

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.5497 of 2012

ORDER:

This writ petition under Article 226 of the Constitution of India is filed seeking the following relief/s:

‘to issue any appropriate writ, order or direction particularly one in the nature of Writ of Mandamus, declaring the action of the respondents in making construction of additional class room in the tank by name Narsingrayudu Cheruvu spread over in AC.14.45 cents of land situate in Sy.No.68 of Vanjangi village, Amadalavasa Mandal, Srikakulam District, and also inaction of the respondents in not protecting the said tank as being arbitrary, illegal and violative of judgment of the Hon’ble Supreme Court of India reported in 2006(3) SCC page No.549 and consequently direct the respondents to preserve the said tank and pass such other order or orders....’

[Reproduced verbatim]

2. I have heard the submissions of the learned counsel for the writ petitioner and the learned Assistant Government Pleader for Revenue appearing for the 3rd respondent.

3. The case of the writ petitioner as set out in the writ petition and as per the submissions made at the hearing, in brief, is this:

He is a resident of Vanjangi village. He is a small farmer and one of the ayacutdars of a tank by name Narsingrayudu Cheruvu (‘the tank’ for brevity) spread over Ac.14.45 cents of land in Sy.No.68 of the said village. While so, the 1st respondent/District Collector while sanctioning budget for schools had also sanctioned a budget of Rs.5.30 Lakhs during the year 2011-2012 for construction of an additional class room for Mandal Praja Parishad school at the village *vide* his proceedings dated 09.11.2011 and that on that the respondents 2 to 4 have chosen to construct the said additional class room in the middle of the above said tank even though the said place is not suitable for construction of a class room and though it is dangerous to build a class room in a tank bed, where the soil would be loose. The proposed

construction of the class room would affect about Ac.70.00 cents of agricultural lands including those of the petitioner as the tank bed size would be diminished. The proposed construction is contrary to law and the ratios in the decisions of the Supreme Court and also violative of Articles 14 and 300A of the Constitution of India. There is sufficient Government land in the village for construction of the class room. The writ petitioner along with some other villagers, who are similarly placed, had submitted a representation dated 06.01.2012 to sensitize the respondents about the importance/significance of the water bodies/tanks and rivers etcetera. Despite such representation, the respondents are proceeding to make construction of the class room in the tank bed. Having been aggrieved of the inaction of the respondents and their action in proceeding with the construction of class room in the tank bed, the writ petition is filed.

4. The 4th respondent, the then Executive Engineer of the Panchayat Raj Department filed a counter *inter alia* stating that the construction of additional class room is already completed on the Eastern side of the tank bund and that the same is adjacent to the already existing school building, which is a pucca building, and that it does not affect tank water and that there is no danger to the class room building and the students as the construction was made in a sound condition and that the construction is not going to affect the cultivation of Ac.70.00 cents of land and that the averment in the writ petition that the class room was constructed in the middle of the tank is not correct and that there are already pucca private and Government buildings such as Gram Panchayat office, Dwakra building, Grameena Veterinary building, Water tank etcetera on the tank bund and that the said constructions were made long time back as per the report dated 19.03.2012 of the Tahasildar, Amadalavalasa and that on account of the construction, there is no loss to the agriculturists.

5. At the hearing, the learned counsel for the parties made submissions in line with the pleadings, which are stated supra.

6. The learned AGP had produced a copy of the report dated 19.03.2012

of the Tahasildar with a plan showing the encroachments and the nature and extents of encroachments, which are already made on the tank bund in Sy.No.68. A careful perusal of the report would show that the tank is in field no.68 and the total area of the tank is Ac.14.45 cents and that already the MPE School kitchen, the MPE school building, additional class room, which is now constructed, water tank (OHSR), Temple, Gram Panchayat Office, Dwakra Office and Grameena Veterinary office are already constructed and are existing on the tank bund. The report also makes it manifest that Ac.1.50 cents was assigned under 'D' pattas to Ex-service men. Therefore, there is no dispute that the class room that was proposed to be constructed on the tank bund was in fact constructed on the tank bund.

7. Having drawn the attention of this Court to the report of the Tahasildar and the sketch attached to the said report, the learned counsel for the petitioner would submit that under law, any constructions in a tank bed or on a tank bund are impermissible and that all the villagers have a fundamental right to healthy environment and that the right to live guaranteed under the Constitution implies to right to food, water and environment and that for such healthy and decent living and environment, the tanks should be there and should be maintained as such and that the tank in question is a communal property and that the respondents, who are the State authorities are trustees to hold and manage properties like tanks for the benefit of the community and that they cannot be allowed to indulge in any acts or omissions, which will result in infringement of the rights of the community and that the respondents ought not to have permitted all the constructions that were made on the tank bund and ought not to have assigned a part of the tank bund on 'D' form pattas and that all the acts of the respondents, including the present construction of the class room, which are contrary to law, cannot be encouraged and that since the tank is providing water source for cultivation of lands, each and every ayacutdar has got a property right and that the said right cannot be taken away by the respondents and that the communal property namely the subject tank cannot be diverted for the purpose of construction of houses, school building and Government building etcetera.

He placed reliance on a decision of the Supreme Court in **Intellectuals Forum, Tirupathi v. State of A.P and others** [(2006) 3 SCC 549].

8. The learned AGP would submit that the prayer in the writ petition is confined only to the class room and that the class room is already constructed by expending huge amount and that the construction was made long time back and that the bund is of a large extent and that inspite of the constructions made on the bund there is still sufficient portion of the bund and water spread area (tank bed) and that, therefore, considering the cost that was incurred in constructing the class room by investing public money, the writ petition may be disposed of permitting the constructions to stay and directing the respondents not to allow any further encroachments or constructions on the tank bund and in the tank bed.

9. I have given detailed and thoughtful consideration to the facts and the submissions. I have perused the decision of the Supreme Court wherein the facts disclose that the grievance of the appellant society was in respect of alienation of tank bed lands of two tanks by the Government concerned in favour of some Government agencies for construction of houses. The Supreme Court having considered the report of a committee of experts disposed of the civil appeals with certain directions. Having regard to the facts and the ratio in the decision and that the respondents are under constitutional obligation to protect the tank in question, which is a public property in which the community at large and each and every ayacutdar has got a property right, and that the said right cannot be taken away by the Government to their detriment, and that the communal property cannot be diverted for the purpose of construction of houses either private or Government, this Court is of the well considered view that in the event of conflicting interests between environment and social development, the former should be preferred as it is the responsibility bestowed upon the State to protect and preserve the tanks, which are an important part of environment of the village. In this connection, it is to be noted that it was observed in **Delhi Water Supply & Sewage Disposal Undertaking and Anr. v. State of Haryana and Ors** [1996 Cri LJ 1887] as follows :

Water is a gift of nature. Human hand cannot be permitted to convert this bounty into a curse, an oppression. The primary use to which the water is put being drinking, it would be mocking the nature to force the people who live on the bank of a river to remain thirsty, whereas others incidentally placed in an advantageous position are allowed to use the water for non-drinking purpose. A river has to flow through some territory; and it would be travesty of justice if the upper-riparian States were to use its water for purpose like irrigation, denying the lower riparian States the benefit of using the water even for quenching the thirst of its residents.

Similarly in **Chameli Singh and Ors. v. State of U.P. and Ors. [AIR1996 SC 1051]** the Supreme Court observed as under:

Right to live guaranteed in any Civilised society implies the right to food, water, decent environment education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live, should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the Constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself. To bring the Dalits and Tribes into the mainstream of national life providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights.

In **Hinch Lal Tiwari v. Kamala Devi: [AIR 2001 SC 3215]** the Supreme Court (vide paragraphs 13 and 14) observed thus:

13. It is important to note that material resources of the community like 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 enable people to enjoy a quality life which is essence of the guaranteed right under [Article 21](#) of the Constitution. The Government, including 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 public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.

14. For the aforementioned reasons, we set aside the order of the High Court, restore the order of the Additional Collector dated February 25, 1999 confirmed by the Commissioner on March 12, 1999. Consequently, respondents 1 to 10 shall vacate the land, which was allotted to them, within six months from today. They will, however, be permitted to take away the material of the houses which they have constructed on the said land. If respondents 1 to 10 do not vacate the land within the said period the official respondents i.e. respondents 11 to 13 shall demolish the construction and get possession of the said land in accordance with law. The State including respondents 11 to 13 shall restore the pond, develop and maintain the same as a recreational spot which will undoubtedly be in the best interest of the villagers. Further it will also help in maintaining ecological balance and protecting environment in regard to which this Court has repeatedly expressed its concern. Such measures must begin at the grass-root level if they were to become the nation's pride.

10. Viewed thus, this Court finds that this writ petition can be disposed of with the following directions.

The respondents shall not allow any further constructions to be made in the subject tank including tank bund in Sy.No.68 of Vanjangi village. The constructions already made shall not be allowed to continue. However, since the constructions, both Government and private, were made over a period of time and are in existence since a long time, the respondents shall take immediate steps for finding out an alternative for shifting of the constructions presently on the tank bund to any other suitable available Government land or village land in the vicinity and provide alternative accommodations to the deserving occupants of the structures in the tank bund and thereafter remove the constructions made on the tank bund in strict accordance with the procedure established by law. It is made clear that the investments made by any party for constructions shall not come in the way of implementing the above said orders as otherwise it would seem that once a party makes certain investment in an illegal activity it would be a fiat accompli. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this writ petition shall stand closed.

M. SEETHARAMA MURTI, J

04.02.2016

Vjl