

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION Nos.23806 AND 24477 OF 2022

COMMON ORDER:

The subject matter and the parties in both the writ petitions are one and the same, both the writ petitions are heard together and decided by way of the following **common order**.

2-a. W.P.No.23806 of 2022 is filed to declare the action of respondent Nos.12 and 13 herein in not allowing de-casting of sand from petitioners patta lands situated in Sy.Nos.02 and 03 to an extent of Ac.4.31 guntas of Thatikole Village, Devarakonda Mandal, Nalgonda District (for short, the subject land'), for a quantity of 38,648 M3 and trying to dispossess the petitioners from sand bearing area even though valid permission accorded from the District Collector/Chairman, District Level Sand Committee (DLSC), Nalgonda vide proceedings No.3987/Sand/P1/2015, dated 22.04.2022, further the respondent Nos.2 to 11 herein are not taking action against respondent Nos.12 and 13 on petitioners representation dated 12.04.2022 with regard to illegal interference of respondent Nos.12 and 13 in de-casting operation, as illegal and consequently direct respondent Nos.12 and 13 not to interfere

and dispossess the petitioners in respect of carrying out de-casting of sand from the above said land.

2-b. W.P.No.24477 of 2022 is filed to declare the action of respondent No.2 in not revoking the proceeding No.3987/Sand/PL2015 dated 22.04.2022 de-casting of sand from the subject land of respondent Nos.9 to 11 for a quantity of 38,648 M3 as illegal, and consequently set aside the same.

3. Heard Smt. P.Vijayalakshmi, learned counsel for the petitioners in W.P.No.23806 of 2022 and respondent Nos.9 to 11 in W.P.No.24477 of 2022, Dr. Kadiri Krishnaiah, learned counsel for the petitioners in W.P.No.24477 of 2022 and respondent Nos.12 and 13 in W.P.No.23806 of 2022 and learned Government Pleader for Mines and Geology for the official respondents in both the writ petitions. Perused the record.

Facts in W.P.No.23806 of 2022:

4. The petitioners are absolute owners and possessors of the subject land, they are marginal farmers of subject land. The said lands are near to Gollapalli vagu. Due to floods during rainy season, the said lands are casted with sand and therefore, they are not in a position to carry out their agricultural activities. As per the Telangana State Sand Mining Rules, 2015 (for short, the Rules') for de-casting of sand from

subject property, they have submitted application in 2018 to the Assistant Director of Mines and Geology Department, Nalgonda, who is the Member Convener of the District Level Sand Committee (DLSC). Subsequently joint inspection was conducted by the Revenue and Agricultural Department and Mines Department and submitted the report to the District Collector, Nalgonda, and the proposal was discussed in DLSC meeting and the District Collector submitted said report to Vice Chairman, Telangana State Mineral Development Corporation Limited (TSMDC) vide letter, dated 30.03.2022. Since all the officers forming part of the joint committee were of the considered opinion that sand has to be de-casted to make the lands fit for agriculture operations. The DLSC had accorded permission vide proceedings, dated 22.04.2022 for de-casting of sand from their subject land for a quantity of 38,648 M3 for a period of 6 months from 22.04.2022. The petitioners have also entered into an agreement with the TSMDC as per the terms of the Rules on 22.04.2022 itself. They have commenced de-casting operations from 22.04.2022. The respondent Nos.12 and 13 illegally trespassed into sand de-casting area of subject land illegally and directed them to stop de-casting operations and highhandedly tried to dispossess them without any authority or right. Thus, they have stopped the

petitioners from carrying out the de-casting operations from the subject land in spite of their obtaining permission from the DLSA and agreement, dated 22.04.2022.

Facts in W.P.No.24427 of 2022:-

5. The 1st petitioner is Thatikole Grampanchayat represented by its Sarpunch and the petitioner Nos.2 to 21 are villagers of the said Thatikole Village. It is a major gram panchayat. There is a stream which is only source for drinking and irrigation water to the entire village and also cattle of the other villages. The respondent Nos.9 to 11 herein obtained proceedings, dated 22.04.2022 for de-casting sand from the subject land without following the procedure laid down under law and the same are contrary to Rule 7 of the Rules and Section 27 of the Telangana Water Land and Trees Act, 2002 (for short, 'WALTA Act'). Though specific representations were given to the District Collector, Superintendent of Police, Mines Department, they are not considering the same. The 1st petitioner – Gram panchayat has also passed resolution dated 28.04.2022. The petitioners sought to declare the proceedings dated 22.04.2022 as illegal.

6. Learned Government Pleader for Mines and Geology, basing on the written instructions, would submit that the petitioners in

W.P.No.23806 of 2022 have made an application on 01.09.2015 to accord permission for de-casting sand from the subject land. The Revenue Department has confirmed that the subject land is the patta land of the petitioners which was casted with sand. The Member Departments/Revenue, Agricultural, Ground water, Irrigation, M/s TSMDC Limited and Mining Departments, have conducted joint inspection on 16.09.2015, estimated the quantity of sand as 38,648 M3 in the subject land and recommended for de-casting of sand for a period of six months. The Government vide G.O.Ms.No.54, Ind.,& Comm.,(M-1) Department, dated 21.08.2015 amended Rules. As such, de-casting of sand in any patta land abutting river bed, to make the land suitable for cultivation shall be by M/s TSMDC Limited. However, the petitioners vide letter dated 25.01.2016 have submitted their willingness/consent to entrust de-casting of sand from their patta land through M/s TSMDC Limited. The DLSC, in the meeting dated 16.02.2016 passed resolution to permit M/s TSMDC, to de-cast sand for a quantity of 38,648 M3 from the subject land vide proceedings, dated 22.02.2016 for a period of six months.

7. Sri B.Srinu, MPTC and others have filed a Grievance Petition, dated 30.03.2016 endorsed by the Joint Collector, Nalgonda, have filed

a petition to the District Collector, Nalgonda in the Public Grievance Cell to cancel the permissions accorded to M/s TSMDC Limited, alleging that the Thatikole vagu is main source for drinking water as well as irrigation to the villagers of Thatikole, Bollepally, Nandulametta, Regandla thanda, Ygonivampu and Kommapally vagu and requested to cancel the permissions given for de-casting of sand from the subject land. After detailed enquiry by the RDO, Devarakonda and the Executive Engineer, RWS Nalgonda submitted their reports stating that there is no drinking water problem due to de-casting of sand in the subject land. Subsequently, the District Collector, Nalgonda, vide letter dated 08.12.2016 informed the same to M/s TSMDC Limited, Hyderabad for taking necessary action in the matter.

8. The pattadars filed a writ petition vide W.P.No.19838 of 2017 seeking a direction to M/s TSMDC Limited to implement the orders of the District Collector, Nalgonda, dated 08.12.2016 and the said writ petition was disposed of directing the respondents to consider the representations submitted by the petitioners, dated 31.05.2017 and 07.06.2017 and pass appropriate orders in accordance with law, as expeditiously as possible, preferably within a period of eight (8) weeks from the date of receipt of a copy the said order. In obedience to the said

orders, M/s TSMDC Limited, submitted the Agreement in Form S-4(a) duly requested to enter into an agreement for commencing de-casting operations for a quantity of 38,648 M3 in the subject land from 20.06.2018 to 03.10.2018. As per the office records, M/s TSMDC Limited, has not obtained any sand dispatch permits for the subject land.

9. The villagers of Thatikole Village again submitted representation dated 02.07.2018 in prajavani requesting not to permit the de-casting operations in Thatikole vagu, as the Vagu is the main source of drinking water in the village. The Joint Collector, Nalgonda has directed the RDO, Devarakonda and Assistant Director, Survey and Land Records to conduct the joint inspection and fix up the boundaries between the patta lands and vaagu at Thatikole village. The RDO, Deverakonda inspected the site jointly with the Assistant Director, Survey and Land Records, along with Tahsildar and villagers and fixed the boundaries of the subject land and also vagu as per Naksha by geo co-ordinates and further instructed the Tahsildar to monitor the boundary lines of the land as find by the Assistant Director, Survey and Land Records, without any deviation and submitted the report to the District Collector, Nalgonda vide letter dated 13.07.2018. Thereafter, M/s TSMDC Limited, vide letter dated 09.08.2018 informed to the

District Collector that the villagers and farmers of Thatikole Village, Deverakonda Mandal, have made objections for de-casting of sand in the subject lands on the pretext that the de-casting of sand will lead to depletion of ground water in surrounding areas and forcible de-casting of sand leads to law and order problems in the village. Therefore, M/s TSMDC Limited requested the District Collector, Nalgonda to clear that under the present circumstances the de-casting of sand from the subject land is possible or not. The District Collector, vide letter dated 20.08.2018 directed the RDO, Devarakonda, Divisional Superintendent of Police, Devarakonda to inspect the above subject land and submit a detailed report in the matter and further instructed the Assistant Director, Agricultural Department, Devarakonda to submit the report on feasibility of cultivation in the subject land after de-casting sand. The same were pending with concern departments.

10. In the meanwhile, the petitioners filed W.P.No.34843 of 2018 seeking police protection for de-casting the sand, this Court disposed of the said Writ Petition. The petitioners also filed a writ petition vide W.P.No.34708 of 2018, this Court ordered notice. The District Collector, Nalgonda vide letter dated 20.08.2018, requested the RDO, Devarakonda and Deputy Superintendent of Police, Devarakonda to

inspect the above subject area and submit joint inspection report under intimation to the Assistant Director of Mines and Geology, Nalgonda urgently. The RDO has submitted the report vide letter dated 28.03.2022, stating that they have inspected the subject area along with Assistant Director, Agriculture, Devarakonda, Mandal Agriculture Officer, Devarakonda and Tahsildar, Devarakonda on 26.03.2022 regarding the feasibility of land after de-casting of sand and after verifying the land, it is submitted that the subject land is useful for agriculture after de-casting of sand.

11. The villagers Juluru Renu and others filed a writ petition vide W.P.No.34708 of 2018 challenging the order dated 23.02.2016 permitting de-casting of sand in the subject property. Meanwhile the permission granted by the DLSC, Nalgonda for de-casting of sand in the subject property was lapsed. Basing on the representation made by the pattadars, M/s TSMDC Limited entered into an agreement dated 22.04.2022 with them for de-casting of sand from their patta lands for a period of six months and addressed a letter to the District Collector, Nalgonda informing the same. After considering the matter in detail, the District Collector, Nalgonda, granted permission vide proceedings, dated 22.04.2022 in favour of M/s TSMDC Limited for de-casting of

sand for a quantity of 34,648 M3 from the subject land for a period six months. This Court in W.P.No.23806 of 2022 passed interim direction directing the respondent Nos.12 and 13 not to interfere with de-casting operation done by the petitioners.

12. Therefore, according to the learned Government Pleader for Mines and Geology, the respondents have followed the due procedure laid down under law while issuing proceedings dated 22.04.2022. The Sarpunch and the other villagers have been obstructing the said de-casting operations on one pretext or the other. With the said submissions, he sought to dismiss the present writ petition.

13. The above said facts would reveal that the District Collector vide proceedings dated 22.04.2022 accorded permission in favour of TSMDC Limited, for de-casting of sand for the aforesaid quantity from subject land for a period of six months from the date of agreement with M/s TSMDC Limited, subject to Rules laid down in the Rules, 2015 and amendments thereon. The above stated facts would also reveal that the petitioners in W.P.No.23806 of 2022 are the absolute owners and possessors of the subject land. Their land is casted with sand. Therefore, they have made an application dated 01.09.2015 seeking permission to de-cast the sand from their patta lands. Thereafter, the joint inspection

was conducted by the Member Departments and reports were submitted. The recommendations were made. Since at every stage, MPTC, Sarpanch and some others villagers of Thatikole Village obstructed the said proceedings, the above said writ petition is filed.

14. Perusal of the record also would reveal that after conducting a joint inspection by the Member Departments, recommendations were made for de-casting of the sand from the subject land and also assessment of the quantity as 38,648 M3. The earlier permission granted in favour of the petitioners in W.P.No.23806 of 2022, dated 23.02.2016 was lapsed. Therefore, they have made an application after following the due procedure laid down under law, to the District Collector, who in turn, issued impugned proceedings dated 22.04.2022. According to respondent Nos.12 and 13 in W.P.No.23806 of 2022 and also the petitioners in W.P.No.24477 of 2022, their objections have not been considered by the District Collector. According to petitioners in W.P.No.24477 of 2022, official respondents have not followed the procedure laid down under Rule 7 of the Rules, and also Section 27 of the WALTA Act. The entire village is depended on the said stream of the Thatikole Village for drinking water as well as irrigation. The MPTC and other villagers have submitted grievance petition dated 30.03.2016

to the District Collector, Nalgonda, who directed joint inspection and received report stating that there is no drinking water problem by de-casting of sand in the subject property. A similar representation dated 02.07.2018 was submitted by the villagers of Thatikole village. The said representation was also considered. Some of the villagers have filed a Writ Petition No.34708 of 2018 and thereafter they have withdrawn the same stating cause of action does not survive for adjudication and has become infructuous.

15. If the gram panchayat, MPTC, or other villagers are having any grievance against the petitioners in W.P.No.23806 of 2022 and that permission granted in their favour for conducting de-casting operations is in violation of any Rules, they are at liberty to submit a specific representation to the District Collector and also other authorities concerned. They have to specifically mention the alleged violation of Rules and terms and conditions of the agreement in the representations. Perusal of the representations submitted by the petitioners in W.P.No.24477 of 2020 would reveal that they are vague and there are no specific allegations. Basing on the said vague allegations, they cannot stop the petitioners in W.P.No.23806 of 2022 in carrying out de-casting of sand operations illegally. They cannot take the law into hand and stop

the mining operations. If at all they have any grievance, they have to take recourse available under law including the submission of representations/complaints, the competent authorities and also to the District Collector/Chairman of DLSC. Instead of doing so, they are preventing the petitioners in W.P.No.22806 of 2022 in carrying out the de-casting operations which is nothing but obstructing them illegally.

16. Considering the problem of indiscriminate sand mining affecting the ecology, the State Government to stop the rampant sand mining, have evolved policies from time to time and issued G.O.Ms.No.3, Industries and Commerce (Mines-I) Department, dated 08.01.2015. It says in case of the sand cast in patta lands, the pattadar shall be allowed to de-cast sand to make the land fit for agriculture. The said G.O. contemplates as follows:-

“This G.O. contemplates to constitute a District Level Sand Committee consisting of officials of various Departments such as Revenue, Irrigation, Rural Water Supply, Pollution Control Board and Mines and Geology Departments, who would consider the applications for de-casting and in the event they are convinced about de-casting of sand in a particular land, it enables entrusting of the said responsibility to the 2nd respondent Corporation to remove it.

10. Clause-7 of the said G.O. specifically deals with de-casting of sand from patta lands. It states:

“7. De-casting sand from Pattalands:

In case of the sand cast in pattalands, the pattadar shall be allowed to de-cast sand to make the land fit for agriculture.

To eliminate vested interests, no Agent/GPA/Lease holders other than the pattadar shall be involved in de-casting process.

(1) De-casting in patta lands abutting the river course:

(a) The pattadar shall apply to the Asst. Director of Mines and Geology concerned along with copy of pattadar pass book and Title deed book and location of the land on village map.

(b) Asst. Director of Mines & Geology concerned shall take up Joint inspection of the pattaland with the following:

(i) Tahsildar shall identify the patta land, possessor/occupier and furnish attested sketch demarcating the area. The boundaries will then be fixed on the ground.

(ii) Mandal Agriculture Officer shall certify that without de-casting the patta land is not fit for agriculture.

(iii) The Ground Water Dept., shall record the geo-coordinates of the patta land as per boundaries fixed by the Tahsildar, assess the thickness, quantity the sand to be de-casted and give specific recommendation on the mode of de-casting i.e. manual or mechanized.

(iv) Asst. Director of Mines & Geology shall certify the suitability of sand for construction.

(v) Executive Engineer, Irrigation Dept., concerned shall report on the location of patta land with reference to river course/bed.

(2) After receipt of joint inspection report, the Assistant Director of Mines & Geology shall submit the proposals duly stipulating the period of de-casting to the District Collector.

(3) District Collector after scrutiny shall submit proposals to the Govt.

(4) After receipt of orders from the Govt. the Asst. Director of Mines & Geology concerned shall collect the seigniorage fee for the entire assessed sand quantity in advance, security deposit in the form of Bank Guarantee in favour of Asst. Director of Mines & Geology; equivalent to seigniorage fee on the assessed sand quantity and enter into an agreement in Form-S5 'before' issue of dispatch permits in Form-S3.

If Ad valorem rate of seigniorage fee is imposed, the Telangana State Mineral Development Corporation rate will be the bench mark for payment of seigniorage fee for de₁ casting sand from patta lands.

(5) Responsibilities of the pattadar:

(a) Shall extract sand from the patta land by manual/mechanized means as 'recommended by Ground Water Department and transport to' the stockyard by tractors capacity nor more than 3 cu. mt., along with transit form issued by the Asst. Director of Mines & Geology.

(b) Shall establish a stockyard by obtaining registration under MDR, 2000 or any suitable subsequent rules/amendments to be issued by Government from time to time from the Competent Authority at a location having proper road connectivity.

(c) Shall dispatch sand from the stockyard to the consumers with Transit Pas in Form-E issued by Asst. Director of Mines and Geology concerned 'under MSR,J W.P.No.7342 of 2018 6 MDR,2000 or any suitable subsequent rules/amendments to be issued by Government from time to time.

(d) Shall dispose sand from the stockyard as per the sale price fixed by the Government from time to time.

(e) Loading of sand from the stockyard shall be as per the approved capacity of the vehicle with transit pass duly indicating the destination, date and time.

(f) Any contravention by the pattadar during the de₁ casting, the Chairman, DLSC may order for cancellation of:

(i) Rs.1,00,000/- or Rs.500/- per cu.mt. whichever is higher shall be collected as penalty on de-casting of sand beyond the specified times or in excess of permitted depth.

(ii) Repeated violations will result in cancellation of permission and forfeiture of security deposit.

(iii) Penalty of Rs.10,000/- per ton on vehicles carrying more than the permitted capacity from the stockyard.

(6) To prevent indiscriminate removal of sand from patta lands abutting the Riverbed, more rigorous vigilance and inspections shall be taken up.

(7) The District Level Sand Committee shall issue operational guidelines for de-casting sand from patta lands abutting river bed.

(8) The patta lands located in the midst of the river course/bed:

In case of patta lands located in the midst of the river bed/course, the pattadar shall enter into an agreement for removal of sand by Telangana State Mineral Development Corporation Ltd.

The Chairman, District Level Sand Committee shall allot the patta lands located in the midst of the river course/bed to Telangana State Mineral Development Corporation Limited as per Rule 2(i) read with Rule 4(iv)(c).”

11. Thus, as can be seen from the policy framed by the 1st respondent in clause-7, where there is sand deposited in patta land, the pattadar is entitled to make it fit for agriculture subject to the conditions mentioned therein.”

17. In view of the said G.O, the legal position and facts of the case:-

- i. W.P.No.23806 of 2022 is allowed. The respondent Nos.12 and 13 are directed not to stop/prevent the petitioners from carrying out de-casting of sand operations from their patta lands/subject land in accordance with the proceedings dated 22.04.2022 and agreement dated 22.04.2022 entered into with M/s TSMDC Limited. The respondent Nos.2 to 11 in W.P.No.23806 of 2022 shall take all necessary steps including providing Police protection etc., to the petitioners

in carrying out their de-casting of sand operations pursuant to proceedings dated 22.04.2022.

- ii. W.P.No.24477 of 2022 is dismissed. However, liberty is granted to the petitioners to submit a representation to the District Collector-Chairman District Level Sand Committee (DLSC), Nalgonda, with specific objections/allegations, if any, against the petitioners in W.P.No.23806 of 2022. In which event, the District Collector/Chairman, DLSC, shall consider the same and pass appropriate orders in accordance with law.

Consequently, miscellaneous petitions, if any, shall stand closed.

K. LAKSHMAN, J

Date:18.08.2022

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