

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

WP.No.4864 of 2015 and WP.No.16297 of 2014

COMMON ORDER:

These two Writ Petitions arise between the same parties in respect of the same land, and hence they are being disposed of by this common order.

2. The same petitioner has filed both these Writ Petitions. The 7th respondent in WP.No.16297 of 2014 is the 5th respondent in WP.No.4864 of 2015 and he will hereinafter referred to as 'I.V.R.', representing his name Indukuri Venkata Ramaraju.

WP.No.16297 of 2014

3. The case of petitioner is that the petitioner's family is in the business of aquaculture and has fish tanks in Acs.42.00 set up by him after obtaining permission from the Government; that abutting their fish tanks there are irrigation and drainage channels in Sy.Nos.130, 131, 132, 133, 134, 135, 39, 42 and 40 of Kaikaluru Village, known as Polaraju drain; that this is used by ryots in the vicinity for drawing irrigation water and also for discharging drainage water through two channels.

4. The allegation in this Writ Petition is that an extent of Ac.0.09 cents of R.S.No.39 of Kailaluru Village which

lies below +5' contour of Kolleru Wildlife Sanctuary (**for short, 'KWS'**), and which abuts the petitioner and his family's properties is encroached by I.V.R. and that the respondents in both the Writ Petitions i.e., the Revenue as well as Forest officials, have not taken any action in that regard.

5. The petitioner contends that I.V.R. illegally occupied the irrigation and drainage canals in above Survey No.s, filled them with mud and merged his fish tank after occupying Ac.0.09 cents of land in Sy.No.39, constructed cement canal for drawing water from the Polaraju drain exclusively for his own fish tanks and he was not allowing any person to move on the irrigation and drainage canal bunds which are government lands by putting iron gates. He alleged that I.V.R. has no right to occupy the government irrigation and drainage canal bunds and he could not have constructed the cement canal and draw water from the Polaraju drain. He alleged that he made representation dt.18.04.2014 to the respondents in WP.No.16297 of 2014 (the Revenue and Irrigation Department Officials), but since I.V.R. is an influential person, they did not take any action.

6. No counter-affidavit is filed by respondent nos.1 to 6 in WP.No.16297 of 2014 (Revenue Department and Irrigation Department Officials) even though the said Writ Petition has been pending since June, 2014.

W.P.NO.4864 OF 2015

7. In WP.No.4864 of 2015, the petitioner impleaded the Forest Department Officials as well as the Collector of the Krishna District at Machilipatnam, and alleged that I.V.R. and his family members encroached into Rolla Codu channel and occupied Ac.0.09 cents of Government land in Sy.No.39 and constructed a sluice to draw water from Polaraju canal into his fish ponds. He alleged that the *sluice* is of length 150 meters and it totally blocks the flow of water into the said channel; that he also constructed a *room* covered with tin sheets abutting the Polaraju canal *to house water pump sets* to draw water from the said Polaraju canal, and he also constructed a small *sump* connecting the aforesaid sluice to transfer the water so drawn from the said canal to the fish ponds belonging to him and his family members; by virtue of these activities of I.V.R, the Rolla Codu channel is totally blocked and the water discharged from Kaikaluru Village abutting the fish ponds is getting stagnated; there is no free flow of water in the said channel and the petitioner and his family members are unable to drain the excess water from the fish ponds for harvesting the fish crop; Kolleru lake is about one kilometer away from the Kaikaluru village and it is a fresh water lake with rare birds and fauna, and it is a notified Wildlife Sanctuary vide G.O.Ms.No.120, Environment, Forest, Science and Technology (For. – III)

dt.04.10.1999 (**for short, 'the G.O.'**), issued by the State of Andhra Pradesh under the provisions of the Wildlife (Protection) Act, 1972 (**for short, 'the Act'**); an extent of 4117.81 hectares of land in Kaikaluru Mandal, Krishna District forms part of the said sanctuary under the above notification; it falls in the boundary description mentioned at Serial No.2 - South 'B' to 'C' of the said G.O.; an extent of Acs.489.36 cents of land in Kaikaluru village comes within the area included in the KWS; and *that Ac.0.09 cents of land encroached allegedly by I.V.R. in Sy.No.39 is included within the prohibited area of the KWS* . He alleged that I.V.R. had made constructions therein which are not permitted as per the said G.O.; that in particular, the said G.O. prohibits in Clause (2) any person from forming any tank for aquaculture or for any other purposes; Clause (7) directs maintenance of existing water courses and drains necessary to avert submersion of agricultural lands surrounding the lake; Clause (9) permits electricity connection to be given only for domestic use and not for aquaculture or any activity connected therewith; and that any encroachments or activities which are not permitted specifically are liable to be removed/stopped forthwith as per Clause (15). Petitioner alleged that these clauses mentioned above have been violated by I.V.R. and none of the respondents have taken any action against I.V.R. even though he has encroached into the prohibited area notified under the Act, and made

the above constructions therein.

COUNTER AFFIDAVIT ON BEHALF OF FOREST DEPARTMENT
IN WP.No.4864 of 2015

8. The Divisional Forest Officer, Wildlife Management, Eluru Division, Eluru, East Godavari District, who is the 3rd respondent in WP.No.4864 of 2015 filed a counter-affidavit on his behalf and on behalf of the Principal Chief Conservator of Forests, State of Andhra Pradesh, Hyderabad.

9. In this counter, he admitted that an area of Ac.0.09 cents in R.S.No.39 of Kaikaluru village lies below +5' contour of the KWS; that *a shed was constructed on the bank of Polaraju drain for bailing out water from the said drain; that it was in existence since 2006* and was not demolished during Kolleru operation in the year 2006, which was carried out under the direction of the then District Administration of Krishna District, Machilipatnam; and that *Rolla Codu canal was stopped at the North-East point by the fish tank erected by I.V.R.* and it is a field channel flowing nearby shed. It was stated that *a shed was installed along the boundary line of KWS by I.V.R. by encroaching the Ac.0.09 cents area in R.S.No.39 of Kaikaluru village*; that the Forest Range Officer, Wildlife Management, Kaikaluru submitted a report stating that the Dy. Range Officer also inspected the site in question on 11.07.2015 and found that an extent of Ac.0.09 cents

covered by R.S.No.39 lies below +5' contour of KWS; that the shed located in R.S.No.39 in that Ac.0.09 cents was removed and dismantled on 11.07.2015, and *Ac.0.01 cent of the Rolla Codu channel was blocked by the motor shed resulting in reducing of free flow of water.* It was stated that the Revenue Records did not mention who the owners of the shed are and there was nothing to show that 5th respondent constructed the shed. Although there is a reference to a case registered against six persons before the Judicial I Class Magistrate, Kaikaluru in C.C.No.481 of 2012 in the counter, the respondents did not state that I.V.R. also is one of the accused therein. They admit that commercial activity of fish aquaculture in the sanctuary is strictly prohibited as per the orders passed by the Supreme Court dt.10.04.2006 and by this Court dt.31.07.2001, and that the 3rd respondent is taking all stringent steps in true spirit to protect the sanctuary. It was denied that the 3rd respondent had neglected the protection of the KWS.

COUNTER AFFIDAVIT ON BEHALF OF I.V.R

10. Counter-affidavit was filed by I.V.R. stating that he constructed the sluice between 1996 and 1998 after taking permission of the Assistant Engineer, Drainage Section – 4, Kaikaluru to lift water and the same was got renewed periodically. He alleged that he was forced to construct the sluice since the Writ Petitioner had occupied

a major portion of the canal in R.S.No.39, and that the encroachment by petitioner is in the KWS area and channel. He stated that petitioner had constructed a bund in the channel to a width of 70 links out of 100 links of the channel with a height of 3.5 meters as a protection to their fish tanks in the extent of Acs.46.20 cents of land held by him and his family members, and that by the construction of bund by petitioner, flow of water into the channel was reduced to 30 links width; and that sluice constructed by him (i.e., IVR) is of 3' width on pillars of 1' diameter does not affect the free flow of water in the channel. He stated that the iron gate erected was in his property; that certain civil suits, viz., O.S.Nos.47 of 2014 and 33 of 2014 were filed against him by petitioner, and an interim injunction in O.S.No.33 of 2014 was granted against him (IVR). He alleged that he had constructed the sluice in the year 1996 long before the G.O. was issued by the Government on 04.10.1999, notifying the KWS and also denied that the constructions were made contrary to the said G.O.

THE EVENTS AFTER FILING THE WRIT PETITION

11. This Writ Petition was earlier heard by another learned Single Judge, and on 08.09.2015, after noting the rival contentions of petitioner and I.V.R., he directed the Divisional Forest Officer, Wildlife Management, Eluru Division, Eluru, East Godavari District (3rd respondent in WP.No.4864 of 2015) to submit a report with regard to (i)

the constructions existing in Sy.No.39 of Kaikaluru Village as on that day and also to report (ii) whether the Writ Petitioner had occupied any Government land or was doing any activity which is not permissible in law. The matter was directed to be posted to 29.09.2015.

12. Since no report was filed by 3rd respondent on that day his personal appearance was directed on 29.09.2015 and he was asked to file an affidavit explaining the reason for not submitting the report, and the matter was directed to be listed on 13.10.2015. Thereafter, the matter was listed on 27.10.2015 on which date the learned Government Pleader for Forest was absent. The case was again listed on 12.11.2015. On that day also no affidavit was filed by 3rd respondent explaining why he did not file the report as directed by the Court in its order dt.29.09.2015. However, an enquiry report dt.13.10.2015 was placed on record by the Government Pleader for Forests.

13. The said report was submitted by 3rd respondent in WP.No.4864 of 2015 stating (i) that the illegal constructions in the Ac.0.09 cents of land in R.S.No.39 of Kaikaluru Village which is below +5' contour of KWS was demolished/dismantled on 23.09.2015, and (ii) that there was no pisciculture activity done by petitioner in the above Ac.0.09 cents of land in R.S.No.39.

14. Heard Sri S. Srinivas Reddy, counsel for Writ petitioner in WP.No.4864 of 2015. None appeared for the petitioner in WP.No.16297 of 2014. I also heard the learned Government Pleader for Forests, learned Government Pleader for Revenue, and the learned Government Pleader for Irrigation and Sri V.V. Raghavan, counsel appearing for Sri Vikram Poosarla, counsel for I.V.R.

THE CONSIDERATION BY THE COURT

15. From the facts narrated above, it is clear that petitioner is alleging that I.V.R. had encroached Ac.0.09 cents of land in R.S.No.39 of Kaikaluru village and he had erected a sluice of length 150 meters blocking the flow of water; constructed a room with tin sheets abutting the Polaraju channel to house water pump sets to draw water from the Polaraju canal; constructed a small sump connecting the sluice to transfer the water drawn from the Polaraju canal to I.V.R's fish ponds; and he had also obtained electricity connection for pumping water from the aforesaid canal to his fish ponds.

16. The petitioner's contention is that by virtue of this construction by I.V.R., the Rolla Codu channel is totally blocked and the water discharged from Kaikaluru village abutting fish ponds is getting stagnated preventing the petitioner and other ryots from draining excess water from

the fish ponds for harvesting the fish crop.

17. Even though the petitioner had alleged that I.V.R. had constructed a sluice, a room with water pump-sets as well as a sump and has obtained electricity connection, and the construction of the sluice of 3' width on pillars of 1' diameter, which is also admitted by I.V.R., shockingly the counter filed by 3rd respondent refers only to the room with tin sheets/shed and makes no reference to the sluice constructed by I.V.R. The 3rd respondent in WP.No.4864 of 2015 states in his counter that he is not aware as to who constructed the said shed since the name of I.V.R. is not mentioned in the Revenue record and he states that there is no documentary evidence to support that I.V.R. has constructed the shed. He also states that this shed was removed on 11.07.2015 in para no.2 of his counter, but contradicts himself in the report dt.13.10.2015 by stating that it was removed on 23.09.2015. It is difficult to believe that 3rd respondent is not aware that it was I.V.R. who constructed the shed, and that he is not aware of the construction of the sluice of 3' width on pillars of 1' feet diameter. Neither the 3rd respondent in WP.No.4864 of 2015 nor I.V.R. had denied in their counters the allegation made by petitioner about construction of the same. Therefore, their existence is deemed to be admitted. Even according to Forest Department Officials, the extent of Ac.0.09 cents in R.S.No.39 of Kaikaluru Village forms

within the contours of KWS notified under the G.O., as stated by 1st respondent.

18. Under the said G.O., clause (2) prohibits any person from forming any tank for Aquaculture or for any other purposes within the limits of the sanctuary notified under the said G.O; clause (7) states that the Government has the right to maintain the existing water courses and drains necessary to avert submersion of agricultural lands surrounding the Kolleru lake; clause (9) mandates that electricity connection can be given only for domestic use and not for aquaculture or any activity connected therewith; and clause (15) states that any encroachments or activities which are not permitted under the said G.O. are liable to be removed or stopped forthwith.

19. Thus, the construction of both the sluice, the motor pump shed as well as the sump by I.V.R. in the Ac.0.09 cents in R.S. No.39 which falls below +5 contour of KWS is contrary to Clauses (2) and (7) mentioned above. Since the motor pump shed has an electricity connection which is intended for aquaculture and not for domestic use, even the said electricity connection could not have been continued for the motor shed after 14.10.1999 by the Forest Department Officials. Admittedly, under clause (15) the 1st respondent in W.P.No.4864 of 2015 has a duty to remove activities or encroachments not permitted under the said G.O., but the respondents have not done

anything in that regard resulting in the flourishing of the sluice, the motor shed as well as the sump from 1996 till date.

20. The conduct of 3rd respondent in WP.No.4864 of 2015 as well as respondent nos.3 to 6 in WP.No.16297 of 2015 in not reporting these activities of I.V.R. to the higher officials and taking action to remove the sluice, motor shed and water sump erected by IVR and removing the encroachment into the land covered by KWS clearly points to collusion between them and I.V.R. There can be no doubt that 3rd respondent in WP.No.4864 of 2015 has deliberately kept silent on the existence of the sluice on stilts and the water sump in order to favour I.V.R. That apart, he had clearly made a false statement in the counter-affidavit filed by him in WP.No.4864 of 2015 that the shed erected in R.S.No.39 of Kaikaluru Village was demolished on 11.07.2015, since in the report filed by him on 13.10.2015 he himself stated that it was removed on 23.09.2015. Also, when this Court asked him on 08.09.2015 to file a report as to whether petitioner occupied any Government land as alleged by I.V.R., instead of answering the said question he stated in his report dt.13.10.2015 that petitioner is not doing pisciculture activity in the Ac.0.09 cents in R.S.No.39 of Kaikaluru Village. This Ac.0.09 cents is admittedly in the occupation of I.V.R., and there would be no question of

petitioner doing any activity therein. A responsible Government Officials like the 3rd respondent is not expected to file false affidavits in Court, and try to mislead the court in this manner.

21. The audacity of 3rd respondent can also be noted from the fact that he did not file any affidavit explaining reasons for not submitting the report to this Court in spite of a specific order by this Court on 29.09.2015 to that effect, and by not appearing before the Court when specifically directed by this Court to appear before this Court on 13.10.2015. This conduct on the part of 3rd respondent cannot be countenanced.

22. I.V.R. had made certain allegations against the petitioner and his family members about encroaching the KWS land. I do not wish to express any opinion on the said issue at this point of time.

23. I am also of the opinion that the permission granted to I.V.R. by the Village Administrative Officer, Kaikaluru to construct the sluice or the 'No Objection Certificate' granted for erecting an electrical pump set by the Assistant Engineer, Drainage Section, Kaikaluru cannot have any validity once the area has been notified under the above G.O as part of KWS. by 1st respondent. The further contention of I.V.R. that he had done the construction of the sluice prior to the issuance of the G.O.

also cannot be of any avail and protect the structures erected by him once they fall in the area notified under the said G.O.

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THE RESULT

24. Therefore, WP.No.4864 of 2015 and WP.No.16297 of 2014 are allowed, and the following directions are given to respondents in both the Writ Petitions:

- (1) disciplinary proceedings be initiated against 3rd respondent by 1st respondent in WP.No.4864 of 2015 for his collusion with I.V.R. and allowing the structures such as sluice, water sump and motor shed erected by him to continue to remain even after the above G.O was issued notifying KWS;
- (2) the 1st respondent in WP.No.4864 of 2015 shall ensure that sluice, the water sump as well as the motor pump set erected by 3rd respondent are immediately removed and appropriate legal proceedings including prosecution be initiated against I.V.R. for the

said activity;

- (3) the 1st respondent in WP.No.4864 of 2015 shall also cause an enquiry to be made into the alleged encroachment by the Writ Petitioner into the land notified under the above G.O. and take action against the Writ Petitioner also, if it is found in such an enquiry that he has also made constructions or indulged in activities prohibited under the above G.O. He shall take the assistance of the District Collector, Krishna District, Machilipatnam and the Revenue and Irrigation Department Officials in this regard;
- (4) the District Collector, Krishna District, Machilipatnam shall also cause an enquiry to be made into the possible collusion by respondent nos.3 to 6 in WP.No.16297 of 2014 with I.V.R. and cause proper proceedings to be initiated against them if it is found that they have a role in permitting I.V.R. to carry on the above activities within the area notified under the above G.O.; and
- (5) the 3rd respondent in WP.No.4864 of 2015 shall personally pay costs of Rs.10,000/- to the Writ Petitioner within a period of two (02)

weeks from the date of receipt of a copy of
this order.

25. Accordingly, the Writ Petitions are allowed with the
above directions.

26. Miscellaneous petitions, pending if any in these
Writ Petitions, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 15-12-2015

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