
(2013) 02 BOM CK 0154
In the Bombay High Court
Case No : Writ Petition No. 244 of 2003

Mrs. Maria A. Silveira

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 3 ABR 54 : (2013) 4 ALLMR 740

Hon'ble Judges : V.M. Kanade, J;U.V. Bakre, J

Bench : Division Bench

Advocate : Joseph Vaz, for the Appellant; S. Linhares, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

V.M. Kanade , J.—Heard learned counsel on behalf of the petitioners and learned Additional Government Advocate on behalf of respondent Nos. 1 to 4. It is to be noted that Rule was issued and respondent No. 5 was served. Thereafter, he had appointed Advocate. Neither Advocate nor the members of respondent No. 5 appear before this Court.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners are seeking the following reliefs:

- (i) That this Court may be pleased to issue writ in the nature of Mandamus/writ in the nature of Certiorari directing respondent Nos. 1 to 4 to take immediate action against respondent No. 5 and others and preventing inundation of the Khazan lands.
- (ii) That this Court may be pleased to issue writ of Mandamus/Certiorari directing to respondent Nos. 1 to 4 to see that no pisciculture activities are carried out in the paddy fields marked in green shading.
- (iii) That this Court may be pleased to issue writ of Mandamus/Certiorari

directing respondent No. 1 to comply the direction given by the Apex Court as per the judgment dated 11/12/1996 S. Jagannath Vs. Union of India and others, and for direction to respondent No. 1 to submit a compliance report.

(iv) That this Court may be pleased to issue writ of Mandamus/Certiorari directing respondent No. 1 to pay compensation to the petitioner on account of failure for not implementing the judgment and orders of the Apex Court in respect of pisciculture.

(v) For interim reliefs pending the disposal of the writ petition, respondent Nos. 1 to 4 be directed to stop all pisciculture activities that are being carried out in the paddy fields marked in green shading and to take other appropriate action against respondent No. 5 and its members.

(vi) For cost of the petition.

(vii) For such other reliefs this Court deems fit and proper in the interest of justice,

3. Brief facts which are necessary for the purpose of deciding this writ petition are as under:

The grievance of the petitioners is that respondent No. 5 and its members have been releasing saline water in the paddy fields for the purpose of carrying on pisciculture. It is submitted that as a result of saline water being released to the said paddy fields, the coconut plantation of the petitioners has been ruining.

4. Learned counsel appearing on behalf of the petitioner has relied on the judgment of the Apex Court in the case of S. Jagannath Vs. Union of India and others, . It is submitted that in similar case, the Apex Court had deprecated the practice of saline water being released on the paddy fields for the purpose of pisciculture. He submits that the Apex Court had in the said case taken extensive view that this causes damage not only to the paddy fields where saline water is released but also to the adjoining areas and fields and had given a direction to stop this release of saline water in the paddy fields.

5. This Court by order dated 22/01/2009 had directed the Mamlatdar to ensure that all the steps should be taken by him to drain out the water from the paddy fields and that he should take up the matter with the concerned authorities to ensure that the damaged breaches are repaired and no further damage is caused to the petitioners. Accordingly, the Mamlatdar conducted an enquiry and submitted report to the Assistant Registrar of this Court dated 15/01/2011 and in the said report he stated that the work of improvement of bund was initiated by him and about 20% work has been completed as informed by the Executive Engineer, Soil Conservation Division. Thereafter, a fresh report was tendered dated 30/05/2011 which shows that the Executive Engineer has informed that the entire work of removing saline water was completed and the report was submitted after joint inspection was taken. It appears that however, some further steps need to be taken firstly to ensure that the directions given by this Court

dated 22/01/2009 are complied with and secondly to ensure that the paddy fields and other fields adjoining the paddy fields become fit for cultivation and no further damage is caused to the land owned by the petitioner. The Apex Court in the case of "S. Jagannath" (supra) has given similar directions to the respondents and, accordingly compliance report was tendered by the Union of India. The ratio of this judgment, in our view, squarely applies to the facts of the present case.

6. Therefore, the writ petition is allowed in terms of prayer clauses (i) to (iii).

7. The Mamlatdar and the Executive Engineer to ensure that in future similar activity is not undertaken by respondent No. 5.

8. Fees of the Commissioner which are quantified at Rs. 10,000/- to be paid by the State. The petition is accordingly disposed of.