

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

W.P.No.11323 of 2021

ORDER:

The tank, known as the 'Dasabandham' tank spread over an extent of Ac.193.78 cents in Sy.No.718, situated in Kunduru Village, Santhamaguluru Mandal, Prakasam District, is the subject matter of the present writ petition. The petitioner, who is said to be a permanent resident of Kunduru Village, states that the said Dasabandham tank was excavated for the purpose of providing source of irrigation for the agricultural lands around the area and for providing water for cattle and people in the villages of Mamillapalli, Paritalavaripalem and Kunduru. The petitioner also states that Inam land of Ac.14.22 cents in R.S.No.306, 398 and 432 of Kunduru Village, was granted in favour of some Dasabandhamdars for maintenance of the said tank. This tank was registered as an institution under Section 6(c) (i) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') by way of publication in A.P. Gazette on 17.03.1988. Subsequently, in the year 1995 a trust board was constituted by the 4th respondent vide proceedings dated 27.11.1995 for a period of one year. The Dasabandhamdars, aggrieved by the publication dated 17.03.1988 and the constitution of trust board by proceedings dated 27.11.1995, had approached the erstwhile High Court of A.P. by way of W.P.No.15051 of 1996 assailing the said proceedings. This writ petition, along with certain other writ petitions filed by the third persons, in W.P.Nos.9141, 6543 of 1990 and 5592 of 1996 wherein the auction of fishing rights were challenged, were all taken up together and disposed of by a common order dated 19.04.1999. The common High

Court of A.P., in the said common order held that the said tank was neither a charitable institution nor an endowment and would not amount to a public trust and allowed the writ petitions. These orders were challenged in a writ appeal bearing W.A.No.793 of 1999 and the same came to be allowed by order dated 15.09.2008 wherein liberty was granted to the parties in the said proceedings to approach the 2nd respondent under Section 87 of the Act to redress their grievances and for deciding as to the status of the tank as well as the status of the parties to the litigation. S.L.P.(Civil).No.29456 of 2008 filed before the Hon'ble Supreme Court against the orders in the writ appeal is pending as Civil Appeal No.7348 of 2008.

2. The case of the petitioner is that as no stay has been granted in Civil Appeal No.7348 of 2008, it would be open to the parties to approach the 2nd respondent to conduct an independent enquiry into the issue and to protect the Dasabandham tank, in as much as the 6th respondent is auctioning the fishing rights of the said tank and making huge amounts of money. It is the case of the petitioner that these auctions are causing a public nuisance, as the persons obtaining leasehold rights are polluting the tank in the name of growing fish, which is causing huge ecological damage and also resulting in the ayacutdars not being permitted to utilise the tank, as a source of irrigation apart from the villagers of the three villages being unable to obtain drinking water from the tank.

3. The 6th respondent has filed a counter stating that the said tank is a public tank built on Government land. The 6th respondent submits that by virtue of G.O.Ms.No.188 dated 21.07.2011, the lands belonging to the Gram Panchayat including all public water sources,

springs, reservoirs etc., would vest with the Gram Panchayat, and as such, the 6th respondent should be treated as the owner of the said Dasabandham tank, and consequently, the 6th respondent would be entitled to auction the leasehold rights of the said tank.

4. The 6th respondent, replying to the allegations in the writ petition, submits that no chemicals are being put into the tank for increasing the fish growth. The 6th respondent further submits that the petitioners had never complained with regard to non-permitting of cattle and villagers of the three villages from taking water from the tank for drinking purposes and also no complaint was made to the effect that the adjoining ayacutdars are not being permitted to use the water for cultivating their lands.

5. The 6th respondent would also submit that in the year 2019 an auction was conducted for the said tank wherein the highest bid obtained was Rs.82,05,000/-. It is further submitted that some of the Dasabandhamdars had filed W.P.No.2042 of 2019 against the auction of the tank in the year 2019 and the lease period given under the said auction is also to be completed now. In the circumstances, the present writ petition does not set out any new facts which require any interference by this Court at this stage.

6. Sri G.R. Sudhakar, appearing for Sri V. Vinod K. Reddy, learned counsel for the 6th respondent would rely upon a judgment of the Hon'ble Supreme Court in **Jagpal Singh and Ors., v. State of Punjab**

and Ors.,¹ to contend that all the public utility lands including ponds and reservoirs would vest with the Gram Panchayat alone.

Consideration of the Court:

7. It is true that the public tanks and reservoirs situated within the limits of a Gram Panchayats would ordinarily vest in the Gram Panchayats. However, the question that arises in the present case is – whether the said tank falls within the ambit of the Endowment Act, and in the event of such a situation whether it would be the endowment department, which would be required to maintain and manage the tank, or whether the tank would still vest with the 6th respondent Gram Panchayat.

8. The parties on either side have filed counter affidavits and produced various records available with the Revenue Department in support of their rival contentions. A perusal of these records does not show whether the tank was originally excavated in private land or in Government land. As submitted by the petitioner, the said question is an issue which needs to be settled under the provisions of Section 87 of the Act. As the power under Section 87 of the Act has now been conferred on the Endowments Tribunal, it would be appropriate to leave it open to the parties to approach the Endowments Tribunal for a decision in this matter.

9. The pendency of the civil appeal before the Hon'ble Supreme Court would not preclude such a course of action as any decision taken by the Endowments Tribunal, pending the disposal of the said civil

¹ (2011) 11 SCC 396

appeal before the Hon'ble Supreme Court, would have to abide by the decision of the Hon'ble Supreme Court in the matter.

10. In the circumstances, this writ petition is disposed of, leaving it open to the parties in the present writ petition as well as the parties in the original Writ Appeal No.793 of 1999 to approach the Andhra Pradesh Endowments Tribunal, under Section 87 of the Act for a decision on the question of whether the subject tank is an endowment property, the management of which has to be regulated under the A.P.Endowments Act, 1987 or whether the said tank should be treated as a public tank which would vest with the 6th respondent Grampanchayat.

11. It is also clarified that the income obtained from the auction of the leasehold rights of the fishing rights in the said tank would also abide by the decision of the A.P.Endowments Tribunal, subject to any decision that would be taken by the Hon'ble Supreme Court in the pending civil appeal.

12. As far as, the question of infringement of the rights of persons in these three villages by prohibiting them for drawing the water for drinking purposes or irrigation purposes is concerned, no material has been placed before this Court to make out such a case except the pleadings in the writ petition which has been promptly denied by the 6th respondent in the counter affidavit filed by the 6th respondent. However, the 6th respondent does not deny that the villagers in the area have such rights. As such, no orders can be passed on this issue at this stage, except to direct that such rights, which have not been disputed by the 6th respondent, shall be protected.

Accordingly, the writ petition is disposed of. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

R. RAGHUNANDAN RAO, J

03rd August, 2021

Js/RJS

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

W.P.No.11323 of 2021

Js/RJS

03rd August, 2021