

In the High Court of Judicature of Andhra Pradesh at Hyderabad

Water Users Association, Cuddapah

v.

The Government of A.P.

Writ Petition No. 20323 of 2000

06-02-2002 dd.

Sri V.V.S. Rao J.

JUDGMENT :

1. The Water Users Association, Thimmayagari Pally (for short 'the Association'), is the petitioner. The Association is recognized under the A.P. Farmers' Management of Irrigation Systems Act, 1997 (for short 'the Act'). The Association represented by its President has filed this writ petition complaining the action of the respondents in proposing to assign the land abutting/adjacent to Thimmaigari pally Irrigation Tank (for short 'the Irrigation Tank'), in Cuddapah District, on "ek saal" leases, as being illegal and contrary to A.P. Board Standing Orders as well as the instructions issued by the Government from time to time.
2. The Irrigation Tank in question is the source for irrigating about 400 acres of land. The members of the petitioner-association own extents of agricultural land, which form ayacut under the said Irrigation Tank. It is alleged that the harijans of Thimmayagari village sent representations to the respondents for grant of "ek saal" leases (lease of Government waste land for one year), and that basing on the said the representations, the respondents are proposing to assign pattas. As the representations made by the Association requesting the respondents not to grant "ek saal" pattas to any body, did not yield any result, the Association filed the present writ petition.
3. On 25-10-2000, this Court while ordering notice before admission, directed status quo as on that date to be maintained. The 7th respondent-Mandal Revenue Officer, on behalf of himself and respondents 1, 2 and 5 to 6, has filed counter-affidavit. Therefore, with the

consent of the learned counsel for the parties, the writ petition itself is taken up for final disposal at the stage of admission.

4. The 7th respondent, inter alia, in his counter stated that the writ petition is premature as no lease was granted to any of the villagers. The land or tank bed land, which is sought for assignment, is on the higher level of the tank, and when 135 harijan families made representations on 3-9-1997, the Assignment Committee passed a resolution for grant of lease subject to change of the classification of the lands. However, the proposals could not fructify as no orders thereon were passed. Again in the year 1993, a proposal was mooted for classification of land in question from tank bed poramboke to assessed waste in an extent of about 204 acres, which is above the maximum water level of the Irrigation Tank. The proposals sent by the Sub Collector were forwarded to the Executive Engineer, Irrigation Department. The Executive Engineer issued a "No Objection Certificate" on 29-5-2000 for assignment of tank poramboke land, which is above the maximum water level of the Irrigation Tank. The Superintending Engineer also gave similar "No Objection Certificates". The District Collector, thereupon sent proposals to the District Irrigation Board for grant of "ek saal" leases, the District Irrigation Board has not taken a decision so far. It is stated that by grant of "ek saal" leases, the area of the Irrigation Tank will neither get diminished nor the full tank level get reduced.

5. The Superintending Engineer, Irrigation Circle, Cuddapah, has filed a separate counter on behalf of the respondents giving technical details as regards the location of the Irrigation Tank. It is stated that the catchment area of the Irrigation Tank is three (3) Sq. Km., that it receives water during rainy season, and its water retaining capacity is very bleak, and the registered ayacut under the tank is limited to 78.15 acres.

6. The learned counsel for the petitioner-Association submitted that the action of the respondents in proposing to assign tank bed and the lands located within the vicinity of the tank, is illegal and contrary to the provisions of BSO 15(4). BSO 15(4) upon which, the learned counsel for the petitioner placed strong reliance reads:

BSO 15(4) Lands that may be assigned and that may not be assigned: -

(i) All lands at the disposal of the Government except those hereinafter prohibited may be assigned. The assignment of lands shall generally be free of market value except in the case of project affected lands in which case market value shall be collected.

(ii) The assignment of the following classes of lands is prohibited:

(a) Poramboke (tank beds, foreshore of tank bed cattle stands, grazing lands and reserved lands (reserved for depressed class members or for any public purpose, such as schools, playgrounds, hospitals, maternity centers, reading rooms and extension of house-sites, Panchayat purposes, town sites and lands in the proximity thereof.

(b) Land which has been occupied for 18 months and adjoins a reserve forest or an unreserved block of a square mile or more until the Collector has consulted the District Forest Officer and considered any objections, he may have to its assignment;

(c) Lands containing topes or valuable trees;

- (d) Lands within cantonment limits;
- (e) Lands reserved under Section 26 of the Forest Act;
- (f) Lands within port limits;
- (g) Lands near the sea coast within one furlong of high water mark of the sea;
- (h) Water course porambokes, namely, margins of channels, streams etc.;
- (i) Lands in the vicinity of aerodromes or landing grounds (i.e.) within a belt of 200 yards;
- (j) Lands containing minerals, quarries, etc.
- (k) Padugais i.e. land within the flood bank of rivers, lanka lands not held on ryotwari tenure, river accretions and reformed lands for which the owners have ceased to pay assessment;
- (l) Lands where "pati matti" is available and;
- (m) Any other lands which are required or likely to be required for any public or any special purposes necessary for the provision of amenities of the community or connected with the development of the village.

Provided, however, that tank bed lands, foreshore lands and lands under categories (g), (j), (k) and (m) above, if not immediately required or if their occupation be not objectionable at present, may be leased with a condition for resumption, when required for public purpose without payment of compensation for improvements, if any effected.

7. A plain reading of the provisions of BSO 15 (4) would show that the assignment of tank beds, foreshore of tank beds, cattle stands and grazing lands and reserved lands, is prohibited.

8. As pointed out by the learned Additional Advocate General, however, certain foreshore lands, if not immediately required and if their occupation is not objectionable at present can be leased out. The proviso to BSO 15(4) says that the lands near the sea coast within one furlong of high water mark of the sea, the lands containing minerals quarries etc., the land within the flood bank of rivers, lanka lands not held on ryotwari tenure and any other land which is not required for public purpose, can be leased out with a condition of resumption when required for public purpose.

9. The submission of the learned Additional Advocate General that the proviso to BSO 15(4) permits the assignment of land for agricultural purpose if the land whose assignment is prohibited is not required presently is without any substance. The proviso mentions two categories of lands indicated at BSO 15(4)(ii)(g)(j)(k) and (m). The categories of land mentioned in BSO 15(4)(ii)(e) is conspicuous by its absence. Further, the categories of lands indicated in BSO 15(4)(ii)(a) refers to poramboke lands reserved for depressed classes or for any public purpose. The land in question, in respect of which proposals are afoot, is classified in the revenue records, as tank poramboke. It squarely falls with the category of lands mentioned in BSO 15(4)(ii)(a), even if it is foreshore of tank bed. To my mind, this is the reason why on two occasions, the proposals were not accepted, though lot of correspondence took place between the Revenue Department and Irrigation Department. Hence, it must be held that any land reserved for any public purpose, cannot be assigned, whether or not it is a tank bed poramboke or foreshore tank bed.

10. The life of a water body is not 100 years to commensurate with normal life span of a man. The water body plays an important role in the ecology and environment, besides having its economic purpose of providing water for irrigation and drinking purposes. Any use of land, which does not satisfy the principle of sustainable development, would be detrimental to a water body. The apex Court in *Vellore Citizens' Welfare Forum v. Union of India*<sup>1</sup>, accepting the theory of 'Sustainable Development' as part of Indian Environmental Law, held:

The traditional concept that development and ecology are opposed to each other is no longer acceptable. 'Sustainable Development' is the answer. In the international sphere 'Sustainable Development' as a concept came to be known for the first time in the Stockholm Declaration of 1972... During the two decades from Stockholm to Rio 'Sustainable Development' has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. 'Sustainable Development' as defined by Brundtland Report means 'Development that meets the needs of the present without comprising the ability of the future generations to meet their own needs.

11. The Supreme Court in *Mehta M.C. v. Union of India*<sup>2</sup>, *Rural Litigation and Entitlement Kendra v. State of U.P.*<sup>3</sup> and *Subhash Kumar v. State of Bihar*<sup>4</sup> and this Court *T. Ramakrishna Rao v. HUDA*<sup>5</sup> has indicated that it is not only the duty of the State (executive), but also duty of the Court to protect the environment and water bodies.

In *Ramakrishna Rao's* case, a Division Bench of this Court held:

Protection of the environment is not only the duty of the citizens but also the obligation of the State and its all other organs including the Courts. The enjoyment of life and its attainment and fulfillment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature's gift without which life cannot be enjoyed fruitfully. The slow poisoning of the atmosphere caused by the environmental pollution and spoliation should be regarded as amounting to violation of Article 21 of the Constitution of India. The legitimate duty of the Courts as the enforcing organs of the constitutional objectives to forbid all actions of the State and the citizens from upsetting the ecological and environmental balance. It is trite to state that hygienic environment is an integral facet of the right to healthy life and it would not be possible to live with human dignity without a humane and healthy environment.

12. In *Patanjali v. A.P.P.C.B.*<sup>6</sup>, a Division Bench of this Court, in which I was a member, held:

Protection of lakes of national importance from pollution, ecology, encroachment etc., should be the primary concern of the State. In the context of rapid globalisation and the eminent threat it posed to environment, ecology vis--vis the rights of the citizens to have pollution free environment, the right to water etc., recognized by the Apex Court under Article 21 of the Constitution of India, the duty of the Government to protect the lakes has assumed much more importance. It is now well settled principle of law that Directive

Principles of State Policy under Part IV of the Constitution are enforceable under Article 21 of the Constitution of India. Under Article 48-A of the Constitution, the State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the country... At the same time, it shall be the fundamental duty of every citizen of India under Article 51-A(g) of the Constitution of India, to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

(emphasis supplied)

13. The Courts have further gone to the extent of laying down whether or not a person petitioning the Court has locus standi, when once the matter is brought before the Court, the Constitutional Court has an obligation to look into the statutory or non- statutory regimen and strive in its endeavour to protect the environment and ecology.

It is not denied before me that as on today the land in question has not been assigned by giving D-form patta or "ek saal" patta to any one. Therefore, whether or not the Irrigation Department has objection, the District Collector shall consider all aspects of the matter in the light of the law laid down by the Supreme Court and this Court in the judgements referred to supra, before granting any patta for agricultural purpose in respect of tank poramboke land, foreshore poramboke land or other banjar land, within the vicinity of an Irrigation Tank. Further, under Section 17 of the Act, a duty is cast on the Water Users Association to encourage avenue plantations, canal bunds and tank bunds by leasing them. When once a water body or an irrigation system is entrusted to a Water Users Association, the limited use to which the canal bund or tank bed can be put to, is avenue plantations, which has its own creative sustaining effect on the health of any Irrigation Tank.

The writ petition, is therefore, disposed of with the above observations and directions.  
No costs.