
(2002) 02 AP CK 0174

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12346 of 1996

Aitha Gopalakrishna

APPELLANT

Vs

District Collector, Visakhapatnam and Others

RESPONDENT

Date of Decision : 04-02-2002

Acts Referred:

Andhra Pradesh Irrigation (Construction and Maintenance of Water Courses) Act, 1965
— Section 4(2)

Citation : (2002) 2 ALD 649 : (2002) 6 ALT 623

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : P. Sri Raghuram, for the Appellant; Government Pleader for Revenue, Special Government Pleader for Taxes and Saraswathi, rep. by P. Raghavender Reddy, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—The writ petition is filed for a writ or direction, more particularly one in the nature of writ of mandamus, declaring the action of the respondents in diverting the Vedula Vagu Water Stream of Batajangalapalem, Sabbavaram Mandal, Visakhapatnam District, by constructing a check-dam without following the procedure under the A.P. Irrigation (Construction and Maintenance of Water Courses) Act, 1965, as without jurisdiction, illegal and arbitrary and consequently, direct the respondents not to proceed with the construction of the same and pass other suitable orders.

2. The facts, in brief, are as follows:

The petitioner is an ayacutdar of Kamaraju Cheruvu situate at Btajangalapalem village, Sabbavaram Mandal, Visakhapatnam District, owning an extent of Acs.5.00 in Survey No. 189 in the said village. The ayacut under Kamaraju Cheruvu is about Acs.20.00 and the water to the said tank comes from Vedula Vagu/Gadda which is situate at a higher level and is the only source of water to the tank as well as to his land. It is further stated that there is a tank by name

Kasidevudu Cheruvu in the neighbouring village, Batajangalpalem village, which has an ayacut of Acs.10.00 and the said tank has no source of water and is being filled by rainwater only. It is further stated that ayacutdars of Kasidevudu Cheruvu seem to have approached respondent Nos. 1 and 2 authorities for diverting the water from Veduyllavagu to this tank by constructing a check-dam and the authorities at the instigation of the ayacutdars and third respondent, who is a Civil Contractor, seemed to have prepared plans for the construction of check-dam as well as to divert the water to Kasidevudu Cheruvu. It is also stated that the writ petitioner came to know that Rs. 1,00,000/- also had been sanctioned for the said purpose. It is also stated that if the water from Vedullavagu, which is the only feeder to Kamaraju Cheruvu, is diverted by constructing a check-dam to Kasidevudu Cheruvu, their lands of about Acs.20.00 will suffer from water and hence, the writ petitioner issued telegram to the Mandal Development Officer, Sabbavaram, and Deputy Executive Engineer, Panchayat Raj, Sabbavaram, on 9-3-1996 to stop the sanction of check-dam in Survey No. 191, Kasidevudu Cheruvu, Batajangalapalem village, Visakhapatnam District. But, inspite of the same, the respondents are proceeding with sanctioning of the said check-dam. It is further stated that before the construction of water course, the Irrigation Officer shall publish a notification in a prescribed manner in every village through which the water course is proposed to be taken specifying the extent of land which lies in such village and which has been marked as prescribed in Section 4(2) of the A.P. Irrigation (Construction and Maintenance of Water Courses) Act, 1965, hereinafter referred to as "Act" in short for the purpose of convenience. As per Clause (b) of Section 4, every person likely to be affected by the construction of the water course or interested in the land on which it is proposed to construct the water course has to submit his petition to the Irrigation Officer stating his objections to the proposed construction within sixty days of publication of notice and on receipt of such objections, the Revenue Divisional Officer has to pass orders after hearing the affected parties. It is also further stated that this procedure was not followed at all and the writ petitioner was denied of any opportunity before the sanction of the work. It is also stated that no notice was published nor informed to the Villagers/Ayacutdars in any manner and hence, the said action is wholly illegal and arbitrary and contrary to the provisions of the Act.

3. After issuing rule nisi, this Court had granted interim order on 28-6-1996 and the said interim order is in force.

4. The third respondent filed counter-affidavit with the following averments:

In paragraph No. 3 of the counter-affidavit, it is stated that the question of giving notice to ayacutdars to Kamaraju Tank of Batajangalapalem village does not arise as this is not a registered MI source and moreover, this is purely rain-fed tank. Kamaraju Tank is a private tank owned by the petitioner and no other ayacutdars are existing except the petitioner and this tank is purely rain-fed tank and the course of Vedulagadda is far away to this tank. This fact can be seen from the

copy of EMB sketch and prior to the construction of proposed check-dam, the ayacutdars of Kasidevudu tank, which is a registered MI source, used to divert the water from Vedullagadda, by making temporary mud wall against the flow of Vedullagadda and used to fill the tank through a canal. The surplus water, if any, available in Kasidevudu tank used to be let out. As Kamaraju tank is existing in the downstream portion, the petitioner used to get the surplus water for filling the tank. It is further stated that since Kasidevudu Cheruvu is a registered Minor Irrigation source and water cess is being collected from the ayacutdars, it is the responsibility of Government to make the MI source stabilised by creating permanent check-dam against Vedullagadda. Accordingly, estimates have been prepared for construction of check-dam across Vedullagadda, so that it will serve better the ayacutdars of Kasidevudu tank with assured water supply. After getting necessary sanction to the scheme, construction of check-dam has been taken up. The Mandal Revenue Officer, Sabbavaram, in his letter Rc.No. 355/96, dated 31-8-1996, had also certified that the land of Sri A. Gopalakrishna will not be affected by the construction of the check-dam. It is also further stated that in view of the construction of the check-dam, the ayacutdars under registered MI. Source i.e., Kasidevudu tank, will be benefited and in any case, if any Ayacutdar under the adjacent registered MI source will be affected, then only the question of issuing notice to ayacutdars arise and in this case, no one is being affected including the petitioner.

5. Heard Mr. P. Sri Raghuram, the learned Counsel representing the writ petitioner and Mrs. Saraswathi representing Mr. P. Raghavendra Reddy.

6. Mr. P. Sri Raghuram, the learned Counsel representing the writ petitioner, had contended that the writ petition is filed mainly questioning the action of the respondents in not issuing notice and not giving opportunity as contemplated by Section 4 of the Act. The learned Counsel had contended that it is, no doubt, true that if several disputed questions of fact are involved in the matter, the remedy is by way of a civil suit, but however here is a case where the procedure contemplated by the Act had not been followed and hence, the writ petitioner had invoked the jurisdiction of the Writ Court under Article 226 of the Constitution of India and hence, the remedy sought for by the writ petitioner is a proper remedy and not a misconceived one. The learned Counsel had placed reliance on *Marine Kishtaiah v. RDO, Medak 1972 (1) APLJ 363*, in this regard. The learned Counsel also had drawn my attention to several other definitions under the Act to substantiate his contentions.

7. Mrs. Saraswathi representing Mr. P. Raghavendra Reddy had made the following submissions:

The learned Counsel mainly contended that the proposed construction of the check-dam is also for the benefit of the writ petitioner and in fact, the writ petitioner is in no way affected and since the public interest in general should be given precedence as against individual interest of the writ petitioner and inasmuch as, the further construction had been stalled by virtue of the direction

granted by this Court, the writ petition has to be dismissed. The learned Counsel also had drawn my attention to paragraph Nos. 3, 4 and 5 of the counter-affidavit whereas specific stand had been taken that it is not a registered source and moreover, it is a purely rain-fed tank and hence, there is no question of issuing notice to the writ petitioner. The learned Counsel further contended that the provisions of the Act are not attracted at all and even, otherwise, since the petitioner is in no way affected by the construction of this check-dam, he has no legal right to maintain the present writ petition.

8. Heard both the Counsel at length. Several of the facts, as can be seen from the respective pleads, are not in dispute. The principal contention of Sri Raghuram, the learned Counsel representing the writ petitioner, is that inspite of the telegram issued by the writ petitioner as ayacutdar and an affected party, the respondents instead of following the procedure as contemplated under the Act, further proceeded with the work without hearing the objections of the writ petitioner in this regard. Section 2(a) of the Act defines ayacut as "ayacut in relation to an irrigation work means all the lands which are entitled to irrigate under that irrigation work". Section 2(b) of the Act simply defines ayacutdars as "ayacutdar means owner of land in any ayacut". Section 2(f) of the said Act defines Irrigation Work as follows:

"Irrigation work" includes:-

- (i) all rivers and natural streams or parts thereof;
 - (ii) all lakes and other natural collections of water or parts thereof;
 - (iii) all tanks, wells, tube wells, reservoirs, ponds, kuntas, streams, madugus used for the supply or storage of water for purpose of irrigation;
 - (iv) all canals, channels, anicuts, dams, embankments, weirs, sluices, groins, kunts and other works other than escape channels connected with, or auxiliary works referred to in Sub-clause (i) to (in).
 - (v) all drainage channels, the water of which is utilised for the purpose of irrigation;
 - (vi) all lands used for the purpose of irrigation works referred to in Sub-clauses (i) to (v); and
 - (vii) all buildings, machinery, fences, gates, roads and other erections occupied by, or belonging to, the Government and connected with an irrigation work;
- which are owned, maintained, constructed or controlled by the Government.

Likewise, Section 2(g) defines owner as hereunder:

"owner in relation to any land in respect of which land revenue is payable means the person liable to pay land revenue and in relation to any land in respect of which no land revenue is payable means the person who would have been liable to pay land revenue if it had been payable on such land; and includes a ryot

having a permanent Tight of occupancy in the land".

Section 2(j) of the said Act defines water course as follows;

"water course means a field channel which receives supply of water from the outlet of an irrigation work and conveys water to lands included within the ayacut of that work and which is not maintained at the cost of the Government and includes all subsidiary works connected with any such channel except the sluice or outlet through which water is supplied from irrigation work to such channel".

Apart from the aforesaid definitions, Section 4 of the Act dealing power of Irrigation Officer to construct watercourse suo motu or on application reads as follows:

(1) Whenever an Irrigation Officer considers suo motu or on the application of an ayacutdar that the construction of a watercourse, is expedient or necessary, he shall ascertain the most suitable alignment for the said water-course and cause the land which in his opinion is necessary for the construction thereof to be marked out on the ground.

(2) He shall thereupon publish a notice in the prescribed manner in every village through which the water course is proposed to be taken specifying the extent of land which lies in such village and which has been marked out under Subsection (1) and requiring:

(a) every owner who wishes to receive supply of water to his land through the water-course or to make use of the water-course for drainage purposes to make an application in that behalf to the Irrigation Officer within thirty days of publication of notice;

(b) Every person likely to be affected by the construction of the watercourse or interested in the land on which it is proposed to construct the water-course to submit his petition to the Irrigation Officer stating his objections to the proposed construction within sixty days of publication of the notice.

(3) The Irrigation Officer shall also send copies of the notice to every person known or believed to be the owner of the land through which the water-course is proposed to be taken and to the District Collector for publication in the Andhra Pradesh Gazette.

(4) The Irrigation Officer where he is not the Revenue Divisional Officer shall, as soon as may be after the expiry of the period specified in the notice, make a report to the Revenue Divisional Officer regarding the proposed water-course together with a plan showing the alignment thereof and objections, if any, received by him.

Section 4(2)(b) of the Act specifically says "Every person likely to be affected by the construction of the water-course or interested in the land on which it is proposed to construct the water-course to submit his petition to the Irrigation Officer stating his objections to the proposed construction within sixty days of

publication of the notice". It is, no doubt, true that it is contended by Mrs. Saraswathi that it is not a registered source of irrigation and hence, the writ petitioner is not entitled to any notice. In Manne Kishtaiah case (supra) the meaning of the expression "every person likely to be affected by the construction of the water course" had fallen for consideration and it was held that the expression "every person likely to be affected by the construction of the water course" does not necessarily require that the person affected should be an ayacutdar under a particular water course which is proposed to be constructed and any ayacutdar under a particular irrigation work, who is likely to be affected by the construction of a watercourse, should be required to state his objections u/s 4(2Xb). It appears that a liberal construction had been given to the said provision and every person affected may have to be given an opportunity of being heard relating to the proposed objections, which he may be inclined to raise in a matter of this nature. It is needless to say that, however, a specific stand had been taken by the third respondent that it is not a registered source at all and hence, no notice is necessary. Even if it is true, since the writ petitioner approached the writ Court with the grievance that he will be affected party by the proposed construction, in my considered opinion and in the light of the facts stated above, it is desirable that the writ petitioner should be put on notice and hear the objections, if any, in this regard before further proceeding with the proposed construction since it is his specific case that he is an affected party.

9. In the light of the foregoing discussion, it is made, clear that the respondents may fix a date by issuing notice for hearing the grievances or the objections, which may be raised by the writ petitioner in this regard and decide the matter in accordance with the provisions of the Act and then proceed further in the matter.

10. The writ petition is allowed to the extent indicated above. No order as to costs.