

APHC010391452024



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3328]

MONDAY, THE TWENTY THIRD DAY OF JUNE
TWO THOUSAND AND TWENTY FIVE

PRESENT

**THE HONOURABLE SRI JUSTICE GANNAMANENI RAMAKRISHNA
PRASAD**

WRIT PETITION NO: 19674/2024

Between:

- 1.MAGINENI SHANMUKHA VINAY KUMAR, , S/O. POTURAJU AGED 32 YEARS, OCC BUSINESS, R/O. D.NO. 4-411, DANIGUDEM ROAD, CHINNA CHERUVU GATTU, KAIKALURU VILLAGE AND MANDAL, ELURU DISTRICT.
- 2.MAGINENI SATYA ANJANI,, W/O. M. SHANMUKHA VINAY KUMAR AGED 30 YEARS, OCC HOUSEWIFE R/O. D.NO. 4-411, DANIGUDEM ROAD, CHINNA CHERUVU GATTU, KAIKALURU VILLAGE AND MANDAL, ELURU DISTRICT.

...PETITIONER(S)

AND

- 1.THE STATE OF ANDHRA PRADESH, REP. BY ITS PRINCIPAL SECRETARY, DEPARTMENT OF REVENUE, SECRETARIAT, VELAGAPUDI, AMARAVATI, GUNTUR DISTRICT.
- 2.THE DISTRICT COLLECTOR, ELURU, ELURU DISTRICT.
- 3.THE REVENUE DIVISIONAL OFFICER, , ELURU, ELURU DISTRICT.
- 4.THE TAHSILDHAR, KAIKALURU, ELURU DISTRICT
- 5.THE DEPUTY EXECUTIVE ENGINEER, IRRIGATION SUB DIVISION KAIKALURU, ELURU DISTRICT.

...RESPONDENT(S):

Counsel for the Petitioner(S):

1.K V ADITYA CHOWDARY

Counsel for the Respondent(S):

1.GP FOR REVENUE

2.GP FOR IRRIGATION COMM AREA DEV

The Court made the following ORAL ORDER:

Heard Sri K.V.Aditya Chowdary, learned Counsel for the Writ Petitioners; Sri Srinivas Pathuri, learned Assistant Government Pleader for Revenue appearing for the Official Respondents.

2. The present Writ Petition is filed seeking the following relief:

“Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the action of the Respondent No.4 in issuing Notice R.B.216/2024, dated 04.09.2024 to petitioners for removal of Bridge (ingress and egress to Petitioners’ House) on Ralla Kodu Channel at KM 2.000, situated at D.No. 4-411, Dangudem Road, Chinna Cheruvu Gattu, Kaikaluru, Eluru District is illegal, arbitrary, violation of Constitution of India and set aside the same and to pass such other order or orders may deem fit and proper in the circumstances of the case.”

Shorn of unnecessary facts:

3. It is the submission of Sri K.V.Aditya Chowdary, learned Counsel for the Writ Petitioners that for gaining ingress and egress to the house of the Writ Petitioners, father of the Writ Petitioner No.1 has made an Application to the Deputy Executive Engineer dated 20.05.2015 (Ex.P.2) for construction of a bridge with retaining walls on both sides of the Ralla Kodu Channel; that *vide* Proceedings dated 10.06.2015 (Ex.P4), the Respondent No.5 has granted permission with several conditions, *inter-alia*, that the said construction work shall be undertaken under supervision of the Executive Engineer, Irrigation

Department and by maintaining the same width and depth of the actual canal with concrete bed of five (5) mts., and stone revetment etc.; that about seven (7) conditions have been prescribed; that owing to flood situation, the Tahsildar, Kaikaluru, Eluru District had issued Notice dated 04.09.2024 (Ex.P.1) directing the Writ Petitioners to remove the bridge constructed by them on Ralla Kodu Canal; this Notice issued by the Tahsildar dated 04.09.2024 is under challenge. The Writ Petitioners have filed Photographs from page Nos. 40 to 46 of the paper book which indicates the width of the Canal only, but no photograph had been filed by the Writ Petitioners showing the actual construction/improvement made by them.

4. This Court *vide* Order dated 06.09.2024 had directed the Tahsildar as well as the Deputy Executive Engineer, Irrigation (Sub-Division), Kaikaluru (Respondent Nos. 4 and 5 respectively) to submit a Report to this Court by 10.09.2024, whether the Writ Petitioners have violated the terms and conditions in terms of the permission granted on 10.06.2015 (Ex.P4). On 10.09.2024, this Court has noticed that the Written Instructions furnished by the Tahsildar does not have the date of issuance of the Written Instructions and on perusal of the Written Instructions, it transpired that the same does not address any of the directions given by this Court on 06.09.2024. Therefore, *vide* Order dated 10.09.2024, the Tahsildar was directed to appear before the Court on 20.09.2024.

5. The Tahsildar (Respondent No.4) as well as the Deputy Executive Engineer for Irrigation (Respondent No.5) have submitted their Reports. The Report of the Tahsildar dated 18.09.2024 indicates that the Writ Petitioners have constructed concrete slabs to a length of 62 feet and 11 Inches (i.e., almost 63 feet), thereby covering the entire stretch of the Canal all along the length of the compound of the Writ Petitioners. It was noticed by the Court that the Writ Petitioners have clearly violated the conditional permission dated 10.06.2015 (Ex.P4) by laying concrete slabs to a length of about 62 feet 11

inches. This would indicate that the 62 feet 11 inches concrete slab had been laid by the Writ Petitioners without informing the Executive Engineer as laid down in the conditions. Taking this aspect into account, this Court has passed the following Order on 20.09.2024:

“5. In this view of the matter, this Court takes a serious view with regard to the conduct on the part of the Writ Petitioners in fraudulently violating the conditions imposed by the Department of Irrigation. It is unfortunate that, when such a huge construction is being built, neither the Revenue Officials nor the Irrigation Officials have raised their objection about it and initiated appropriate action.

6. The Writ Petitioners are directed to remove the entire concrete structure, leaving about six feet for the purpose of ingress and egress. There shall be a direction to the Writ Petitioners that, while removing these structures, they shall ensure that not a single piece of debris will fall into the canal. The Tahsildar, as well as the Executive Engineer, Irrigation Sub-division, Kaikaluru, shall personally supervise this removal and submit a Report within ten (10) days before this Court, along with photographs and video graphs by way of pendrive. They shall also ensure that the gate is confined to the same width and is attached to the compound wall belonging to the petitioners, but not on the public”

6. The Reports filed by the Tahsildar as well as the Executive Engineer on 20.09.2024 along with Photographs would indicate that the Official Respondents have deliberately ignored the violation committed by the Writ Petitioners. The Report submitted by the Tahsildar on 19.09.2024 would also indicate that the Writ Petitioners in fact has free and convenient ingress and egress on the western side but the Writ Petitioners have closed it by erecting a Garage and had started taking complete access from the southern side where the Writ Petitioners have illegally constructed a concrete bridge to a length of 62 feet 11 inches. After executing the Court's directions, the Tahsildar has now placed on record an Affidavit with photographs which indicates that the Writ Petitioners are permitted to just retain a concrete bridge

across Ralla Kodu Canal of width of about 6 feet and the rest of the concrete structure has been removed.

7. These violations on waterways and watercourses in which fresh water or drainage water flows are damaging or destroying the flora and fauna besides causing humongous damage to the human inhabitations. In times of flood, inundation of land by water become virtual death-traps for animals in the wild (in forests) as well as to the humans in the villages, towns and metropolitan cities. It is also noticed that the violators go scot-free with impunity because the existing law, does not have a deterrent effect. Therefore, it is the right time for the Government (law makers) to make laws, rules and regulations to weaponise the Government Departments to achieve this purpose. This law needs to address not only the violators from among the public, but also the Officials who conveniently turn a blind-eye to the acts of violation.

8. The above concern expressed by this Court has also been addressed by the Ld. Single Judge of the High Court of Madras in ***T. Sannamani Ammal V. Government of Tamilnadu Rep. by its Secretary Revenue Department and Others; 2018 SCC Online Mad 13056***. Ld. Single Judge had considered the aspects relating to the encroachments made by the public in a water body and the consequential disasters that would ensue on account of such encroachments. Para Nos. 3 to 7 of the said Judgment is usefully extracted hereunder:

"3. The learned Government Advocate appearing on behalf of the respondents made a submission that the writ petitioner is an encroacher and is in possession of the land, which is classified as Eri poromboke. Eri poromboke is a water body and therefore, the authority competent should bound to evict all such encroachers from the water bodies and water resources.

4. It is a growing tendency across the State that the water bodies, water resources and Government Eri poromboke lands are encroached for personal enjoyment. A few corrupt men are indulged in encroaching the public

lands for their personal gains and the authorities competent are bound to monitor all such encroachments and evict the encroachers by following the procedures contemplated under the Encroachment Act as cited above.

5. Encroachment is a social evil. Encroachment in water body and water resources are affecting the Constitutional Rights of all other citizens. Whenever the rights of the citizens in general are infringed on account of certain illegal acts by few greedy men, then the State is bound to act swiftly and evict all such encroachments by following the procedures.

6. People are frustrated on account of large scale encroachments in water bodies and water resources. On account of such encroachments in water bodies and water resources, people at large are facing disaster, which are all man made. Even the experts are rightly emphasizing that the disasters are occurring on account of the illegal activities of such persons by encroachments. This being the opinion of the experts on many occasions, the State is bound to evict all such encroachments in the water bodies, water resources and Government Eri poromboke lands. In the present case on hand, the land in question is classified as Eri poromboke land, which is a water body. Thus, there cannot be any leniency or sympathy in respect of evicting the encroachers.

*7. The State undoubtedly has to provide welfare schemes for the landless/houseless poor people. When the scheme for allotment of landless poor people are undertaken by the State, the said Schemes are to be implemented uniformly and by considering all the eligible persons without causing any discrimination. In other words, the encroachers, on eviction may be provided with a rehabilitation scheme. While implementing the rehabilitation Scheme, the State must consider all eligible persons equally and the scheme is to be implemented strictly in accordance with the terms and conditions and without any violation. **Contrarily, if the encroachers are allowed to continue in water bodies and water resources, the consequences would be disastrous and the rights of all other citizens in general are being infringed.***"

9. Niti Aayog, Government of India, having taken a very serious note of the constant flooding occurring in India due to manmade violations and indiscriminate human interference by way of encroachments, has submitted a

Report in the year 2021 i.e., “Report of the Committee Constituted for Formulation of Strategy for Flood Management Works in Entire country and River Management Activities and Works related to Border Areas (2021-26)” (the Report 2021-26)’.

10. In the ‘**Foreward**’ of the above mentioned Report 2021-26, rendered by the Chief Executive Officer of NITI AAYOG, it is stated that:

“.....Major reasons for the flood of such magnitude are unplanned construction and encroachment on riverbeds that have reduced the capacity of rivers to carry flood waters. Unfortunately, this is not just the picture from one disaster but in India the soaring rise in the damage from the flood is result of the heedless construction and increasing activities in flood plains.”

11. In the ‘**Introduction**’ part of the said Report 2021-26, it is stated that:

***“Flood is the most prevalent and costliest natural disaster in the world which devastates both life and economy on large extent.....
.....Urban flood has become one of the major problems now a days, the recent floods in Kerala, Uttarakhand and in metropolitan cities like Delhi, Mumbai, Kolkata point towards the need for proper management of floods and the drainage system.”***

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“.....Urban flooding due to storm water drainage congestion (pluvial in nature) has also become common in towns/cities due to such extreme meteorological events. The devastation caused due to floods in the past has drawn attention of the planners of the country towards comprehensive flood management plans, policies and implementation thereof.”

12. The “**Constitutional Position**” with regard to the flooding and flood management is also discussed in the Report 2021-26. The relevant portion from the Report 2021-26 is usefully extracted hereunder:

“As per constitutional provisions, the subject of flood management including erosion control falls within the

purview of the States. The flood management and anti-erosion schemes are planned, investigated and implemented by the State Governments with own resources as per priority within the State. The Union Government only renders assistance to States which is technical, advisory, catalytic and promotional in nature.

The subject of flood control, unlike irrigation, does not figure as such in any of the three legislative lists included in the Constitution of India. However, drainage and embankments are two of the measures specifically mentioned in Entry 17 of List II (State List), reproduced below:

“Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provision of entry 56 of List I (Union List).”

Entry 56 of List I (Union List) read as follows:

“Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.”

It may be seen that the primary responsibility for flood control lies with the States. A number of States have already enacted laws with provisions to deal with matters connected with flood control works. However, there exists a significant provision that the powers to be exercised are subject to Entry 56 of Union List. It may be pointed out that Entry 17 of List II (State List) quoted above does not cover land use involved in the administrative measures of dealing with reduction of flood losses viz. flood plain zoning.”

13. The said Report 2021-26 has approached the Flood Management in a twofold manner: (i) **Structural Measures for Flood Management**; and (ii) **Non-Structural Measures for Flood Management**. The said Report 2021-26 states that the ‘structural measures of flood protection/anti erosion, which do not reduce the flood flow but reduce spilling are:

“a. xxxxx

b. ***Channel and drainage improvement work, which artificially reduce the flood water level so as to keep the same, confined within the river banks and thus prevent spilling.***

c. xxxxx

d. xxxxx”

14. One of the major finding relating to the floods caused in city of Hyderabad in 2020 is discussed by NITI AAYOG in its Report 2021-26 and it is usefully extracted hereunder:

“Major Findings

1. *Much of the damage was due to the overflowing of lakes – in particular, the Hussain Sagar lake in the middle of the city and the breaching of storm water drains. Construction over lake beds and encroachments of drainage channels have been identified as problems that have exacerbated flooding and inundation in the city.*

2. xxxxx

3. xxxxx”

15. Having regard to the above facts where the Writ Petitioners have constructed 62 feet 11 inches of concrete bridge in blatant violation of the permission granted by the Deputy Engineer, Department of Irrigation dated 10.06.2015 (Ex.P4) and that the Writ Petitioners have been utilizing this portion illegally for a considerable length of time and the Irrigation Department also has conveniently ignored the blatant violation of their own directions, this Court is rather constrained to issue the following directions, in public interest, to the Department of Revenue, Department of Irrigation, Department of Panchayat Raj, Department of Municipalities and Municipal Corporations:

i. The Irrigation Department, Revenue Department, Department of Panchayat Raj, Municipalities and Municipal Corporations shall ensure that all waterways and or watercourses (with whatever

nomenclature they are called) that carry fresh water as well as drainage water are maintained and preserved in terms of depth, width and length as per the Official Records.

ii. The above Departments shall ensure that any construction made by anyone over the watercourses and or waterways (with whatever nomenclature they are called) that enable flow of fresh water and drainage water shall not in any manner impede, block or 'cause a bottleneck effect' either during the normal time or during the time of flood.

iii. Concerned Departments shall make periodical visits/inspections along the entire length of such waterways/watercourses (with whatever nomenclature they are called), preferably once in six (6) months and submit reports to their respective Heads of Departments as regards violations or deviations from permits/licences which are noticed during their visits/inspections with complete measurements of the violations/deviations and the particulars of the violators/deviators.

iv. Concerned Heads of the Departments, upon receiving of such reports, shall forthwith cause an enquiry and ensure clearance within fifteen (15) days, by following the due process of law.

v. The above directions shall apply to all waterways and or watercourses, and feeder channels, either man-made or natural. Concerned Heads of Departments shall percolate this Order to all

Officers in the whole hierarchy for effective compliance. (Note: Fresh Water and Drainage Water, wherever they are referred to shall mean and include brackish-waters, back-waters and sewerage waters)

16. Before parting with this case, this Court deems it appropriate to issue further directions in view of the fact that the Department of Panchayat Raj, Department of Municipal Administration and Municipal Corporations are not arrayed as parties. The Principal Secretary, Irrigation and the Principal Secretary, Revenue, shall submit a copy of this Order to the Chief Secretary, Government of Andhra Pradesh within two (2) weeks from the date of uploading of this Order on the website of this Court. The Chief Secretary, Government of Andhra Pradesh shall communicate this Order to the Department of Panchayat Raj; Department of Municipal Administration as well as to all Commissioners of Municipal Corporations and direct them to follow the directions given hereinabove without any deviation.

17. With these observations and directions, this Writ Petition stands disposed off. No order as to costs.

18. Interlocutory Applications, if any, stand closed in terms of this order.

GANNAMANENI RAMAKRISHNA PRASAD, J

Dt: 23.06.2025
UPS/JKS/MNR

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HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

WRIT PETITION No.19674 OF 2024

Dt: 23.06.2025

UPS/JKS/MNR