

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 300 OF 2018

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the respondents in allowing the fifth respondent to raise constructions in a water body, pursuant to a resolution No.590, dated 29.09.2017 as illegal, arbitrary and in contravention of the Municipality Act and Rules made therein and also in violative of the provisions of Andhra Pradesh Water, Land and Trees Act, 2002 and Andhra Pradesh Urban Area Development Act, and consequently to *set aside* the Resolution No.590, dated 29.09.2017.

2) The facts which lead to filing of the present writ petition are as under:

The petitioner, who claims to be a resident of Tenali Municipality, came to know that the Municipal Council passed a resolution authorising construction in the tank area behind the municipal office. According to him, permission was granted on 09.02.2017, pursuant to which tenders were called for and fifth respondent was authorized to raise constructions. As it was a single tender, the same was placed before the council, which approved the same. Since the permission,

which was granted for raising constructions is contrary to the provisions of Section 3 of the Andhra Pradesh Water, Land and Trees Act, Section 6 of the Andhra Pradesh Urban Area Development Act and the provisions of the Municipalities Act, the present writ petition came to be filed.

3) By an order dated 05.01.2018, this Court after hearing the learned counsel for the petitioner and the Standing Counsel for Tenali Municipality, directed the respondents to maintain *status quo* as on that day till 19.01.2018. On 27.02.2018, this Court appointed one Sri E Venkata Sddhartha, as advocate-commissioner to visit the property; note down the features and submit his report. Pursuant thereto, the advocate-commissioner visited the premises and submitted his report dated 19.03.2018, before this Court.

4) Learned counsel for the petitioner mainly argued that having regard to the judgments of the Hon'ble Supreme Court in *Association for Environment Protection v. State of Kerala and others*¹ and *Intellectuals Forum, Tirupathi v. State of A.P. and others*², the action of the authorities in allowing the fifth respondent to raise constructions in a tank bed area, is totally illegal, improper and incorrect. He took us through the provisions of the Andhra Pradesh Water, Land

¹ (2013) Law suit (SC) 525

² (2006) 3 SCC 549

and Trees Act, to show that the Government has no power or authority to convert tank bed land into a commercial land and then allow a third party to raise constructions.

5) On the other hand, Tenali municipality filed its counter stating that no water bed is in existence as on today, more so, when the resolution, dated 29.09.2017, was passed. It is stated that the subject land was described as Ura Cheruvu in Town Survey Field Register and the same is not in existence since 1955. On 12.11.1955, the Municipal Council passed a resolution requesting the Director, Town Planning, State of Andhra Pradesh, for preparation of a layout locating the bus stand in the said area, which was approved by the competent authority. As location of the bus stand was shifted to another place, the municipal council passed a resolution for construction of a pucca market complex, to cater to the needs of public. On 30.04.1956, the Director, Town Planning granted layout, vide permit BP No.81/ 50 for construction of a market complex. A resolution came to be passed requesting the Director, Town Planning to revise the above said layout showing construction of a shopping complex and municipal office to meet the modified needs at the said place, which was also accepted and approved vide revised plan dated 18.11.1962. Immediately thereafter, the respondent municipality constructed not only the municipal office but

also a shopping complex in the said place during year 1959 and 1966. From the above, it is urged that no water bed was in existence from the year 1966 onwards in the said area and that a municipal complex came to be constructed in the year 1966 itself, in the name of Alapati Venkataramaiah Market. On 05.02.1974, a revised master plan came to be issued by Tenali municipality, wherein the subject land was earmarked for commercial use. As the said market yard became very old and as it was in a dilapidated condition, the same was removed and then a new complex was sought to be constructed in the very same place, which came to be challenged on the ground that Ura Cheruvu is sought to be converted into a commercial place.

6) Sri Ganta Rama Rao, learned Standing Counsel for the respondent-municipality would contend that even prior to introduction of Andhra Pradesh Urban Area Development Act came into force, the nature of land was changed in the master plan and the provisions of the Andhra Pradesh Water, Land and Trees Act, which came into force on 19.04.2002, have no application since the subject land, was converted long back into a commercial area and then structures including the municipal office were constructed in the said place. Hence, pleads that there is no illegality in allowing the fifth respondent to proceed with the construction.

7) Respondent No.5 also filed counter stating that no water body is existing as on the date of passing of the resolution. It is stated that after obtaining necessary administrative sanction, the Municipality issued e-tender notice dated 30.05.2017 on e-procurement platform and in response to the same, the fifth respondent firm, had submitted its tender and as the fifth respondent alone has submitted the tender, the municipality, after obtaining technical sanction, placed the said tender before the municipal council and the council accepted and approved the same vide resolution dated 29.09.2017 and issued work order. Subsequently, the fifth respondent entered into an agreement on 28.11.2017 and commenced the work in the month of October, 2017. It is further stated in the counter that there are no bonafidies on the part of the petitioner in filing the writ petition and only with an ulterior motive to stop construction of a shopping complex, the present writ petition came to be filed.

8) In order to appreciate the same, it would be useful to refer to the report of the advocate-commissioner.

9) Pursuant to an order passed by this Court on 27.02.2018, the advocate-Commissioner took the help of the Mandal Surveyor and Municipal Surveyor, for conducting survey and enquiry. He is said to have visited the said land and found the area surrounded by permanent constructions including a

market, shops and good movement of the public at the proposed site. The said property was covered by road on three sides with concrete structures at the site. He noticed existence of semi iron pillar construction in part of the proposed site, with sufficient set backs. According to him, the proposed site, by name Ura Cheruvu have ruins of old structure and took the assistance of Mandal Surveyor in determining the actual facts of the proposed site. Photographs came to be submitted along with the report evidencing existing of old structure at the proposed site. He also claims to have visited the water bodies existing in Tenali town, taking the common point as the municipal complex. He noticed five water bodies at the distance of 1 to 2 kms., from the municipal complex.

10) From the report of the advocate-commissioner, it is clear that there was an existing old structure at the site, part of which came to be removed and thereafter new construction is sought to be made in the said area.

11) *Intellectuals Forum, Tirupathi case (2 supra)*, was a case where a tank which was in existence and was being put to use not only for irrigation purpose but also as a lake, which was furthering percolation to improve the groundwater table, serving the needs of the people in and around the tanks. As per the observations of the Apex Court, the High Court gave

precedence to the economic growth by completely ignoring the importance and primacy attached to the protection of environment and protection of valuable and most cherished fresh water resources. As there was shortage of water in Tirupati, an Engineering team, was assigned a task to visit in an around the foot-hills of Tirupati and Tirumala, for the purpose of identifying sources of fresh water. The team of Engineers, in their meeting held on 26.05.1990 suggested that improvement of feeder channels for Peruru and Avilala Tank would improve percolation of all the surrounding areas and that there is enough potential for the tanks to get enough water if the feeder channels are improved. In the mean time, the Government issued G.O.Ms.No.181, dated 15.03.1991, alienating an extent of 150 acres of land which belongs to the tank bed area of Peruru Tank to Tirumala Tirupati Devasthanam. Letters were written to various authorities of the Government, requesting them not to alienate the tank bed areas except for the purpose to which they meant. However, in the year 1994, G.O.Ms.No.84, dated 28.01.1994 came to be issued authorizing the District Collector, Chittoor, to alienate 90 acres of land belonging to Avilala tank bed area to Andhra Pradesh Housing Board and directing the TUDA to provide a master plan for the entire area of 170 acres, so as to ensure integrated development of Avilala tank area.

Dealing with an issue of this nature, the Apex Court *set aside* orders of the Division Bench of this Court, which give precedence to the economic growth by completely ignoring the importance and primacy attached to the protection of environment and protection of valuable and most cherished fresh water resources. While doing so, the Apex Court held as under:

“The appeals are disposed of with the following directions:

With regard to Peruru tank:

- (i) No further constructions to be made.
- (ii) The supply channel of Bodeddula Vanka needs to be cleared and revitalized. A small check dam at Malapali to be removed to ensure the free flow and supply to the tank.
- (iii) Percolation tank to be constructed and artificial recharge to be done to ensure the revival of the tank, keeping in mind its advantage at being situated at the foot hills.
- (iv) The area allotted by Mandal Revenue Office for construction of the tank to be increased to a minimum of 50 acres. Percolation tank with sufficient number of recharge shafts to be developed to recharge the unsaturated horizons up to 20 m. The design of the shafts etc. to be prepared in consultation with the CGWB. The proposed percolation tank to be suitably located along the bund keeping in view the inlets, irrigation sluices and surplus water.
- (v) Feasibility and cost estimation for the revival of the old feeder channel for Swarnamukhi River should be carried and a report to be submitted to the Court.

- (vi) Each house already constructed by the TTD must provide for roof top rain water harvesting. Abstraction from ground water to be completely banned. No borewell/ tubewell for any purpose to be allowed in the area.
- (vii) Piezometers to be set up at selected locations, in consultation with the CGWB to observe the impact of rain water harvesting in the area on ground water regime.

With regard to Avilala tank:

- (i) No further construction to be allowed in the area.
- (ii) Each house already constructed by the APHB/ TUDA must provide structure for roof top rain water harvesting. All the storm water in the already built colonies to be recharged to ground water. Structures for such purposes to be designed in consultation with the CGWB.
- (iii) No borewell/ tubewell for any purpose to be allowed in the area.
- (iv) An area of 40 acres presently reserved for the Government should not be developed in any way that may lead to concretization of the ground surface. Recharge structures to be constructed for rainwater harvesting.
- (v) Piezometers to be set up at selected locations, in consultation with the CGWB to observe the impact of rain water harvesting in the area on ground water regime.

12) In *Association for Environment Protection case (1 supra)* the Apex Court while dealing a situation where preservation of natural resources vis-à-vis the action of the District Tourism Promotion Council and Department of

Tourism, wherein a decision was taken to construct a restaurant on the reclaimed land by citing convenience of the public coming on Svarathri festival, set aside the finding of the Division Bench of the High Court, which approved the sanction granted by the State Government, for renovation and beautification of Manalpuram Park, and observed as under:

“20. G.O. dated 13.1.1978 is illustrative of the State Government's commitment to protect and improve the environment as envisaged under Article 48A. The object of this G.O. is to ensure that no project costing more than Rs.10 lakhs should be executed and implemented without a comprehensive evaluation by an expert body which can assess possible impact of the project on the environment and ecology of the area including water bodies, i.e., rivers, lakes etc. If the project had been referred to the Environmental Planning and Co-ordination Committee for review and assessment of environmental implications then it would have certainly examined the issue relating to desirability and feasibility of constructing a restaurant, the possible impact of such construction on the river bed and the nearby bridge as also its impact on the people of the area. By omitting to refer the project to the Committee, the District Tourism Promotion Council and the Department of Tourism conveniently avoided scrutiny of the project in the light of the parameters required to be kept in view for protection of environment of the area and the river. The subterfuge employed by the District Promotion Council and the Department of Tourism has certainly resulted in violation of the fundamental right to life guaranteed to the people of the area under Article 21 of the Constitution and we do not find any justification to condone violation of the mandate of order dated 13.1.1978. In the result, the appeal is allowed.”

13) But the case on hand stands on a totally different footing. It is no doubt true that the land where the construction is now sought to be made, was described as Ura Tank in the year 1922. The material placed before the Court would show that as per Town Survey Field Register, dated 22.03.1923, the land in Sy.No.164/ 1 was classified as tank poramboke. Vide resolution, dated 12.11.1955, the municipal council resolved to request the Director, Town Planning, to prepare a lay out, for location of a bus stand. As the construction of the bus stand was shifted to a new place, the authorities proposed to construct a pucca market to cater the needs of the public and accordingly, requested the first respondent herein to permit the use of Ura Tank for construction of market and also for earmarking of tank poramboke area for construction of other pucca structures. The said resolution is dated 30.04.1956. Copies of the minutes of the meeting are placed on record. The request of the council was accepted by Director, Town Planning and granted lay out vide permit BP No.81/ 1950. Thereafter, the council again resolved to request the Director, Town Planning to revise the lay out plan of Ura Tank to meet the modified needs. The same was approved vide revised plan dated 18.11.1962, for construction of shops and municipal office vide BP No.85/ 62. Copy of the layout is placed before this

Court. After approval by the Director-Town Planning, construction of a shopping complex and municipal office came to be made in the year 1959 and 1966 respectively.

14) It is to be noted here that on 05.02.1974, the Director of Town Planning, issued a master plan in respect of the municipality, classifying and earmarking the subject tank area for commercial use. Therefore, the subject land which got converted in the year 1956, was approved not only in the initial lay out but also in the revised lay out and the same was reflected in the master plan prepared in the year 1974. The said master plan of the year 1974, was never challenged by anybody till date. In the said master plan this land was shown for commercial use. The shopping complex consisting of 22 shops, which was constructed in the year 1959, in an extent of 2000 square yards, became very old and as it was in dilapidated condition, the council proposed to demolish the existing shopping complex and sought to utilize the same for vegetable and fruit market and for construction of multi-storied complex. Accordingly, notice came to be issued to the lease holders, whose lease period already expired, requesting them to vacate the shops. After the lease holders vacated the shops, the municipal council resolved to construct a new complex vide resolution No.935, dated 09.02.2017. E-tender was issued on 30.05.2017 on the basis of e-procurement

method. The fifth respondent was the only person, who is said to have submitted his tender, which was forwarded to the third respondent for technical sanction. The same was accepted vide proceedings dated 18.09.2017. Later, the same was put forth before the Council, which was accepted and resolved vide resolution No.590, dated 29.09.2017. Work order came to be issued on 03.10.2017 and an agreement was also entered with the fifth respondent on 28.11.2017. Pursuant there to the fifth respondent removed the old construction and started constructing a new complex.

15) It is to be noted here that the land was demarcated, as a commercial area in the master plan which was prepared in the year 1974, that is, much prior to Andhra Pradesh Urban Area Development Act came into force. The master plan remained un-challenged till the date of filing of the writ petition. In fact from the year 1959, till date, there existed a shopping complex containing 22 shops including Tenali Municipal Office. No objection was raised till the shopping complex, which was in dilapidated condition, was removed for the purpose of constructing a new complex.

16) Similarly, Section 23 of the Andhra Pradesh Water, Land and Trees Act, is being pressed into service for preservation of tank bed land. The material on record would show that when the said Act came into force, construction in the said premises

existed and 15 years later the shopping complex came to be demolished, as it was in dilapidated condition.

17) Therefore, the argument of the learned counsel for the petitioner that a tank area is now sought to be converted into a commercial area has no legs to stand. A perusal of the documents clearly indicate that the resolutions came to be made by municipal council in the year 1955, for construction of a bus stand and as the said proposal was dropped, another resolution came to be made in the year 1956 for construction of a market and then by 1959 a market complex consisting of 22 shops was raised in the said place. As observed earlier, the said complex was in existence till it was removed in the year 2017. It is also to be noted that the report of the advocate-commissioner, who visited the said area fortifies the observations made above. The advocate-commissioner's report indicates that the existing area which is surrounded by roads on three sides consists of number of constructions including the shops and offices in and around the said area. It is not the case of the petitioner herein that there was any drain or any source of water is being getting affected if the said area is allowed to be used as a commercial area. No report of any authority is placed to that effect. Since the area is surrounded by constructions, with multi-storied complexes, coupled with the fact that tank bed area had

structures raised since 1959, this Court is of the view that the request of the petitioner to treat the said area as tank bed area cannot be accepted.

18) Having regard to the above, the writ petition is dismissed. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

31.10.2018
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JUSTICE C. PRAVEEN KUMAR