
(2002) 04 AP CK 0129

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25803 of 2001

Gundla Anantha Reddy and Others

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 23-04-2002

Acts Referred:

Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 — Section 57, 62, 63
Andhra Pradesh (Telangana Area) Land Revenue Rules, 1951 — Rule 70
Andhra Pradesh Mineral Dealers Rules, 2000 — Rule 3, 3(2)
Andhra Pradesh Minor Mineral Concession Rules, 1966 — Rule 11, 12, 12(2A), 9
Constitution of India, 1950 — Article 226
Mines and Minerals (Development and Regulation) Act, 1957 — Section 23C

Citation : (2002) 5 ALT 637 : (2002) 2 APLJ 115

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : A. Pulla Reddy, for the Appellant; G.P. for Revenue, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—Similarity of facts and commonality of questions involved for consideration and decision induced me to hear and dispose of these writ petitions by this common order.

2. For the purpose of deciding these writ petitions, suffice it to narrate the necessary skeleton facts, which are common.

3. These writ petitions relate to Nalgonda District. Petitioners claim to be the pattedars of the respective extents of lands in their occupation/possession comprised in different survey numbers of Medipalli village, Gajularamaram Mandal, Nalgonda District, which are allegedly situated on the banks of "Shameerpeta Vagu". According to them, whenever the "Shameerpeta Vagu" overflows, the mud and sand in huge quantity accumulate/collect over their patta lands, making the lands unfit for cultivation. For the last two years major portion

of their lands are not being cultivated due to huge collection of mud and sand above the surface level of their lands. In order to remove such accumulated/ collected mud and sand over their lands, the petitioners claim that they constructed filter beds in their respective lands for separating the mud from sand spending considerable amount. Petitioners state that the sand separated from the mud is being sold to local customers to meet the expenditure incurred for separating the sand from the mud.

4. According to the petitioners, agriculture is the only source of their livelihood and they are removing the mud and separating the sand therefrom only for the purpose of making their lands fit for cultivation. It is their case that the activity of removing the mud and sand accumulated/ collected on their patta lands does not attract either the provisions of the Mines and Mineral (Regulation and Development) Act, 1957 or the A.P. (T.A) Land Revenue Act, 1317 Fasli, or the A.P. (T.A) Land Revenue Rules, and hence the respondents 1 to 3 have no jurisdiction or power to interference with their activity which is being carried on by the petitioners only to make their lands fit for cultivation. Petitioners submit that in the year 1995, when huge quantity of mud and sand accumulated over their lands, the then Mandal Revenue Officer, Bommalaramaram, has permitted them to lift the sand from their patta lands for leveling their lands which were covered by sand. The respondents, without any power or authority, are now interfering with the abovesaid activity of the petitioners. Therefore, in these writ petitions, they are seeking directions to respondents 1 to 3 and their subordinates not to interfere with their activity in removing the mud and sand gathered on their patta lands.

5. A detailed counter-affidavit is filed by the respondents stating, inter alia, that the petitioners are using their assigned agricultural lands situate on the bank of "Shameerpeta Vagu" for non-agricultural purposes contrary to the conditions of assignment by erecting filterbeds on the edge of the river-bank for separating the sand from mud and selling the same to the customers. It is averred that the said activity of the petitioners is not permissible, except with the prior approval of the District Collector under Rule 70 of A.P. (T.A) Land Revenue Rules, 1951 and permission of the authorities under the Minor Minerals (Regulation and Development) Act and the A.P. Minor Mineral Concession Rules. According to the respondents, "Shameerpeta vagu" has never over-flown during the past ten years and the lands of the petitioners have not been inundated or covered with sand.

6. The learned counsel for the petitioners submits that there is no need for the petitioners to obtain any permission either from the Revenue Department or from the Mines and Minerals Department to excavate the sand from their patta lands which is being done by the petitioners only for the purpose of making their lands fit for cultivation.

7. Learned Government Pleader for Revenue contended that the petitioners have no right to excavate sand and sell the same. He contended that as per Sections 62 and 63 of the A.P. (T.A) Land Revenue Act, the petitioners cannot convert

their agricultural lands into non-agricultural lands without prior permission and that the petitioners must necessarily obtain permission of the District Collector to carry on such activity.

8. To appreciate the contentions of the petitioners" Counsel, I have directed the learned Government Pleader to produce the photographs of the filterbeds of the petitioners to ascertain the activity of the petitioners. A detailed counter-affidavit is filed by the respondents narrating the factual scenario and stating, inter alia, that during the last ten years there was no flood to the Shamirpet Vagu and the water from the Shamirpet vagu did not even overflow and so the question of accumulation of any sand in the lands of the petitioners does not arise. The petitioners have not produced any document or material to show that there are floods during the last one year, two years or ten years to the Shamirpet vagu. So, the averment made by the writ petitioners (first contention of the petitioners) that there is accumulation of sand in their lands because of floods to Shamirpet vagu cannot be accepted. The averments made by the respondents in their counter-affidavits are not rebutted by the petitioners by filing any reply-affidavits.

9. In support of the stand taken by the respondents, the learned Government Pleader has produced a number of photographs of the lands of the petitioners before this court to show that the depth of the digging was about 30 feet. But the contention of the petitioners is that they are only taking out the upper layer of the soil of their fields and removing the sand. The reasons for digging 30 feet depth of their lands by the petitioners for removing the sand, when the accumulation of sand and mud is on the upper portion (surface) of their lands, are not known. Photographs produced by the Government Pleader also depict that the petitioners are not at all carrying on activity relating to agriculture in their lands. The photographs amply establish that the petitioners have converted their lands into mines and quarrying/ mining to extract sand therein in the guise of agricultural activity.

10. The further contention of the petitioners" Counsel is that for conversion of their lands from non-agricultural lands into agricultural lands (i.e., making the lands fit for cultivation) the petitioners must necessarily construct filterbeds for separation of sand from the mud. I have also directed the Counsel for the petitioners to produce the photographs of the filterbeds of the petitioners and accordingly they are produced before, this Court. The constructions are huge construction with walls. To clean the sand from the mud, the petitioners have to use large quantity of ground water. There is no technical opinion or scientific information to prove that the said filter beds are useful for cleaning and removing the sand from the mud.

11. As could be seen from the photographs, the constructions made in the shape of filterbeds by the petitioners in their lands are huge and they are all permanent structures. So it cannot be said on that basis that the petitioners are using these filterbeds for conversion of their non-agricultural lands into agricultural lands. On

the other hand it is asserted by the respondents in their counter-affidavits and also by the Government Pleader during his arguments that the petitioners have unauthorisedly dug borewells in their lands and are using large quantity of borewell water to clean the excavated sand in their lands. This excavation and using large quantity of water by digging borewells by the petitioners is resulting in alarming situation of depletion of ground water levels which is ultimately creating drinking water problem also. In view of the above factual situation, the contention of the petitioners' counsel that the activity of the petitioners is an agricultural activity cannot be countenanced. The activity of the petitioners is clearly an non-agricultural activity. It can be termed as a "mining activity". This Court by an elaborate order dated 27-3-2002 in Writ Petition No. 25323 of 2002 and batch, has dismissed a batch of similar writ petitions relating to Nalgonds District. In that batch of writ petitions, the petitioners claimed that they constructed filterbeds in their patta lands for the purpose of cleaning the sand and supplying the same to the Builders at Hyderabad and other places. In that batch of writ petitions it is found that in the surrounding areas of the Hyderabad City, particularly in the Districts of Rangareddy and Nalgonda, the farmers who are having lands abutting river-beds and streams ("Vagus") are converting their agricultural lands into sand mines and in the guise of cleaning purposes they have constructed huge filterbeds to clean the sand which they have excavated by digging 30 to 40 feet in their own lands. The activity of the petitioners in digging their lands, even for separating the sand from the mud, is nothing but dealing with a "mineral", and it must be termed as a "mining activity". Apart from that, the provisions of Section 62 of the Telangana Revenue Act empowers the District Collector concerned to take action u/s 57 of the said Act against a pattedar or Shikmidar who, without permission, appropriates agricultural land to non-agricultural purposes.

12. The petitioners contended that they are owners of patta lands. This is denied by the respondents in their counter-affidavit. In the counter-affidavit, it is clearly averred that the lands held by the petitioners are assigned lands. This averment of the respondents in counter-affidavit is not rebutted/controverted by the petitioners by filing any reply-affidavit.

13. Before considering the question, viz., whether the petitioners are entitled to undertake the activity of cleaning the mud (top soil) from the sand in the filterbeds on their lands by digging borewells for that purpose, it is necessary to determine the nature of ownership of the petitioners in respect of the lands in question. In the counter affidavit filed by the respondents it is categorically stated that the lands in question are assigned lands and they are not patta lands or ownership lands of the petitioners. The petitioners have not filed any reply-affidavit denying the various counter averments including the statement that the lands are assigned lands. It is well-settled that uncontroverted averments made in the affidavits in writ proceedings should be presumed to have been admitted. In this connection, reference may be made the judgments of the Supreme Court in C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport

Corporation, ; Bharat Sing v. State of Haryana, AIR 1938 SC 2181 and Naseem Bhanu v. State of U.P., 1993 Supp. (4) SCC 46 wherein it was held that if the averments in writ affidavits are not controverted in the counter-affidavit or if the averments in the counter-affidavit are not controverted by rejoinder or reply affidavit, High Court should proceed on the basis that the averments have been admitted by the respective parties. Therefore, the lands in question must be held to be assigned lands.

14. The assignment of agricultural lands is governed by Standing Orders issued by Andhra Pradesh Board of Revenue. Board Standing Order (BSO) No. 15 deals with grant of lands for agricultural purposes. As per paragraph-12 of BSO No. 15, competent authority is required to issue assignment order (Patta) in Form-D given in Appendix-V to the B.S.O (popularly known as "D-Form patta")- Grant of agricultural land is subject to conditions mentioned in D-Form patta. There are as many as 21 conditions subject to which assignee of agricultural land may enjoy the grant. Condition No. 2 requires assignee to bring the land under direct cultivation within three years from the date of grant of patta. Condition No. 5 prohibits excavation of pits or ponds if the same are used for casuarina plantations. Further, if the lands is within 200 yards from village site, irrigation by pots is prohibited and any contravention would entail in cancellation of patta. Conditions Nos. 6 and 7 are relevant for the purpose of the cases on hand and they read thus:

"6. The existing and customary rights of the Government and the public in roads, rivers, streams and channels running through or bounding the land and the right of the Government to a share in mines and quarries adjacent to the said land are reserved and are in no way affected by grant.

7. Government also reserve to themselves or persons authorised by them the powers necessary for the proper working of the minerals such as the full and free liberty and right of ingress and egress and regress etc., as detailed in the rules in A.P. Mining Manual and the Mineral Concessions Rules, 1949 and the forms prescribed thereunder".

15. A Larger Bench of five Judges of this Court recently considered the effect of conditions of "D- form patta" on right of an assignee in State of Andhra Pradesh Vs. Bondapalli Sanyasi and Others, , and by a majority of 3:2 the Larger Bench overruled a decision rendered by a Full Bench of three-judges in State of Andhra Pradesh and Another Vs. P. Peda Chinnayya and Others, and held that when the assigned land is resumed for public purpose the State is not liable to pay any compensation to the assignee. In that context, in his concurring judgment, Hon'ble Chief Justice S.B.Sinha (as His Lordship then was) observed that grant by the State is governed by Government Grants Act and B.S.O.No. 15 and that a grantee under D-Form patta does not possess absolute right to the land. The enjoyment of the assigned land is subject to conditions of grant contained in D-Form patta. Therefore, if any activity including purported agricultural activity goes against the conditions of grant, the same would render itself illegal and

respondents are entitled to take necessary action.

16. In these writ petitions, the facts are very clear and they disclose that the petitioners are taking out/removing the layer of the upper portion of their lands and they are excavating sand in their lands. So, it cannot be said that the petitioners are only converting their non-agricultural lands into agricultural lands, viz., that they are making their lands cultivable. No doubt, mere removal of upper layer of the soil on the land of an agriculturist in order to make the land cultivable cannot be termed as a "non-agricultural activity", because it is surely an "agricultural activity". That is not so in the present cases on hand.

17. Under the A.P. Mineral Dealers' Rules 2000, no person unless he got a registration can stock or sell or offer for sale any mineral in any place. Whoever wants to deal with the minerals has "to obtain registration from the competent authority. As rightly submitted by the learned Government Pleader, a Division Bench of this Court in Bheemagari Bhaskar and others Vs. Revenue Divisional Officer, Bhongir, Nalgonda Dist. and others, (vide judgment in W.P.Nos. 22740 of 2001 and batch dated 7-4-2001), adverted to this matter and held that all persons who deal with minerals are bound to follow the provisions contained in A.P. Minor Mineral Concession Rules and that no pattadar can claim any right to dispose of sand deposited in his land without obtaining any permit or permission.

18. Apart from that, it is stated by the respondents that taking the alarming situation in the adjacent Districts of Hyderabad, already the Revenue authorities have prohibited transportation or processing or quarrying of sand by orders of the District Collector, Nalgonda dated 26-12-2000 which are challenged before this Court in the above batch of writ petitions, viz., W.P.Nos. 22740 of 2001 etc. (Bheemagiri Bhaskar's case) and the Division Bench upheld the action of the respondents therein in issuing such prohibitory orders. In this context it is apposite to quote the observations made by the learned Chief Justice (S.B. Sinha) in Bheemagiri Bhaskar's case (6 supra), speaking for the Bench:

"By reason of Rule 12 of A.P. Minor Mineral Rules, the competent authority specified therein alone is entitled to deal with the sand deposited on the land of the pattadars, save and except the procedure which is required to be followed in terms of the said rules. Neither the pattadars can claim a right to dispose of the sand deposited on their land by payment or (of) royalty nor can any permit be granted in their favour automatically. All persons who intend to carry on mining operation on any mineral are bound to follow the provisions contained in the said rules.

The pattadars have a right to claim their land, but, for the said purpose, they have to remove the sand and keep it at the corner of the land and ask the authorities to remove the same. They cannot be permitted to dispose of the same; their rights being confined to only carrying out agricultural operation.

That the pattadars have no right as such over the minor mineral unless they obtain a permit is also absolutely clear from Rule 12(2-A) of the rules, which

merely provide for grant of a preference to them in this regard. The said provision clearly goes to show that only in the event of any auction is held, other things being equal, the pattadar will have a preference, but by necessary implication, it also mean that they do not derive any right there-over automatically. In any event, as noticed hereinbefore, in some of the cases, a dispute has been raised by the State that any sand is deposited on the land, and such a question cannot be gone into by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The competent authorities of the State must, therefore, take recourse to the law in terms of the provisions under the said rules in respect of the sand, if any, deposited at the land of the pattadars.

The deposit of sand on the land owners/pattadars' land is an act of God, but, even by reason thereof, no right is vested in them, having regard to the provisions of the A.P. Estates Abolition Act".

19. Moreover, the petitioners have not filed any piece of paper or document to show that, when such huge quantity of sand is accumulated in the lands of the petitioners, (neither) they have approached the Revenue Officials or any authorities of the government for taking permission for removal of the said sand. It is not denied before me that as per the Division Bench judgment of this Court in Bheemagiri Bhaskar's case (6 supra) when sand is accumulated in a patta land, the right of the agriculturist is only to collect the same and keep it aside in a corner of his land and he has no right on the said sand which is a "mineral". If the landowner wants to sell or take away the sand, he has to obtain necessary permissions under the Revenue Laws and the A.P. Mineral Dealers' Rules 2000 from the concerned authorities. I have already given a finding in the preceding part of this order that the activity of the petitioners in these cases is a "mining activity", i.e., dealing with a "mineral" and so the petitioners must necessarily obtain the requisite permissions from the authorities concerned under the A.P. Mineral Dealers' Rules. Rule 3 of the A.P. Mineral Dealers' Rules 2000 reads:

"3. Prohibition:-- (1) No person other than a mining leaseholder or a holder of a dealer registration shall stock or sell or offer for sale or engage in any transaction in buying and selling of any mineral in any place except under a dealer's registration by the competent authority under these rules.

(2) No person shall transport, carry by any means or cause the transport or carry any mineral from the place of raising or sale to another place without being in possession of valid transit pass issued by the competent authority under these rules".

20. The Andhra Pradesh Mineral Dealers' Rules 2000 are issued by the State of Andhra Pradesh in and by G.O.Ms.No. 537, Industries Department dated 11-10-2000, in exercise of the powers conferred by Section 23-C of the Mines and Minerals (Development and Regulation) Act 1957 (Act 67 of 1957), to regulate the possession, storage, trading and transport of minerals and mineral

products and to check the evasion of royalty or seigniorage fee, stopping of illegal mining and quarrying and transportation in the State of Andhra Pradesh.

21. It is clear from Rule 3 of the said Rules (Andhra Pradesh Mineral Dealers' Rules 2000) that there is a prohibition to the effect that other than the dealers no person is entitled to stock or sell or offer for sale or to engage in transactions in buying and selling any mineral. Sub-rule (2) of Rule 3 of the above Rules prohibits transporting, carrying by any means or causing the transport or carrying any mineral from the place of raising or sale to another place without a valid transit pass issued by the competent "authority. Sub-rules (1) and (2), which are very clear and unambiguous, prohibit any person other than a dealer even for carrying of any mineral from the place of its raising. Besides this, Rule-6 thereof stipulates that any person desiring to transport or carry away any mineral from any place shall obtain transit pass from the Deputy Director of Mines and Geology of the concerned area. If any of the Rules are violated, as per Rule 9 of the Rules, it is open to the competent authority to enter into and inspect any premises where the mineral is kept or stored or transported and to seize the said mineral.

22. As stated already, the Rules, which are exhaustive and self-contained, are framed by the Government with the specific objectives, viz., to regulate the possession, storage, trading and transport of minerals and mineral products etc. As per Rule 11 of the Rules, an appeal is provided to the Director of Mines and Geology as against the order passed by the Deputy Director of Mines and Geology under the Rules. So also, Rule 12 of the Rules provides a revision to the Government from the appellate orders of the Director of Mines and Geology.

23. In this background, certainly the petitioners have no right to construct such filter beds. Be it noted that the allegation in the counter-affidavit of the respondents is that in the guise of cleaning of sand the petitioners are excavating and selling sand to the builders is not denied. Eventhough the petitioners say that they are only cleaning sand, this activity, in my opinion, would also amount to the business of dealing with the mineral, i.e., sand which, in law, requires licence under the A.P.Mineral Dealers' Rules 2000. No mala fides are attributed by the petitioners to the respondents. If at all the respondents are taking any action, they are acting bona fide, that too, to protect the environment and in the larger interests of the public. These are not fit cases calling for interference under Article 226 of the Constitution of India. It is well-settled that the High Courts should exercise its discretionary power under Article 226 with great caution and should exercise such power only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when the Court comes to the conclusion that overwhelming public interest requires interference, then it can intervene (see *Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others*, . In this background, particularly when the respondent-authorities are taking steps to protect the environment and ecology

as well as taking into consideration the alarming condition of depletion of ground water levels, the Court must adopt a slow attitude to interfere with the administrative actions of the respondent-authorities. The petitioners have not established or shown any right or permission under which they can do such a business.

24. The Court is the guardian for protection of environment. The respondent-authorities are at liberty to prevent any acts of the petitioners, which are going to affect the environment or ecology in the larger interests of the public. Any interference by this Court under Article 226 of the Constitution in cases of this nature would adversely affect the overwhelming public interest. The Division Bench of this Court in Bheemagiri Bhaskar's case (6 supra), while upholding the prohibitory orders issued by the District Collector, Nalgonda, in the case before, it, took note of and referred to the report submitted by the Deputy Director, Ground Water Department, Nalgonda, which reflected the factual scenario of the alarming situation of depletion of ground water levels prevailing in the areas. In those cases, the above said report was referred to by the District Collector, Nalgonda, in his proceedings dated 5-5-1999 imposing ban on lifting of sand in the entire Nalgonda District, except in Gram Panchayats listed in Annexure and where issue is under examination.

25. For all the aforesaid reasons, no relief can be granted to the petitioners in these writ petitions. If at all the petitioners have got any right to do such business of cleaning the sand, they can certainly do such business after obtaining proper permissions and licences from the concerned authorities. All the writ petitions are dismissed. No costs.