

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.6802 of 2018

ORDER :

The petitioners herein are farmers having patta land in Bommanapally Village, Wazeedu Mandal, Khammam District.

2. They submitted applications dt.02.07.2016 and 20.07.2016 requesting for de-casting of sand which got accumulated in their lands to the Assistant Director of Mines and Geology of the said District.

3. 'No Objection' letters for de-casting were given by the Tahsildar, the Agriculture Officer, The Deputy Director of Ground Water and the Executive Engineer, M.I.P. Division, for the said purpose in view of policy of the 1st respondent-Government notified vide G.O.Ms.No.3 Industries and Commerce (M.I.) Department, dt.08.01.2015 framing their New Sand Mining Rules, 2015, and in particular, as per Rule 7(1)(b)(iii)&(V) of the said Rules. However, applications of petitioners for de-casting were kept pending by the respondent without assigning any reason.

4. Ultimately, on 29.03.2017, a cryptic order vide proceedings No.160/Sand/2016 was passed by the District Collector, who was Chairman of the District Level Sand Committee, Jayashankar Bhupalpally (respondent no.5), rejecting the petitioners' applications for de-casting of sand from their lands merely saying "*on Technical Grounds*".

5. Assailing the same, the present Writ Petition is filed, contending that on 29.03.2017, the District Level Sand Committee, which is the 5th respondent, had rejected hundreds of applications for de-casting through

the said order giving the same reason, i.e., “that they are rejected on technical grounds”. The petitioner contends that each of those orders were cyclostyled copies merely changing the name of pattedar, and do not disclose what was the technical reason preventing de-casting / de-silting of sand from their land, and that this is illegal and arbitrary.

6. The petitioners placed reliance on the order dt.06.11.2017 passed in W.P.No.15492 of 2017 and batch, wherein this Court considered three such orders passed on 29.03.2017 by the 5th respondent, and directed the respondents to grant permissions to the petitioners therein for de-casting of their lands.

7. The petitioners contend that as per the policy of 1st respondent-Government, sale of sand is exclusively to be done by 4th respondent, and if there was any technical reason why sand from petitioners’ land cannot be removed, disciplinary action ought to be taken by the respondents against all the officials who have granted ‘No Objection Certificate’ for de-casting of sand in their lands and who had not cited any technical reason why de-silting cannot be done from their land. Petitioners also contend that the state has permitted desilting of reservoirs in the Godavari River nearby their lands, and if that was technically possible, decasting sand from their lands is also not technically impossible, and petitioners would have to starve if the sand in their land is not decated.

8. Counter-affidavit is filed by the 2nd respondent admitting that petitioners have made applications for de-silting of land as per G.O.Ms.No.3 Industries and Commerce (M.I.) Department, dt.08.01.2015, and the New Sand Mining Rules, 2015, notified therein, and also admitting that there was

recommendation from the Assistant Director of Mines and Geology whose Joint Inspection Team visited the lands of petitioners and recommended to the 5th respondent to grant decasting permission; that other technical people belonging to M.I.P. Division, Ground Water Department, Mandal Agriculture Officer and Mandal Tahsildar also gave NOCs; and that the 5th respondent considered the same in its 2nd meeting held on 23.03.2017 and rejected the same giving the following reasons :

- “(1) It leads to more scoring and erosion of more agriculture lands;*
- (2) The existing Panchayat Raj Roads designed up to 10 Tonnes capacity may be damaged.*
- (3) Even after de-casting of sand from patta lands, the land will not be utilized for cultivation, since the depth of sand is more than 4 meters, whereas the Ground Water Department is permitting up to 2.5 meters.*
- (4) Permission for de-casting of sand leads to revenue loss to Society reaches.*
- (5) Presently the de-silting of sand from Medigadda and Annaram barrages will be sufficient to the market needs.*
- (6) In light of wildlife sanctuary at Eturnagaram may be affected with more number of vehicles.”*

9. It further stated that these orders were communicated to the petitioners by proceedings dt.29.03.2017. It is further stated that the State Government had decided to construct Reservoirs across the Godavari River at “Medigadda and Annaram”, that environmental clearance was not required for de-silting of sand in reservoir as per a notification dt.15.01.2016 issued by the Ministry of Environment, Forests, Union of India and petitioners cannot seek permission for de-casting of sand by comparing the same with de-silting of sand in the proposed reservoir.

10. In the counter-affidavit, the 1st respondent denied that the State Government permitted de-casting in the River and rejected the petitioners’ applications only to help other persons to do sand business. However the respondents also admit that this Court passed orders dt.06.11.2017 in

W.P.No.15492 of 2017 and batch, setting aside the proceedings dt.29.03.2017 of the 5th respondent, and directed the respondents to grant permission to petitioners for de-silting the same from the subject patta lands.

11. In the said order passed by this Court, this Court held :

“9. Farmers are the backbone of our society and our economy and because of their hard work and the labour the society is getting food grains for sustenance. We all know what amount of difficulties they undergo in the said process of growing food grains and obviously keeping in view the said crucial aspect, the State of Telangana while framing the above said Rules inserted Rule 7 with a laudable object. Therefore, the authorities are required to discharge their functions by keeping in mind the said laudable object of the State Government. In fact, the said laudable object would be very much evident from the reading of Rule 7 of the Rules. Rule 7 of the Rules categorically and in a clear language mandates that in case of the sand cast in pattalands, the pattedar shall be allowed to de-cast the sand to make the land fit for agriculture. The said provision of law imposes reciprocal obligation on the authorities to see that the said intention is achieved. The certificates issued by various authorities under Rule 7, obviously after through verification, would disclose about the unwarranted deposit of sand in the lands of the petitioners herein which obviously comes in the way of process of cultivation. Having called for the particulars/reports as stipulated under Rule 7 and having received the same, this Court does not find any justification on the part of the District Level Sand Committee in rejecting the request of the petitioners herein and the said rejection is a patent violation of not only the Rules but also Articles 14, 21 and 300-A of the Constitution of India. The authorities cannot lose sight of the factual situation and the ground reality that unless the petitioners who are owners of small extents of lands are permitted to de-cast the sand, they will not be in a position to cultivate their own lands, which may also effect their livelihood as such the impugned action can neither be approved nor countenanced. In fact, the Minutes of the District Level Sand Committee have also been placed on record by the respondents along with their counter and a perusal of the same makes it very much evident that the District Level Sand Committee completely discarded the reports of the various authorities under Rule 7 of the Rules and failed to assign any reasons, much less valid reasons, for discarding the said reports.

10. Having regard to the facts and circumstances of the case and in view of the material available before this Court, this Court does not find any justification on the part of the respondent authorities in rejecting the request of the petitioners herein for de-casting, totally ignoring the Rules framed by the State Government.

11. For the aforesaid reasons, the writ petitions are allowed, setting aside the proceedings No.160/Sand/2016, dated 29.03.2017, of the District Collector, Bhupalapally District, at Bhupalapally and consequently the respondents are directed to grant permission to the petitioners herein for de-casting the sand from their subject patta lands. As a sequel to the disposal of the writ petitions, miscellaneous petitions, if any, pending shall stand disposed of.”

12. Having regard to the reasons assigned in the said order, with which I completely agree, I hereby set aside the proceedings No.160/Sand/2016, dt.29.03.2017 of the 5th respondent, and direct the respondents to grant permissions to petitioners for de-casting sand from the subject patta lands within one week from the date of receipt of copy of this order.

13. Accordingly, the Writ Petition is allowed as above. No order as to costs.

14. As a sequel, miscellaneous applications pending if any, in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-04-2018

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