
(1990) 06 KAR CK 0047
In the Karnataka High Court
Case No : W.P. No. 10203/1982

Shanthaveerappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 20-06-1990

Acts Referred:

Karnataka Irrigation Act, 1965 — Section 14

Citation : (1990) 2 KarLJ 431

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-The petitioner who belongs to Malagondanakoppa of Shikaripur Taluk, Shimoga District, has approached this Court for a direction to the respondents to conduct an enquiry and to take appropriate action in order to protect the interest of the petitioner and other authorised achucutdars of Pranamanakere of Talugunda bearing No. 253 and also to restrain unauthorised draw or flow of water contrary to the provisions of the Karnataka Irrigation Act, 1965 (hereinafter referred to as "the Act") in the interest of the petitioner and other authorised achucutdars. The petitioner has also sought for a mandamus to the respondents to take suitable action under Sections 27, 29, 31, 51 and 61 of the Act.

2. Briefly stated the case of the petitioner is that by placing a concrete pipe on the western bund of Pranamanakere and constructing a field channel to convey water from the sluice to Sy. No. 24 and to Dammallikere, Hirekere and Buralakatte tanks is without the authority of law and is in contravention of the provisions of the Act. According to the petitioner, the respondents have not taken proper action under the Act to prevent unauthorised use and flow of water and further they have erred in diverting kodi water of Hirekere of Talagunda bearing No. 336 to Pranamanakere and then diverting the same by a separate channel to the aforementioned three tanks in Shivapura even though they have sufficient supply of water from other sources. It is stated that the petitioner and other achucutdars were not heard before such a diversion was made and that instead of taking action to stop improper and unauthorised use of water, the respondents

are making preparations to construct a pucca sluice on the western bund of Pranamanakere.

3. The respondents have filed statement of objections sufficiently comprehensive in an effort to meet the averments made in the writ petition.

4. From the statement of objections, it can be gathered that Pranamanakere of Talagunda is a tank maintained by the Public Works Department and the achucut of the tank measures 168 acres 18 guntas in two villages of Talagunda and Shivapura. There are only two irrigation sluices and two high level pipe out-lets and the irrigation sluice No. 2 is located at cill level + 46.18 metres at chainage of 120 metres. The irrigation sluice No. 2 is located at cill level + 46.7 metres at chinage 375 metres.

5. It appears the tank was repaired during the year 1955 under the Community Development Project Scheme and the achucutdars had contributed 1/3rd of the expenses. The existence of the 3 tanks mentioned by the petitioner is admitted. According to the respondents, the petitioner draws water from sluice No. 2 to his lands in Sy. Nos. 212/2, 198/2, 200/1 and 200/2 and therefore it is said that the petitioner cannot complain that the crops raised in his lands will be dried up and it is asserted that water is always available to the petitioner's lands. A significant point to be noticed in the statement of objections is that it is acknowledged that there is a bund of Herekere of Talagunda at left flank that had been bridged wherein 230 MM dia-metre cast iron pipe is kept to regulate the waste weir water of the aforementioned tanks to Pranamanakere. But, at the same time, it is denied that water from Herekere of Talagunda has been diverted by separate channel to Dammalikatte, Herekere and Burlakatte of Shivapura. According to the respondents, the water from Herekere of Talagunda would be carried in a draft channel which leads to Ramanakatte situate in Sy. No. 14 of Shivapura as shown in the revenue survey map. It is therefore stated that by diverting the tank surplus, the inflow of water to Pranamanakere is not reduced as contended by the petitioner. According to the respondents, the release of excess water from Pranamanakere will lead to the three tanks mentioned earlier as otherwise there will be a very heavy flow of water which may result in damage to Pranamanakere and the lower down tanks. It is contended that Pranamanakere is virtually saved from the danger of being breached during floods by diversion of surplus water. It is emphasised that the surplus water of Pranamanakere was diverted by putting 12" diameter pipe for escape of surplus flow and surplus water has been utilised.

6. As regards the allegation of non-observance of procedure as contemplated by the Act, the respondents state that they have not allowed the opening of a new outlet to Pranamanakere nor have they constructed any field channel to the detriment of the petitioner and other achucutdars of the tank. However, it is admitted that the tanks have been provided with two irrigation sluices and two irrigation outlets and as such the claim of the petitioner is untenable. It is further contended that there is no violation of any provision of law and least of all the principles of natural justice. Lastly, it is contended that the respondents have

taken action to draw surplus waste water from Herekere and Pranamanakere to lower down tanks through the draft channels and the petitioner and others are drawing water from the same regularly and therefore no injury is caused to the petitioner or to the other achucutdars.

7. The point for consideration arising out of the pleadings is whether the laying of concrete pipe on the western bund of Pranamanakere and the alleged construction of a field channel to convey water from sluice to Sy. No. 24 to the three tanks is without authority of law and whether such an action is questionable for nonissue of notification envisaged under Section 15(1) of the Act. The second point is whether there is an infraction of principles of natural justice for the impugned action having been taken without hearing the petitioner and the other achucutdars.

8. The learned Counsel appearing for the petitioner relied upon para 5 of the statement of objections which reads:

"The respondents have taken action to draw surplus waste water from Hirekere and Pranavanakere to lower down tanks through the draft channels and the petitioner and other achcatdars are drawing water from Pranavanakere regularly....."

The allegation of the petitioner is that by placing a concrete pipe on the western bund of Pranamanakere and by constructing a field channel in order to convey water from the sluice to Sy. No. 24 and thereon to 3 tanks is in contravention of the provisions of the Act. The case of the petitioner is that on account of this field channel and laying of the concrete pipe to accommodate water course, the tanks which the petitioner and the achucutdars have been relying upon for purposes of drawing water have diminished supply proportionately and therefore legal injury is occasioned by the petitioner and the achucutdars. In fact, the petitioner has gone to the extent of contending that the respondents failed to appreciate that the unauthorised diversion of water has destroyed the valuable areca, coconut and plantain gardens and caused irreparable loss to the petitioner and others. It is not possible to disbelieve the grievance of the petitioner since the laying of the concrete pipe of 12" diameter on the western bund of Pranamanakere is not in dispute and further the construction of a field channel which the respondents choose to call as draft channel to convey water from the sluice is also not disputed. What is disputed is only the consequence of these actions. The representation given by the petitioner vide Annexure-C to the P.W.D. Minister dated 28-7-1972 lends credence to the grievance of the petitioner and at least I must say that Annexure-C is convincing enough to believe that the grievance expressed in the writ petition does not lack bona fides. The grievance of the year 1972 is virtually repeated in this writ petition not by force of habit, but on account of pragmatic difficulties encountered by the petitioner and the achucutdars after no response was received from the authorities dispensing relief or capable of dispensing relief.

9. This takes me to the question whether there is any violation of a statutory provision of the Act rendering the impugned action of the respondents questionable. In this context, it is necessary to refer to some of the definitions and relevant provisions of the Act. Clause (d)(i) of Section 2 of the Act defines drainage work. "Drainage work" includes channels, either natural or artificial, for the discharge of waste or surplus water, and all works connected with or auxiliary to such channels (ii) escape channels from an irrigation work, dams, weirs, embankments, sluices, groynes and other works connected therewith, but does not include works for the removal of sewage. According to Section 2(e) of the Act "field-channel" means any water course, hikkal or pipe having a capacity not exceeding one cubic foot per second, which is supplied with water from an irrigation work, and includes all subsidiary works belonging to such field-channel, except the sluice or outlet through which water is supplied to such channel or pipe.

10. In the instant case, the laying of the concrete pipe for flow of either waste water or surplus water falls within the ambit of the expression "drainage work". The definition of "field channel" is satisfied by the admission that in fact it was constructed, but the only difference is that the petitioner calls it as field-channel whereas the respondents describe it as draft channel. However, effort to find out the existence of the word "draft channel" in the Act proved unsuccessful. I have to presume that the channel referred to by both the petitioner and the respondents is nothing but the field-channel only. Section 14 of the Act provides:

"Construction of drainage works:

Whenever it appears to the State Government that any drainage work is necessary for the public health or for the improvement of the proper cultivation or irrigation of any land, or that protection from floods or other accumulations of water or from erosion by a river is required for any land, the State Government may in its discretion cause a scheme for such work to be drawn up and carried into execution, and the person authorised by the State Government to draw up and execute such scheme may exercise, in connection therewith, the powers conferred on Irrigation Officers by Sections 6, 7 and 8 and shall be liable to the obligations, imposed upon Irrigation Officers by sections 9 and 35."

11. The condition precedent for construction of drainage work is the preparation of a scheme and the person authorised by the State Government is expected to draw up and execute such scheme and exercise such powers as are conferred on Irrigation Officers by Sections 6, 7 & 8 and further they are subject to the obligations imposed on Irrigation Officers under Sections 9 and 35.

12. Section 15 of the Act envisages:

"Determination of the need for field-channels and their alignment in any area:
(1) The Irrigation Officer on being satisfied that the construction of field-channels in any area is necessary in public interest for supply of water from an irrigation work to lands requiring such supply for purposes of cultivation, shall declare by

notification that such field-channels may be constructed after a date to be specified in the notification, not being earlier than thirty days from the date of publication thereof. A copy of such notification shall be sent to the Tahsildar of the area for publication in the villages concerned.

(2) xxx xxx"

13. Thus, it could be seen from Section 14 of the Act that the drainage work cannot be brought into existence abruptly, but statutory obligation contemplates the drawing up of a scheme, execution of the scheme according to the manner of exercise of power to the extent of legal obligation fastened on the officials concerned. Section 15 mandates publication of a notification for construction of field-channel after a specified date to be mentioned in the notification not being earlier than 30 days from the date of publication thereof and it further envisages that a copy of the notification should be sent to the Tahsildar of the area for the purpose of publication in the villages concerned.

14. Apart from the statutory compulsion of notifying the construction of a field-channel, a copy of the notification is also expected to be sent to the Tahsildar intended to be published in the villages concerned. A proper construction of Sec. 15 would be that not only there shall be a notification of the intention to construct a field-channel, but also the need to circulate or notify such an intention in the concerned villages by the Tahsildar of the area. Though the provision does not expressly provide that an opportunity of hearing should be given to the villagers whose rights in regard to the water supply or utilisation of water resources are related, by implication it is to be construed that the purpose of publication is to afford an opportunity to the villagers of the concerned villages to offer suggestions or objections if any in order to protect their rights. Mere publication, in my opinion, without an opportunity to prefer objections or suggestions would render the provision a dead letter in the statute book. Besides bearing in mind the principle that the principles of natural justice supplement the law if not subplant the law. I am of the opinion that the very same principles warranting an opportunity of hearing are attracted to the facts of the case with reference to the statutory obligation to be fulfilled by the authorities under Section 15(1) of the Act. There is no material on record which justifies a finding that indeed there was a notification and that the concerned villagers including the petitioner and the achucutdars had an opportunity of hearing in the matter before the field-channel was constructed muchless is there any material to show that a scheme for bringing into existence drainage work was prepared and it was executed in accordance with the scheme. If mere existence of the construction and the concrete pipe should be the criteria to persuade me to presume that it must have been preceded by a scheme and that it must have been preceded by a notification and also by an opportunity of hearing, this Court cannot act on a surmise in the absence of material to support such a finding. In these circumstances, I am of the opinion that the statutory obligations and procedure contemplated under Sections 14 and 15 are not satisfied to justify the action of

the respondents both in regard to the laying of the concrete pipe and the construction of the field-channel or the draft-channel.

15. The reliefs sought by the petitioner are consistent with the basic aspirations of agriculturists who have to depend on water resources for agricultural production and the nature of reliefs sought in this writ petition cannot be described as either unreasonable or fanciful by any means. All that the petitioner is seeking is a mandamus to the respondents directing them to conduct an enquiry and to take such measures as are necessary to safeguard the interest of the petitioner and other authorised achucutdars of Pranamanakere of Talagunda bearing No. 253 and also to halt the unauthorised draw or flow of water.

16. I am of the opinion, on an over all consideration of the case, that the petitioner is entitled to the reliefs sought in the writ petition and hence the following order:

The writ petition is allowed. The respondents are directed to hold an enquiry into the grievance of the petitioner and take appropriate action in order to protect the interests of the petitioner and other authorised achucutdars of Pranamanakere of Talagunda bearing No. 253 and if as a result of the enquiry the case of the petitioner is established, proceed to stop unauthorised draw or flow of water both in the interest of the petitioner and other authorised achucutdars. The enquiry shall be held affording a reasonable opportunity of hearing to the petitioner and the affected achucutdars before a decision is reached on merits and in accordance with law. It is further directed that the enquiry shall be completed within sixty days from the date of receipt of a copy of this order.

17. Since the learned Counsel for the petitioner considers it redundant to grant the relief sought for suitable action under Sections 27, 29, 31, 51 and 61 of the Act, it is unnecessary to grant the relief.

Writ Petition Allowed.