

Case Note: Case concerning a writ petition challenging the construction of a shopping complex on a dilapidated temple tank. The court dismissed the petition and allowed the construction as the tank was artificial (and not natural), was in disuse and there was no acute water shortage in the surrounding area.

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AIR2006SC2893, 2006(7)SCALE640, (2006)6SCC543

IN THE SUPREME COURT OF INDIA

Decided On: 08.08.2006

Mrs. Susetha

v.

State of Tamil Nadu and Ors.

Hon'ble Judges:

S.B. Sinha and Dalveer Bhandari, JJ.

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. The Appellant herein claims herself to be a member of the Okkiam Thoraipakkam Panchayat Union. There exists a temple tank in the said village. The village is located on both sides of the main road connecting Chennai City with Mahabalipuram on the Old Mahabalipuram Road. The said tank admittedly was lying in disuse. It was in fact an abandoned one. The Panchayat took a decision of constructing a shopping complex for the purpose of user thereof for resettlement of those persons who were displaced due to expansion of a highway project. The State of Tamil Nadu also issued a Government Order permitting constructions of a shopping complex therein. A writ petition was filed by the Appellant before the High Court of Madras, questioning the said decision. By an order dated 06.12.2005, the High Court, having regard to the stand taken by the Respondents herein in their counter affidavit, appointed the Director, Centre for Water Resources, Guindy, Chennai, as the Commissioner to inspect the tank land and submit a report in regard to the condition thereof. Pursuant to or in furtherance of the said direction, an inspection was carried out at the instance of the Director. A report by the Centre for Water Resources, College of Engineering, Guindy, Anna University, Chennai also was filed before the High Court.

Relying on or on the basis of the said report, a Division Bench of the Madras High Court by reason of the impugned order dismissed the writ petition filed by the Appellant herein. The Appellant is, thus, before us.

3. Ms. Indu Malhotra, the learned Counsel appearing on behalf of the Appellant, submitted that keeping in view the water shortage faced by the public in general, the High Court committed a manifest error in permitting construction of a shopping complex on a water body. Drawing our attention to a decision of the Division Bench of the Madras High Court in L. Krishnan v. State of Tamil Nadu, it was argued that the State Government was enjoined with a duty to preserve the tank by taking all possible steps both by way of preventive measures as well as removal of unlawful encroachments and not to use the same for commercial purpose. Drawing our attention to a report of the Director, the learned Counsel urged that the" conclusions arrived at therein were not correct as a it was noticed that during rainy season, the tank did not remain dry. Resurrection of the tank, according to the learned Counsel, being possible, the High Court should have exercised its extra-ordinary jurisdiction in directing so.

4. Mr. Harish N. Salve, the learned Senior Counsel, appearing on behalf of the Respondent-State of Tamil Nadu, on the other hand, supported the impugned judgment contending that the tank in question being an artificial tank and not a natural water resource, all considerations relevant for passing an appropriate order having been taken note of by the High Court, this Court should not exercise its discretionary jurisdiction. Mr. L. Nageswara Rao, the learned Senior Counsel appearing on behalf of the Gram Panchayat, urged that the Appellant herein is not a member of the Gram Panchayat. It was further submitted that there had been no shortage of water in or around the tank.

5. The tank in question was admittedly a temple tank. It was not a lake. Although it was classified in the revenue records as a tank poramboke, but it had lost its utility a long time back. It was being used as a dumping yard. There was no inlet or outlet facilities. It was also prone to encroachments. In its report the Centre for Water Resources, upon inspection of the tank, drew the following conclusions:

i) The catchment area available is 26,781 m². The present capacity of the tank is 1,861 m³. The annual runoff potential is 8,034 m³.

ii) There is no specific inlet or surplus channels for the temple tank.

iii) The water from the tank is not directly being used by the public/cattle or for any other purpose.

iv) The water contained in the tank is unfit for human consumption.

v) The tank area has not been maintained properly over the years and has been used as a dumping yard.

vi) When such water bodies are not maintained property, they are likely to be encroached.

vii) From the interaction with the Public, the team learnt that but for the recent heavy rains, the tank would have remained dry.

viii) The tank area has no access from three sides namely South, North and Eastern sides and could be accessed only from the Old Mahabalipuram road side.

ix) The tank does not contain any built up structures like steps to enter, etc. but contains building debris dumped into it.

x) The area is surrounded by three other bigger sized tanks, two in the East and one in the west, which will be recharging the ground water in that area and the recharge contribution of this temple tank will be insignificant.

xi) The Temple tank is in a dilapidated condition.

6. The tank is situated in Survey No. 211/2. It is abutting a highway. Within a kilometer from the said tank, there are five other tanks, relevant details whereof are as under:

SI. No.	Name of the Tank	Survey No.	Extent	
			Hec. Are	Acre Cent
1.	Kannankkan Kulam	41/7	032.5	0.80
2.	Kuttai	101/2	0.52.5	1.30
3.	Aya Kulam	207	1.03.5	2.55
4.	Puthu Kulam	209/1	0.31.0	0.77
5.	Periya Chandran Kulam	263/2A	0.70.0	1.73
	Total		2.89.5	7.15

It is also not in dispute that the shops and other dwelling units abutting the said highway were subject matter of acquisition proceedings and the affected families were to be provided alternate sites, shop or dwelling units under the rehabilitation and settlement scheme. The State in its counter affidavit stated that having regard to the condition of the said tank, levelling of the land was taken up and completed on 15.02.2006 and, thus, it is contended that it is in public interest that the proposed shopping complex are allowed to be constructed.

7. Concededly, the water bodies are required to be retained. Such requirement is envisaged not only in view of the fact that the right to water as also quality life are envisaged under Article 21 of the Constitution of India, but also in view of the fact that the same has been recognized in Articles 47 and 48-A of the Constitution of India. Article 51-A of the Constitution of India furthermore makes a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life. [See *Animal and Environment Legal Defence Fund v. Union of India and Ors.*; *M.C. Mehta (Badkhal and Surajkund Lakes Matter) v. Union of India and Ors.*; and *Intellectuals Forum, Tirupathi v. State of A.P. and Ors.*].

8. Maintenance of wetlands was highlighted by the Calcutta High Court in *People united for better living in Calcutta - Public and Anr. v. State of West Bengal and Ors.*, observing that the wetland acts as a benefactor to the society. Recently, in *T.N. Godavaram Thirumulpad (99) v. Union of India and Ors. (2006) 5 SCC 47*, this Court again highlighted the importance of preservation of natural lakes and in particular those which

are protected under the Wild Life (Protection) Act, 1972. We may, however, notice that whereas natural water storage resources are not only required to be protected but also steps are required to be taken for restoring the same if it has fallen in disuse. The same principle, in our opinion, cannot be applied in relation to artificial tanks.

In L. Krishnan (supra), the Division Bench of the Madras High Court had been dealing with natural resources providing for water storage facility and in that view of the matter the State was directed to take all possible steps both preventive as also removal of unlawful encroachments so as to maintain the ecological balance.

9. The matter has also been considered at some details by this Court in Intellectuals Forum, Tirupathi (supra), wherein again while dealing with natural resources, it was opined:

This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. *Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust.* However, when the state holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinize such actions of the Government, the Courts must make a distinction between the government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources....

[Emphasis supplied]

This Courts have not, in the aforesaid decisions, laid down a law that alienation of the property held as a public trust is necessarily prohibited. What was emphasized was a higher degree of judicial scrutiny. The doctrine of sustainable development although is not an empty slogan, it is required to be implemented taking a pragmatic view and not on ipse dixit of the court.

10. In Bombay Dyeing & Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group and Ors., referring to a large number of decisions, it was stated that whereas need to protect the environment is a priority, it is also necessary to promote development stating:

...The harmonization of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply put, is a process in which development can be sustained over generations. Brundtland Report defines 'sustainable development' as development that meets the needs of the present generations without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and trade offs.

11. Treating the principle of sustainable development as a fundamental concept of Indian law, it was opined:

The development of the doctrine of sustainable development indeed is a welcome feature but while emphasizing the need of ecological impact, a delicate balance between it and the necessity for development must be struck. Whereas it is not possible to ignore inter-generational interest, it is also not possible to ignore the dire need which the society urgently requires.

12. The case at hand must be judged having regard to the aforementioned principles in mind. The Respondents categorically denied and disputed that there is any water shortage in the village. The village is situated on both sides of the National highway. It is situated near a sea and having five water tanks in or around therein. It is, therefore, difficult to accept that there had been acute water shortage in the village, as was submitted by Ms. Malhotra. The tank in question is not a natural tank. Only rain water could be collected in it. It has been a dumping ground for a long time. Although there is no material on records to show as to since when it has been fallen in disuse, indisputably the tank in question is in a dilapidated condition for a long time and has been used as a dumping yard and sewage collection pond. In our opinion, thus, it is not a case where we should direct its resurrection.

13. The High Court in its judgment has taken into consideration all relevant factors. It was not pointed out that essential features or other relevant principles of law were not taken into consideration by the High Court in passing the impugned judgment. We would, however, direct the State and Gram Panchayat to see that other tanks in or around the village are properly maintained and necessary steps are taken so that there is no water shortage and ecology is preserved.

For the foregoing reasons, we do not find any reason to interfere with the impugned judgment. The appeal is dismissed without any order as to costs.