

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 25886 of 2018

ORDER:

1) Challenging the action of the authorities in imposing ramp charges @ Rs.30/- per tractor and Rs.60/- per mini lorry and introduction of clause (5) to the effect that no machinery shall be permitted to be used for de-casting sand from the land vide proceedings dated 27.06.2018 and the consequential proceedings dated 16.07.2018, the present writ petition came to be filed.

2) The petitioner herein is said to be the owner and possessor of the land admeasuring Ac.9.70 cents in Sy.No.338/ 1C, 338/ 1G, 340/ 1E and 340/ 2 of Royyuru Village, Thotlavallur Mandal, Krishna District. Since the lands were covered with sand due to floods and as the petitioner was not able to make use of the said land for cultivation, made an application on 16.06.2017, to the Assistant Director of Mines and Geology, for de-casting of the sand, who inturn called for a report from the Mandal Agricultural Officer. The Mandal Agricultural Officer, is said to have inspected the patta land along with the Tahsildar, Surveyor, V.R.O., and Revenue Inspector on 20.07.2017 and found that the land owned by the applicant is fit for cultivation, after de-casting of sand

and that the average pit depth for sand excavation was measured at 3.00 meters and the quantity of sand to be excavated was assessed as 1,17, 767.77 CBM. He forwarded his report to the Tahsildar on 21.07.2017. On receipt of the said report, the Tahsildar, further inspected the site and submitted a report to the Assistant Director of Mines and Geology, vide proceedings in Rc.No.B/ 154/ 2017, dated 12.02.2018 and also referred to the Revenue Divisional Officer, who inturn forwarded his report to the Assistant Director of Mines and Geology in Rc.No.A1/ 37/ 2018 recommending for de-casting of sand in R.S.No.340/ 2 to an extent of Ac.4.00 measured as 3.0 meters of sand.

3) The Assistant Director of Mines and Geology, referred the matter to the River Conservator and Executive Engineer, Krishna Central Division, Vijayawada, who inturn called for a report from the Deputy Executive Engineer, R.C.Sub-Division, who inspected the same and submitted his report to the Executive Engineer stating that the land is situated in river side of the KLF Bank and is 2.50 km. away from KLF Bank in Royyur Village. The report further states that due to floods in October, 2009 to Krishna river, part of patta land got eroded and flown into river leading accumulation of sand in patta land. The Executive Engineer, River Conservator, forwarded his report, dated 16.02.2018 stating that they have no

objection for lifting the sand from the patta land to the extent prescribed by the Tahsildar, on certain terms and conditions. A joint inspection came to be conducted on 24.03.2018 and then the second respondent passed an order, dated 16.07.2018, prescribing the latitudes and longitudes for the quantity of 33387 cbm, within the geo-coordinates, but however imposed certain conditions, which are challenged in the present writ petition.

4) The main ground urged by the learned counsel for the petitioner is that the condition of not-permitting the petitioner to install machinery, for de-casting the sand in patta land, which is 2.5 kms., away from the river bank, is totally illegal and improper. According to her, orders were issued by the Government from time to time and even the proceedings issued in favour of the petitioner never postulated any bar for using machinery to de-caste sand. It is submitted that the guidelines issued by the District Collector, fixing additional conditions is contrary to the proceedings issued by the Government vide G.O.Ms.No.76, Industries and Commerce (M.I) Department, dated 25.06.2018, since the District Collector has no authority to do so more so when the land is away from the river bank, as observed in the report of prepared by the Executive Engineer and River Conservator.

5) The Tahsildar-fourth respondent filed his counter stating that their involvement in the matter is only to find out as to whether the petitioner is having any right or title over the land. In the counter, they have categorically stated that the petitioner is the owner of the property, having valid title over the land. The said counter though refers to the permissions granted for de-casting of the land, but states that the appropriate authority would be the fifth respondent to respond to the said plea.

6) The fifth respondent-the Assistant Director of Mines and Geology, filed counter stating that the government has reviewed the sand policy vide G.O.Ms.Nos.19 and 20, Industries and Commerce Department, dated 15.01.2016 and decided to change the policy and make sand available to the public, without charging fee from 02.03.2016 onwards. Vide Memo No.3066/ M.II(1)/ 2016-17, dated 22.03.2016, the Government permitted de-casting of sand deposited in the patta lands so as to enable the pattadars to make their agricultural land cultivable. The Memo further states that if the pattadars remove and dispose of the sand from their lands, they can make the sand available to the public after collecting the expenditure incurred by them for removing the sand. The counter further states that the District Level Committee, Krishna, convened a meeting on 13.07.2018 and

decided to issue permissions to 21 pattadars for de-casting of sand in their patta lands, subject to conditions specified in proceedings dated 27.06.2018. The conditions imposed by the Collector states that the petitioner can de-cast sand for a quantity of 33,387.00 cbm from his patta lands in Sy.No.340/ 2(P) of Royyuru Village, for a period of one year or till the quantity get exhausted, whichever is earlier, with a rider that the said sand should be made available to the public on collection of expenditure incurred for excavation and loading of the sand. It also states that the sale of sand is strictly prohibited. He further states in the counter that the land of the petitioner is located adjacent to Krishna River and approachable by a ramp to a distance of 2.20 km. from the bund along with the other agricultural fields and the petitioner has to utilize the ramp for transporting the sand from his patta lands and accordingly the transporter has to pay Rs.30/- per tractor (one unit) and Rs.60/- per mini lorry (2 units) cannot be said to be bad in law.

7) It is pleaded that the condition of prohibiting usage of machinery, cannot be said to be arbitrary since the District Level Committee has complete freedom to devise or formulate their own guidelines which are suitable to the District and for effective implementation of the free sand policy as per G.O.Ms.No.104, dated 26.07.2017. In view of

the above, it is pleaded that the conditions imposed for effective implementation of free sand policy, cannot be found fault with.

8) The main objection of Smt. N.Shobha, the learned counsel appearing for the petitioner, is that since the sand cannot be de-casted manually, usage of machinery is a must. Though the patta land of the petitioner came to be covered with sand in the year 2009 and though permissions have been granted to de-cast sand, the petitioner herein could not do so, in view of the prohibition in usage of machinery.

9) There is no dispute that the land is patta land. The letter addressed by the River Conservator and Executive Engineer, Krishna Central Division, Vijayawada, to the Assistant Director of Mines and Geology, dated 16.02.2018, would show that the land is situated in the river side of the KLF Bank and is 2.50 km. away from KLF Bank, in Royyuru Village. The letter also refers to floods in the month of October, 2009 to river Krishna and part of patta land getting eroded and flown into the river leading to formation of sand in the patta lands. From the said letter, it is very clear that the patta land of the petitioner is about 2.5 kms. away from the river bank. Apart from that, the counter filed by the Assistant Director of Mines and Geology would show that the patta land of the petitioner is 2.5 kms., away from the river

bed. In the counter it is specifically stated that the petitioner has to utilize the ramp for transporting of sand from his patta land. Therefore, the argument of the learned counsel for the respondents that the land of the petitioner is at the river bed, wherein there is a total prohibition of excavating the sand cannot be accepted.

10) As stated earlier, the objection is with regard to prohibition of usage of de-casting machines and collection of charges.

11) Insofar as de-casting of sand is concerned, pursuant to an application made by the petitioner, the Tahsildar, called for a report from the Mandal Agricultural Officer, who inspected the patta land along with other officers and found that the land of the petitioner fit for cultivation after de-casting of sand. The average depth of the fit for sand excavation was measured as 3.00 meters and the quantity of the sand to be excavated, was assessed at 1,17,767.77 cbm. The Tahsildar also addressed a letter to the Assistant Director of Mines and Geology, stating that the Mandal Agricultural Officer, has reported that the above said land is fit for cultivation after de-casting of sand and also about the presence of sand in the said land. He also refers to the ownership of the petitioner over the land. The Joint Collector also addressed a letter to the Assistant Director of Mines and Geology, stating that he

conducted personal inspection on 02.02.2018 and recommended for de-casting of sand in R.S.No.340/ 2. Letter dated 16.02.2018 written by River Conservator and Executive Engineer, Krishna Central Division, Vijayawada, which was referred to above show the location of the land. Thereafter, the Government issued G.O.Ms.No.76, Industries and Commerce (Mines.II) Department, dated 25.06.2018, wherein certain proposals came to be issued while reviewing the free sand policy. The same are as under:

“4. The Government has reviewed the sand policy on 23.06.2018 duly examining the above proposal of the DMG and decided that:

- (i) all the sand reaches in the State shall be maintained by the committee of local officials for each sand reach in the district to be constituted by the District Level Committee headed by the District Collector.
- (ii) Ramps at the reaches shall be laid for the first time by meeting the expenditure from NREGP funds as instructed vide Govt. Memo, 1<sup>st</sup> read above.
- (iii) A uniform charge of Rs.30/- per tractor (one unit), Rs.60/- for Mini Lorry (2 units) shall be collected by the committee of local officials at each sand reach in the district to meet the expenditure for the maintenance of the ramps at the sand reaches.

- (iv) District Collectors shall ensure that no middle-men or third party enter in the reaches in the name of ramp maintenance.”

12) A reading of the above G.O., does not anywhere indicate any prohibition for usage of any de-casting machines. The only condition imposed was with regard to collection of charges for ramp maintenance at the sand reaches.

13) On 27.06.2018, ie., two days after the issuance of the said G.O., the Collector and District Magistrate, Krishna, issued the impugned proceedings by imposing a condition which is as under:

“No machinery shall be permitted in de-casting of sand in patta lands”.

14) Pursuant there to ie., on 16.07.2018, the petitioner was allowed to de-caste sand from his patta land on the following conditions.

i. Transporter of the sand carrying vehicle shall collect transportation charges as per the prices notified by the District Level Committee, Krishna.

ii. Collection of ramp maintenance charges of Rs.30/- per Tractor (one unit), Rs.60/- for Mini Lorry (2 units) from each sand transporting vehicle by the Village Committee to meet the expenditure for the maintenance of the ramps, watering the ramp continuously to avoid dust, laying of leaves for stability of the ramp etc., and also arrange gates for entry and exit for movement of sand vehicles.

iii. The officer on the duty at the sand reach shall collect the ramp maintenance charges and issue a receipt, which shall contain the following details like name of the sand reach, Mandal, Vehicle number, capacity of vehicle (in units).

iv. Excavation and loading charges collected towards the labour charges shall not exceed Rs.300/- per each unit of Sand in de-casting of sand in patta lands by pattadar.

v. No machinery shall be permitted in de-casting of sand in patta lands.

vi. The sand reaches shall be operated during the day time only ie., from 6.00 a.m., to 1.00 p.m., and 1.00 p.m., to 6.00 p.m.

vii. Loading is strictly on the first come first serve basis only.”

15) From the above, it is very clear that though G.O.Ms.No.76 does not anywhere prescribe any condition for de-casting of sand by using machinery, but the circular issued by the Collector introduced the said condition which was never contemplated by the Government. Things would have been different had the land of the petitioner was situated at a river bed. Even as per the report of the Executive Engineer and River Conservator, the land of the petitioner was situated at a distance of 2.5 kms., from the river bed and that ramps have to be laid for the purpose of de-casting the same.

16) That being the position the issue is Whether the District Collector was justified in imposing such condition.

17) Though the Government Pleader would contend that by virtue of G.O.Ms.No.104, the District Level Committee, has complete freedom to devise or formulate their own guidelines which are suitable to the District so as to ensure implementation of free sand policy, but as contended by the learned counsel for the petitioner such a power is available to the District Collector in respect of sand reaches which are within the river bed.

18) In the instance case, as observed by me earlier, the land of the petitioner is far away from the river bed. The authorities of the River Conservator and the Mines and Geology never felt that such a prohibition is necessary for de-casting sand from the patta land of the petitioner. That's why, while granting permission to the petitioner to excavate the sand, no condition was imposed. In fact, even the District Collector in his earlier proceedings never thought of imposing such condition. As stated earlier, the power though available to the District Collector in view of G.O.Ms.No.104, the same can be used if the land is situated within the river bed.

19) Since the patta land of the petitioner, would be fit for cultivation after de-casting; having regard to the fact that the land of the petitioner is eroded due to natural calamity ie. Floods and taking into consideration the location of the land, this Court is of the view that the petitioner can be permitted

to use machinery for de-casting of the sand to the extent ordered by the authorities.

20) Insofar as the payment of charges for usage of ramp is concerned, I do not agree with the counsel for the petitioner that no amount is liable to be paid. However, the learned counsel for the petitioner would submit that the said amount has already been deposited for usage of ramp. If the amount is deposited for the usage of ramp, the same shall be adjusted towards the amount to be paid. If no amount is paid, the petitioner shall pay the amount as prescribed in the G.O.

21) Accordingly, the Writ Petition is allowed-in-part, to the extent indicated above i.e., permitting the petitioner to use machinery for de-casting of sand to the extent ordered by the authorities. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

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JUSTICE C. PRAVEEN KUMAR

31.10.2018  
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