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Abdul Rahman v State of Rajasthan, 2004

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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.
ORDER

Abdul Rahman

V/S

State of Rajasthan & Ors.

D.B. CIVIL WRIT PETITION NO. 1536/2003
UNDER ARTICLES 226 & 227 OF
THE CONSTITUTION OF INDIA.

Date of Judgment

Aug.02, 2004

PRESENT

HON'BLE MR. JUSTICE N.N.MATHUR
HON'BLE MR. JUSTICE K.K.ACHARYA

Mr. Anil Bhandari, for petitioner.

Mr. B.L.Tiwari, Additional Government Advocate.

BY THE COURT: (PER HON'BLE SHRI MATHUR J.)

1. By way of instant "Public Interest Litigation", petitioner has raised an issue of high public importance emphasizing on the need to protect the tanks, ponds for proper and healthy environment to enable the people to enjoy a quality life, which is the essence of right of a citizen under Article 21 of the Constitution of India.
2. Referring to the provisions of Rajasthan Land Revenue Act 1956, it is submitted that no Nadi land can be used for any sort of construction.
3. The backdrop in which the petition has been filed needs to be noticed. There is a gair mumkin Nadi measuring 9 bighas 17 biswas in Khasra No.253 at Village Marwar Balia and so also, there is a land measuring 29 bighas 1 biswa in Khasra No.266 and this land is gair mumkin pasture land. The land situated in Khasra No.253 being a gair mumkin Nadi, cannot be used for construction of any sort of building. However, the third respondent viz; Mohd.Yusuf, Sarpanch, Gram Panchayat, Marwar Balia has started construction of a school building in the land situated in Khasra No.253. It is further stated that some persons made encroachments in the said gair mumkin Nadi land of Khasra No.253 and those persons served with notice for removing encroachments and thereafter all the encroachments were removed. A direction is sought restraining the respondents to construct the school building in Khasra No.253, which is a Nadi land.
4. In reply to the writ petition, it has been admitted that in the revenue record, Khasra No.253 is recorded as gair mumkin Nadi land and Khasra No.266 as gochar land. However, it is denied that there is any Nadi land over the disputed site. There is 29 bighas and one biswa of land as straight land. There exists, various buildings viz; "Aanganbadi", Sub Health Centre, G.L.R.Building etc, It is further stated that large number of residential houses have been built therein. Thus, a proposal has been sent for conversion of the land as "Abadi" land. So far, as the construction of the school is

concerned, it is submitted that the same is in larger public interest. In the same area, number of Government buildings have already been constructed.

5. It appears that there has been indiscriminate utilization of the catchment areas for construction and mining purposes, which has prevented lakes, reservoirs, rivers, ponds etc. from receiving water even during the rainy season. This Court by order dated 18.7.2003 directed the State Government to undertake a general survey to identify the catchment areas, which have been used for construction and mining purposes. It was further directed that survey shall also be undertaken for the purpose of studying the effect of utilization of catchment areas for construction and mining purposes or for other purposes. Further, suggestion was sought for restoring the catchment areas to their original shape and use.

6. Pursuant to the directions of this Court dated 18.7.2003, the State Government constituted an Expert Committee with the following compositions:

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|---|----------|
| 1. Shri Y.C.Agrawal, Director (MIS), ID&R, Irrigation Department, Sinchai Bhawan, JLN Marg, Jaipur | Convener |
| 2. Sh. S.B.L.Mathur, Jt. Director, Jodhpur Range, Watershed Development & Soil-Conservation Department, Jodhpur | Member |
| 3. Sh. S.S.Dhindsa, Chief Chemist, PHED, Jaipur | Member |
| 4. Sh. Rakesh.Hirat, Superintending Mining Engineer, Udaipur | Member |

7. The said Expert Committee has conducted the survey and submitted its report to this Court. It appears that the Committee inspected various lakes in Udaipur, Raj Samand and Ajmer. It also met the Government Officials and Non-Government persons related to the subject. The committee also inspected the mining areas to collect the relevant information. General Survey Reports were sought from the District Collectors and Chairman, District Expert Committee from all districts. District wise abstracts of obstructions in catchment areas of reservoirs / ponds / lakes etc. and obstructions to be removed as referred in General Survey reports received from the District Collectors and Chairman District Expert Committee were carefully considered. General Survey of the obstructions was undertaken by the Remote Sensing Technology.

8. We are happy to note that the State Government spared 22.70 lacs for the purpose of survey to State Remote Sensing Application Centre, Jodhpur. The Committee found that at some places, proper drainage crossing in embankments, residential colonies and other construction activities have not been provided to allow free and uninterrupted water in drainage channels. This has resulted in reduction of catchment areas of lakes, reservoirs, rivers, ponds etc. and filling of water bodies in the State. Due to soil conservation works, watershed works & water harvesting structures, the run off from the catchment areas has been reduced. Untreated domestic waste, industrial waste and other wastes are falling in water storage bodies, causing the deterioration of quality of water. This has caused biological growth of various types. It is further found that wherever the excavation in mining leases goes below natural ground level, the water from the adjoining area gets entry into the mine and fill it, thus reducing quantity of water reaching the water bodies like lakes, reservoir etc. It is further observed that wherever there are deep mines, they are de-watered to

do mining operations. This lowers down the ground water table and creates scarcity of water for drinking and agriculture. The dumping of marble slurry and other waste into drainage channels has caused reduction in their water carrying capacity and thus reduced quantity of water reaching the water bodies.

9. The problem of environmental pollution has been recognized as a Worldwide disaster. Development without regard to the ecological equilibrium has led to an environmental crisis. Urbanization, modernization and the race for technological and industrial development has caused the ecological imbalance. The Constitution (Forty Second Amendment) Act, 1976 has made it a fundamental duty of the State and citizens to protect and improve the environment.

10. Article 48 A 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."

11. Article 51 A of the constitution provides that –

“To protect and improve the natural environment including forests, lakes, rivers and wild-life and to have compassion for living creatures."

12. Thus, the Constitutional provisions, on the one hand give directions to the State for the protection and on the other, cast a duty on every citizen to help the preservation of natural environment.

13. Article 21 of the Constitution of India guarantees every citizen of India, the right to life and personal liberty. The Apex Court has elevated the environmental concerns to the level of a fundamental right as falling under Article 21 of the constitution.

14. In Rural Litigation and Entitlement Kendra v/s State of U.P. reported in AIR 1985 SC 652, the Supreme Court made a detailed order regarding the working of the limestone quarries in the Dehradun Mussorie belt. There are series of decisions wherein the Supreme Court has affirmed that every citizen has fundamental right to take enjoyment of quality of life and living as contemplated by Article 21 of the Constitution of India. Thus, it is felt that there is a need to adopt the regulatory measures so as to maintain a proper balance between the conservation of natural resources and the protection of the ecological environment on one hand, the need for development and of the industrial growth of the country on the other.

15. The Committee has made suggestions for restoring the catchment areas to their original shape and use:

"(3) Suggestions for restoring the catchment areas to their original shape and use:

Looking to the site visit by the State Level Expert Committee in September 2003 and General Survey Reports received from the District Collectors and Chairmen, District Expert Committee, following suggestions are made:

1. All land shown as drainage channels like nalla, rivers, tributaries etc. as on 15.8.1947 should be declared as Govt. land. Any conversions made after 15.8.1947 should be declared illegal. The relevant act and rules must be amended accordingly.
2. Demarcation of catchment areas should be done by construction pillars at suitable spacing depending upon size of the catchment area with the help

of G.T. sheet of scale 1:25000 or 1:50000 and/or "Water Shed Atlas of Rajasthan" prepared by the State Remote Sensing Application Centre, Jodhpur.

3. Demarcation of drainage channels -

(i) In uninhabited areas this can be done by installing pillars at suitable spacing or by constructing side wall depending upon size of drainage channel and its importance.

(ii) In urban and rural areas, the demarcation of drainage channels must essentially be done by constructing side walls of appropriate height and thickness.

4. In the government owned lakes and other water bodies, the Khatedari rights of private persons in their submergence area should be brought under the ownership of the government.

5. The drainage channels in the catchment areas should be got inspected by engineering professionals and Patwatis. Wherever there are obstructions in nalla, it should be suitably removed by constructing culverts, deepening and widening of nallas etc.

6. Wherever there are any construction activities, which may interfere with the flow of water in drainage channels, no objection certificate must be obtained from the irrigation department.

7. The Anicuts more than 2m height above deepest nalla bed should be identified. The height more than 2m should be dismantled.

8. Wherever residential colonies have been constructed obstructing flow in drainage channels, the obstruction must be removed and nallas may be deepened and constructed

9. On the periphery of lakes, ponds, water bodies in urban and rural areas, a pucca drain should be constructed on periphery of the water body to prevent entry of domestic, industrial and other waste in the water body.

10. For soil conservation work, suitable guidelines must be issued by the "Watershed & Soil Conservation Department" so that these works make minimum possible interference with the flow of water.

11. The district administration should specify places for dumping various types of waste material. If any body is found to dump the waste material in other places, particularly drainage channels, then suitable punishment should be provided in the law.

12. The government should use television, radio and newspapers to create awareness in this matter.

13. Possibility should be explored to use marble slurry as construction material, for filling depressions etc. as has been done for disposal of fly ash from thermal Power Houses.

14. The water quality of water bodies should regularly be monitored.

15. Wherever over-burden or waste materials generated from mines and processing units, have been dumped obstructing flow of water in drainage channels; diversion drains and check walls must be constructed. For that

purpose, special condition should be incorporated in the lease/license agreement."

16. Having, given thoughtful consideration to the issue involved and the suggestions made, we direct the State Government to consider the recommendations of the Committee referred - to above and chalk out a plan to take the effective steps for restoring the catchment areas to their original shape. It is made clear that this order will not prevent the State Authorities from drawing up or taking further step more effectively to fulfill the object of the directions issued by this court. Three months' time is granted for giving positive shape to the suggestions. The interim order dated 9.4.2003 granted by this Court is made absolute.

Sd/-

(K.K.ACHARYA) J.

Sd/-

(N.N.MATHUR) J.