

(2023) 02 TEL CK 0033
In the Telangana High Court
Case No : Writ Petition No. 24352 Of 2020

Jakkula Srinivas Reddy And Others

APPELLANT

Vs

State Of Telangana And Others

RESPONDENT

Date of Decision : 09-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 21, 300A

Citation : (2023) 02 TEL CK 0033

Hon'ble Judges : Surepalli Nanda, J

Bench : Single Bench

Advocate : Srinivas Polavarapu

Final Decision : Disposed Of

Judgement

1. Heard the learned Counsel for the Petitioners and the learned Government Pleader for Irrigation Department.

THE PRAYER SOUGHT FOR BY THE PETITIONER IN THE PRESENT WRIT PETITION IS AS FOLLOWS:

2. The Petitioners filed this petition to issue a Writ Order or direction more particularly one in the nature of WRIT OF MANDAMUS to declare the action of the Respondents 2, 3 and 6 in taking the Canal through the lands of the Petitioners herein situated in Sy. No.s 519, 521, 538, 130 and 131 of Manoharabad Village and Mandal Medak District as illegal arbitrary and unfair and violative of Articles 14, 21 and 300-A of the Constitution of India and opposed to the principles of natural justice and consequently restrain the Respondents No.2 and 3 from laying the Canal through the lands of the Petitioners herein without following due process of law.

3. The Counter Affidavit filed by Respondents No.1 to 3 and the relevant paras 18, 19 and 20 are as follows :

Para 18 : It is humbly submitted that the National Highway authorities have

constructed culverts bearing No. 449/1 (3 mts x 1.5 mts box culvert) as per the NH 4 lane manual, for the purpose of surplus course/catchment area water flow and it is open to both ends of NH, to flow natural streams. Further the National Highway authorities have constructed culverts bearing No. 448/2 & 448/3 (1.5 m x 1.5 m culverts) as per the NH 4 lane manual for the purpose of Highway storm water flow and are connected to NH parallel (0.75 mts) storm water lines, and these are not open culverts at both ends of NH. Hence 448/3 NH storm water culvert constructed in front of Sy. No. 119 is constructed only for NH storm water purpose, which is not sufficient for the flow of 66 Cumecs Yellamma Cheruvu surplus water discharge. That the Petitioner 1 & 2 lands in Sy No.s 521, 538 are located one side of the culvert & NH 44, and Petitioner 3 & 4 are own brothers and their lands in Sy. Nos. 130, 131 are located on the other side of the culvert & NH 44, which shows to prove that the presence of natural flow of water flowing under the culverts on National Highway 44 touching the petitioners lands at the above said Sy. No's which were pre existing.

Para 19 : That the 2 respondent issued proceedings No: EE/IB/MDK/556, dt: 15.09.2020 directing the respondent No. 3 to demark the surplus course from Yellamma Cheruvu to feed Pedda Cheruvu of Ramaipalli village as per the alignment shown in the topo sheet. As per the 2 respondent proceedings the 3" respondents taken steps with the help of Sarpanch and Executive Officer of Manoharabad village and completed the restoration of existing surplus channel (vaagu) near by the lands of the petitioner.

Para 20 : It is further humbly submitted that the discharge of the Yellamma cheruvu is 66.00 cumecs. That there is no new excavation of channel is undertaken and it is only a restoration and re-sectioning of existing surplus channel as per topo sheet No. 56K/5, about 30-meter width existing Weir, old channel up to SC Colony and existing National Highway 44 bridge is undertaken and completed. The said restoration and re-sectioning work was completed much prior to the filing of the present writ petition by the petitioners before this Hon'ble Court.

4. Additional Counter Affidavit filed by Respondent No.2 in W.P.No.24352 of 2020, in particular, Paras 2, 3, 4 and 5 read as follows :

Para 2 : The tanks Kuthakunta and Peddacheruvu in Jeedipally (V), Mogullacheruvu in Kucharam (V) form a series in the Upstream side of Yellammacheruvu and the Downstream link of chain of tanks consists of Peddacheruvu Ramaipalle (V) and Ooracheruvu in Imampur village of Toopran Mandal. The Government of Telangana has given utmost importance for the restoration for the chain of tanks under Mission Kakatiya programme. The above mentioned tanks Restoration has been done in Government prestigious programme of Mission Kakatiya. The Yellamma Cheruvu tank falls under HMDA limits.

Para 3 : There exists a natural surplus channel from Yellamma Cheruvu to

Peddacheruvu Ramaipalle (V) which is situated on down stream. During heavy rains, which occurred in the year 2020 October, the surplus water has inundated houses of Manoharabad Village and also submerged the surrounding areas and the National Highway 44, because these Petitioners leveled the surplus channel.

Para 4 : The District Collector, Medak and RDO, Toopran inspected Manoharabad and further instructed to restore the surplus channel. Joint inspection was conducted by Irrigation Department along with Revenue Department and Panchayat Raj Department. The Executive Engineer, Irrigation Department has issued order for restoration of surplus channel on 15.09.2020.

Para 5 : The Gram Panchayat members of Manoharabad Village have passed Resolution of Restoration of Surplus channel from Yellamma Cheruvu to Peddacheruvu Ramaipalle (V) on 26.09.2020 and also passed resolution on 16.10.2020 for providing funds for Restoration of natural Surplus channel as it is very essential for the village. Accordingly the surplus channel has been restored in 2nd week of December 2020. Later the Tahsildar, Manoharabad Mandal superimposed the restored surplus channel on the village map which passes through the Sy.Nos. 111, 123, 127, 130, 131, 154, 188, 189, 190, 191, 520, 521, 524, 529, 532, 535 & 538.

5. Reply Affidavit filed by the petitioners to the Counter Affidavit filed by Respondents Nos.1 to 3 and 6 in W.P. No.24352 of 2020, in particular Para 8 as follows: a.

Para 8 : The allegations in Paras-11 and 12 of the Counter Affidavit are all false and incorrect. There is no existing Cheruvu or Vagu in the land of the Petitioners. The location sketch as well as TOPO sheet has been prepared by the Respondents without any basis to deprive the valuable constitutional rights of the Petitioners herein. There is no question of any restoration of work but a new canal is being taken from the lands of the Petitioners. There was no existing Vagu as per the plans submitted by the Respondents. They have altered the alignment and constructing a new canal. The Petitioners never given their consent to take the canal from their lands. Infact Petitioner No.3 contested the Sarpanch Elections and lost to the present Sarpanch. The present Sarpanch with a political vengeance and ulterior motive to deprive the Petitioners of their valuable rights cooperated with the Respondents No.2 and 3 in changing the alignment through the lands of the Petitioners.

6. The Counter Affidavit filed by Respondent No.6 i.e., Gram Panchayat, Manoharabad (V) & (M), Medak District, represented by its Panchayat Secretary, paras 5 & 7 read as under :

Para 5 :

"It is also true that the surplus water of Yellamma Cheruvu tank flow starting from the weir of 30 mtr width through SC Colony, Sy.No.532 and also through the lands of the petitioners which are situated on either side of the National

Highway 44. It is not true to suggest that there was no canal or Vague flowing through the lands of the petitioners, but the same flows naturally through various agricultural fields. As a matter of fact, the petitioners themselves disturbed, leveled Vaagu by filling soil and gravel and utilizing the same for agricultural and commercial activities. It is pertinent to mention here that the Vaagu is existing and not disturbed till today through out SC Colony and up to Survey No.532."

Para 7 :

"It is true that the respondents No.2 and 3 initiated steps to restore Vaagu from Yellamma Cheruvu to Ramaipally Pedda Cheruvu, which was existing from time immemorial, but recently disturbed and leveled the Vaagu for agricultural and commercial purposes, by the writ petitioners themselves along with some others. But it does not amount to diversion from Yellamma Cheruvu to Ramaipally Pedda Cheruvu. It is rather natural course of flow of water from Yellamma Cheruvu to Ramaipally Pedda Cheruvu through Vaagu, which also passes through the lands of writ petitioners, along with many others."

It is false to allege that originally the alignment was proposed by respondents No.2 and 3 to pass through Syl.No.119 but not from the lands of the petitioners. As a matter of fact, there is no such proposition of alignment from respondents No.2 and 3, nor any diversion to the lands of the petitioners, as alleged by writ petitioners. Rather the respondents No.2 and 3 reestablished and restored the existing Vaagu basing on the topo sheet, existing old channel and existing NH 44 Bridge by utilizing the Google maps, with clerical and logistic support of Gram Panchayat.

This respondent is unaware that the owners of Sy.No.119 gave their property for development to Sreenidhi Projects. Hence, denied for want of knowledge, and the writ petitioners are put to strict proof of the same.

Hence, it is false to allege that the developers of Sy.No.119 along with other Sy.Nos. have prevailed over the respondents No.2, 3 and 6 and got the alignment changed, so as to pass through the lands of the petitioners herein, which is falsified, from the factual basis of topo sheets as stated supra."

7. The proceedings No.EE/IB/MDK/ 556, dt. 15.09.2020 of the 2nd Respondent herein is extracted hereunder :

"The Deputy Executive Engineer, IB Sub Division Toopran have submitted the proposals for surplus course from Yellamma Cheruvu Manoharabad (V&M) to feed the Pedda Cheruvu Ramaipally (V) of Manoharabad (M).

It is observed that the Surplus course of Yellamma cheruvu situated in Manoharabad (&M) is a Minor Irrigation tank. During inspection this surplus course is disturbed long back and NHA Authority has not taken the Yellamma Cheruvu discharge in to account and constructed culvert with 3.00 mX 1.50m @ Hyderabad, Nagpur KM 453/1.

As per Topo sheet No.56K/5 the surplus course is passing through fields and crossing NH 44, is to be modified for required discharge from Yellamma cheruvu Manoharabad (V&M) to feed Pedda Cheruvu Ramaipally (V) of Manoharabad (M), which is enclosed copy along with showing the alignment.

Based on the memoirs the section is worked out by discharge of surplus course of Yellamma cheruvu Manoharabad (V&M) to feed Pedda cheruvu Ramaipally (V), Manoharabad (M) for which worked out to lined canal is shown in the Topo sheet based on google map, Topo sheet and Ground levels the alignment to be fixed with co-ordinates. The lined canal sectional area is 4.50m x 3.50 m, this shall be adopted as per the site conditions.

It is instructed to identify the surplus course with the Co-ordinates by the help of sarpanch and E.O of Manoharabad (V&M) as per the alignment shown in the Topo sheet to protect the channel from future encroachments.

Further it is instructed to The Deputy Executive Engineer, IB Sub Division Toopran to demark the surplus course from Yellamma cheruvu Manoharabad (V&M) to feed Pedda Cheruvu Ramaipally (V) of Manoharabad (M), on the ground with the help of Sarpanch and E.O of Manoharabad (V&M) as per the alignment shown in the Topo sheet."

8. PERUSED THE RECORD : DISCUSSION AND CONCLUSION :

9. Interim Orders of the Hon'ble Court dt. 31.12.2020 in I.A.No.1/2020 in W.P.No.24352/2020 states as follows :

"Any digging of canal will be subject to the result of the writ petition".

10. The plea of the Petitioners that the Respondents No.2 & 3 are laying the Canal in the lands of the Petitioners herein in Sy.Nos. 519, 521, 538, 130 and 131 of Manoharabad Village and Mandal Medak District is specifically denied in the Counter Affidavit and the Additional Counter Affidavit and it is specifically contended that the tanks Kothakunta and Peddacheruvu in Jeedipally (V), Mogullacheruvu in Kucharam (V) form a series in the Upstream side of Yellammacheruvu and the Downstream link of chain of tanks consists of Peddacheruvu Ramaipalle (V) and Ooracheruvu in Imampur village of Toopran Mandal.

The Government of Telangana has given utmost importance for the restoration for the chain of tanks under Mission Kakatiya programme. The above mentioned tanks Restoration has been done in Government prestigious programme of Mission Kakatiya. The Yellamma Cheruvu tank falls under HMDA limits and further it is specifically contended that the Respondents No.1 to 3 herein that there is no excavation of channel undertaken as alleged by the Petitioners and it is only restoration and re-sectioning of the existing surplus channel touching the Petitioners lands. This plea of the Respondents however is again specifically denied by the Petitioners by filing the Reply Affidavit reiterating their contentions as averred in the affidavit filed in support of the present Writ Petition specifically

contending that there is no question of any restoration of work but a new canal is being taken from the lands of the Petitioner.

11. A bare perusal of the contents of the proceedings No.EE/IB/MDK/ 556, dt. 15.09.2020 of the 2nd Respondent herein (extracted above) clearly indicates that a culvert had been constructed with 3.00m x 1.50m @ Hyderabad – Nagpur KM 453/1 and as per Topo sheet No.56K/5, the surplus course is passing through fields and crossing NH-44, is to be modified for required discharge from Yellamma Cheruvu, Manoharabad (V&M) to feed Pedda Cheruvu Ramaipally (V) of Manoharabad Mandal as per the alignment shown in the topo sheet to protect the channel from future encroachments. In view of the fact that decision has been taken to demark the surplus course from Yellamma Cheruvu, Manoharabad (V&M) to feed Peddacheruvu Ramaipally (V) of Manoharabad Mandal as per the alignment shown in the topo sheet which is evident as per the contents of the proceedings dt. 15.09.2020 of the 2nd Respondent herein vide No.EE/IB/MDK/556, and duly taking into consideration the averments made by the Petitioners in para 8 of the Reply Affidavit filed by the Petitioners to the Counter Affidavit of the Respondents No.1 to 3 and 6 and further duly considering the fact as admitted by the Respondents herein that the surplus water of the Yellamma Cheruvu tank flow starting from the weir of 30 Mtr width through S.E. Colony, Sy.No.532 and also through the lands of the Petitioner which are situated on either side of the National Highway No.44, the Writ petition is disposed of directing the respondents to issue due notice to the petitioners and further provide an opportunity of personal hearing as well to the petitioners herein and others concerned duly considering petitioner's representation dated 21.12.2020 in relation to petitioner's specific grievance of alleged construction of 4 mtrs wide rain water canal in petitioner's land in Survey Nos. 519, 521 and 538 situated at Manoharabad Village and Mandal, Medak District by virtue of the work undertaken by the respondents for restoration of surplus channel from Yellamma Cheruvu to Peddacheruvu Ramaipalle (V) on 26.09.2020 in pursuance to the proceedings dated 15.09.2020 of the 2nd respondent and in pursuance to Grampanchayat resolution dated 16.10.2020 of the Grampanchayat Members of Manoharabad Village and pass appropriate orders within a period of two weeks from the date of receipt of a copy of the order duly communicating the decision to the petitioner.

12. The Writ Petition is accordingly disposed of with the above observations. However, there shall be no order as to costs.

13. Interim Orders of the Hon'ble Court dt. 31.12.2020 in I.A.No.1/2020 in W.P.No.24352/2020 stand vacated.

Miscellaneous petitions, if any, pending shall stand closed.