meditation etc.

14. The first writ petition is filed seeking a blanket relief against the Station House Officer and Circle Inspector not to interfere with alleged

possession and peaceful activities of the petitioner. Such a writ petition by the very nature of the prayer is not maintainable. It is well settled that

Article 226 of the Constitution of India is not a proper remedy to seek an injunction against the Police restraining them from discharging their

sacred duties of maintaining law and order. In the guise of enforcing fundamental rights under Articles 25 and 26 of the Constitution, no citizen has

any right to restrain the Police from maintaining and enforcing the law and order in the society. The writ petition is wholly misconceived and it is

liable to be dismissed with heavy costs.

15. The three other writ petitions basically seek a declaration that the alleged interference by the officials of Archaeological Department, Police

Department and Revenue Department as illegal. When the petitioner knew that "Belum Caves" are declared as protected monuments under the

provisions of the Act, the petitioner, instead of challenging the notifications directly, went on repeatedly seeking the same prayer of declaration not

to interfere with his religious activities and challenged the notifications under the Act collaterally. When the "Belum Caves" are declared as

monuments, the petitioner is not entitled to question the notifications either u/s 4(1) or u/s 4(3) of the Act in a collateral manner. Indeed, as on

today, the petitioner's contention is that his alleged religious activities cannot be interfered with unless "Belum Caves" are taken over by the

Registering authority under the Act in accordance with a valid notification declaring the "Belum Caves" as monuments and vesting the ownership

and guardianship in the Director of Archaeology. Therefore, in my considered opinion, the three writ petitions are not properly framed.

16. Be that as it may, having regard to the broad principles of writ jurisdiction that an improper prayer sought in a writ petition does not result in

dismissal only on that ground, I have also considered the question of validity of the notification dated 8-3-1989 issued by the Government u/s 4(1)

and the notification vide G.O. Rt. No.1847 dated 8-11-1989 issued u/s 4(3) of the Act. There is no substance in the submissions made by the

learned Counsel for the petitioner.

17. The Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1960, is an Act to provide for preservation of ancient and

historical monuments, archaeological sites and remains. Section 2(a) defines "ancient monument" as to mean any structure, erection or monument

or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archaeological or artistic interest

and which has been in existence for not less than one hundred years. The Report of Herbert Daniel Gebauer (1985) on ""Caves of India and

Nepal"" conclusively establishes that "Belum Caves" are of unique archaeological interest. The counter affidavit by the Commissioner of

Archaeological shows that the earliest archaeological investigations brought to light ""Middle Paleolithic Tool Kit"" and ""Proto-historic Pot Shreds"".

This averment is not denied by the petitioner, lending credence to the decision of considering the "Belum Caves" as having a greatest

archaeological importance besides unique geological importance. Therefore, the submission contrary to this cannot be countenanced.

18. Section 4 of the Act deals with the power of the Government to declare ancient monuments to be protected monuments and areas. Under sub-

section (1) Section 4, where the Government are of the opinion that any ancient monuments which are not included in the category of ancient

monuments under the provisions of Ancient Monuments Preservation Act, 1904 (Act 7 of 1904), Hyderabad Ancient Monuments Preservation

Act, 1337-F (Hyderabad Act VIII of 1337-F), are required to be treated as monument, they may, by notification in the Andhra Pradesh Gazette,

give two months notice of the Government's intention to declare such monument to be protected monument. The notification shall be affixed in a

conspicuous place near the monument. Under sub-section (2), any "person interested" in such ancient monument, may object within two months,

to the declaration of the monument as a protected monument. After the expiration of the two months, the Government may, after considering the

objections, filed under sub-section (2) of Section 4 by any person, declare by notification in the Andhra Pradesh Gazette the ancient monument as

a protected monument. Sub-section (4) of Section 4 attaches finality to the notification issued u/s 4(3), that is to say, when once a notification is

issued declaring an ancient monument as a protected monument that is final unless it is withdrawn. Section 5 deals with acquisition of rights in a

protected monument. As already observed by me, the petitioner does not seriously dispute the fact that "Belum Caves" belong to Government and

no private citizen can claim any right in or over the "Belum Caves". It is, therefore, not necessary to consider the submissions based on Sections 5

and 6 of the Act. In any event, be it noted that the "ownership" of the land pre-supposes the right to enjoy surface rights only. It is always

presumed in law that the sub-soil rights including the rights over the minerals vest always with the Sovereign. The vesting of the land in the

Sovereign takes within the expression "ownership" of surface rights as well as sub-soil rights whereas in the case of ownership by private citizen, it

only refers to surface rights in the soil and not in the sub-soil, unless contrary is proved. After referring with approval to the judgment of the Privy

Council in Secretary of State for India v. Srinivasachariar AIR 1921 PC 1, with approval, the Constitution Bench of the Supreme Court in State of

Andhra Pradesh Vs. Duvvuru Balarami Reddy, , held as under:

This decision thus establishes that the mere fact that a person is the holder of an inam grant would not by itself be enough to establish that the inam

grant included the grant of sub-soil rights in addition to the surface rights and that the grant of sub-soil rights would depend upon the language used

in the grant. If there are no words in the grant from which the grant of sub-soil rights can be properly inferred the inam grant would only convey the

surface rights to the grantee, and the inam grant could not by itself be equated to a complete transfer for value of all that was in the grantor.

19. Therefore, the sub-soil rights can stand vested only if they are granted by the Sovereign under valid law. In view of this, the allegation made by

the petitioner that he has been in possession and he is the owner of the "Belum Caves" is a mere illegal assumption of the petitioner and law does

not recognise such a right.

20. The learned Counsel for the petitioner submits that the preliminary notification u/s 4(1) was not affixed in a conspicuous place near the

monument and, therefore, the right to object for declaring the monument as protected monument given to the petitioner by the law is taken away.

The submission is devoid of any merit. Firstly, the allegation has been denied by a sworn affidavit by the Commissioner stating that after publication

of the preliminary notification, the same was sent to the Commissioner of Archaeology, who, through the Registering Officer, Department of

Archaeology and Museums, got affixed and that the entire village knew about this. There is no material placed before me by the petitioner to

controvert the same. Indeed, it is not even denied by filing a rejoinder. Secondly, the right to object under sub-section (2) of Section 4, in my

considered opinion, is given not to a third party or any citizen but to a person who claims to be owner of a protected monument, in which event the

provisions of Sections 5 and 6 apply. In this case, as observed by me, "Belum Caves" as being subterranean and sub-soil level, always in law

vested in the Government and the petitioner or the likes of him, who are not the owners, have no right to object for the declaration of the "Belum

Caves" as a monument. Therefore, this submission that the same is not affixed is factually and legally not correct and the same is liable to be

rejected.

21. It is nextly contended by the learned Counsel for the petitioner that the "Belum Caves" are situated in Belum Singavaram village in Kolimigundla

Mandal of Kurnool District. In the preliminary notification issued vide G.O. Rt. No.296 dated 8-3-1989 published in A.P. Gazette of the same

date as well as in the final notification vide G.O. Rt. No.1847 dated 8-11-1989 published in the A.P. Gazette, the "Belum Caves" are described

as "Belum Caves" of Belum village in Koilkuntla Mandal. Therefore, he submits that the notification is not properly issued and the same cannot be

treated as a valid notification. In the counter-affidavit filed by the Commissioner, it is stated that Belum Singavaram village and Belum village are

two distinct revenue villages separated by a distance of two kilometres. Though Belum village was initially in Koilkuntla Mandal as on the date of

Notification, after bifurcation, Belum village is within the Kolimigundla Mandal. I fail to understand as to how any objection can be taken based on

these facts. In any view of the matter, these are curable defects and it is always open to the Government, if necessary to issue necessary addendum

regarding the Mandal. The mentioning of Koilkuntla instead of Kolimigundla Mandal does not cause prejudice to anybody and, indeed, in all the

writ petitions the petitioner has arrayed the Mandal Revenue Officer of Kolimigundla Mandal only as a respondent and he is aware of the

bifurcation of Kolimigundla from Koilkuntla Mandal. There is no substance in the submission made.

22. No other submission is made by the learned Counsel for the petitioner.

23. In the result, all the writ petitions are dismissed with costs. The petitioner shall pay costs @ Rs.5,000/- in each writ petition to the Department

of Archaeology. The Government of A.P., Department of Archaeology and the A.P. State Tourism Development Corporation shall take all steps

to drive out all encroachers and anti-social elements from the area and implement the Tourism Development Project of the Tourism Corporation in

right earnest as expeditiously as possible.