

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.24294 of 2010

ORDER:

The petitioners who are fifty-six (56) in number have filed this Writ Petition seeking a *Writ of Mandamus* to declare the inaction of respondents in (i) initiating acquisition proceedings of their respective agricultural lands and (ii) in paying compensation under the provisions of the Land Acquisition Act, 1894 (**for short, 'the Act'**), as illegal, arbitrary and violative of Articles 300-A and 21 of the Constitution of India, and for a direction to the respondents to pay compensation as per the present market value by initiating land acquisition proceedings.

2. The petitioners are all owners of small extents of land in Bekkam Village, Weepagandly Mandal, Mahboobnagar District. The details of the lands owned by petitioners are mentioned in para no.2 in the affidavit filed in support of the Writ Petition.

3. The District Collector, Mahabubnagar is arrayed as 1st respondent; the Revenue Divisional Officer, Wanaparthi, Mahabubnagar District is arrayed as 2nd respondent; the Tahsildar, Weepagandla Mandal, Mahabubnagar District is arrayed as 3rd respondent; the Government of Andhra Pradesh, rep. by Principal Secretary, Irrigation Department, Secretariat, Hyderabad is arrayed as 4th respondent; and the Superintending Engineer, R.W.S. Circle,

Mahabubnagar is impleaded as 5th respondent.

4. Since after the Writ Petition was filed, the erstwhile composite State of Andhra Pradesh has been bifurcated into the new State of Telangana and the residuary State of Andhra Pradesh, in view of Section 104 of the A.P. Re-organization Act, 2014, the State of Telangana is deemed to be substituted in the place of the State of the Andhra Pradesh (4th respondent).

THE PETITIONER'S CONTENTIONS

5. There was a water tank in the said Bekkam village.

6. According to petitioners, in 1980, because of overflow of Srisailem Project backwater, this water tank got submerged beyond its full reservoir level of 269 meters. In 1991, there was reconstruction of the bund of the tank by the Minor Irrigation Department which was completed in 1995 under the "Chinnamaroor Lift Irrigation Scheme", and thereafter, the tank was being utilized for the purpose of providing drinking water facility to 36 surrounding villages. In the process of re-construction, petitioners allege that the bund attached to the tank was raised by enhancing the width, length and height of the bund by 0.500 km, and the tank thus came to be converted as Summer Storage Tank.

7. The petitioners contend that Irrigation Department of the State did not serve any notice or communication to the respondents of the Bekkam Village, or to the pattadars of the lands situated in the above

survey numbers including the petitioners; and that if they had been given notices, they would have filed objections since the raising of the bund has caused the lands situated around the village tank to be submerged and the decision to raise the length, width and height of the bund was taken arbitrarily in a hasty and negligent manner.

8. The petitioners contend that after the Priyadarshini Jurala Project commenced in 2002, water from the Distributary canals of the said Project enters into the summer storage tank constructed in the Bekkam Village and is causing submergence of the fields of petitioners, and this continuous submergence is causing enormous loss and financial hardship to the petitioners who are earning their livelihood by cultivation of the above lands. They contend that on account of over-flowing of the water through the Distributaries of the Priyadarshini Jurala Project in the summer storage tank, the lands situated along the Survey Numbers mentioned by the petitioners are completely under submergence preventing the petitioners to cultivate the lands for more than six years.

9. The petitioners contend that they had been giving representations since 2004 to the Government seeking payment of compensation by acquiring their lands, but the respondents are not taking any action.

10. The petitioners contend that this amounts to deprivation of possession of the lands belonging to the petitioners by the respondents for the sake of Bekkam Tank without following due process of law,

and therefore, direction should be given to the respondents to acquire their lands.

11. The petitioners refer to the letter No.E/470/08 dt.22.12.2008 addressed by the Revenue Divisional Officer, Wanaparthi to the Executive Engineer, R.W.S., Wanaparthi and Executive Engineer, R.W.S., Pebbair stating that the Tahsildar, Weepangandla after conducting enquiry had submitted a report Lr.No.A/7251/07 dt.11-11-08 stating that due to release of water through Distributary nos.30 to 34 of the Priyadarshini Jurala Project for irrigation purpose, the excess water would flow continuously into the Bekkam Tank which is a balancing reservoir used for drinking purpose to various villages; that because of rise of the bund Ac.111.21 cts is completely under submergence all through the year and the ryots are unable to cultivate the lands. The said letter also stated that the Executive Engineers should conduct a detailed survey as regards representation made by the ryots whose lands are coming under submergence of the tank and apprise the Government so that their grievance is redressed. Later, another letter Lr.No.E/470/08 dt.19.11.2009 was also addressed by the Revenue Divisional Officer, Wanaparthi to the Executive Engineer, I.B. Division, Wanaparthi / Nagarkurnool requesting the latter to initiate action in the matter.

12. In the year 2010 also, a letter Lr.No.E/470/08 dt.25.01.2010 was addressed by the Revenue Divisional Officer, Wanaparthi to the Executive Engineer, I.B. Division, Wanaparthi / Nagarkurnool and

the Executive Engineer, R.W.S., Wanaparthi to initiate action in the matter.

13. The petitioners contend that the inaction of respondents has caused them great loss as they are deprived of their livelihood by cultivating the lands belonging to them and they are entitled to be compensated by the State by acquiring all their land. Copies of the representations given by the petitioners to the Revenue Divisional Officer, Wanaparthi are also annexed to the affidavit filed in support of the Writ Petition.

14. Initially, 'Notice Before Admission' was ordered and counter-affidavits were called for from the respondents.

COUNTER AFFIDAVIT OF THE REVENUE DIVISIONAL OFFICER, WANAPARTHI FOR RESPONDENTS 1-3

15. Counter-affidavit was filed on behalf of the Revenue Department by the 2nd respondent.

16. He admitted the ownership of the petitioner of the lands as per the statement filed by them in the Writ Petition affidavit.

17. He took the plea that the Bekkam tank was being filled with the water of the Priyadarshini Jurala Project canal and was releasing water for drinking water purpose to the surrounding villages, but there is no evidence of the petitioners' lands coming under submergence due to excess water of the distributaries of the said project. He also admitted that the then Revenue Divisional Officer had addressed a letter to the Executive Engineer of the said project at Pebbair and other officials

requesting to submit a report whether the lands of petitioners are coming under submergence or not, present position and the action proposed to be taken to redress the grievance of petitioners. He stated that the Tahsildar, Wanaparthi Mandal had conducted a *panchanama* and submitted a report according to which *petitioners' lands are coming under acquisition in the source of the Bekkam Tank for providing drinking water and irrigation purposes*, but there is no evidence regarding submergence of the lands of petitioners.

18. After referring to the letters E/470/2008 dt.19.11.2009 and 25.01.2010 addressed by him to the Executive Engineers of the Irrigation Division, Wanaparthi and R.W.S., he also refers to a Letter No.AEE2/Weepagandla/WNP/2009-10 dt.23.1.2011 stating that the *Bekkam Tank which was an irrigation source earlier is now being used as drinking water supply scheme source*; and as per the records available, *the existing surplus weir (nature ground) was not raised and only sluice was closed* by the R.W.S. Department. According to him, as long as the existing natural source surplus weir is not raised, there is no scope for additional area being submerged even if the bund is raised.

19. He also stated that there is no evidence of petitioners' land coming under submergence of the said tank and unless proposals for acquisition are received from the requisition departments along with funds, the Land Acquisition Officer cannot initiate land acquisition proceedings and pay compensation.

20. He also contended that as per *pahanies* for the years 2007-08, 2008-09, 2009-10 and 2010-11, the petitioners were cultivating and raising crops in their lands and a statement of crops raised and portions which were un-cultivated were also enclosed.

21. It was also stated that 25 petitioners and other shareholders of petitioners received compensation for crop damage due to heavy rains in October, 2009 and if their lands were really submerged they could not have raised crops and received crop damage compensation.

22. An additional plea was also raised that the Writ Petition itself is not maintainable and petitioners should approach the Civil Court for appropriate relief.

Order dt.13-12-2012 in WPMP.NO.47109 of 2012

23. In view of the counter-affidavit filed by the 2nd respondent, the petitioners filed WPMP.NO.47109 of 2012 in WP.No.24294 of 2010 seeking appointment of an Advocate-Commissioner by directing him to submit a detailed report as to the then existing physical position of the lands covered under the survey numbers stated in the Writ Petition with the assistance of the Surveyor.

24. This Court took note of the contradiction in the counter of the 2nd respondent that there is no evidence of submergence of the petitioners' lands *and* the letter of the Revenue Divisional Officer, Wanaparthi addressed to the Executive Engineer, (R.W.S.),

Wanaparthi in proceedings No.E/470/08 stating that due to release of water to the distributary Nos.30 to 34 for irrigation purpose, excess water would flow continuously into the Bekkam tank and due to rise of bund an extent of 111.21 acres would be completely submerged throughout the year; and directed the District Collector, Mahabubnagar District to get the matter enquired as to *whether the lands of petitioners were subject to submergence* in the Priyadarshini Jurala Project, *whether their crops had been affected* and *whether they received compensation* in respect thereof after giving notice to petitioners, and to submit a report.

25. Though the Collector submitted a report dt.06-08-2013 in proceedings G1/717/2013 stating that he enquired into the matter, and stating that the lands of petitioners are not submerged and they are in fact cultivating the said lands.

26. The petitioners also filed objections to the said report stating that there was no visit by the District Collector at all to the lands of the petitioners since no details of any dates of inspection of the lands were mentioned and there is also no mention of the enquiry conducted by the Collector by way of recording statements of petitioners or the other villagers. It was also stated that the reports simply refers to the report dt.21.03.2010 of the Executive Engineer R.W.S., Wanaparthi and no new facts were revealed as to the status of the lands which are under submergence. It was pointed out that the *pahanies* filed along with the report and the sketch map do not in any way reflect the

existing status of the lands which have been under submergence since 1995, and the statement showing disbursement of input subsidy to the farmers affected in floods in the year 2009 has nothing to do with the subject lands. They also pointed out that in the statement showing particulars of the cultivated and un-cultivated lands from 2007 to 2011 the petitioners' land were shown as un-cultivated (*Padava*). It was also contended that the photographs filed to the report relate to different lands un-connected to petitioners' lands, and therefore, the report cannot be relied on.

27. A reading of the report does not indicate that he did any personal inspection of the lands in question and he also did not refer to any statements of the affected ryots like the petitioners. Therefore, his report cannot be of any value. I completely agree with the objections raised by petitioners to the said report and hold that the report of the District Collector, Mahabubnagar dt.06.08.2013 is wholly unreliable and has to be ignored.

ORDER DT.23.9.2014 IN WPMP.No.34223 of 2014

28. The matter underwent some adjournments and thereafter, petitioners filed WPMP.No.34223 of 2014 seeking appointment of an Advocate-Commissioner to inspect the subject lands and for filing a report with regard to physical position of the lands covered by the subject survey numbers with the assistance of a Surveyor. The said application was allowed on 23.09.2014, holding that the request of petitioners was reasonable and one Advocate by name Sri

K. Ramakrishna was appointed as a Commissioner to visit the subject locality, make necessary enquiry with the assistance of Mandal Surveyor of Bekkam Mandal of Mahbubnagar District, Executive Engineer, R.W.S. (Wanaparthi) and also Executive Engineer, Irrigation Department, Wanaparthi and submit a detailed report as to

(i) *whether the subject lands of petitioners have undergone submergence* due to Priyadarshini Jurala Project; (ii) if not, *whether they have become uncultivable due to water percolation from the project and due to raising of bunds*; and (iii) *whether petitioners are cultivating the lands* as alleged by the respondents. Report was directed to be filed within four weeks from that day, and the Advocate-Commissioner was permitted to issue Notice to counsel for petitioners as well as the respondents before executing the warrant indicating the date of inspection and enquiry. He was also directed to see that photographs of the area are taken for perusal of the Court.

THE REPORT OF THE ADVOCATE COMMISSIONER

29. The Advocate-Commissioner inspected the subject lands and filed his report dt.20.10.2014. In the said report, he stated that after issuing Notices to both sides he executed the warrant by going to the Bekkam Tank area on 30.09.2014 after perusing the village map.

30. In his report, he stated that the approximate subject area was 4 kms. in length and during his visit he observed that *water was flowing and the engineering officials informed him that it is the weir level of the tank and excess water is flowing there*. He stated that the

lands mentioned in the Writ Petition were under water and when they are submerged the question of cultivation did not arise.

31. In particular, he stated:

“3. I went through the water to the tank bund which is more than 500 meters, there the fields men (agriculturists) shown me the place, saying that this is the old weir area (‘Alugu’) of the bund, and the entire area where I walked is a extension of bund at the time of construction of Bekkem Cheruvu. (water project) with the funds of Netherland Water Scheme, but there is no proofs for that shown by them, when I enquired the same with the Engineering officials, they expressed their inability at present, because they have no records with them, it is their inability at present, because they have no records with them, it is constructed long back, they have to verify the same, whether the old records are there or not. I have also seen from there itself about some survey numbers, identified with the help of Mandal Surveyor through village map i.e., Sy.No.1070, the extents mentioned in the writ petition are completely under water, in Sy.No.1072 approximately 5 acres land is under water, out of the extents mentioned in the writ petition (estimated with the help of Mandal Surveyor, he estimated with the scale) since it is not possible to go to the fields, because these survey numbers is in water. The remaining extent mentioned in the writ petition is not useful for cultivation because of water percolation, with regard to survey no.1071 the Extents mentioned in the writ petition are completely under water.

4. I was taken by the RWS Engineering officials to the Bekkem SS Tank (RWS Scheme, Raw water in take well) they shown me the level of water of the tank, the further shown me at the scale which is showing 270 number, they informed me that is the FRL of the Tank. (Full Reservior Level), at the time of my visit at the Raw water in take well scale showing the water level is 269.45 and they informed me that the weir will be fixed just height to the above water level i.e. 270, as per that I just came to prima facie conclusion that the weir level at about 271, these numbers may be the meters level, (approximately these levels are Srisailam Project

Levels), they further informed me that the sluices of the Bekkem Cheruvu is already closed, when they were closed not known to them, and they also not known why the sluices were closed. I also observed that because of closing of sluices there is no other way go to the water except weir at the end, they also informed me that the Priyadarshini Jurala Project Distributors Water is directly entering in the tank, this water is not going to the Srisailalm Project.

5. I further went to identify the lands with the help of Manal Surveyor and VRO (Village Revenue Officer), the total survey numbers mentioned along with extents in the writ petition are under water, i.e., Sy.Nos.11, 66, 232, 69, 67, 70, 71, 73, 60, 57, 39, 38, 40, 49, 9, 66, 11, 12, 1070, 1072, 1071, 56, 39, 48, 8, 40, 49 and 12, except the Sy.No.56, 67, 70, 71, these survey numbers i.e., Sury.No.56 is completely out side the water, the Sy.No.56 very useuful for cultivation. The land in Sy.No.67, 50% of the land mentioned in the writ petition is under water, the remaining extent mentioned in the writ petition is not cultivable. The land in Sy.No.70 approximately, 29 guntas of land, out of the extent mentioned in the writ petition is under water, the remaining land mentioned in the writ petition is cultivable and with regard to Sy.No.71, out of extent mentioned in the writ petition approximately, 24 guntas land is under water, the remaining extent mentioned in the writ petition is cultivable. I also observed that there are some more lands which are not part of the writ petition also under water.

6. In some survey numbers I have verified from far away because it is not possible to reach there, I have only seen them to the extent where we could reach, and from there I have verified them. The Surveyor shown about that survey numbers with the help of village map, I tried my level best extent to reach the survey numbers wherever possible, I have not left any survey numbers mentioned in the writ petition without verification.”(emphasis supplied)

32. He also specifically recorded that the entire bund was approximately about 4 kms. length and there is no other bund except

this, but the farmers, i.e., the petitioners stated that the bund is constructed 500 meters extra than the actual construction should be, but the *Engineering officials expressed their inability to give any information about it and could not say whether it was done or not.*

33. Photographs taken at the time of his inspection are also filed which categorically show submergence of the lands visited by the Advocate-Commissioner to a large extent at the time of his visit.

OBJECTIONS FILED BY THE RESPONDENTS TO THE ADVOCATE COMMISSIONER'S REPORT

34. The following objections were filed to the report of the learned Advocate-Commissioner:

“(i) The report is against technical norms and facts on the grounds.

(ii) The learned Advocate-Commissioner at Para No.4 said to have come to conclusion that the weir level is about 271.00 meters, and further with the reason that the weir will be fixed just to the height water level of the weir. The conclusion of learned Advocate Commissioner is unimaginable and implausible situation, as the weir height should be more than Full Reservoir not make any efforts to know the technical details of the minor irrigation tanks, and more particularly of this tank, without which it is not possible to conduct enquiry. As such, it is not relevant to go into the other findings of the learned Advocate Commissioner.

(iii) The learned Advocate Commissioner has not gone into the basic issues, that is, whether any extra land submergence, due to the conversion of Minor Irrigation tanks into summer storage tank,

by taking levels (Full Tank Level, Full Reservoir Level, weir and height etc.) of Minor Irrigation tank and converted summer storage tanks and the possibility of changing levels, and their effects.

(iv) The reports submitted by the learned Advocate Commissioner is incomplete and does not help the Court to look into the grievance of the petitioner that is submergence of land of the petitioner due to conversion of minor irrigation tank into the summer storage tank.”

THE COUNTER OF THE CHIEF ENGINEER, IRRIGATION DEPARTMENT

35. The Chief Engineer, Minor Irrigation filed a counter-affidavit thereafter on behalf of 4th respondent initially stating that the 4th respondent was not aware of petitioners' averments that their lands were under submergence in the Bekkam tank, but later denying it.

36. According to him, in the year 1995, the Chinnamaroor Lift Irrigation Scheme was executed with the proposal to lift water through foreshore of Srisailem Project and to fill the water into a series of minor irrigation tanks and Bekkam tank was one among them. He admitted that the tank was subsequently proposed for use as a summer storage tank to provide drinking water supply and sanitation and the R.W.S. and other department made some useful repairs without enhancing the width and height of the bund to preserve water for more period.

37. He stated that even thereafter the level of the tank in the normal

period will be only up to weir level and the submergence in the foreshore is no more than that has been under original proposal of the tank.

38. He also did not deny that the water of the Priyadarshini Zurala Project was supplied to this area since 2002 and also did not deny that there is a possibility of supplying water to the Bekkam Tank through distributary nos.30 to 34 depending on the requirement to the fields and to the Bekkam tank, to cater to the drinking water needs.

39. He stated that there was no need to put the petitioners on notice since there was no raising of the bund.

40. He blamed the petitioners for not mentioning technical details such as the levels of the minor irrigation tanks, changes if any due to change in summer storage tank and contours of the petitioners' lands.

41. According to him, water flow from the Priyadarshini Zurala Project into the Bekkam Tank would not submerge more lands as the minor irrigation tank does not retain water than its designed level.

42. He again denied that there was any raise in the bund and petitioners are unable to cultivate their lands due to submergence. He stated that there is no extra submergence of the lands than that were under the minor irrigation tank. After referring to letter E/470/08, dt. -12-2008, he again states that *continuous submergence is due to using Bekkam tank as summer storage tank.*

**REPLY AFFIDAVIT OF PETITIONERS TO COUNTER OF
RESPONDENT NO.4**

43. The petitioners filed reply-affidavit to the counter of 4th respondent.

44. In the reply-affidavit, it is stated for the purpose of strengthening the bund, revetments were constructed on both sides of the bund and this resulted in increase in the width and length of the bund and the length was enhanced from 3 to 4 Km.

45. It was denied that the width and length of the bund were not enhanced for preservation of water.

46. It is reiterated that the water from the Priyadarshini Jurala Project was continuously and consistently flowing into the Bekkam Tank, and by virtue of such flow, which is in excess of its capacity, submergence of petitioners' lands was happening.

47. It is also stated that in para no.10 of the counter of the 4th respondent had admitted that the continuous submergence of the Bekkam Tank because of use as a summer storage tank and this supports their plea.

48. It is also stated that without filing a counter-affidavit for four years after the Writ Petition was filed, only after the Advocate-Commissioner filed report, the 4th respondent filed counter with false contentions without any factual basis and not supported by the required information.

49. It is also stated that the objections the by the 4th respondent to the Advocate-Commissioner's report are very vague and that at the time of execution of the warrant by the Advocate-Commissioner all the Officers of the concerned department were present and all engineers were present, and the Advocate-Commissioner had incorporated in his report the relevant information and technical data which was furnished to him by the Engineering staff. It is pointed out that there is no merit in the 4th respondent's contention that the Advocate-Commissioner did not consider details of measurements, etc., and he was not aware of the technical data.

THE COUNTER OF RESPONDENT NO.5

50. The 5th respondent filed a counter-affidavit stated that 4th respondent had given technical details of the tank. This is factually incorrect.

51. He otherwise supported the stand of the 4th respondent.

CONTENTIONS OF COUNSEL FOR PETITIONERS

52. The counsel for the petitioners reiterated the contentions raised in the Writ Petition affidavit and placed strong reliance on the Advocate Commissioner's report dt.20-10-2014 in support of petitioners' plea that the lands of the petitioners as mentioned in the para-2 of the affidavit filed in support of the Writ Petition were submerged on account of the actions of the respondents by construction of *bund* to the Bekkam village water tank by the Irrigation Department of the then State of Andhra Pradesh which was

completed in 1995 and by converting the same into summer storage tank after the Priyadarshini Jurala Project started functioning in 2002 when water from its left main canal flows through Distributor Nos.30 to 34.

53. Learned counsel also contended that the Executive Engineer (RWS) of Wanaparthy and Executive Engineer, Irrigation Department, Wanaparthy were given notices by the Advocate Commissioner before his visit on 30-09-2014' that at the time of such visit, the Junior Engineer (RWS), Executive Engineer (RWS), Mandal Surveyor were all present; that no technical details were furnished by them to the Advocate Commissioner except with regard to full reservoir level of the tank at 270, on the basis of which the Commissioner came to the conclusion that the weir level was 271 M and sluices of the tank are already closed but the time when they were closed or why they were closed was not informed to the Advocate Commissioner nor explained in the counter affidavit; and so the Advocate Commissioner stated that because of closing of sluices, there was no other way for the water to go except to over the weir.

54. It is also pointed out that the Advocate Commissioner stated held that he verified every land mentioned in the Writ Petition with the help of the Mandal Surveyor and there is water in the fields of the petitioners in most of the survey numbers except (i) Sy. No.56, (ii) land other than Ac.0.20 gts in Sy. No.70 and (iii) land other than Ac.0.24 gts in Sy.No.71; and no technical details about the

construction of the bund were given to the Advocate Commissioner by the Irrigation and RWS Department officials.

55. Counsel also relied upon the contents of the letter No.E/470/08 dt.22-12-2008 of the Revenue Divisional Officer, Wanaparathi, addressed to the Executive Engineer (RWS), Wanaparathi and the Executive Engineer (RWS), Pebbair which referred to the enquiry of the Tahsildar, Weepangandla, and the report submitted by the said Tahsildar in letter No.A/7251/07 dt.11-11-2008 stating that due to release of water through Distributaries No.30 to 34 for irrigation purpose, there is excess water flow continuously into the Bekkam tank; that bund of the tank was raised in 1992; and due to the said rise in the bund, Ac.111.21 gts was completely under submergence year long and the rights are put to loss.

56. Learned Counsel also pointed out that even the statement filed with regard to lands of the petitioners along with the counter affidavit of the 2nd respondent indicated that from 2007-08 to 2010-11, lands of the petitioners were not cultivated and were shown as "*padava*" i.e. uncultivated.

57. Learned counsel for the petitioner contended that the respondent raised the length, width and height of the bund resulting in submergence of the agricultural lands of the petitioners depriving the petitioners of their source of livelihood. He contended that the respondents are therefore liable to acquire the lands of the petitioners and pay them market value compensation.

CONTENTIONS OF THE LEARNED ADVOCATE GENERAL FOR THE RESPONDENTS

58. The Advocate General appearing for the respondents reiterated the stand in the counter affidavit filed by respondent Nos.2 and 4 and contended that lands of the petitioners are not submerged and there is no necessity to acquire lands of the petitioners.

59. He also contended that petitioners are cultivating their respective lands and there is no evidence of submergence due to excess water of Distributaries of Priyadarshini Jurala Project.

60. He stated that as per records available, existing surplus weir (nature ground) was not raised and only sluice was closed by RWS Department; and as long as existing natural source surplus weir was not raised, there is no scope for additional area being submerged even if the bund is raised.

61. It is also stated that some petitioners received input subsidy and some others received compensation for crop damage and this disproves their plea.

62. According to him, though the tank was originally a minor irrigation tank and was later being used as a summer storage tank to provide drinking water supply by the Sanitation (RWS & S) Department, there was no enhancement of the width, length and height of the bund to preserve water for more period.

63. He did not deny that there is a possibility of supplying water to the Bekkam tank through Distributaries No.30 to 34 of the

Priyadarshini Jurala Project depending on the requirement to the fields.

64. He also disputed the findings of the Advocate Commissioner's report and referred to the objections filed to the said report.

65. I have noted the contentions of both sides.

THE INDIAN LAW ON THE POINT

66. In **Vohra Sadikbhai Rajakbhai and others Vs. State of Gujarat and others**¹, lands of the appellants, in the vicinity of a dam by name Mazum dam over the river Mazum in Gujarat, were flooded on release of 60000 cusecs of water owing to heavy rain.

67. The appellants filed a Civil suit contending that the respondents had constructed and maintained the dam, that 60000 cusecs of water from this dam was released, which flooded appellant's lands during heavy rains and destroyed hybrid berry trees plantations raised in the land in June 1997 and they are entitled to compensation for damage. The Trial Court as well as the High Court declined relief to the appellants. The Supreme Court however granted relief to the appellants.

68. It noted that the respondents admitted that a decision was taken to release water from the dam and because of release of water, the land of the appellants with standing fruit bearing trees got submerged resulting in uprooting and destruction of the trees. It then considered the questions (a) Whether the act of releasing the water from the dam

¹ (2016) 12 S.C.C. 1

would amount to negligence on the part of the respondents or it was inevitable due to heavy rains and is to be treated as an “act of God”? and (b) If the answer to the aforesaid question is in the affirmative, whether the appellants would be entitled to some compensation even in the absence of proof of actual/exact damage caused?

69. The Court held that while overflowing of the dam was caused due to heavy rain, the question was as to *whether the respondents were supposed to take reasonable care in this behalf by keeping the level of water in the dam sufficiently low in order to meet the exigency of ensuing monsoon?*

70. The Court held that since the dam is constructed and maintained by the respondents and the appellants suffered losses as a result of release of water from the said dam, onus was on the respondents to prove that they had taken proper care in maintaining appropriate level of water in the dam taking into account the provision for the water that can get accumulated in the said dam due to forthcoming rainy season; that the respondents are owners of the dam and they are expected to keep the said dam in such a condition which avoids any loss or damage of any nature to the neighbours; and the doctrine of strict liability, which has its origin in *Rylands Vs. Fletcher*² is attracted. It quoted the following observations of Blackburn J:

² (1868) LR 3HL 330: 37 LJ Ex 161

“.....the true rule of law is that the person who, for his own purpose, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril; and if he does not do so is prima facie answerable for all the damage which is the natural consequences of its escape.”

71. It also held that for the principle to apply there has to be non-natural use of land i.e. a special use bringing with it increased danger to others; and the non-natural use by the offending party should result in “escape” of the thing from his land which causes damage.

72. It also noted that in **State of Punjab Vs. Modern Cultivators**³, damage was caused by over flowing of water from a breach in a canal and damages were awarded even when the use of land for construction of a canal system was found to be an ordinary use and not a non-natural use since the Court attributed negligence on the part of the authorities.

73. It also referred to **Jay Laxmi Salt Works (P) Limited Vs. State of Gujarat**⁴ and held that in that case damage was caused by over flow of water from a reclamation bund constructed by the State of Gujarat for reclamation of vast area of land from saltish water of the sea and the Government was held responsible since its act was treated as violation of public duty and negligence which lay in defective planning and construction of the bund by applying “fault liability” principle and not “strict liability” principle. The court observed that canal systems are essential to the life of a Nation and land that is used as canals, is subjected to an ordinary use and not to

³ AIR 1965 (17)

⁴ (1994) 4 S.C.C. 1

unnatural use.

74. After considering other decisions the Court held that *what needs to be examined is as to whether the damage to the property of the appellant was the result of an inevitable accident or unavoidable accident which could not be possibly prevented by exercise of ordinary care, caution and skill.*

75. The Court concluded that the evidence on record showed that the over flow of the dam was occasioned by torrential and heavy rains; the appellants specifically pleaded that respondents did not keep the level of water in the dam sufficiently low to take care of the ensuing monsoon rains; they had thus pleaded negligence on the part of the respondents in not taking care of the forthcoming monsoon season and keeping the water level in the dam at sufficiently low level to absorb the rain fall which was going to raise the water level in the dam; and *the respondents ought to have demonstrated by adequate evidence that the water in the dam was kept at reasonable and proper level to take care of normal rains*, that the rains in the monsoon season were more than the ordinary rains which could not be foreseen, and that the public purpose was served in taking the decision to release the water which prevented larger catastrophe. *Merely by saying that the level of water in the dam is increased because of monsoon rains and that the water was released in the public interest cannot be treated as discharging the burden on the part of the respondents in warding off the allegation of negligence.* It observed

that with advanced technology available with Meteorological Department in the form of satellite signals etc. there is a possibility of precise prediction of the extent of rain fall in the monsoon season; and in view of the principle in **Rylands** (2 supra), onus was on the respondents to discharge such a burden, and it has miserably failed to discharge the same. It therefore concluded that there was negligence on the part of the respondents which caused damage to the fields of the appellants and awarded Rs.5.00 lakhs as compensation.

THE CONSIDERATION BY THE COURT

76. Now I shall consider the facts of the instant case and apply the principle of the above decision.

a) Plea that petitioners' lands are submerged is accepted

77. It is important to note that the respondents did not dispute title of the petitioners to the lands claimed by them in para-2 of the affidavit filed in support of the Writ Petition.

78. In the counter filed by the 2nd respondent though it is contended that from 2007-08 to 2010-11 petitioners are cultivating their lands as per evidence of pahanies, the said pahanies relating to survey Nos.9, 48, 57, 11, 12, 8, 70, 71, 73, 232, 1070, 1071, 1072 etc. in column 21 (which deals with crop grown) either mention "*padava*" (uncultivated) or show a 'blank' for *most* extents. This belies the stand of the respondents that the *all* lands claimed by petitioners are being cultivated.

79. Admittedly the Advocate Commissioner gave notice before his visit on 30-09-2014 to the Irrigation Department as well as RWS Departments of the State Government. With the assistance of the Mandal Surveyor, he verified the physical position/condition of the lands of every survey number mentioned in the Writ Petition and found that survey numbers 11, 66, 232, 69, 67, 70, 71, 73, 60, 57, 39, 38, 40, 49, 9, 66, 11, 12, 1070 to 1072, 56, 39, 48, 8, 40, 49 and 12 to be under water. According to him, only 50% of the land in Sy. No.67 is under water and the remaining extent mentioned in the Writ Petition is not cultivable; Ac.0.20 gts of land out of the extent mentioned in Sy. No.70 by petitioners was under water and the remaining land is cultivable; and Ac.0.24 gts of land out of the extent mentioned in Sy. No.71 by petitioners is under water and the rest is cultivable. He clearly stated that land which is submerged cannot be cultivated. Photographs were also filed by him. *What was witnessed by the Advocate Commissioner and noted in his report as above cannot be simply dismissed as a fiction and a falsehood by respondents.*

80. It is important to note that objections to the Advocate-Commissioner's report were no doubt filed by the 4th respondent stating that the Commissioner did not make any efforts to know the technical details of the Bekkam tank. Admittedly, the Advocate-Commissioner issued notice to the Executive Engineer (R.W.S.), Wanaparthi and to the Executive Engineer, Irrigation Department Wanaparthi that he would be executing the warrant on 30.09.2014.

The Junior Engineer, R.W.S. and the Executive Engineer, R.W.S. were present at the time of execution of warrant, but they did not disclose any technical details to the Advocate-Commissioner (except that the Full Reservoir Level of 270m, the raw water intake well scale showing 269.45 and that the weir level is at 270m) which they ought to have disclosed. They also did not disclose why and when the sluices were closed and details of revetment of the bund which was admittedly done. The respondents cannot take advantage of their own wrong in suppressing the information from the Advocate-Commissioner and then criticize the report of the Advocate-Commissioner.

81. In fact in para-10 of the counter affidavit of the 4th respondent, he admitted that *continuous submergence is due to using of Bekkam tank as summer storage tank and the 3rd respondent reported that due to release of water through Distributaries, excess water is flowing continuously in the Bekkam cheruvu.*

82. So the plea of the respondents that petitioners' lands are not at all submerged is rejected. The Advocate commissioner's report is accepted and his findings are made part of this order.

b) The respondents were negligent

83. Petitioners have specifically contended that there is increase in height of the bund of the Bekkam tank causing submergence; and before undertaking the construction of the Summer Storage tank in the said tank, respondents should have take expert opinion with regard to

probable consequences and likelihood of submergence of their lands; but unilaterally, without consulting the petitioners and without giving opportunity to raise objections, respondents resorted to construction activity.

84. Though the respondents have denied raising the bund height, they admitted the use of the Bekkam tank as a Summer storage tank and linking the Distributaries No.30-34 of the Priyadarshini Jurala project to it so that it received inflows from it. So what steps, like consulting experts, they had taken, before making the linkage ought to have been disclosed. They did not do so.

85. The respondents, who are owners of the tank, are expected to keep it in such a condition which avoids any loss or damage of any nature to the neighbours like petitioners owing to flow of water from the tank across the weir; and the Doctrine of Strict Liability, which has its origin in **Rylands Vs. Fletcher** (2 supra), is undoubtedly attracted since storage of large quantity of water by building a weir with a bund is non-natural user of land and there is clearly escape of water from the tank submerging petitioner's lands.

86. Whether the damage to the property of the petitioners was the result of an inevitable accident or unavoidable accident which could not be possibly prevented by exercise of ordinary care, caution and skill, has to be seen.

87. In the instant case, it is not the case of the respondents that heavy rainfall on a particular day or season occurred causing

submergence of the petitioner's lands. It is also not the case of respondents that petitioners have done anything which has resulted in such submersion of their lands.

88. Also the lands claimed by the petitioners are not abutting the Sea or any River which could possibly inundate their lands.

89. The lands are located in the near vicinity of the Bekkam tank and it is admitted by the respondents that it is receiving inflows from Distributaries No.30 to 34 of the Priyadarshini Jurala Project and is being used as a summer storage tank for drinking water supply to the neighbouring villages and sometimes for irrigation purpose also. At a time when there was no monsoon rain on 30-9-2014, when the Advocate Commissioner visited the lands of petitioners, he found excess water flowing over the weir and submerging most of the lands of the petitioners. Thus the inevitable conclusion is that the Bekkam tank and its linkage to the Distributaries No.30-34 of the Priyadarshini Jurala Project is possibly the only reason for their submergence.

90. So the damage to the property of the petitioners was not the result of an inevitable accident or unavoidable accident which could not be possibly prevented by exercise of ordinary care, caution and skill.

91. It is admitted in letter No.AEE-2/Weepagandla/WMP/2009-10 dt.23-01-2010 of the Executive Engineer (RWS & S Division), Wanaparthy, addressed to the Revenue Divisional Officer,

Wanaparathi, filed along with the counter of the 4th respondent that *there was bund strengthening with revetment taken up by the RWS Department*. No doubt it is denied that existing surplus weir (nature ground) was not raised and only sluice was closed.

92. But the officials of the Irrigation Department did not submit any records about the repairs/revetment of the tank bund of the Bekkam tank or the reason for closing the sluice, to the Advocate Commissioner or to this Court.

93. Having constructed the Bekkam tank, bund and surplus weir and linked the tank to the Distributaries No.30-34 of the Priyadarshini Jurala project to it so that it would receive inflows from it and function as Summer Storage Tank, the burden is on the respondents to establish that their actions, did not result in the submergence of the lands of the petitioners. They did not discharge this burden of proof.

94. So it has to be inferred by applying the principle in **Rylands Vs. Fletcher** (2 supra) that they were negligent in planning the use of the Bekkam tank as a Summer Storage Tank and linking the Distributaries No.30-34 of the Priyadarshini Jurala project to it so that it would receive inflows from it.

95. In the counter affidavit of 2nd respondent, he stated that the Tahsildar, Wanaparthy Mandal had conducted a *panchanama* and submitted a report according to which *petitioners' lands are coming under acquisition in the source of the Bekkam Tank for providing drinking water and irrigation purposes*, but there is no evidence

regarding submergence of the lands of petitioners. What he meant by '*coming under acquisition in the source of the Bekkam tank*' is not explained by the Advocate General.

96. Since even at a time there were no monsoon rains, water from the tank was found to have submerged most of the petitioners lands, it has to be held that loss to petitioners is of permanent nature and a one time award of small monetary relief will not provide any succour to the petitioners and unless their submerged lands, as found by the Advocate Commissioner are acquired under the applicable land acquisition law and compensation thereunder is paid, justice cannot be done to them.

d) Petitioners need not go to Civil Court.

97. The other contention raised by the Advocate General is that petitioners ought to have approached to the Civil Court and proved submergence of their lands and compensation.

98. Firstly, the factum of submergence of most of the lands of the petitioners is established by the visit of the Advocate Commissioner and his report.

99. Secondly, the relief sought by the Writ Petitioners is a Writ of Mandamus to declare the inaction of the respondents in initiating acquisition proceedings and paying compensation under the Land Acquisition Act, 1894, and for a direction to the respondents to do so and pay market value compensation. This relief cannot be granted by

the Civil Court.

100. As held in **ABL International Ltd., Vs. Export Credit Guarantee Corporation of India Limited**⁵, there is no absolute rule that in all cases involving disputed questions of fact, the parties should be relegated to a Civil Court; and the High Court has jurisdiction to determine questions of fact, even if they are in dispute. It followed the judgment in **Century Spinning and Manufacturing Company Limited Vs. Ulhasnagar Municipal Council**⁶, where the Court held that merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a Civil suit against a public body.

101. Therefore this contention of the respondents is rejected.

CONCLUSION:

102. I therefore hold that most of the petitioners' lands have got submerged due to negligence of the respondents in not properly maintaining the Bekkam tank, riveting it, and linking it to the Distributaries Nos.30 to 34 of Priyadarshini Jurala Tank to convert it into a summer storage tank, that the loss to the petitioners of such lands is of permanent nature which cannot be compensated by a one time grant of compensation, and there is no other option but to compel the State to acquire the same under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

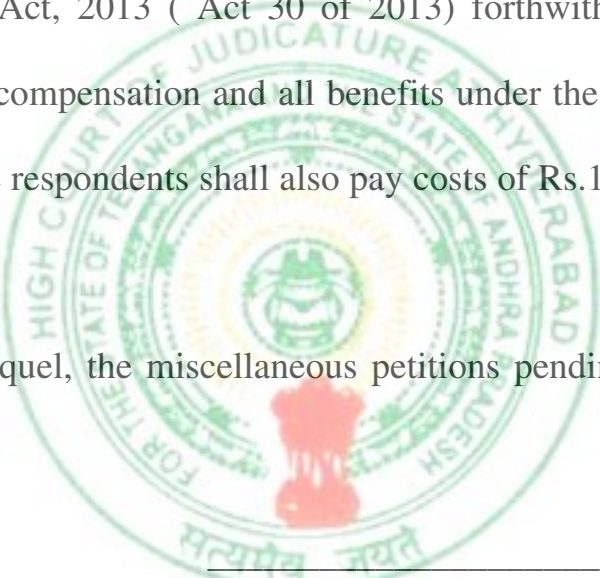
⁵ (2004) 3 S.C.C. 553

⁶ (1970) 1 S.C.C. 582

Resettlement Act, 2013.

103. Accordingly the Writ Petition is allowed; the State of Telangana rep. by it's Principal Secretary, Irrigation Department is directed to initiate proceedings for acquisition of such of the lands of the petitioners, located in Survey numbers mentioned by the Advocate Commissioner in his report dt.20-10-2014 (see para-31 above), which are submerged, under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) forthwith and pay them market value compensation and all benefits under the said Act within 4 months. The respondents shall also pay costs of Rs.1000/- to each of petitioners.

104. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.



JUSTICE M.S.RAMACHANDRA RAO

Date: 23-11-2018

Ndr/kvr