

(2002) 03 AP CK 0116
In the Andhra Pradesh High Court
Case No : Writ Petition No. 4460 of 2002

P. Krishnam Raju

APPELLANT

Vs

District Collector, Ranga Reddy District, Hyderabad

RESPONDENT

Date of Decision : 28-03-2002

Acts Referred:

Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act,
1948 — Section 3
Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 — Section 61
Board Standing Order — Order 7(1)

Citation : (2002) 3 ALD 494 : (2002) 4 ALT 247 : (2002) 2 APLJ 41

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

Bench : Single Bench

Advocate : T. Jagadish, for the Appellant; Government Pleader for Revenue, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner claims to be the owner of Ac.8-00 of agricultural land, comprised in Sy. Nos. 432, 433 and 439 of Aliabad Village, Medchal Mandal, Ranga Reddy District. The petitioner states that it is an ancestral property, that he is conducting agricultural operations therein by raising fruit bearing plants and others plantations. The petitioner further states that he raised loans from Primary Agricultural Co-operative Society for digging a bore well in the said land.

2. The petitioner states that some builders, who purchased impure sand from various areas, requested him to undertake the process of cleaning of the sand and for removal of the impurities. He therefore, constructed two filter beds or sumps (incorrectly described as "slump" in the affidavit) with brick masonry upto a height of 5 from the ground level. The sand is cleaned by way of pumping water into the first sump, filled with sand, and as a result, the impurities, waste particles and earthen soil get accumulated in the second sump. The petitioner is paid Rs. 20/- for each lorry load of sand cleaned. The petitioner, in all, undertakes 7 to 8 lorry loads of sand cleaning every day. The petitioner states

that the quarry owners pay seigniorage fee for lorry load of sand cleaned, in accordance with the A.P. Minor Minerals Concession Rules, 1966. One of the sand lorry owners informed the petitioner that the District Collector, Ranga Reddy District, ordered demolition of all sumps. The petitioner alleges that the revenue officials demolished two such sumps in his village. Apprehending that the District Collector or the Officials of the Revenue Department, may at any time demolish the sumps constructed by him in his land, the petitioner has filed this writ petition praying for a writ of mandamus declaring the action of the respondent namely, the District Collector, Ranga Reddy District, or his subordinates in trying to demolish the sumps or slumps situated in the patta land, constructed by the petitioner for the purpose of cleaning and washing the sand, as illegal, unconstitutional and violative of the principles of natural justice.

3. Sri T. Tagdish, the learned Counsel for the petitioner submits that operations for clearing of sand, in petitioner's land, does not amount to any manufacturing activity and does not require any licence under any law, and therefore, any attempt on the part of the respondent or his subordinates to demolish the sumps constructed by the petitioner, is without jurisdiction and arbitrary exercise of power. Having regard to the incidents of demolition by the revenue authorities in the neighbouring villages, the petitioner has genuine and reasonable apprehension that the revenue officials may demolish the sumps constructed by him. The learned Counsel submits that on 6-3-2002, the revenue officials visited the lands of the petitioner, and without passing any orders, threatened to demolish the sumps.

4. The only point that arises for consideration in this writ petition is as to whether the petitioner has any right to carry on the sand cleaning operations in his agricultural land by digging a bore well and constructing sumps or slumps? As a corollary, another question, which arises for consideration is as to whether a duty is cast on the State to interdict any unauthorised use of agricultural land, for non-agricultural activity, which will have a deleterious effect on environment and ecology?

Sovereign and Agricultural Land:

5. The petitioner claims absolute right over the agricultural land by reason of the title vested in him to undertake the operations of cleaning of sand, which is not prohibited either by law or the Constitution. This Court, therefore, has to determine the nature of title and right vested in the petitioner in relation to the agricultural land, and whether enjoyment of such right is circumscribed by any statute or law or whether such right can be regulated by the State in exercise of its power of eminent domain or police power.

Nature of Right in Immovable property:

6. The right to immovable property, that is to say, land, according to Salmond, includes (i) a determinate portion of the earth's surface ; (ii) the ground beneath the surface down to the centre of the world; and (iii) possibly, the column of

space above the surface and infinitum. (Cujus est solum, ejus est usque ad coelum, that is to say, he who possesses land possesses, also that which is above it, Salmond on Jurisprudence, 12th Edn. pp 416). The right in the land, is however, subject to certain encumbrances, including power of eminent domain of the sovereign. The right in the land is also subjected to common law principles as well as the law made by the State. For instance from the maxim Cujus est solum, ejus est usque ad coelum, it follows that "a person has no right to erect a building in his own land, which interferes with the due enjoyment of adjoining premises and occasions damage thereto either by overhanging them or by the flow of water from the roof and caves upon them, unless indeed, a legal right so to build has been conceded by grant..... See Broom's Legal Maxims, 10th Edn., pp257. Right to enjoy the land, whether it is surface right or sub-soil right, either as an owner or holder of a possessory title, does not, however, include the right to invade the legal rights of the neighbour. The maxim Sicutere tuo ut alienum non-laedas, states the principles that "a man must enjoy his own property in such a manner as not to invade the legal rights of his neighbour, ibid (2) pp 260.

Some more Common Law principles :

7. Insofar as the law on this aspect of the matter is concerned, it is a fallacy to contend that the right in land is an absolute right. The right is not only subject to the power of eminent domain of the sovereign, but is also subject to any legislation, that may be made by the State in exercise of its "taxing powers" or "police powers", as the case may be. The State can not only divest the right and title in the land, in accordance with law, but it can also regulate and tax the enjoyment of such right and title in the land. The State can also prescribe the extent and scope of the right and title in the land.

Statute Law and Ownership of Land:

8. As per Section 3 of the A.P. (Andhra Area) Estates Abolish Act, 1948, after abolition of private estates, the entire land in the estate namely, communal lands and porambores, other non ryoti lands, waste lands, pasture lands, lanka lands, forests mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries and ferries, vested in the Government and all rights and interest created in or over the land before the abolition, against the Government, are of no avail except such rights and privileges as are recognised or conferred on them by or under the said Act. Any other rights and privileges which may have accrued to them in the estate before the notified date against the principal or any other landholder thereof, shall cease and determine and shall not be enforceable against the Government or such landholder. Therefore, after abolition of the estates, the right of the owner of the land over the "surface earth is determinate portion of land" on which a person has a right. A person has no other right.

Relevant Law in Andhra Pradesh :

9. Further the right of a person over the land vested in such person is governed by several statutes, which lay down the scope and extent of such right subject to

which it can be enjoyed. The agricultural land can be cultivated subject to law and not otherwise. The agricultural land also cannot be converted for the purposes other than agricultural. The A.P. Non-Agricultural Lands Assessment Act, 1963 defines "agriculture" to mean raising of any crop or garden produce, the raising of orchards; or the raising of pasture. Whereas, "Non-Agricultural Land" means land other than the land used exclusively for the purpose of agriculture, but not including the land exclusively used for cattle sheds and hayricks. In Telangana Area of Andhra Pradesh, the land administration is governed by the A.P. (Telangana Area) Land Revenue Act, 1317-F (for short "the Telangana Area Act") and in Andhra Area in Andhra Pradesh, the land administration is governed by the A.P. (Andhra Area) Land Revenue Act (Regulation 1 of 1803) (for short "the Andhra Area Act"), Besides, these, the Standing Orders of the Board of Revenue also govern the enjoyment of right to agricultural land and other lands for which the State is the paramount owner. Even the Board Standing Orders restrict the right to land.

10. u/s 61 of the Telangana Area Act, the occupant is not entitled to appropriate Government land for purposes other than agriculture. BSO 7(1) (iii) however, stipulates that a person desirous of constructing a private tank or a well has to obtain permission of the revenue authorities, and construction of a tank or a well, including bore well without the permission of the revenue authorities, would be illegal. In this case, admittedly, the petitioner has not obtained any prior permission for construction of sumps/filter beds from the revenue authorities. The affidavit is silent as to whether the petitioner has obtained any permission for digging the borewell in his land. Therefore, it must be held that the activity of cleaning of sand, being carried on by the petitioner, amounts to converting the agricultural land into non-agricultural land, that is to say, for the purposes other than agricultural.

11. Various revenue officials discharge statutory functions. It is their duty to protect the agricultural land from being converted into non-agricultural land, as otherwise, it would be detrimental to the interests of the public at large. A Division Bench of this Court in *Madireddy Padma Rambabu and Others Vs. District Forest Officer, Kakinada, E.G. District and Others*, to which I was a member observed:

In this connection, we may also refer to another aspect of the matter. Deep underground water belongs to the State in the sense that doctrine of public trust extends thereto. Holder of land may have only a right of user and cannot ask any action or do any deeds as a result whereof the right of others is affected. Even the right of user is confined to the purpose for which the land is held by him and not for any other purpose. A person who holds land for agricultural purpose may, therefore, subject to any reasonable restriction that may be made by the State may have the right to use water for irrigational purposes and for the said purpose he may also excavate a tank. But under no circumstances, he can be permitted to restrict flow of water to the neighbouring lands or discharge the

effluents in such a manner so as to affect the right of his neighbour to use water for his own purposes.

12. It is needless to point out that the activity of cleaning of sand undertaken by the petitioner in the sumps/filter beds, certainly results in depletion of ground water and surface water, which is not only detrimental to the petitioner's agricultural land but also to the agricultural lands of his neighbours. The contention of the learned Counsel for the petitioner that the earthen soil which gets accumulated in the process of cleaning of the sand, is a good manure, cannot be accepted for there is no material produced before this Court to support such a contention. Further any activity which results in depletion of "top soil" of the land, must be the concern of State.

Law of Minerals and Ownership in Agricultural Land:

13. The next question that falls for consideration is whether the activity undertaken by the petitioner is an illegal activity. As per the Mines and Minerals (Regulation and Development) Act, 1957 (for short "the Act") and the A.P. Minor Mineral Concession Rules, 1966 (for short "the Rules"), sand is a minor mineral, and therefore, within the purview of the provisions of the Act and the rules. As per Section 3(i) of the Act, the expression "Mine" shall have the same meaning as is assigned to it in the Mines Act, 1952. u/s 3(d) of the Act, the expression "Mining Operations" is defined to mean any operation undertaken for winning any material. u/s 2(1)(j) of the Mines Act, the word "Mine" is defined to mean any excavation where any operation for the purpose of searching for or obtaining minerals, and also includes inter alia, the following activities:

(i) all borings, boreholes, oil-wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oil-fields; in a mine or for depositing refuse from a mine or in which any operations in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine;

(xi) any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or preparing for sale of minerals or of coke is being carried on.

14. The activity carried on by the petitioner in his agricultural land, is admittedly, for cleaning sand and dressing for preparing the sand for sale, which is a minor activity.

15. The Apex Court in *Sri Tarkeshwar Sio Thakur Jiu Vs. Dar Dass Dey and Co. and Others*, , upon considering the question whether removal of any minor mineral deposited on the surface of the land would amount to winning the mineral and whether the said land can be treated as mine, held:

.....The contention must be repelled. The definition of "mining operations" and "mine", noticed above are very wide. The expression "winning of mineral" is spacious enough to comprehend every activity by which the mineral is extracted

or obtained from the earth irrespective of whether such activity is carried out on the surface or in the bowels of the earth.

16. The activity carried on by the petitioner, must therefore, be treated as mining operation. A Division Bench of this Court in *Bheemagari Bhaskar v. Revenue Divisional Officer* 2001 (5) ALD 227 (DB), to which I was a member, considered the question of nature of right of a pattedar to deal with the sand accumulated on his land, and upon referring to Rule 12(2Xa) of the A.P. Minor Mineral Rules, 1966, held:

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

17. In *Jagadish Chandra Deo Dhabal Deb Vs. Kanai Lal Nandi and Another*, , to which a reference was made by a Division Bench of this Court in *Bheemagari Bhaskar*, a Division Bench of Patna High Court held that under the provisions of Section 21 of the Chota Nagpur Tenancy Act, as amended by Act XXV of 1947, a person had no right whatsoever to manufacture bricks which were not required for domestic or agricultural purpose of the ryot and his family.

18. It is relevant to refer to A.P. Mineral Dealer's Rules, 2000 (for short "the Dealer's Rules"), which were framed by the Government of Andhra Pradesh in exercise of the powers u/s 23(c) of the Mines and Minerals (Development and Regulation) Act, 1957. As per Rule 3 of the Dealer's Rules, a person under law is required to obtain registration as Dealer under the Dealer's Rules to stock or sell or offer for sale for engaging in any transaction in buying and selling of any mineral in any place. Any transport of the mineral from the place of raising or sale to another place shall have to be made with a valid transit pass, issued by the competent authority. Any contravention of the Dealer's Rules attracts penalties (see Rule 8 of the Dealer's Rules), including imprisonment for a term, which may extend to one year or fine. Under the Dealer's Rules, power vests with the competent authority or authorized officer to seize any stock of mineral if there is reason to believe that an offence has been committed under the said rules. It is also competent for the authorized officer to confiscate the mineral or other property used in the commission of the offence. The conspectus of the Dealer's Rules is that any person engaging in the minerals in any manner, including treating, dressing and separating the top soil or earth mixed with sand, requires registration, and any contravention is an offence. Admittedly, the petitioner has no such registration or authorization under the Dealer's Rules, and therefore, his activity must be held to be illegal.

19. To sum up, as seen from A.P. (Andhra Area) Estates Abolition Act, 1948, Andhra Area Act, Telangana Area Act and the Board Standing Orders, the owner of the agricultural land is not conferred with any right to convert his land or a part of his land as a place for carrying on mining operations or for cleaning of sand in the sumps/filter beds. Admittedly, the petitioner has violated the provisions of the Act and the rules by carrying on the activities of mining operation namely, cleaning or dressing or preparing the sand, he cannot seek any relief from this Court so as to protect his illegal activity, and to enforce a right, which in fact, does not vest in him under law.

Doctrine of Public Trust and Land Protection:

20. The doctrine of public trust requires the State to protect the land and water. The Apex Court in *M.C. Mehta Vs. Kamal Nath and Others*, , quoted with approval an article entitled "Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention, By Joseph L Sax, Professor of Law, University of Michigan, which reads:

The source of modern public trust law is found in a concept that received much attention in Roman and English law - the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasized. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property, which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties - such as the seashore, highways, and running water - "perpetual use was dedicated to the public," it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant Government.

In *M.C. Mehta v. Kamal Nath*, the Apex Court held as follows:

Apart from the above statutes and the rules made thereunder, Article 48A of the Constitution provides that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. One of the fundamental duties of every citizen as set out in Article 51-A(g) is to protect and improve the natural environment, including forests, lakes, rivers and wildlife and to have compassion for living creatures. These two Articles have to be considered in the light of Article 21 of the Constitution which provides that no person shall be deprived of his life and liberty except in accordance with the procedure established by law. Any disturbance of the basic environment elements, namely air, water and soil, which are necessary for "life", would be hazardous to "life" with the meaning of Article 21 of the Constitution.

21. This Court in *Madireddy Padma Rambabu* placed reliance on the doctrine of public trust and held that water being common property, it is the duty of the

State to protect the water resources. As held by the Supreme Court in *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, and various other cases, a Constitutional Court is the guardian of environment and ecology. It is the duty of the Constitutional Court to ensure that environment and ecology are protected and no action, which has an adverse effect on the environment, is ever permitted. In the instant case, the petitioner has converted the agricultural land for purposes other than agricultural, that is for cleaning of sand by drawing underground water. Such activity of the petitioner, would certainly have an adverse impact on the environment as the continuous use of underground water for cleaning of sand, would deplete the groundwater resources, besides harming top soil. This Court, therefore, cannot issue a mandamus, as prayed for by the petitioner, to the respondent to act contrary to the principles of environmental law, namely, the adoption of "precautionary principle" under which the State should always anticipate environmental harm and take measures to avoid and prevent environmentally harmful activity. This Court in *Bheemagari Bhaskar*, applying the precautionary principle, held:

.....The quarrying and lifting of sand in the river bed areas are thus required to be protected and regulated by a scheme to be evolved by the State. The State being a welfare State was under a constitutional obligation to control such illegal quarrying and lifting of sand in Gram Panchayat areas. If no preventive measures are taken to stop such activity, it may lead to a situation where there will be no land in which cultivation can be carried out in the villages where the people mainly depend on ground water for their irrigation purposes. Therefore, it is high time that the State Government takes appropriate preventive measures immediately to arrest the illegal operations that are being carried out in the State.

22. For the above reasons, the writ petition is liable to be dismissed in limini, and it is accordingly dismissed. No costs.