

THE HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.9069 of 2004

ORDER:

Heard Sri K.V.Bhanu Prasad, learned counsel for petitioner, Mr.Durga Reddy, learned Government Pleader for respondents 1 to 3 and Mr.J.Prabhakar for respondents 8 and 9.

M/s.Janachaitanya Housing (Pvt.Limited) represented by the authorized officer is the petitioner.

The subject matter of the writ petition is an extent of Ac.11-32 gts in Sy.No.141 of Koheda Village (previously Hayathnagar Mandal), presently Abdullapur Mandal with effect from 11.10.2016.

The petitioner prays for *certiorari* to call for the records leading upto and including proceedings No.B1/2939/96 dated 21.03.1997 of District Collector/2nd respondent, and proceedings No.D1/6652/1999 dated 31.10.2002 and the order dated 19.01.2004 in proceedings No.T4/1294/2003 of Commissioner (Appeals) Office of Chief Commission of Land Administration/3rd respondent, quash the proceedings as illegal, arbitrary and violative of Article 14 of Constitution of India by holding that the A.P. (Telangana Area) Irrigation Act (for short 'the Act'), has no application to the subject matter of writ petition and consequently set aside the impugned proceedings.

Respondent Nos.2 and 3 through the proceedings impugned in the writ petition held that alleged removal of bund in Sy.No.141 of Koheda Village is illegal, warranting action under Sections 49 and 50 of the Act. Respondent Nos.2 and 3 further directed restoration

of “Pittacheruvu” to its original standards within a period of three months from the date of receipt of order of 2nd respondent. The 3rd respondent confirmed the order of 2nd respondent dated 31.10.2002.

For convenience and also clarity on the facts-in-issue raised by petitioner, this Court refers to the primary fact-in-issues in between the parties regarding Sy.No.141 of Koheda Village. The petitioner refers to subject matter of writ petition as agricultural land, respondent Nos.1 to 3 refer to as Pittacheruvu. At appropriate stage of the order, this Court would consider the respective submissions and record a finding, but for the present refers to the Sy.No.141 as subject matter of writ petition.

The petitioner is a company incorporated under the provisions of Companies Act. The petitioner claims to be doing business in real estate by purchasing, developing and selling properties as plots, houses etc. The petitioner as part of its business activity purchases both agricultural and non-agricultural lands. The petitioner purchased the subject matter through registered sale deeds bearing Doc.Nos.4338/96; 2035/95; 4339/96 from pattadars. The petitioner on 01.09.1995 got the subject matter surveyed and at the survey of subject land there was no whisper or objection that land surveyed is a tank or tank bed land. The petitioner in addition to being a bonafide purchaser refers to certificate issued under Section 38-E of A.P.(Telangana Area) Tenancy and Agricultural Lands Act, 1950. The further allegation in this behalf is that the certificate if issued under Section 38-E, would show that the subject

matter was agricultural land but not a tank bed or tank. Therefore, there is no embargo for purchasing the property from pattadars by the petitioner.

On 17.08.1996, the 1st respondent issued show cause notice as to why action against the petitioner company should not be proceeded with, for causing damage to the bund of Pittacheruvu in Sy.No.141 by using bulldozers and levelling the tank bed land. The show cause notice refers to removal of 12 palm trees, which act contravenes A.P. Excise Act, 1968. The show cause notice is also issued under Sections 49 and 50 of the T.A. Irrigation Act, 1359 Fasl. The petitioner by way of reply contended that the Act has no application to the subject matter of writ petition. The petitioner relies on Section 3(a) which defines Irrigation Work under the Act. The petitioner denied committing breach or damage to Irrigation Work and prayed for dropping the proceedings. On 21.03.1997, the 2nd respondent passed order and the operative portion of the order reads thus:

“The explanation received is verified and in order to give an opportunity a date of personal hearing was fixed. Notices were issued. Sri M.S.R.Subramaniam represented the case on behalf of M/s.Janachaitanya Housing Pvt.Ltd. He was reiterated the same facts that were mentioned in the written explanation.

Perused the documents and explanation submitted by the petitioner. The report of Mandal Revenue Officer, Hayathnagar No.1748/ 96 dt.5-6-96 is verified. It is proved beyond doubt that M/s Janachaitanya Housing Pvt.Ltd. represented by its Regional Manager have damaged the tank bund of Pittacheruvu located in Sy.No.141 of Koheda village by using Buldozers. It is violation and contravention of Section 49 & 50 of A.P. (T.A) Irrigation Act, 1357-F. Therefore, an amount of Rs.1,000/- (Rupees one

thousand only) is levied as penalty. He is further directed to restore the tank bund to its original standards. The Mandal Revenue Officer, Hayathnagar is requested to implement the orders.”

The petitioner since was dissatisfied with the manner in which fact-in-issue was considered by 2nd respondent, challenged the proceedings dt.21.03.1997 before the 3rd respondent who in turn remanded the case to 2nd respondent for disposal afresh vide order dated 27.09.1999. The 2nd respondent on remand reconsidered the issue and through proceedings No.D1/6652/1999 dated 31.10.2002 held as follows:

“In this case, the “Pittacheruvu” which is an irrigation work under the A.P. (TA) Irrigation Act, 1357 F., has now fallen into disuse. Taking advantage of the tank in disuse condition and under the guise of patta land though the Irrigation work stands on Patta land, the petitioner institution knowingly and wantonly tried to change the nature of the land. Indiscriminate and thoughtless destruction of water body would reduce ground water level resulting in an adverse effect on the environment and would damage the ecology. Hence, such course of action by the petitioner institution is impermissible and illegal.

If the bund of the Pettacheruvu is kept intact and if the said water body is maintained to its original standards and if the water is received to its capacity during the monsoon, it would improve ground water potentiality and would serve useful purpose as a percolation tank which would promote ecological interest.

The reports of the MRO, Hayathnagar clearly disclosed that the petitioner institution has committed actions which would amount to offences U/s.49 & 50 of the A.P., (TA) Irrigation Act, 1357 F for which fine was imposed. Further the petitioner is also liable to be prosecuted before the competent criminal court.

In view of the above findings and in view of the directions and observations of the Hon’ble Supreme Court of India and the Hon’le High Court of A.P. in its judgments referred above, the

orders passed earlier by the then Collector, are found correct and in accordance with law.

Hence, the orders passed earlier by this Office vide Collector, Ranga Reddy District Procds.No.B1/ 2939/ 96, Dt.21.03.1997, are hereby confirmed and the petitioner institution has to restore the Pittacheruvu to its original standards within a period of (3) months from the date of receipt of this order.”

The petitioner filed appeal before the 3rd respondent and through order No.T4/1297/2003 dated 19.01.2004, the appeal was dismissed confirming the findings of 2nd respondent. For convenience and having regard to the grounds raised by the petitioner, the operative portion is excerpted here under:

“The case came up for final hearing on 17.11.2003. The learned counsel for the appellant has not filed his written arguments. In the impugned order, the Collector, observed that “Pitta Cheruvu”, which is in irrigation work under the A.P. (T.A) Irrigation Act, 1357 f., has now fallen into disuse, that taking advantage of the tank in disuse condition and under the guise of patta land, though the irrigation work stands on patta land, the appellant institution knowingly and wontedly tried to change the nature of the land that in discriminate and thoughtless destruction of water body would reduce ground water level resulting in an adverse effect on the environment and would damage the ecology. Therefore, the Collector held that such course of action by the appellant institution is impermissible and illegal and that the orders passed earlier by his predecessor are found correct and in accordance with law in view of the various judgments of the Hon’ble High Court of Andhra Pradesh and the Supreme Court of India referred to there in. The records filed before me show that the land in Sy.No.141 is a patta land purchased by way of registered documents by the appellant institution from the pattadars basing on the ‘N.O.C.’ issued by the MRO Hayatnagar in his letter No.C/ 4866/ 95, dated 18.10.1995 on the application, dated 13.10.1995 made by the pattadars, but not at the instance of the appellant institution. Thus, the MRO

was not aware of acquisition of the landed property by the appellant institution on Sy.No.141 to deny issue of 'N.O.C.' and nothing had prevented the appellant institution to verify the nomenclature of the property before it is acquired, and approach the authorities concerned for change of the land use following the procedure prescribed in the statute. Hence, obtaining of 'N.O.C.' from the competent by the original pattadar has no relevance to the petitioner Institution and the Collector has correctly pointed out that the petitioner Institution has failed to seek permission of the Competent Authority for change of the land use as required U/s 61 of the A.P. (T.A.) Land Revenue Act, 1317 fasli. Failure to follow the prescribed procedure by the appellant institution to commence their activities resulted in breaches of bund of the kunta, which was said to be in disuse, and therefore the MRO Hayatnagar, had initiated punitive action against the appellant institution. Under these circumstances, I do not find any reason to interfere with the orders of the first respondent. Accordingly, the appeal is dismissed and the stay granted by this Court on 26.07.2003 is hereby vacated."

Hence the writ petition.

The petitioner contends that a kunta was never in existence or a tank in subject matter of writ petition. The land in Sy.No.141 was a patta land. The petitioner purchased subject land from a person who held Section 38-E certificate under A.P.(TA) Tenancy and Agricultural Lands Act, 1950. The action of respondents in undertaking a roving enquiry, particularly when the revenue record evidences that this tank has fallen to disuse is illegal. If a tank is not used or fallen to disuse, Section 61 of the Act has no application. Sections 49 and 50 of the Act are inapplicable to subject matter of the writ petition. The order of 2nd respondent suffers from infirmities in law and the 3rd respondent without independently examining all the objections raised by the petitioner has passed a laconic order.

The order of 3rd respondent is a cryptic order as well. According to petitioner, the orders against petitioner under Sections 49 and 50 are without material or evidence, but by referring to inapplicable provisions of law, penalty is imposed and further direction is issued to restore the tank bund. The petitioner prays for setting aside the impugned proceedings.

The respondents either willfully or by design as usual did not produce the record, though the prayer is for writ of certiorari, much less filed the counter affidavit.

On 22.01.2018, keeping in view the nature of contentions between the parties and also the findings recorded by 2nd and 3rd respondents, the Court passed the following docket order:

“On 30.04.2015, learned Government Pleader stated on instructions that the matter involves tank bed land and seeks further time to file counter. Considering the importance of the matter, this court was inclined to accept the request of the Government Pleader notwithstanding the earlier conditional order passed on 06.04.2015. The request was accepted and the writ petition was posted to 12.06.2015. Thereafter, the matter underwent 14 adjournments and the Government Pleader (Revenue) repeats the same request.

From the above, it is clear that the respondents on one hand do not want to place material before the Court or alternatively does not want adjudication of the issue between the parties.

Post on 12.02.2018 for filing counter affidavit and production of record by respondents 1 to 3.

If the counter affidavit is not filed or record is produced by the next date of hearing, respondents 1 and 2 are directed to deposit a sum of Rs.15,000/- (Rupees fifteen thousand only) to the credit of Secretary, Telangana State Legal Services Authority and the Court would also consider ensuring the presence of either 1st respondent or 2nd respondent with record.”

The respondents in response to the docket order, filed counter affidavit and also produced the revenue record for the perusal of Court. The respondents have also filed certified copies of pahanies for the years 1955-1958; 1975-1976; 1985-1986; 1990-1991; 1995-1996; 1999-2000. The counter affidavit of 1st respondent states that Sy.No.141 to an extent of Ac.11-32 gts at Koheda Village is an irrigation source known as Pittacheruvu. The petitioner who has purchased through sale deeds a portion of subject matter damaged the bund of tank with the help of bulldozers, levelled the tank bund land in shikham in contravention of Sections 49 and 50 of Telangana Irrigation Act. For these acts of commissions and omissions, it is stated that the 2nd respondent imposed penalty of Rs.1,000/- for damaging the irrigation source and further directed restoration of tank bund to its original standards. The 1st respondent supports the orders of the appellate authority and also the orders dated 31.10.2002 and 19.01.2004 passed by respondent Nos.2 and 3. The 1st respondent in paragraph 3 of counter affidavit on the applicability of Act to subject matter of the writ petition states thus:

“The 1st respondent/Tahsildar has filed the counter affidavit stating that an extent of Ac.11.32 gts., at Pittacheruvu in Survey No.141 of Koheda village is irrigation source, and though the land is classified in the records as Shikam Patta, it is covered by water body, namely Pittacheruvu. Even though the water body/tank is situated over the patta land, it is irrigation source as per Section 3(a)(i) of the Irrigation Act and hence the provisions of Sections 49

and 50 of the Act would apply. The pattadars of such land are having only subterranean rights to cultivate the land when the water recedes, but they are not entitled to covert into non-agriculture purpose. The land in Survey Nos.141 and 144 are adjoining to each other. The boundaries in document No.2935/95 clearly shows that Pittacheruvu is very much existing and it is recorded as Shikam from 1958-59 to 1977-78. Subsequently, it is recorded as Patta by way of supplementary sathwar, but its utility as Shikam remains.”

Finally, it is stated that Act has no application and for the purpose of showing existence of tank in the neighbourhood, the 1st respondent refers to sale deeds through which the petitioner claims to have purchased the subject matter of the writ petition.

According to 1st respondent, Sy.No.141 to an extent of Ac.11-32 gts is a tank, recorded in revenue records as Pittacheruvu shikham. The 1st respondent refers to Section 38-E certificate and further states that the person who has ownership certificate granted under Section 38-E has subterranean rights but not to change the demography or physical features of land. According to 1st respondent, the issues namely Sy.No.141 is a tank or not, whether the petitioner demolished the tank bund etc are considered in required detail by respondent Nos.2 and 3 and no ground for interference of this Court under Article 226 of Constitution is made. The respondents pray for dismissing the writ petition.

The respondent No.4 was impleaded and on the demise of respondent No.4, the legal representatives of R-4 have been

brought on record. The respondent No.4 is a rival claimant and sets up title and possession independent to the claim and assertion of petitioner. Simultaneously, the 4th respondent also challenges the findings of respondents on treating the subject matter as Tank or Tank bed. This Court keeping in view, the writ prayer, namely writ of certiorari to quash the impugned orders, does not enhance the scope of the present prayer by taking up rival claims on title to subject matter of writ petition. Further, the 4th respondent cannot get the disputes vis-à-vis petitioners or respondent Nos.1 to 3 resolved in the present writ petition. The averments made on behalf of respondent No.4, for the above reason, are not adverted to. It is at the same time clarified that the forum for resolution of title dispute is before civil court in accordance with law.

Mr. Bhanu Prasad contends that exercise of jurisdiction by respondent Nos.2 and 3 is patently illegal and orders impugned are liable to be set aside. According to him, the Act has no application to the subject matter of the writ petition still directions for restoration of bund are given. He in support of his contention places reliance on the definition of irrigation work in Section 3(a) of the Act and also Sections 49 and 50 of the Act. According to him, even assuming without admitting, a tank was in existence, the Act has no application as the alleged tank does not satisfy definition clause and no order under the Act could be passed against the petitioner. According to him neither there is cultivation under the tank nor the tank satisfies the definition of Section 3(a) of the Act. He further contends that the 2nd respondent did not advert to all the

objections raised by the petitioner and still recorded findings that the subject matter is a tank and the petitioner illegally demolished a portion of tank bund or levelled the subject matter. He further contends that the abandoned tank has to be appreciated in a different way from a tank in use and as there is no natural flow of water resources into the tank, the preservation laudably referred in the orders under challenge is only a convenient reason used by the respondents to pass the orders impugned in the writ petition. To draw the distinction between a natural water resource i.e. either a tank or tank in disuse, he relies on *Mrs. Susetha Vs. State of Tamilnadu and Others*¹. He places strong reliance on paragraphs 23 and 24 thereof, which read thus:-

23. The case at hand must be judged having regard to the aforementioned principles in mind. The Respondents categorically denied and disputed that there is any water shortage in the village. The village is situated on both sides of the National highway. It is situated near a sea and having five water tanks in or around therein. It is, therefore, difficult to accept that there had been acute water shortage in the village, as was submitted by Ms. Malhotra. The tank in question is not a natural tank. Only rain water could be collected in it. It has been a dumping ground for a long time. Although there is no material on records to show as to since when it has fallen in disuse, indisputably the tank in question is in a dilapidated condition for a long time and has been used as a dumping yard and sewage collection pond. In our opinion, thus, it is not a case where we should direct its resurrection.

24. The High Court in its judgment has taken into consideration all relevant factors. It was not pointed out that

¹ AIR 2006 SUPREME COURT 2893

essential features or other relevant principles of law were not taken into consideration by the High Court in passing the impugned judgment.”

He prays for setting aside the orders impugned in the writ petition.

Mr.Durga Reddy appearing for respondents contends that this is one of the rare instances, where the respondents have taken timely action before the physical features of the subject matter are completely changed and thus a water body is preserved. Before relying on the findings recorded by respondents 2 and 3, he draws the attention of the Court to village map of Koheda village, pahanies for the years 1955-58, 1975-76, likewise 1985-86, 1990-91, 1995-96, 1999-2000 and 2016-17 to contend that the subject matter of writ petition in an extent of Ac.11-32 gts., is recorded as ‘Shikam Kunta’ and the local name of the subject matter is ‘Pitta Cheruvu’.

From the documents now filed by respondents to point out the collusion in bringing into existence the Certificate under Section 38-E of the Tenancy Act, Mr.Durga Reddy further draws the attention of the Court to the pahanies from 1985-86 onwards to explain that the land in Sy.No.141 of Koheda village, upto 1975-76 has been registered as Shikam Poramboke. The names of several individuals are incorporated against subject matter and classification changed without orders enabling for change of classification, mutation orders etc. According to him, even if the names of individuals are either written or fudged in revenue records, the entries are not binding on the Government/respondents, for the respondents are under obligation to protect water bodies,

independent of Irrigation Act and in the case on hand, such steps have been taken and this Court in a writ of Certiorari ought not to disturb the orders. To substantiate the legal ground raised by Mr.Bhanu Prasad, he relies on the order of 2nd respondent dated 31.10.2002 and the order of 3rd respondent dated 19.01.2004, which are already excerpted above.

Mr.Durga Reddy, finally with vehemence at his command and disposal argues that no case is made out for interference under Article 226 of the Constitution of India. He distinguishes the decision relied on by petitioner i.e. *Mrs.Susetha's case* (1 supra) to the subject matter by showing that the tank dealt with by Apex Court is a tank constructed adjoining a temple, whereas the subject matter covers an extent of Ac.11.32 gts., and the subject matter can be protected for posterity. He places reliance on *M.C.MEHTA Vs. KAMAL NATH AND OTHERS*², *HINCH LAL TIWARI Vs. KAMALA DEVI AND OTHERS*³ and *FRIENDS COLONY DEVELOPMENT COMMITTEE Vs. STATE OF ORISSA AND OTHERS*⁴ to contend that apart from passing an order under the Irrigation Act, the efforts of respondents 2 and 3 are to restore water body and also prevent either change of physical feature or encroachment by anyone including the petitioner herein.

In *M.C.MEHTA's case* (2 supra), the Hon'ble Supreme Court held as follows:-

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² (1997) 1 Supreme Court Cases 388

³ (2001) 6 Supreme Court Cases 496

⁴ (2004) 8 Supreme Court Cases 733

“The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority.

"Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses".

It is no doubt correct that the public trust doctrine under the English Common Law extended only to certain traditional uses such as navigation, commerce and fishing. But the American Courts in recent cases have expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in Mono Lake case clearly show the judicial concern in protecting all ecologically important lands for example fresh water, wetlands or riparian forests. The observations of the Court in Mono Lake case to the effect that the protection of ecological values is among the purposes of public trust, may give rise to an argument that the ecology and the environment-protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. In Phillips Petroleum co. vs. Mississippi 108 S.Ct. 791 (1988), the United States Supreme Court upheld Mississippi's extension of public

trust doctrine to lands underlying non-navigable tidal areas. The majority judgment adopted ecological concepts to determine which lands can be considered tide lands. Phillips Petroleum case assumes importance because the Supreme Court expanded the public trust doctrine to identify the tide lands not on commercial considerations but on ecological concepts. We see no reason why the public trust doctrine should not be expanded to include all eco-systems operating in our natural resources.

In *Hinch Lal Tiwari's case* (3 *supra*), the Hon'ble Supreme Court held as follows :-

“.....

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

I have taken note of the submissions of the learned counsel appearing for parties.

The petitioner prays for Writ of Certiorari to quash orders dated 19.01.2004.

The decisions of Apex Court in *Mrs.Susetha's case* (1 *supra*) and *M.C.MEHTA's case* (2 *supra*) are kept in mind both for taking up

the Judicial Review within the permissible limits and also test the orders impugned in the writ petition from the record of orders impugned and also Revenue Records.

Before advertng to the legal contentions raised by petitioner, this Court finds it convenient to state briefly the details of subject land vis-à-vis the revenue records.

The village map refers to Sy.No.141 and the local name is shown as 'Pitta Cheruvu'. The pahanies from 1955-58 are excerpted hereunder.

S.No.	Year	Sy.No.	Total extent	Nature of land	Name of the occupant	Name of the Pattedar
1.	1955-58 Ssala	141	11-32	Shikam Kunta	1.Rokkam Kistaiah 2.Rokkam Narsimha	
2.	1975-76	141	8-33			Sarkari
3.	1985-86	141	11-32	Patta	Syed Zainulbuddin Syed Nabi Syed Mahamood	Syed Zainulbuddin Syed Nabi Syed Mahamood
4.	1990-91	141	11-32	Patta	Sontham	Syed Zainulbuddin Syed Nabi Syed Mahamood
5.	1995-96	141	11-32	Patta	Syed Zainulbuddin Syed Nabi Syed Mahamood Baddam Laxmamma Kandala Srinivasu Reddy	Syed Zainulbuddin Syed Nabi Syed Mahamood Baddam Laxmamma Kandala Srinivasu Reddy
6.	1999-2000	141	11-32	Patta		Syed Zainulbuddin Syed Nabi Syed Mahamood Baddam Laxmamma Kandala Srinivasu Reddy

7.	2016-17	141/ A	2.0000	Patta	Baddam Laxmamma W/ o. Venkat Reddy	Baddam Laxmamma W/ o. Venkat Reddy
		141/ Aa	0.3500			
		141/ E	8.3700		Kandala Srinivas Reddy S' o. Ram Reddy Zainul Abuddin Syed S' o. Ameer Ali	Kandala Srinivas Reddy S' o. Ram Reddy Zainul Abuddin Syed S' o. Ameer Ali

From the record produced by respondents, *prima facie* it appears that the subject matter of writ petition has been recorded as Shikam Kunta in all the revenue records from 1957-58 upto 1985-86. As already noted, from 1985-86 onwards an extent of Sy.No.141, is reduced from 11-32 gts. to Ac.8-12 gts. Thereafter, without there being an order from the Collector or the Revenue Divisional Officer, the classification of land is changed from Shikam poramboke/ kunta to patta.

It is well settled proposition of law that entries made in the revenue record *de hors* orders authorising change of classification by the competent authority by itself cannot be treated as binding much less enable a party to claim right and title contrary to the original classification shown in the revenue records. So the orders impugned in the writ petition are merely in the nature of giving effect to original entries in revenue record, but nothing more. The plea based on Sec.38-E certificate may not a fact-in-issue directly, but the revenue records raise more questions than one. The petitioner places strong reliance on the Certificate issued under

Section 38-E of the Tenancy Act. The validity or legality of tenancy certificate on which the petitioner relies on need not be examined by this Court in the present writ petition. It is sufficient to record a finding for the present that the certificate alone will not prevent the respondents from protecting the water body in subject matter of the writ petition. In the case on hand, though steps are taken under the Irrigation Act, without deciding on the applicability of the Act etc., by referring to the binding precedents, referred to above, particularly, the decision of Hon'ble Supreme Court in *JAGPAL SINGH AND OTHERS Vs. STATE OF PUNJAB AND OTHERS*⁵, this Court is of the view that the petitioner has not made out a case for interfering with the orders impugned in the writ petition. The petitioner claims title to subject matter substantially on registered sale deeds and Sec.38-E certificate. This Court is not in the present writ petition deciding whether the grant of Sec.38-E certificate is tenable or not, but suffice to note that the revenue records produced by respondents show otherwise. Therefore this Court is not persuaded by the argument of petitioner on Sec.38-E certificate. Likewise the other ground raised by petitioner that Irrigation Act has no application in the circumstances referred to above is not a substantial objection, when in the considered view of this Court the orders are passed in the larger interest of public Trust and to protect a water body recorded in revenue records. The decision of Apex Court in *Mrs. Susetha's case (1 supra)* is distinguishable on the circumstances under which the case was

⁵ (2011) 11 Supreme Court Cases 396

decided with the circumstances of this case. The notable distinguishing circumstances between *Mrs. Susetha's case* and the case on hand is, in *Mrs. Susetha's case*, Supreme Court was dealing with a tank or pushkarani abutting temple, where as, in the case on hand the subject matter covers an extent of Ac.11.32 guntas and it is recorded as water body in revenue records.

The respondents have issued directions and are intending to protect water body in existence in Sy.No.141 of Koheda village. The petitioner has already paid Rs.1,000/- fine and there is nothing on record to show beyond that damage to the tank alleged by respondents is substantial and the physical features of the tank are further disturbed or changed by petitioner. On the other hand, the photographs relied on by petitioner show that shikam land is kept in tact. Therefore, this Court is of the view that no ground is made out for interference.

As already noted, this Court has not examined the title dispute between the petitioner and unofficial respondents, except reviving the orders under challenge.

Learned Government Pleader, during and in the course of arguments to sustain the orders impugned submitted that the State of Telangana is keen to protect all water bodies and respondents 2 and 3 would take steps as are required to restore the subject matter as a water body and also prevent encroachment or change of physical features by third parties including petitioner. Respondents 1 and 2 are directed to implement their decision of treating subject matter as water body and within three months from the date of

receipt of copy of this order steps in furtherance of protecting and restoring the subject water body are taken and completed.

Mr. Bhanu Prasad, after order is dictated, submits that directing the petitioner to restore water tank is untenable and completely onerous.

I have seen the finding recorded by respondents 2 and 3 in this behalf. *Prima facie*, this Court is of the view that the petitioner can be called upon to restore bund, which is abutting other agricultural land purchased by petitioner through sale deeds, referred to above. Therefore the restoration of bund by petitioner ought to be restricted to the extent required on ground. The first respondent causes inspection of subject matter and informs petitioner the extent of bund to be restored by petitioner. As and when such direction is issued, this Court has no reason to doubt that the petitioner will adhere and discharge its obligation to Society and the village.

With the above observations, the writ petition is dismissed. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Dt: 16.02.2018
Dv/Prv