

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 5026 of 2023

Between:

Kommera Ravinder Reddy

... Petitioner

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 24.03.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 5026 of 2023**

% 24.03.2023

Between:

Kommera Ravinder Reddy

..... Petitioner

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.....Respondents

< Gist:

> Head Note:

! Counsel for the Petitioners : Mr. Ponnam Ashok Goud

^ Counsel for the Respondents1 to 4: G.P. for Irrigation

^ Counsel for the Respondent No.5 G.P. for Revenue

^ Counsel for the Respondent No.6 : Sri P.V..Bhanu Prakesh

? Cases Referred:

1. 2021 (5) ALD 545 (AP)

2. (2013) 4 SCC 465

3. (2001) SCC 734

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 5026 of 2023****ORDER:**

Heard learned counsel for the Petitioner Sri Ponnamp Ashok Goud, learned Asst. Government Pleader for Irrigation appearing on behalf of Respondents No.1 to 4, learned Asst. Govt. Pleader for Revenue appearing for the 5th Respondent, and learned counsel Sri P.V.L. Bhanu Prakash appearing on behalf of the 6th Respondent.

2. The main prayer sought for by the Petitioner is as follows :

“to declare the inaction of the respondents in allowing the illegal excavation, dumping of soil at tank submergence area and trying to encroaching the Oora Cheruvu at Madhapur Village, Ganneruvaram Mandal, Karimnagar District by the 6th respondent, his henchmen and local politicians without considering the representation dated 13.02.2023 as illegal, arbitrary, unconstitutional, violative of Article 14 and 300-A of the Constitution of India and consequently direct the respondents to stop the illegal excavation and encroachments in OoraCheruvu at Madhavpur Village, Ganneruvuaram Mandal, Karimnagar District.

3. The case of the petitioner, in brief, is as follows:

a) The petitioner is a resident of Madhavpur Village, Ganneruvuaram Mandal, Karimnagar District and the said village is consists of a water tank namely OoraCheruvu in Sy.No. 542 and the same is used by the villages for agriculture, fishing and many other purpose.

b) One Mr. Madgula Ravinder Reddy (6th respondent herein), along with his henchmen and local politicians have hatched a plan to encroach the OoraCheruvu for their personal gains without permission from competent authorities and started excavating soil from OoraCheruvu and dumping the same on the other side of the Dam.

c) Assistant Engineer of Irrigation, Ganneruvuaram visited the site and submitted the report to the 4th respondent and 4th respondent in turn had addressed a letter dated 09.02.2023 stating that the villager are illegally excavating the soil in Shikam Area and are dumping the same in submergence area and further requesting the 5th respondent to take necessary action.

d) In spite of bringing the issue to the notice of 5th respondent on 09.02.2023, no action had been taken so far. Respondent despite having full knowledge of the illegal activity, neither tried to stop nor took any action on such illegal excavation of OoraCheruvu. Further, the letter issued by the 4th respondent is a formal letter to project that the respondents are action upon the excavation.

e) The 6th respondent, having the brains and brawn had been influencing the respondents in excavating the sand from OoraCheruvu on the pretext of wanting to construct the Sri Rama Temple.

f) The petitioner once again made a representation to the 4th respondent bringing to into the notice the illegal action of the 5th respondent but no action till date had been taken.

PERUSED THE RECORD :

4. A bare perusal of the contents of the letter of the Deputy Executive Engineer, Irrigation Sub-Division No.4, LMD Colony, Karimnagar, addressed to the Tahsildar, Ganneruvaram Mandal, Karimnagar District reads as under :

"It is to inform that, the Assistant Engineer, Ganneruvaram during his site visit on 07.02.2023 of the Oora Cheruvu, Madhapur (V) it is observed that the villagers have illegally excavating the soil inshikam area and dumping the same soil in the tank submergence area. He has stopped the work and instructed the villagers not to commence the work further. But the work is again started on 09.02.2023.

In this regard, it is requested the Tahsildhar, Ganneruvaram mandal kindly look into the above matter immediately.

This is submitted for favour of information and necessary action."

DISCUSSION & CONCLUSION :

5. The main grievance of the Petitioner who is resident of Madhapur Village, Ganneruvaram Mandal, Karimnagar District is that the 6th Respondent is a politically influenced person and is trying to encroach the Ooracheruvu at Madhapur Village, Ganneruvaram Mandal, Karimnagar District and when the 6th Respondent and henchmen and local politicians started excavating the soil from the said tank and dumping the same on the other side of the tank dam and when the same was brought to the notice of the official

Respondents herein the Assistant Engineer, Ganneruvaram conducted personal inspection and submitted his Inspection Report to the 4th Respondent herein who in turn vide his letter dt. 09.02.2023 addressed to the 5th Respondent (extracted above) referred to the said Inspection done by Asst. Engineer, Ganneruvaram on his site visit on 07.02.2023 of the Ooracheruvu, Madhapur Village, and observed that the villagers are illegally excavating the soil in Shikam area and dumping the same soil in the tank submergence area and therefore he had stopped the work and instructed the villagers not to commence the work further but the work again started on 09.02.2023 and therefore he had requested Tahsildar, Ganneruvaram Mandal to look into the matter immediately. The said letter dt. 09.02.2023 vide Letter No. No.DEE/ISD4/LMD/KMNR/224 had been acknowledged by the office of the 5th Respondent on 10.02.2023 itself, but however, there had not been any action in stopping the illegal encroachment and excavation of soil from the Ooracheruvu/tank situated at Madhapur Village, Ganneruvaram Mandal, Karimnagar

District. The Petitioner's further case is that though the Petitioner submitted representation dt. 13.02.2023 to the 2nd Respondent herein yet there has been no action to save the Ura pond in Madhapur Village of Ganneruvaram Mandal.

6. The learned Asst. Govt. Pleader appearing on behalf of the 4th Respondent and also learned Asst. Govt. Pleader appearing on behalf of the 5th Respondent submit that the writ petition could be disposed of directing the 2nd and 5th Respondents to consider the Petitioner's representation dt. 13.02.2023 in accordance to law by fixing a reasonable period.

6. The learned counsel appearing on behalf of the unofficial Respondent No.6, takes preliminary objection in so far as the maintainability of the present writ petition is concerned in particular pertaining to the locus of the petitioner and further pleads that the present writ petition is not in the nature of the public interest litigation hence need not be entertained and needs to be dismissed.

7. The learned counsel appearing on behalf of unofficial Respondent No.6 further places reliance on two judgements of the Apex Court which are listed hereunder :

a) (2001) 4 SCC 734 in Vinoy Kumar v. State of U.P. & Others, in particular, Para 2 reads as under:

“Generally speaking, a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the constitution is based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas- corpus or quo warranto or filed in public interest. It is a matter of prudence, that the court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there is an effective legal aid organisation which can take care of such cases. Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when

it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason or poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief.

b) (2013) 4 SCC 465 in Ayaubkhan Noorkhan Pathan v. State of Maharashtra & Others, in particular, paras 9, 10 and 17 and contends that the relief under Article 226 of the Constitution is based on the existence of the right in favour of the person invoking the jurisdiction. Paras 9, 10 and 17 read as under:

"9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons.

Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of

such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide : State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12; Saghir Ahmad & Anr. v. State of U.P., AIR 1954 SC 728; Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal & Ors., AIR 1962 SC 1044; Rajendra Singh v. State of Madhya Pradesh, AIR 1996 SC 2736; and Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar & Ors., (2009) 2 SCC 784).

10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide: Shanti Kumar R. Chanji v. Home Insurance Co. of New York, AIR 1974 SC 1719; and State of Rajasthan & Ors. v. Union of India & Ors., AIR 1977 SC 1361).

17. In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others. Locus standi of respondent no.5

8. The learned counsel appearing on behalf of the Petitioner, on the other hand, relies upon the Judgement dated 08.08.2021 passed in W.P.No.16274 of 2021 of the Andhra Pradesh High Court in Mula Maheswara &

Another and contends that the writ petition is maintainable in view of the fact that the petitioner is a local resident of the village and further that it is the duty of the Respondents to take steps to remove encroachments of the water body and in case of Respondents failing to discharge their duty in protecting water body person aggrieved by inaction may approach High Court by impleading the said encroachers.

9. This Court opines that it is the obligation of the State to protect and improve the environment, to protect the water pollution and to protect lakes, rivers, tank beds in terms of Articles 48(a) and 51-A(g) of the Constitution of India.

9. Article 51(a) deals with fundamental duties. According to Article 51-A(g) it shall be the duty of every citizen of India to protect and improve the natural environment, including forests, lakes, rivers and wild life and to have compassion for living creatures. Thus Article 48(a) and Article 51-A(g) obligates the State to protect the environment and make every endeavour to protect

lakes, rivers etc., to maintain the ecological balances.

The Hon'ble Apex Court in Hinch Lal Tiwari v. Kamala

Devi reported in AIR 2001 SC 3215, observed as follows:

"forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites."

10. This Court opines that the protection of environment is a human right and the Petitioner who is a resident of the said village Madhapur, Ganneruvaram Mandal, Karimnagar District, has an individual duty to protect and preserve the environment and therefore the plea of the learned counsel for the Respondent in so far as the locus of the Petitioner is concerned cannot be

sustained and the two judgments relied upon by the counsel for unofficial Respondent No.6 are not applicable to the facts of the present case.

11. Taking into consideration the above referred facts and circumstances and the view taken by the Apex Court in the judgement reported in AIR 2001 SC 3215 in Hinch Lal Tiwari V Kamala Devi (referred to and extracted above) and also the view taken in the Judgment dt. 18.08.2021 in WP No.16274/2021 by the A.P. High Court in Mula Malleswara Rao & Another v. State of A.P. & Others reported in 2021 (5) ALD 545 (AP) relied upon by the counsel for the Petitioner which squarely applies to the facts in the present case and duly considering, the contents of letter No. No.DEE/ISD4/LMD/ KMNR/ 224, dated 09.02.2023 of the 4th Respondent herein addressed to the 5th Respondent (extracted above) which clearly bring on record the fact of excavation of the soil in Shikam area of the Ooracheruvu, Madhapur Village and dumping of the same soil in the tank submergence area and the fact that the work, though was stopped on the day of inspection i.e. on 07.02.2023,

but yet the said work commenced again on 09.02.2023, and therefore, this Court opines that the writ petition should be allowed as prayed for. The Respondents No.2 to 5 are directed to take appropriate action and stop the illegal encroachment and excavation of soil from the Ooracheruvu/tank situated at Madhapur Village, Ganneruvaram Mandal, Karimnagar District duly considering Petitioner's representation dt. 13.02.2023 within a period of 2 weeks from the date of receipt of the copy of the order duly taking into consideration the contents of the letter dt. 09.02.2023 vide Letter No.DEE/ISD4/LMD/KMNR/224 addressed by the 4th Respondent to the 5th Respondent herein. However, there shall be no order as to costs.

Miscellaneous petitions if any, pending shall stand closed.

MRS JUSTICE SUREPALLI NANDA

Dated: 24.03.2023

Note: L.R.Copy to be marked

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