
(2011) 03 MP CK 0028

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2708 of 2005 (PIL)

Rinkesh Goyal

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 10-03-2011

Acts Referred:

Constitution of India, 1950 — Article 48A, 51A

Madhya Pradesh Land Revenue Code, 1959 — Section 251

Citation : (2011) ILR (MP) 1504 : (2011) 2 MPHT 519 : (2011) 2 MPJR 201 : (2011) 2 MPLJ 618

Hon'ble Judges : S.K. Gangele, J;Brij Kishore Dubey, J

Bench : Division Bench

Judgement

S.K. Gangele, J.

This writ petition has been registered on the basis of a post-card received in the Registry from one Rinkesh Goyal resident of Gandhi Chowk, Shivpuri. In the aforesaid postcard the writer has informed the Court about descending water level at Shivpuri and encroachments over land of lakes and tanks situated at district Shivpuri. Thereafter, this Court issued various interim orders in regard to the problem and the Respondents have generously cooperated with the Court and filed affidavits and also compliance reports.

It has been mentioned in the compliance report that there are 1069 tanks and lakes at Shivpuri district and only some parts of the land of the tanks and lakes of Shivpuri town there are encroachment and rest of the tanks and lakes are free from encroachment. The details and particulars of the ponds and tanks situated at Shivpuri city have also been mentioned.

On behalf of Secretary, Department of Revenue, Government of Madhya Pradesh, an affidavit has been filed. It is mentioned in the affidavit that u/s 251 of the M.P. Land Revenue Code 1959 tanks vest with the State Government and subsequently vide order dated 26-1-2001 the management of ponds/tanks have been handed over to Gram Sabha and in urban areas management of tanks and

ponds have been handed over to local bodies viz. Nagar Panchayats vide orders dated 19-9-1994 and 26-1-2001.

Another compliance report has been filed on 15-2-2006 on behalf of Secretary, Department of Revenue. Along with the compliance report a copy of chart has been filed in regard to situation of tanks and ponds of all districts of State of Madhya Pradesh. As per the aforesaid chart there are encroachments over some ponds and tanks, however, those encroachments are not in alarming state. Independently, the Collector, district Morena has also filed compliance report mentioning the fact that the encroachments over tanks and ponds in the urban area as well as in rural areas have been removed and all the tanks and ponds are being properly conserved and maintained. The Collectors, districts Shivpuri and Vidisha, have also filed compliance reports mentioning same facts.

Learned Amicus Curiae, appointed by the Court, has submitted that due to improper conservation of tanks and ponds in the State the water level is going down. It has further been submitted by the learned Amicus Curiae that the situation of water level is at an alarming stage and hard steps have to be taken by the concerned Authorities and persons who are responsible for that in accordance with law to ensure proper conservation of ponds and lakes.

Learned Additional Advocate General has also supported the cause and submitted that the State has taken all steps to conserve and maintain the ponds and lakes in their original state. It has further been submitted that the State has further taken specific steps in order to improve ground level water and introduced various schemes in regard to conservation of water which is precious natural resource and one of the essential element for life at the planet.

The natural resources are assets of entire nation as well as planet. There is no dispute in regard to the fact that water is one of the essential resource necessary for existence of life on the earth. Hon"ble the Supreme Court in T.N. Godavarman Thirumulpad Vs. Union of India (UOI) and Others, has specifically emphasized the need and it is the obligation of all the persons including Government to conserve and not waste these resources and observed as under:

Natural, resources are the assets of the entire nation. It is the obligation of all concerned, including the Union Government and State Governments to conserve and not waste these resources. Article 48-A of the Constitution requires that the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Under Article 51-A, it is the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

Hon"ble the Supreme Court further in the case of Jagpal Singh and Ors. v. State of Punjab and Ors. AIR 2011 SCW 990 has held, as under, in regard to management and conservation of water resources:

16. The present is a case of land recorded as a village pond. This Court in Hinch

Lal Tiwari Vs. Kamala Devi and Others, (followed by the Madras High Court in L. Krishnan Vs. State of Tamil Nadu and Others, held that land recorded as a pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose. The Court ordered the Respondents to vacate the land they had illegally occupied, after taking away the material of the house. We pass a similar order in this case.

In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which, served them for thousands of years.

Over the last, few decades, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country.

Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so called auctions are not used for the common benefit of the villagers but mis-appropriated by certain individuals. The time has come when these mal-practices must stop.

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Before parting with this case we given directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been, granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.

Let a copy of this order be sent to all Chief Secretaries of all States and Union Territories in India who will ensure strict and prompt compliance of this order and submit compliance reports to this Court from time to time.

There is no dispute in regard to the fact that ground water level is going down due to misuse of water. Even though, the proper steps have not been taken by

the concerned authorities, may be, administrative authorities, local self bodies or other functionaries in ensuring proper management of ponds, tanks and lakes. However, it is a duty of all concerned authorities to work sincerely for the purpose of conservation and maintenance of ponds, tanks and lakes properly.

In this view of the matter, this petition is disposed of with the following directions:

(1) That, in each divisional level a Committee be constituted under the chairmanship of Revenue Commissioner of the division to monitor the effective implementation of the water conservation schemes introduced by the Government for the aforesaid purpose.

(2) The Committee shall also ensure that there should not be any encroachment over the land of ponds, tanks and lakes, and if, there is any encroachment that be removed immediately.

(3) The State Government shall take effective steps in regard to water harvesting and ground water level management so the problem of reducing the level of ground water could be tackled.

(4) A copy of the order be sent to the Chief Secretary of the State and also the Secretary, Revenue Department of the State.

Before parting with the order, we appreciate the valuable assistance provided by the learned Amicus Curiae Mr. K.S. Shrivastava, Advocate, Mr. M.P.S. Raghuvanshi, learned Additional Advocate General and Mr. Sunil Jain, Advocate.

No order as to costs.