

Case Note: Case dealing with protection of village water bodies.

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IN THE HIGH COURT OF ALLAHABAD

Decided On: 30.08.2007

Iqbal Ahmad son of Ismail and Ors.

v.

Deputy Director of Cosolidation and Ors.

Hon'ble Judges:

S.N. Srivastava, J.

JUDGMENT

S.N. Srivastava, J.

1. Intervener application filed on behalf of Bhagirathi son of Neemar resident of village Baksenda Post Sikandra Tahsil Phulpur District Allahabad which has been pressed into service by Sri K.J. Shukla, Advocate is ordered to be placed on record.

2. The question of maintenance of water channels, water bodies, Ponds, Tanks, Pokhar, Talab etc. stemmed for consideration of the Court in the instant writ petition in the course of hearing. From the ancient time, the water reservoir in the shape of ponds, lake and various other water bodies were created and maintained to cater to the needs of homo sapiens. It is eloquent from history that in Indus civilization, water reservoirs consisting of tanks, ponds, lake etc. furnished the main source to cater to the needs of potable water. It is further eloquent from the history that during Chandra Gupta and Kautilya period and also during medieval period, mode of preserving water in reservoirs was adopted by way of rain harvesting and utmost attention was paid to maintenance of water reservoirs which were the only safe mode to be utilized for potable water. It has revealed from reports that out of total water available on earth, the drinking water is assessed to be only 2.7% and the water to the extent of 66% flows down to the sea for want of any proper alternative to fall back upon for its preservation. It is also undeniable that entire world including part of India is reeling under water crisis. Bundelkhand area of Uttar Pradesh is the worst affected due to being scantily rain-fed. The founding fathers of our Constitution foresaw the looming crisis and introduced directive principles of State policy in our Constitution which are enshrined in Part IV of the Constitution. Articles 38, 39 B and 48 A envisaged that it was the responsibility of the State to protect environment, safe guard forest and wild life of the country and take all effective steps. Articles 48A and 51(1)(g) of the Constitution being relevant are quoted below.

38. State to secure a social order for the promotion of welfare of the people. - (1) The State shall strive to promote the welfare of the people by securing and protecting as

effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

39 (b) that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good

48-A. Protection and improvement of environment and safeguarding of forests and wild life.- The State shall endeavour to protect and improve the environment and to safe-guard the forests and wild life of the country.

51-A (g) to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

3. The provisions of the aforesaid Articles were dealt with by the Apex court in various decisions including *Mumbai Kamgar Sabha v. Abdul Bhai* and a recent decision reported in JT 2005 (13) SC 580. The substance in the aforesaid decision is that in determining reasonableness of any executive or legislative action, directive principles of state policy, fundamental duties play a significant role.

4. The Zamindari was abolished in State of U.P. on 1.7.52 by U.P. Act No. 1 of 1951 and certain lands including Tank ponds, water channels etc. were vested in Gaon Sabha under Section 4 read with Section 117 of the said Act and a duty was cast on State as well all the authorities-instrumentalities of State to maintain such water bodies including ponds, lakes Pokhar etc and as such in view of the above, the matter came up for consideration in this writ petition and various orders were passed.

5. Besides the above, the Judgment of the Apex Court in *Hinch Lal Tiwari* also served as a beacon light to guide this Court on the path of taking steps to redeem the ponds, tanks etc which are lying in disuse or in derelict state in our countryside which have been called as material water resources, a national wealth of the community and nature's bounty by the Apex Court which sub-serve the need to maintain delicate ecological balance. The Apex Court also called for vigil as best protection against knavish attempts to seek allotment in non-abadi sites. The case in hand was the appropriate case in view of controversy involved herein for being taken up for enforcing the peremptory directions of the Apex Court.

6. Having heard the matter on various dates, the case has reached the climax point, which necessitates issuing certain directions in the matter.

7. This Court vide order dated 25.2.2005, enjoined the State Government to make a thorough survey of each village of each District throughout the State of U.P. in respect of

Forests, Tanks, ponds and Garhi, water channels and riverbed etc on the basis of the revenue records of the date of vesting under the U.P.Z.A. & L.R. Act, 1950 i.e. 1st July 1952 to pinpoint the status thereof by constituting a special investigation team consisting of Revenue authorities and other concerned officials and Environmentalists and take appropriate steps for compliance of the directions encapsulated in the decision of Apex Court in Hinch Lal Tiwari v. Kamla Devi and Ors. 2001 All CJ. 1604. The relevant portion of the order dated 25.2.2005 containing direction is quoted below.

Accordingly, State Government is directed to make a thorough investigation of each village of each District throughout State of Uttar Pradesh in respect of Forests, tanks, ponds and Garhi, water channel and riverbed etc. on the basis of the revenue records of the date of vesting i.e. 1st July, 1952 by constituting a special investigation team consisting of Revenue authorities and other concerned officials and Environmentalists and take appropriate steps for compliance of the Apex Court's directions in Hinch Lal Tiwari v. Kamla Devi and Ors. (Supra). The State Government of Uttar Pradesh is also directed to make compliance of this order within one year from the date of service of this order to Standing counsel/Chief Secretary of Government of Uttar Pradesh to be circulated to all the District Magistrates and Consolidation Authorities of the State of Uttar Pradesh.

In observance of the said order, the State constituted a Committee, which carried thorough survey of all villages with the revenue record of 1359 Fasli (1952) of State of U.P., as is evident from the affidavits filed by the collectors and Sub divisional Officers of State of U.P. through Standing counsel. As the need was felt, this Court clarified the earlier order dated 25.2.2006 by means of order of the court dated 6.3.2006 the relevant part of which is excerpted below.

1. The order-dated 25.2.2005 is not intended for application to agricultural areas lying within the limits of municipalities, cantonment, notified areas and town areas being not covered by U.P.Z.A. & L.R. Act.

2. The Committee so constituted in compliance of the order of the Court, shall seek out the land recorded in the revenue record on the date of vesting as forests, fisheries, public wells, tanks and water channels, Pokhar, Garhi as enumerated in Section 132 of the U.P.Z.A. & L.R. Act and thereafter identify the constructions made on any part of such land and submit a report to the S.D.O. who has been nominated as chairman of such committee which will be duly forwarded to the collector of the district. In case any part of such land is found to be encroached upon, the person concerned shall be issued a show cause notice accordingly before passing any further order as envisaged in decision of the Apex Court in Hinch Lal Tiwari v. Kamla Devi All C.J. p 1604. In this connection, it may further be clarified that the authorities concerned shall take special/utmost care in distinguishing constructions existing prior to the date of vesting and after the date of vesting and in case any construction is found to have been raised before 21.7.2001 the date on which Apex Court delivered judgment in Hinch Lal Tiwari's case (supra) over an area not exceeding 100 or 150 square meters and in case it is further noticed that the person occupying such land belongs to a class such as Scheduled Castes, Scheduled

Tribes, Agricultural labourers and village artisans and also to a class of persons such as disabled persons widows and persons suffering from physical or mentioned infirmity, the endeavours shall be made to settle the land in their favour on payment of damages for the same according to their aptitude or according to the policy of the government as the case may be and the amount so recovered shall be utilized for the maintenance/beautification of the area, which would include digging and deepening of ponds etc. and to maintain ecological balance etc.

3. It may also be clarified that in case the land as mentioned in Section 132 of the Act is being utilized for purposes like road, temples, pathways, educational institution run by the Panchayat, public wells, tanks and water channels shall be set apart from demolition drive but in any case other than mentioned above, the authorities would be under a duty to issue notice and give opportunity of being heard before passing any order of demolition.

4. The land as vested in Gaon Sabha under Section 117 of the U.P. Z.A. & L.R. Act is submerged or covered by water or a pokhar, Tank etc or is being used as water channel, if the same has come to be recorded subsequently as Bhumidhari land of some person, endeavour should be made to ascertain the fact whether this was done on the basis of a forged entry or otherwise, effective steps should be taken to restore the land to its anti status quo stage as existing on the date of vesting in case the same is used for purpose other than pokhar, Talab, Garhi or water channel, of course, by following due procedure.

5. The order will not be called in aid for application to land vested in the Gaon Sabha only. It may be clarified that in case any Bhumidhar who acquired any right under Section 18 or any sirdari right on the date of vesting or by operation of law under any provisions of the U.P.Z.A. & L.R. Act, is found to be using the said land for water harvesting or as water channel, Talab etc the order will not impinge upon rights of such Bhumidhar.

8. It would also be apposite to advert to the order of this Court dated 20.12.2006 by which this Court called upon the State Government to comply with the modified order dated 6.3.2006 (supra) which carried directions to settle certain land covered by this judgment on payment of damages in terms of the policy decision of the Government and in compliance of the order of the Court, the State intimated by means of filing affidavit the quintessence of which is that it was not possible to make any settlement in favour of persons occupying such land belonging to scheduled Caste, scheduled tribes, agricultural labourers village artisans and also to class of persons such as disabled persons, widow and persons suffering from physical and mental infirmity who had encroached unauthorisedly such Pokhar, Jheel Talab etc. Again it would be relevant to advert to the order of this Court dated 22.1.2007 by which this Court enjoined that if the category of persons referred to above, have no other alternative residential house to fall back upon, the Gram Panchayat or local authorities as the case may be shall settle some other land admeasuring upto the extent of 200 sq. maters in their favour commensurate with their residential need with a view to rehabilitating them particularly regard being had to their means or that they have scanty or no sufficient earning either from agricultural or from

non-agricultural operations. Thereafter, this Court enjoined the State Government to constitute a Committee vide order dated 25.2.2005 to look after and protect water bodies in the State of U.P. and accordingly, the State Government has constituted Committee vide office memo dated 7.2.2007 consisting of 19 members which included, Chief Secretary, as President, Principal Secretary (Revenue), as Member (Convener), Principal Secretary (Environmental) etc. This Committee also included Experts in the water management and was empowered to take policy decision in the matter of water resources. The Committee has not met except on one occasion, which was done in deference to the order of the Court. It would appear that as directed by this Court, the Committee took policy decision in respect of certain matters including financial matters. The above order of the Court was observed in compliance and the State Government issued office memo dated 20.7.2007.

9. From a perusal of the above facts and also from information trickling from other sources including applications/complaints/representations received from various persons, it transpires that the actual work done is much in inverse proportion to the official claims showing that the digging work of 52,200 ponds water channels etc. has been completed. The reports further are to the effect that at some places, the digging work as against official claims has not at all been undertaken. All such reports, applications etc have already been ordered to form part of the record.

10. This Court by means of order also directed learned Standing Counsel to submit CDs containing details of ponds relating to 1359 Fasli (1952) which vested in the State Government which subsequently came in the management of Gaon Panchayat and other local bodies. Though CDs have been received from majority of districts but few districts still remain and therefore, this Court by means of order dated 10.7.2007 called upon the Standing Counsel to obtain CDs from remaining districts namely, Aligarh, Etah, Firozabad, Mau, Pratapgarh, Etawah, Kannauj, Bahraich, Shrawasti, Barabanki, Jalaun, Lalitpur, Bareilly, Sidharthnagar, Mirzapur, Sonbhadra, Sant Ravi Das Nagar, Lucknow, Lakhimpur Kheri, Varanasi, Chandauli, Jaunpur and Muzaffarnagar. On the same day, Sri Raj Shekhar Chief Development Officer, Allahabad, also filed affidavit enumerating details that digging works of 374 Tanks have already been completed and the works relating to 11154 tanks is in progress while digging works of 191 ponds have not yet started. It is further revealed that as many as 52 tanks being in dispute, the work could not be commenced thereon.

11. After considering each and every aspects of the matter and also considering that the State has already taken a decision that in law it is not possible to settle any land covered by Talab etc and also regard being had to the fact that there are three classes of Talabs available (1) Talabs and ponds etc. which are not covered by any construction and illegally occupied by some person (2) Talabs and ponds which are vacant but in the shape of Pokhar and the same have already been filled with earth for what ever reasons and (3) such water bodies on which or part thereof unauthorized constructions were raised. This Court is of the view that since digging works of 5200 tanks as officially claimed have already been completed by 31.3.2007, it is directed that the remaining occupants of such land if any, occupying water bodies of such land on which there was no Pucca

construction, digging works must be completed within next three months. In case there is any residential house constructed on any part of such Talab or water bodies, this Court is of the view that occupants of such land belonging to any of the following classes of persons namely (1) landless and poor persons and the class mentioned in the order dated 27.1.2007 residing in village having no other residential house in the main Abadi or any other place and was not allotted any land by Gaon Sabha for residential purposes or has not been beneficiary under any other Government Scheme, he would not be evicted until he is provided alternative land for residential purposes upto 200 yards and reserved for Abadi for residential purposes. In case there is any scheme floated by the State as well as Central Government and in case residential house under any such scheme of the Government have already been provided they shall be evicted after being rehabilitated. These benefits would not inure in case of Pradhan or members of the concerned Gram Panchayat or any other members of any Gram Panchayat or their Family members and relatives of the members of Gram Panchayat elected office bearers and the members of Kshetra Panchayat, Members of Legislative assembly and members of parliament. In case there is no land available in the Gram Panchayat for allotment of Abadi site such persons may be extended the benefit of housing schemes sponsored by the State Government as well as the Central Government. The District Magistrate shall be empowered to evolve mechanism and constitute such local bodies or hire the services of such bodies for the purpose of looking after digging works and to oversee the maintenance works. He will also look after the finances to ensure optimum use of finances allotted for the purpose for digging/maintenance of ponds, water channels etc. He may, in his discretion, also take effective steps for involving Gram Panchayat and other local bodies in connection with digging and maintenance works of ponds and Talabs including Kshetra Panchayat and Zila Panchayat. In case any District Magistrate has not supplied C.Ds upto now he shall supply the same within 15 days to the Registrar of the High Court through Sri Sanjai Goswami learned Standing Counsel or the Chief Standing Counsel as the case may be and shall also get the receipt.

12. The Committee constituted by the State consisting of 19 members representing almost all the departments on the direction of the court has met only once that too pursuant to the direction of the Court. It has not been reported to the Court whether any further meeting has taken place in furtherance of the directions of the Court. As stated supra, the Committee constituted included Chief Secretary and Principal Secretaries of various departments of the Secretariat. Regard being had to the fact that these high dignitaries are too occupied in quotidian business of the State, in my considered view, there is need to simplify the process of monitoring of digging and maintenance of the water resources at the state level and in this conspectus, the Court considers it essential to propose a smaller Committee which should be headed by the Chairman, Board of Revenue and should include the Principal Secretary (Revenue) and also the Principal Secretary (Environment) which is necessary to accomplish the objects as envisaged by the Apex Court in Hinch Lal Tiwary's case. This Committee in case of any difficulty in implementing the directions of the Court may seek guidance from the Chairman of the Committee constituted by the State of U.P. through memo dated 7.2.2007. In case of any complaint relating to location of water bodies, its digging and other matters, and also complaint relating to utilization of finances, it is directed that the same shall be looked

into by the District Level Committee headed by the District Magistrate. Any complaint if received will be disposed of as early as possible but not beyond three months from the date of receipt of the complaint.

13. Complaints have poured in from various places in the State of U.P. Instead of swelling this judgment by reference to various complaints, I limit myself to complaints which have been received from Tahsil Meja, Handia, Phulpur Soraon etc and the common refrain of the complaints is that revenue authorities have not paid due attention to water bodies in these areas existing prior to date of vesting which have dried up and most of them have been levelled and hundred of Bighas of land have been grabbed. The situation is indeed grim that despite repeated directions of the Court, the work of digging or redeeming these ponds, tanks, *Pokhars* has not still commenced at various places. There is need to check the work claimed to be done by the revenue authorities and the District Magistrate may initiate steps to deploy a team which may also include advocate nominated by the recognized Bar Association to monitor the work done in the reservoirs/tanks/ponds/pokhars in villages. This court is further of the view that in case any such application is made before the District Magistrate for getting the water bodies restored by expunging forged entries, the same shall be dealt with and appropriate orders passed in accordance with law as expeditiously as possible but not beyond the period exceeding three months attended with effective steps to redeem such water bodies from derelict state. This Court is further of the view that water bodies which have already been marked out and where there is *pucca* construction, the entire digging work shall be completed by 31.12.2007. The water bodies covered by unauthorized construction shall also be retrieved from illegal possession and digging work shall be completed by 31st March 2008 of course after taking appropriate steps for rehabilitation of persons who are in occupation of such water bodies. The State of U.P. may also constitute any other team or Committee for specific region with a view to giving effect to the directions contained in this order.

14. As a result of foregoing discussions/directions, the writ petition is disposed of finally.

15. The order shall be communicated to Chief Secretary, Government of U.P. on onward transmission to all the District Magistrates in the State of U.P. for compliance.

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