
(2007) 09 MP CK 0037
In the Madhya Pradesh High Court

Narendra Chauksey

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 18-09-2007

Acts Referred:

Citation : (2007) ILR (MP) 1391 : (2008) 1 MPHT 194

Hon'ble Judges : K.C. Chauhan, J;Deepak Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Deepak Verma, J.—In this Pro Bono Publico proceedings, petitioner is praying that the water tank/pond (hereinafter referred to as "pond") bearing Khasra No. 141 admeasuring 1.42 hectares be allowed to be used by the villagers of Obedullaganj and other neighbouring villages of District Raisen.

2. It has been contended by the petitioner that even though this Khasra No. 141, having the pond has not been allotted or leased out to respondent No. 4, but on account of construction having been made by it all around the said pond, accessibility to it by the villagers has become impossible. It has also been submitted that the villagers of the surrounding villages of Mandideep are facing water problems for their day to day need. Similarly, cattle of the said area require water of the pond for their own need, but are deprived due to its land locking.

3. In the light of these averments being made in the petition, notices were issued to the respondents. Respondent Nos. 1 and 2 have submitted its reply.

4. According to them, the answering respondents had given on lease about 100 acres of land to respondent No. 4 in the year 1974 for establishment of a factory. Pursuant thereto, respondent No. 4 has established its factory on the said land, which was leased out in its favour. The disputed pond is situated on the western side of the allotted plot and total land surrounding the said pond from all directions has been allotted in favour of respondent No. 4. It has been contended

by them that the pond is not being used by public for purposes of Nistar, but they are using the same on two festive occasions in a year, i.e., Bhujalia and Dolgyaras Pooja for immersion of Bhujalia or Pooja for Dolgyaras. They have also contended that on the aforesaid two occasions respondent No. 4 allows villagers and public in general to use it. According to them, the pond bearing Khasra No. 141 is still recorded in the name of the State Government and has not been encroached upon by respondent No. 4. They have contended that on account of specific situation of the pond which stands land-locked, it cannot be used by general public of the villages.

5. No reply has been filed by respondent No. 3, i.e., Municipal Corporation, Mandideep. Respondent No. 4 Factory in whose favour the lease deed has been executed by the State, for an area of 100 acres of land only, has submitted as under:

It has not been disputed by it that Khasra No. 141 has been recorded as pond in the name of the State Government, but this pond has never been source of water to the villagers of Mandideep or its surrounding areas for their day to day use or for their cattle. After allotment of the land in its favour, respondent No. 4 has constructed its Graphite Electrode Unit thereon. The lease has been executed for a period of 99 years commencing from 27-7-1974. It has not been disputed that atleast on two occasions in a year, i.e., Bhujalia and Dolgyaras this pond is being used by the residents of Mandideep and the neighbouring villagers. During that period main gate of respondent No. 4 factory is kept open so as to allow them to gain access to the said pond. Except for these two occasions in a year, neither the pond is available to any other person nor water is available therein for the alleged purposes throughout the year.

It has been contended by it that, in any case, respondent No. 4 is not in an unauthorized or illegal possession of the pond. According to it, the petition being devoid of any merit or substance, deserves to be dismissed.

6. Pursuant to this, rejoinder has been filed by petitioner and additional return has also been filed by respondent No. 4. The matter had come up for consideration before the Court on 27-1-2006. On the said date, after hearing the Counsel for the parties, State Government was directed to clarify and submit further additional reply/return pertaining to validity of leasing of the pond to respondent No. 4 and to explain whether permission for such lease could be granted.

7. In the light of this order, affidavit of Mr. Vikas Mishra, SDM Goharganj, District Raisen has been filed. In the same, it has been mentioned that pond is recorded for "Nistar Usage" in the Revenue Records and the same could not have been given to a private party on lease, much less to respondent No. 4. The disputed pond belongs exclusively to the State and has been recorded as "Nistar Usage" in the record. Khasra No. 141 on which the pond is situated still stands in the name of the State and has not been transferred to respondent No. 4, meaning

thereby that State continues to be its owner. They have then specifically mentioned that, in any case, the pond does not form part of the leased area of respondent No. 4. It is also mentioned that the pond is for "nistar usage" and it cannot be restricted for use by the Factory only but is to be kept open for its use by villagers. Respondent No. 4 is required to make necessary arrangements for usage of the pond by the villagers and necessary action in this regard by Revenue Authorities shall be taken, in accordance with law.

8. After this, additional affidavit was filed. Matter had come up for hearing before the Bench again on 13-8-2007. On the said date, the following order came to be passed:

Pursuant to orders passed by this Court on 20-6-2007, an affidavit has been filed by the Collector, Raisen stating therein that Khasra No. 141 on which the water tank is located has not been given on lease to the respondent No. 4 Company.

If that be so, the respondent No. 4 Company cannot prevent the villagers from using the tank and hence we call upon the Counsel for respondent No. 4 to obtain instructions in what manner the respondent No. 4 will allow the villagers to use the tank. The matter be listed on 29th August, 2007.

The affidavit filed by the Collector, Raisen be placed on record. A copy of the affidavit be furnished to Counsel for respondent No. 4.

Sd/- Sd/- Chief Justice Judge.

9. Aforesaid order dated 13-8-2007, would show that even on that date prima facie, the Bench was satisfied that villagers have to be given right to use the pond. Thereafter, the matter came up for hearing today. We have, accordingly, heard learned Counsel for the parties at length. Perused the record.

10. The question that has cropped up for consideration is whether Khasra No. 141 on which the said pond admeasuring 1.43 acres is situated, was ever allotted to respondent No. 4.

The said question stands answered from Annexure P-2 Khasra Panchshala of the year 2004-05, which shows that the said pond still stands recorded in the name of the State Government. This would go to show that the pond was never allotted or leased out to respondent No. 4. It appears from the location of the pond, it is surrounded on all sides by that land, which has been leased out to respondent No. 4, thus pond stands land locked.

11. Under the circumstances, admittedly, respondent No. 4 has been put to at an advantageous situation, whereby on account of allotment of land to it by State Government, the accessibility to the pond has been denied to the villagers. This has happened on account of construction of walls all around the land allotted to respondent No. 4.

12. Despite arguing for considerable time, learned Counsel for respondent No. 4 was not able to show us any document by which it could be made out that

Khasra No. 141 on which the pond is situated, was ever leased out to it.

This fact has also been denied by respondent Nos. 1 and 2 in their subsequent affidavit filed in this regard on 9-8-2007. They have also submitted that only land was leased out but, pond as such was never allotted or leased out to respondent No. 4.

13. From the averments, as have been made by the respective parties, at least one thing is clear that the said Khasra No. 141 on which the disputed pond is situated, had never been leased out to respondent No. 4. May be, because of the location and situation of the land leased out to respondent No. 4, it may not be accessible to the villagers now as it is land-locked, but that would not mean that the use thereof can be denied to the villagers.

14. Learned Counsel for respondent No. 4 has placed reliance on various judgments of the Supreme Court reported in Ashok Kumar Pandey Vs. The State of West Bengal and Others, , Chairman and M.D., B.P.L. Ltd. Vs. S.P. Gururaja and Others, , The Printers (Mysore) Ltd. Vs. M.A. Rasheed and Others, , Printer (Mysore) Ltd. v. M.A. Rasheed and Ors. to contend that on account of long lapse of time, such a Public Interest Litigation cannot be entertained and the facts mentioned in the petition could not be looked into.

15. H. We are afraid, the ratio decidendi of these cases do not apply to the facts of the present case. There is no question of delay and laches on the part of the petitioner nor it can be said that with malafide intention such a Public Interest Litigation has been brought to the notice of this Court. As has been admitted by all the respondents, respondent No. 4 has been allowing the use of the pond atleast on two occasions in a year, as mentioned hereinabove, which is indicative of the fact that it has no exclusive right, title or interest over the pond.

16. Now the question that crops for consideration is whether it can be put to use for "nistar" purposes of the villagers of Mandideep and surrounding areas throughout the year or not.

As has been mentioned hereinabove, admittedly, the pond was never leased out in favour of respondent No. 4. If that be so, it cannot have any right, title or interest over it. Iiven otherwise, it is meant for public usage as such the use of the pond by villagers for their Nistar cannot be denied to them. Respondent No. 4 has no right to land lock the pond in such a way that it may not be accessible to the villagers.

17. It is a matter of common knowledge that there is great scarcity of water, not only in Urban Towns, but in villages also, whereby majority of Indian population lives. They have lesser resources at their disposal. So, why they should not be allowed to use the natural source of water, which is available in the vicinity. Iiven if respondent No. 4 has spent money on its improvement, would not be material as it has done so knowing it fully well that the pond is not a part of the leased area and has already utilized it for long number of years.

18. In the light of the aforesaid discussion, we are of the considered opinion that in this Pro Bono Publico, necessary directions are required to be issued so as to save the pond from being misused by respondent No. 4 only. Thus, the petition deserves to be allowed. It is, accordingly, hereby allowed. We also gave our anxious consideration to the matter from all angles and came to the conclusion that on facts being brought to our notice, if we do not rise to the occasion, then we would be failing in our duty.

19. To keep the matter at rest from future litigation or complications, we deem it fit to issue the following directions:

(i) Respondent No. 4 on its own, shall make necessary, proper and adequate arrangements so as to have the accessibility to the pond for the villagers of Mandideep and other surrounding villages, in an easy and convenient method within a period of 2 months from today.

(ii) In case respondent No. 4 fails to do so as mentioned hereinabove, then respondent Nos. 1 and 2 would make adequate arrangements in this regard so that accessibility to the pond in question may not be denied to the villagers of Mandideep and other surrounding villages for their "nistar" and day to day use throughout the year. The cost incurred by respondent Nos. 1 and 2 in making this arrangement would be recovered from respondent No. 4.

(iii) Should there be non-compliance of the aforesaid directions contained hereinabove, the petitioner shall be at liberty to bring it to the notice of this Court so that the order could be implemented in letter and spirit. In that eventuality, respondents shall be exposing themselves for committing >->Contempt of Court.

20. With the aforesaid directions, this petition stands allowed to the extent indicated above, but with no order as to the costs.

Security amount, if deposited by the petitioner, be refunded to him after due verification.