
(2000) 08 AP CK 0039

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20123 of 1999

D. Dastagiramma

APPELLANT

Vs

District Collector, Ongole, Prakasam District and others

RESPONDENT

Date of Decision : 09-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2001 AP 116 : (2000) 6 ALD 63 : (2000) 5 ALT 560

Hon'ble Judges : V.V.V. Rao, J

Bench : Single Bench

Advocate : Mr. S. Narendernath Reddy, for the Appellant; Government Pleader for Panchyat Raj, for the Respondent

Judgement

1.The petitioner claims to be the owner of land is Survey Nos.16/1 A, 167 1B, 16/1C, 18/1A, 18/1B and 184 in Gundreddipalli village, Kamarole Mandal, Prakasam district, admeasuring about two acres. On the northern side and eastern side of the petitioner's land, there are two small streams Kocheruvu Vagu, and, Otigundam Vagu, When respondents 1 to 3 allegedly granted permission to fourth respondent for construction of a check dam near Survey No.18/1B at Kocheruvu vagu as part of Janma Bhoomi Padakam, the petitioner approached this Court by filing the present writ petition. He prays for a declaration that action of respondents 1 to 3 in permitting the construction of the check dam by the 4th respondent is illegal and violates the principles of natural justice.

2. This Court ordered notice before admission on 28-9-1999 and when the matter was called on 3-12-1999, also ordered status quo existing as on that date. The respondents 1 to 3 have come forward with a counter-affidavit by way of rejoinder to the affidavit filed in support of the writ petition. At the time of preliminary hearing, learned Counsel for the petitioner as well as Assistant Government Pleader submit that the matter be disposed of at the stage of admission itself. Accordingly, the matter is taken up for final disposal with the

consent of both the Counsel. The counter-affidavit denies the allegation that the 4th respondent was permitted to construct the check dam near the petitioner's land in Survey No.18/16. It is further stated that the construction of check dam is at a height of 0.9 metres above the ground level. The said was decided by a Technical Committee comprising of Geologist. Deputy Executive Engineer (Rural Water Scheme) and Assistant Project Officer of Drought Prone Area Project. It is further stated that construction of check dam at the place will not inundate the surrounding agricultural lands and it is useful to all the villagers and also would help to reduce the scarcity of the drinking water because all the five bore wells in the village will yield sufficient water due to the effect of the check dam. The third respondent, who filed counter-affidavit also states that the construction of check dam in any other place of the village is not technically feasible. The work under the Employment Assurance Scheme cannot be entrusted to others and therefore, the Department itself has taken up the work providing livelihood to the rural landless agricultural labourers.

3. The learned Counsel for the petitioner, Mr. S. Narendhranath Reddy, submits that the construction of a check dam nearer to the petitioner's land in Survey No. 18/1B on the northern side would inundate the petitioner's agricultural lands. He also submits that if the water is allowed to stagnate due to check dam, it would result in seepage of water reducing the utility and fertility of the petitioner's land. He also submits that though the third respondent stated that the agricultural lands surrounding the check dam would not be inundated, they have not specifically denied that there will be some seepage of water into the petitioner's land. To appreciate this contention, it requires technical data and in any event, the data placed before this Court is not sufficient to accept the contention of the learned Counsel. Be it noted that though the counter-affidavit is filed on 10-12-1999, the petitioner did not choose to file a reply affidavit. Therefore, it is well settled that in the absence of a reply affidavit, the contentions in the counter-affidavit have to be taken as admitted and there is no reason not to countenance the averments in the counter-affidavit.

4. Admittedly, the, Kocheruvu Vagu, belongs to the Government. The respondents 1 to 3 have taken up the construction of check dam under Employment Assurance Scheme. The check dam serves the twin objects of augmenting water supply for drinking needs of the villagers and would result in recharging of underground water sources. In a case like this, I am of the considered opinion; any person owning the land nearer to the check dam has no right to seek any public law remedy under Article 226 of the Constitution of India. The allegation of seepage would not also afford any case of action to approach this Court. The writ petition is misconceived.

5. In the result, the writ petition fails and the same is dismissed. In the circumstances, there will be no order as to costs.