

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

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CASE NO. WRIT PETITION No.716 of 2012

Between:

Smt.Vallabaneni Shanti Sree and others
...**Petitioners**

And

The Deputy Director of Fisheries,
Machilipatnam and others
...**Respondents**

DATE OF JUDGMENT PRONOUNCED: 08.07.2015

SUBMITTED FOR APPROVAL:

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THE HON’BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

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+ WRIT PETITION No.716 of 2012

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Smt.Vallabaneni Shanti Sree and others

...**Petitioners**

Vs.

\$ The Deputy Director of Fisheries,
Machilipatnam and others

...**Respondents**

! Counsel for the petitioners: Mr.P.Raj Kumar

Counsel for respondent Nos.1 to 5: Government Pleader
for Fisheries

Counsel for respondent Nos.6 to 16: Ms. G.Sindhu
for Mr. K.Chidambaram

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>Head Note:

? Cases referred:

1. AIR 1997 SC 811
2. (1995) 2 SCC 577
3. AIR 1997 SC 3519

4. (1996) 5 SCC 281
5. (1999) 2 SCC 718
6. (2001) 2 SCC 62
7. AIR 2000 SC 1997
8. (2000) 3 SCC 745
9. 2001 (2) ALD 642
10. 2002 (1) ALD 728 (DB)

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THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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Counsel for respondent Nos.1 to 5: Government Pleader
for Fisheries

Counsel for respondent Nos.6 to 16: Ms. G.Sindhu
for Mr. K.Chidambaram

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The Court made the following:

ORDER:

This writ petition is filed for a *mandamus* to declare the inaction of the respondents in taking action against the persons, who are carrying on aquaculture activities unauthorizedly in Koduru Village, Mudinepalli Mandal, Krishna District, as illegal and arbitrary.

The petitioners, who are the owners of certain extents of agricultural lands in Koduru Village, averred that the lands in the Village are fertile and two paddy crops per year are being raised during kharif and rabi seasons and that though the respondents are fully conscious of this fact, they have not been preventing indiscriminate aquaculture activity being indulged in by several people of the Village by converting their agricultural lands into fish and prawn tanks unauthorizedly.

The petitioners referred to G.O.Ms.No.24, dated 09.04.2010, which was superseded by G.O.Ms.No.67, dated 12.09.2011, prohibiting conversion of agricultural lands into fish tanks without permission. The petitioners further averred that the fish tank owners have occupied drains for formation of tanks resulting in submergence of agricultural lands belonging to the persons such as the petitioners. That the petitioners made representations, dated 26.06.2010, 08.07.2011 and 22.08.2011 to the respondents requesting them to take necessary action, but no such

action has been taken.

Eleven individuals have filed W.P.M.P.No.3474 of 2012 seeking their impleadment as the respondents in the writ petition. This Court, by order, dated 13.09.2012, ordered impleadment of these persons and accordingly, they have been impleaded as respondent Nos.6 to 16 in the writ petition. In support of the aforesaid W.P.M.P., applicant No.1, viz., Mr.M.Nageswara Rao filed his affidavit on behalf of these eleven persons, wherein he has, *inter alia*, stated that as neighbourhood land owners have converted their agricultural lands into fish tanks, they have also applied for grant of such permission on 01.12.2009 in prescribed forms after paying the prescribed fee. They have relied upon G.O.Ms.No.18, dated 26.03.2008, under which permission is deemed to have been granted if the applications for permission are not disposed of within 60 days. They have pleaded that as their applications were not disposed of within the prescribed period of 60 days, they have been carrying on aquaculture activity under the deemed permission. They have further averred that as the revenue and fishery authorities are interfering with their aquaculture activities, they along with others filed W.P.Nos.15256 and 15258 of 2010 before this Court and that the said writ petitions were admitted and interim direction was granted on 30.06.2010 directing the official respondents not to interfere with their fishing activities if their applications were not disposed of within 60 days as envisaged in G.O.Ms.No.18, dated 26.03.2008.

Respondent No.1 – Deputy Director, Fisheries (FAC) filed a counter-affidavit, wherein it is stated that adjacent agricultural farmers have not filed any complaint against fish tank owners, that the allegation that fish tank owners have been blocking the drain is incorrect and that permissions were given to the owners of the lands, which were unfertile and low lying as per the District Level Committee recommendations. He has further stated that the District Level

Committee constituted with Agriculture Department, Revenue Department, Irrigation Department, Fisheries Department and Ground Water Department under the Chairmanship of the District Collector have scrutinized each and every application as per the guidelines issued in the existing G.Os. and that no fish tank was dug unauthorizedly in Koduru Village.

Respondent No.4 - Tahsildar, Mudinepalli Mandal, filed a separate counter-affidavit, which is in tune with the stand taken by respondent No.1 in his counter-affidavit. He has further stated that the respective tank owners have applied for regularization of their respective tanks in terms of G.O.Ms.No.7, dated 16.03.2013, and that the applications are still pending for consideration before the authorities concerned. He has also stated that G.O.Ms.No.24, dated 09.04.2010, and G.O.Ms.No.67, dated 12.09.2011, are not attracted to the instant case as the tanks in question are very old and dug prior to the issuance of the aforesaid G.Os.

As this Court finds contradiction between the averments contained in the affidavit filed by the impleaded respondents on the one side and those contained in the counter-affidavits of respondent Nos.1 and 4 on the other side, by order, dated 24.06.2015, it has directed respondent No.1 to be personally present along with the record. Respondent No.1 is accordingly personally present today. He has stated that the record does not contain the applications stated to have been filed by the impleaded respondents on 01.12.2009. He has, however, stated that on 01.08.2013, his office has received only two applications, one filed by three persons i.e., Maganti Nageswara Rao (respondent No.6), Vemuri Sukha Nagaiah and Adusumilli Veeranjaneya Prasad, seeking regularization of land admeasuring Acs.52.15 cents and another application filed by one Kaza Satya Mahendra (respondent No.12), Adusumilli Jayalakshmi and A.Rajeswara Rao. Respondent No.1 has further stated that at present

there are about 13,000 applications filed for regularization pending and he has sought to explain his statement in the counter-affidavit that no illegal fish tanks are in existence by explaining that the said statement was made on the premise that due to non-disposal of the alleged applications of respondent Nos.6 to 16, the deeming provision *vide* G.O.Ms.No.18, dated 23.06.2008, has come into operation. He has also stated that even the two applications referred to above received on 01.08.2013 have not been disposed of so far.

Ms.G.Sindhu, learned counsel representing Mr. K.Chidambaram, learned counsel for the impleaded respondents i.e., respondent Nos. 6 to 16, submitted that by order, dated 01.08.2013, this Court disposed of a batch of writ petitions including W.P.Nos.15265 and 15258 of 2010 filed by some of her clients with the direction that the District Level Committee shall dispose of the applications stated to be pending before it and that till such disposal, the petitioners therein shall be permitted to carry on the fishing activities in accordance with the existing G.Os.

As noted hereinbefore, in his counter-affidavit, respondent No.4 - Tahsildar has taken the stand that G.O.Ms.No.24, dated 09.04.2010, and G.O.Ms.No.67, dated 12.09.2011, are not attracted to the tanks which are subject matter of the present writ petition as they were dug prior to the issuance of said G.Os.

Clause IV of G.O.Ms.No.24, dated 09.04.2010, reads as under:

“IV. The existing unregistered fresh water aqua units which were not regularized earlier should submit their applications on or before 31.05.2010 for its regularization in accordance with the following instructions. In respect of fresh cases the district committee shall examine as per the guidelines issued in this G.O. and submit recommendations to be placed before the State Level Committee....”

The abovementioned statement made by respondent No.4 in his counter-affidavit, is thus, in the teeth of G.O.Ms.No.24, dated 09.04.2010. The fact that respondent No.4 has made a sweeping statement that no illegal fish tanks were in existence in Koduru village coupled with his statement that the G.Os. are not applicable to the fish tanks suggest his indifferent attitude giving rise to a reasonable presumption that he is supporting the persons, who are carrying on aquaculture activity in a lawless manner without obtaining permissions. I, therefore, perceive this conduct of respondent No.4 as lacking responsibility and accountability. His conduct clearly reflects that instead of making efforts to prevent illegal aquaculture, he has been tacitly supporting the persons, who have been running fish tanks illegally without obtaining permissions in the guise of the purported deemed permissions. The fact that no record is available in respect of the alleged applications of respondent Nos.6 to 16 creates a serious doubt in the mind of this Court as to whether they have ever made their applications as claimed by them. Ironically, all these years they are permitted to carry on aquaculture activity unlawfully in the guise of the deemed permission.

Along with his counter-affidavit, respondent No.1 has filed a copy of common order, dated 01.08.2013, passed by this Court in a batch of writ petitions, which includes W.P.Nos.15256 and 15258 of 2010 stated to have been filed by some among the impleaded respondents i.e., respondent Nos.6 to 16. The said order was passed based on an earlier order, dated 09.07.2013, in W.P.No.10702 of 2011 and on the premise that the applications were filed by the petitioners in the said writ petitions and that they are pending. Now to the astonishment of this Court, it has come to light that the applications filed by respondent Nos. 6 and 12 alone are pending and the remaining private respondents did not appear to have filed their applications.

In a slew of judgments, the Supreme Court expressed grave

concern at environmental degradation on account of indiscriminate aquaculture activities being permitted by the respective States. In **S.**

Jagannadh v. Union of India^[1], the Supreme Court has recognized the adverse affects of prawn farming on the environment and maintenance of ecology vis-à-vis right of citizen under Article 21 of the Constitution of India. The Court gave various directions which, *inter alia*, include the following directions.

“5. The farmers who are operating traditional and improved traditional systems of aquaculture may adopt improved technology for increased production, productivity and return with prior approval of the "authority" constituted by this order.

6. The agricultural lands, salt pan lands, mangroves, wet lands, forest lands, land for village common purpose and the land meant for public purposes shall not be used/converted for construction of shrimp culture ponds.

9. Aquaculture industry/shrimp culture industry/shrimp culture ponds other than traditional and improved traditional may be set up/constructed outside the coastal regulation zone as defined by the CRZ notification and outside 1000 meter of Chilka and Pulicat lakes with the prior approval of the "authority" as constituted by this Court. Such industries which are already operating in the said areas shall detain authorisation from the "Authority" before April 30, 1997 failing which the industry concerned shall stop functioning with effect from the said date. We further direct that any acquaculture activity including intensive and semi-intensive which has the effect of causing salinity of soil, of the drinking water or wells and/or by the use of chemical reeds increases shrimp or prawn production with consequent increase in sedimentation which, on putrefaction is a potential health hazard, apart from causing siltation turbidity of water courses and estuaries with detrimental implication on local fauna and flora shall not be allowed by the aforesaid Authority.”

In **Virendar Gaur v. State of Haryana**^[2], the Supreme Court held that environmental, ecological, air and water pollution should be regarded as amounting to violation of Article 21 of the Constitution of India. The attempt of some persons to reopen the decision in **S. Jagannadh** (1 supra) was thwarted by the Court in **Gopi Aqua Farms**

v. Union of India^[3]. The Supreme Court reiterated the principles laid down in all its earlier cases for protecting the environment and ecology in **Indian Council for Enviro-Legal Action v. Union of India**^[4], **A.P. Pollution Control Board v. Prof. M.V. Nayudu**^[5], **A.P. Pollution Control Board-II v. Prof. M.V. Nayudu**^[6], **M.C. Mehta v. Kamal Nath**^[7], **U.P. Pollution Control Board v. Mohan Meakins Limited**^[8] etc. This Court in **K. R. Krisianaiah v. Mandal Executive Magistrate and MRO, Muthukur**^[9] followed these principles.

On a comprehensive survey of the entire case law on the subject, a Division Bench of this Court in **Madireddy Padma Rambabu v. District Forest Officer, Kakinada**^[10], gave peremptory directions directing the State Government and its Officers not to allow any person to carry on activity of shrimp culture or prawn culture or any type of aquaculture without obtaining the prior permission from the competent authority as prescribed from time to time, upon strict compliance with the directions issued by the Supreme Court in **S. Jagannadh** (1 supra).

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The facts noted above would reveal that the executive apparatus appeared to have gone into hibernation without taking timely action to curb the menace of unlawful aquaculture activity, for the reasons which this Court does not want to hazard a guess. There can be no better testimony of absolute neglect by the functionaries at the District level in curbing this menace than pendency of about 13,000 applications for grant of regularization and allowing the applicant to carry on the aqua culture activity in the guise of deemed permission. This supine indifference on the part of the District Administration deserves strong deprecation and this Court has no option other than inferring from their inaction that they are in complicity with the unscrupulous elements,

which have been carrying on illegal aquaculture activity at the cost of genuine agriculturists growing paddy.

It is time that the State and its concerned Officers must realise that rice is the staple food in both the Telugu speaking States of Telangana and Andhra Pradesh and fish and prawn can never substitute rice. If this kind of official apathy is allowed to continue, I am afraid, paddy farming in the State of Andhra Pradesh, which has acquired the reputation of the rice bowl of India, will die its natural death and a situation may emerge where our country may look to South East Asian countries, such as China and Indonesia, to import rice. I hope and wish that the State will wake up to the reality and take all possible measures to strictly implement the Circular instructions and administrative guidelines in order to prevent illegal/unauthorized aqua/prawn culture in the State of Andhra Pradesh.

In the light of the above discussion, respondent No.2 is directed to forthwith plunge into action and take all such measures as are needed for curbing the illegal aquaculture activity, before it becomes too late. He shall immediately fix a schedule for disposal of all the pending applications and shall ensure that within a maximum period of four months from now, they are disposed of. He shall also ensure that the aquaculture tanks, which are being run either without permission or in respect of which no applications for permission/for regularization are pending are forthwith closed after notice to the owners thereof.

Subject to the above directions, the Writ Petition is disposed of.

As a sequel to disposal of the Writ Petition, W.P.M.P.No.880 of 2012 filed by the petitioners for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

08th July, 2015

Note: L.R.Copies to be marked.
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- [\[1\]](#) AIR 1997 SC 811
[\[2\]](#) (1995) 2 SCC 577
[\[3\]](#) AIR 1997 SC 3519
[\[4\]](#) (1996) 5 SCC 281
[\[5\]](#) (1999) 2 SCC 718
[\[6\]](#) (2001) 2 SCC 62
[\[7\]](#) AIR 2000 SC 1997
[\[8\]](#) (2000) 3 SCC 745
[\[9\]](#) 2001 (2) ALD 642
[\[10\]](#) 2002 (1) ALD 728 (DB)