

Andhra Pradesh High Court - Amravati
Mula Maheswara Rao vs The State Of A.P. on 18 August, 2021

Mobile View

HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

WRIT PETITION No.16274 of 2021

Between:

Mula Maheswara Rao and another.

... Petitioners

And

The State of Andhra Pradesh, Represented by its
Principal Secretary, Revenue Department,
Secretariat Buildings, Velagapudi,
Guntur District and 6 others

... Respondents.

JUDGMENT PRONOUNCED ON 18.08.2021

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? -No-
2. Whether the copies of judgment may be
marked to Law Reporters/Journals -Yes-
3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? -Yes-

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* THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

+ WRIT PETITION No.16274 of 2021

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v.

\$ The State of Andhra Pradesh, Represented by its
Principal Secretary, Revenue Department,
Secretariat Buildings, Velagapudi,
Guntur District and 6 others

.... Respondents

! Counsel for the Petitioners : Sri V.Sudhakar Reddy

Counsel for Respondents: Government Pleader for Revenue

Sri K.Koti Reddy, Standing counsel for
respondent No.7

<Gist :

>Head Note:

? Cases referred:

1. 2001 Supp (1) SCR 23
2. (2019) 4 SCC 500
3. (2006) 3 SCC 549
4. (1997) 1 SCC 388
5. AIR 1991 SC 420
6. AIR 1987 SC 1109
7. AIR 1987 AP 171
8. 2004 (2) SCC 392
9. 1996 (5) SCC 281
10. AIR 1996 SC 2715
11. (2000) 10 SCC 664
12. AIR 1964 SC 24

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.16274 of 2021

ORDER:

This writ petition is filed under [Article 226](#) of the Constitution of India questioning the action of respondent Nos.2 to 4 in proposing to construct the Grama Sachivalayam and other buildings by changing the classification of Sy.No.294 by sub-dividing and closing the tank called Muragada Banda @ Chinna Koneru an extent of Ac.3.13 cents out of Ac.11.18 cents in Sy.No.294 of Korlakota Village, Amadalavalasa Mandal, Srikakulam District and declare the same as illegal, arbitrary, without any authority of law and contrary to the directives of Hon"ble Apex Court and the provisions of the A P Panchayat Raj Act, 1994 and in violation of Principles of Natural Justice, and consequently direct the respondents not to allow any encroachments or make any constructions including Grama Sachivalayam on the tank bed of Muragada Banda and to take appropriate steps to remove all the encroachments over the said tank and restore the same to its original position including the classification in the Revenue record.

The petitioners are the residents of Korlakota Village. Petitioner No.1 while practicing as an Advocate cultivating his land, whereas petitioner No.2 is an agriculturist, eking out his livelihood by cultivation of his agricultural land. In Korlakota village, "Dahala Koneru" and "Muragada Banda @ Chinna Koneru" are situated in Sy.No.294 of Korlakota Village in an extent of Ac.11.18 cents. They are adjacent to one another. Muragada Banda @ Chinna Koneru gets water from the outlet of Dahala Koneru. The ayacutdars draw water from the sluice of Muragada Banda to irrigate their lands through MSM,J wp_16274_2021 the irrigation canal dug from sluice. In the recent past some of the villagers, who have political influence, have encroached upon tank bed and made some illegal constructions. They are slowly encroaching upon the entire tank with a view to close the said tank thereby causing diminution of flow of water which is the only source of irrigation. The respondents are causing mischief to the source of irrigation, which is an offence punishable under [Section 430](#) of Indian Penal Code (for short "I.P.C."). Complaining the same, some of our villagers filed a representation dated 10.05.2020 before the Tahsildar, Amadalavalasa Mandal, respondent No.4 herein, clearly stating that Chinna Koneru situated in Sy.No.294 is subjected to encroachments.

It is further contended that Sri Pedada Rajasekhar S/o Ananda Rao filed an application dated 14.06.2021 under Right to [Information Act](#) before the Deputy Tahsildar and Public Information Officer, Amadalavalasa to furnish the FMB of Muragada Banda, the list of Pattadars and details of possession certificates issued if any to the encroachers, Muragada Banda sub-division details, the list of Government lands in Korlakota Grama Panchayat, particulars of permissions if any granted for the constructions made on Muragada Banda @ Chinna Koneru, actions if any taken on them and the complaint of Panchayat Secretary, filed on 10.06.2021 regarding illegal constructions made around Chinna Koneru etc. In response to the said application the Deputy Tahsildar, and Public Information Officer, Amadalavalasa furnished some information vide Rc.No.355/2021A, dated 09.07.2021. It is clear from the FMB of Sy.No.294 that Dahala Koneru and Muragada Banda are situated adjacent to each other in entire extent of Ac.11.18 cents of MSM,J wp_16274_2021 Sy.No.294. As seen from the statement of sub-division furnished by the Deputy Tahsildar, the Sy.No.294 was divided into two on 05.11.2020, allotted Sy.No.294-1 for an extent of Ac.8.05 cents and Sy.No.294-2 for an extent of Ac.3.13 cents and changed the classification to the extent of Ac.3.13 cents as if it is proposed for construction of Government Building Complex.

As per the endorsement dated 09.07.2021 no permission was granted for the constructions made at Chinna Koneru (Muragada Banda) by the Government or any other department, that the action taken on encroachments of Chinna Koneru was not available in their office and that the complaint made by the Panchayat Secretary regarding the illegal constructions around Chinna Koneru are not available in their office.

The petitioners further contended that in the last week of June, 2021 part of Muragada Banda is filled with earth in truck loads under the supervision of respondent Nos.4, 6 and 7, a foundation stone was laid on 30.06.2021, by the Hon'ble Speaker to construct the buildings of Grama Sachivalayam, Rythu Bharosa Kendra and Milk Chilling Centre on Muragada Banda, though the respondents are not entitled to raise such construction in the tank bed, which is the source of irrigation to the people of Korlakota village. Time and again, the Apex Court directed the State and its authorities to protect the tanks, maintain ecological balance and to protect environment. But

contrary to the guidelines issued by the Apex Court, the land in an extent of Ac.3.13 cents, which forms part of tank is converted into office poramboke for construction of Grama Sachivalayam, Rythu Bharosa Kendra and Milk Chilling Centre.

MSM,J wp_16274_2021 It is further contended that on account of conversion of Ac.3.13 cents into office proramboke, the capacity of the tanks is reduced and possibility of irrigating lands of Korlakota village became bleak besides causing dent to the environment and to maintain ecological balance. Therefore, the petitioners are deprived of their right to irrigate their land with the water drawn from Muragada Banda @ Chinna Koneru and their rights are infringed, requested to issue a direction as claimed by the petitioners in the writ petition.

Along with the writ petition, the petitioners filed copy of endorsement of Deputy Tahsildar and Public Information Officer, Amadalavalasa along with FMB of Sy.No.294, copy of statement of sub-division of Sy.No.294, list of properties prohibited from registration notified by the Government under [Section 22A \(1\) \(b\) of the Registration Act](#) to substantiate their case and those documents will be considered at the appropriate stage while deciding the real controversy between the parties.

At the stage of admission, learned Assistant Government Pleader for Revenue did not file any counter, but only placed on record unsigned brief notes, wherein it is specifically stated as follows:

"As per the oral instructions of the Revenue Divisional Officer, the Tahsildar, Amadalavalasa submitted the sub-division record of the land measuring an extent of Ac.7.96 cents in Sy.No.294-1 classified as Poramboku Muragada Banda (Dahala Koneru) and the land measuring an extent of Ac.3.22 cents in Sy.No.294-2 is classified as Muragada Banda (Abandoned tank) for scrutiny vide Rc.No.366/2020 SA dated 03.11.2020.

As per the Sub-division record Sy.No.294 has been sub divided into Sy.No.294-1, extent Ac.8.05 cents is classified as Poramboku Dahala Koneru and Sy.No.294-2, extent Ac.3.13 cents is classified as Poramboku Government building complex."

MSM,J wp_16274_2021 Sri V.Sudhakar Reddy, learned counsel for the petitioners, contended that conversion of tank bed into Poramboku Government building complex poramboke is contrary to Andhra Pradesh Revenue Board Standing Order 15 (for short "BSO") and tank bed cannot be used for raising construction in view of the law declared by the Apex Court in "Hinch Lal Tiwari v. Kamala Devi¹", "Sarvepalli Ramaiah v. [District Collector, Chittoor²](#)" and "[Intellectuals Forum, Tirupathi v. State of A.P.³](#)"

On the basis of the principles laid down in the above judgment, very conversion of tank bed into Poramboku Government building complex is a serious illegality and proposed to construct building in the tank bed land is another grave illegality and it is in violation of principles laid down by the Apex Court in the judgments (referred supra).

Learned Assistant Government Pleader for Revenue would contend that when part of the land in Sy.No.294 of Korlakota village is converted from tank bed to Government building complex poramboke, no objections were raised by any of the villagers and when the conversion/classification is not questioned, the petitioners are not entitled to agitate the same in the present writ petition on the ground that their right to draw

water is seriously prejudiced besides causing dent to environment and ecology. Learned Assistant Government Pleader for Revenue further contended that the tank is totally dried up and no land is being irrigated under the ayacut of Chinna Koneru; in such case, the contention of the petitioners is fallacious.

2001 Supp (1) SCR 23 (2019) 4 SCC 500 (2006) 3 SCC 549 MSM,J wp_16274_2021 Learned standing counsel for respondent No.7 fairly submitted to the Court that no construction is being raised in the land in Sy.294 of Korlakota Village while requesting to pass appropriate orders.

Considering rival contentions, perusing the material available on record, the point needs to be answered by this Court is as follows:

Whether the construction of Government Offices i.e. Grama Sachivalayam, Rythu Bharosa Kendra and Milk Chilling Centre in the land in Sy.No.294 (which is sub- divided as Sys.No.294-1 and 294-2) of Korlakota Village is in violation of the directions issued by the Supreme Court in "Hinch Lal Tiwari v. Kamala Devi", "Sarvepalli Ramaiah v. [District Collector, Chittoor](#)" and "[Intellectuals Forum, Tirupathi v. State of A.P.](#)" (referred supra)? If so, whether the action of respondent Nos.2 to 7 be declared as illegal, arbitrary; consequently, direct the respondents to remove the encroachments and not to construct any offices in the land covered by Sy.No.294 of Korlakota village irrespective of its sub-division?

P O I N T:

Undisputedly, there are two tanks in the land covered by Sy.No.294 of Korlakota Village viz. "Dahala Koneru" and "Muragada Banda @ Chinna Koneru" in an extent of Ac.11.18 cents. To substantiate the same, the petitioners produced Field Measurement Sketch for Sy.No.294 of Korlakota village (039), which clinchingly establish the existence of two tanks known as Dahala Koneru with depth of 15 feet and Muragada Banda with depth of 5 feet. Total extent of Sy.No.294 is Ac.11.18 cents.

The statement of sub-division is also placed on record to establish that the land in Sy.No.294 is classified as poramboke in an MSM,J wp_16274_2021 extent of Ac.11.18 cents. In column No.5, it is mentioned as "Dahala Koneuru". Total extent of Ac.11.18 cents is sub-divided into Sy.No.294/1 consisting of Ac.8.05 cents and Sy.No.294/2 consisting of Ac.3.13 cents on 03.11.2020. Thus, the original classification of land in Sy.No.294 of Korlakota Village is Dahala Koneru. Now, by virtue of sub-division, Ac.3.13 cents is set apart assigning Sy.No.294/2 meant for construction of Government building complex.

Annexure - II published under Section 22 A (1) (b) of the [Registration Act](#) issued by Tahsildar, Amadalavalasa Mandal, would establish that Sy.No.294, Korlakota Village, Amadalavalasa Mandal, Srikakulam District is Government land and Dahala Koneru is situated in Ac.11.18 cents own by Irrigation Department as per column No.10.

Apart from that, as per the information furnished by Deputy Tahsildar vide Rc.No.355/2021-A dated 09.07.2021 under Right to [Information Act](#), no permission for constructions at Chinna Koneru is given in November 2020, and that the file relating to action taken for removal of encroachment in November 2020 is not available. At best, this information would show that no permission was granted for construction of office buildings. But, still, respondents are allegedly laid foundation for construction of office

buildings of the Government without any permission. The foundation plaque appearing in the photographs filed along with the petition would show that the respondents are proposed to raise construction for offices.

MSM,J wp_16274_2021 Pattadar Adangal is an additional document to establish that an extent of Ac.11.18 cents is Government land and it is tank, which is occupied by Pedada Raju, Sanapala Krishna Rao, Kodipatruni Narayana Rao, Kootikuppala Ratnalu, Kodipatruni Gopalarao, Gunupur Ramulu, Gurugubelli Dhanunjayarao, Chintada Ramanamma, Chintada Ramulu and Thirlangi Satyanarayana.

The pattadart Adangal is suffice to conclude that the Government allowed encroachments and issued pattadar passbooks in their favour as shown in Column No.12 of Pattadar Adangal.

The action of the State permitting encroachments, raising constructions in an extent of Ac.3.13 cents after sub-division converting classification from tank poramboke to Government buildings complex poramboke is an undisputed fact. At the same time, foundation stone for construction of Government building complex is appearing in the photos, and the learned Assistant Government Pleader for Revenue did not dispute the same though the learned standing counsel for respondent No.7 submitted that no constructions are being raised and no permission was granted till date for construction of buildings.

Now, the real controversy is:

Whether the tank poramboke be converted into Government offices building complex poramboke by exercising power under BSO 15 and Whether the construction of office buildings complex in the land in Sy.294 of Korlakota Village is permissible or not?

A separate procedure is prescribed for conversion of land from one category to the other category (classification) in B.S.O.15.2. But the conversion is not under challenge in the present writ petition.

MSM,J wp_16274_2021 However, the original classification that the land in an extent of Ac.11.18 cents in Sy.No.294 is tank poramboke i.e. Dahala Koneru. The said fact is substantiated by producing lot of material and it is not disputed even as per the sub-division proceedings by the revenue department.

B.S.O.15 deals with disposal of land. Clause (2) of B.S.O.15 deals with classification of land. Land is classified in different categories, they are follows:

- (i) Land prima facie available for assignment.
 - (a) Assessed land which is not reserved.
 - (b) Unassessed land which is not reserved.
- (ii) Land prima facie not available for assignment.
 - (a) Poramboke.
 - (b) Reserved land ("assessed" and "unassessed").

Paragraph 3 deals with transfer of land from one head to another, which authorises the Collector to transfer of poramboke from one head to another or to assessed waste.

But a procedure is prescribed under the Standing Order how to transfer such land.

In the present case, the Court is not concerned with assignments. However clause (4) of B.S.O.15 deals with "lands that may be assigned and that may not be assigned." B.S.O. 15 (4) (ii) (a) prohibits assignment of Poramboke tank-beds, fore-shore of tank-beds, cattlestands, grazing lands and reserved lands (reserved for depressed class members) or for any public purpose, such as schools, play grounds, hospitals, maternity centres, reading rooms, MSM,J wp_16274_2021 extension of house sites, panchayat purposes, town sites and lands in the proximity thereof.

This Court is unconcerned with the assignment, but still it is relevant for deciding the real controversy before this Court. As the State converted the tank bed into Poramboke for Government building complex sub-dividing the land in Sy.No.294 of Korlakota Village into Sy.No.294-1 and Sy.No.294-2, which consists of Ac.8.05 cents and Ac.3.13 cents respectively. The very conversion of tank bed into Government Building complex itself is a serious illegality. When there is a clear prohibition against assignment; conversion of classification from tank bed to Government building complex would certainly amount to circumventing the procedure under A.P.Revenue Board Standing Orders obviously for different reasons.

The major contention of the learned counsel for the petitioners is that the tank is being used to irrigate the land under Ayacut. It is notified in the prohibitory list under [Section 22-A](#) (1) (b) of the [Registration Act](#) as it is a "Dahala Koneru" and the same is supported by Field Measurement Sketch. The respondents also not disputed the classification and notification under [Section 22A](#) of the Registration Act. But taking advantage of conversion of the land, the State is contending that it can be used for construction of Grama Sachivalayam, Rythu Bharosa Kendra and Milk Chilling Centre. The Apex Court, time and again, issued directions in various judgments that conversion of tank beds would cause dent to the environment.

The State is under obligation to protect the ecology and improve environment and safeguard forests and wild life. The State shall endeavor to protect and improve the environment and to MSM,J wp_16274_2021 safeguard the forests and wild life of the country -- Vide [Article 48-A](#) of the Constitution of India.

[Article 51A](#) deals with fundamental duties. According to [Article 51A\(g\)](#), it shall be the duty of every citizen of India to protect and improve the natural environment, including forests, lakes, rivers and wild life, and to have compassion for living creatures. Thus, [Article 48-A](#) and [Article 51A\(g\)](#) obligates the State to protect environment and make every endeavor to protect lakes, rivers etc., to maintain the ecological balances. Since the ownership and control over material resources of the community are lies with the State, such resources are to be distributed as best to sub-serve the common good - Vide [Article 39\(b\)](#) of the Constitution of India.

The vacant lands, lakes, rivers etc., are under the direct control of the State and the State has to maintain those rivers, lakes, tanks as stated above by applying the doctrine of public trust and right to life. It is for the State to allot such lands in various circumstances being the custodian of the property of the public. The doctrine of public trust was considered by the Apex Court in "[M.C.Mehta v. Kamal Nath](#)" where the Himachal Pradesh State Government had leased out a protected forest area on the bank of river beas to motels, for commercial purposes, the Supreme Court held that the State is more responsible for maintaining natural resources. Similarly, the Apex

Court in "[Subhash Kumar v. State of Bihar](#)"⁵ held that right to life is a fundamental right which includes the right of enjoyment of pollution free water and air for full enjoyment of life. At the same time, in the guise of sustainable (1997) 1 SCC 388 AIR 1991 SC 420 MSM,J wp_16274_2021 development, the State cannot allow the properties to whomsoever the State likes.

While allowing the public property to the 3rd parties, the State has to keep in mind its consequences on the environment and the obligation of the State under the Constitution of India to keep up the heritage and culture. The 42nd amendment to the constitution of India added [Article 48A](#) and [51A\(g\)](#) which comes under the directive principle of State policy and the fundamental duties respectively. The Supreme Court of India in "[Sachidanand Pandey v. State of West Bengal](#)"⁶ stated that the Court is bound to bear in mind the above said articles whenever a case related to environmental problem is brought to the court. In "[Damodar Rao v. S.O. Municipal Corporation](#)"⁷ the Apex Court held that the environmental pollution and spoliation which is slowly poisoning and polluting the atmosphere should also be regarded as amounting to violation of [Article 21](#) of the Constitution of India.

Similar question came up for consideration before the Apex court in "[Intellectuals Forum, Tirupathi v. State of A.P.](#)" (referred supra) wherein the Division Bench of the Apex Court has considered the allotment of tanks known as „Avilala Tank“ and „Peruru Tank“, which are situated in the suburbs of Tirupathi Town, which is a world renowned popular pilgrim centre to housing board for construction of residential houses to the public, but a social spirited person approached the court for judicial remedy before this Court challenging the allotment of land by G.O.Ms. No.181 Rev. dated 15.3.1991 alienating an extent of 150 acres of land which belongs to AIR 1987 SC 1109 AIR 1987 AP 171 MSM,J wp_16274_2021 the tank bed area of Peruru tank to Tirumala Tirupathi Devasthanam (in short, TTD) and to Housing Board etc., were challenged. The Writ Petition No.7955 of 1994 was filed assailing G.O.Ms.No.181, dated 15.3.1991 in respect of alienation of Peruru tank bund land to TTD and Writ Petition No.8650 of 1994 was filed assailing G.O.Ms.No.84-Revenue Department, dated 28.1.1994 in respect of alienation of Avilala tank bed area land to A.P. Housing Board. The High Court dismissed the writ petitions on various grounds and aggrieved by the order of this Court, the public spirited person approached the Supreme Court. The Apex Court, after considering the facts and circumstances of the case, concluded that alienation of tank bund land vide G.O. Ms.No.84, dated 28.1.1994 is in violation of Articles 48A and 51A(g) of the Constitution of India, after considering the doctrine of „sustainable development“ observed as follows :

"On realizing the importance of restoration of tank basins towards conservation of water and recharging of ground water, increase the storage capacity of tanks, renovating the tank bunds as well as feeder channels, TUDA has taken over 30 tanks in its operational area for taking up the improvements. Proposals include removal or eviction of encroachments, desilting of tank basins, clearing of jungle, strengthening of tank bunds, excavation of boundary trenches, widening and excavation of feeder channels, construction of boundary pillars and compound walls along the tank boundary. Block plantation, programmes for development as landscaped parks and water based entertainment units for the benefit of the public in off shore areas of the tanks have been proposed wherever feasible and viable. Towards protection of environment, provision for treatment

system is also made in the project to take care of entry of drainage/sullage into the tank storages. Block plantation on all on- shore areas of tank have been taken up as a part of Neeru Meeru programme to prevent erosion of soils and entry of encroachments which will have long term positive environment results."

MSM,J wp_16274_2021 But, appointed an expert committee to examine the issue and after careful perusal of expert committee's report, it was accepted to some extent, but, in the interest of protecting environment and social development, this Court placed reliance in the case of "M.C.Mehta v.

Kamal Nath (referred supra), wherein the Apex Court held as under:

"The issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibility, who under the pressures of the changing needs of an increasingly complex society find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not for the Courts. If there is a law made by Parliament or the State Legislatures, the Courts can serve as an instrument for determining legislative intent in the exercise of powers of judicial review under the Constitution. But, in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resource and convert them into private ownership or commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the Courts find it necessary, in good faith, for the public and in public interest to encroach upon the said recourses."

On the basis of the principle in "[M.C.Mehta v. Kamal Nath](#) (referred supra)" the Supreme Court held that the responsibility of the state to protect the environment is now a well-accepted notion in all countries. It is this notion that, in international law, gave rise to the principle of "state responsibility" for pollution emanating within one's own territories [Corfu Channel Case, ICJ Reports (1949)4].

The Apex Court also referred the declaration of environment and development passed during the Earth Summit at 1992 to which India is also a party, adopted the notion of sustainable development principle i.e., in order to achieve sustainable development, MSM,J wp_16274_2021 environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

The Apex Court in the case of "[Essar Oil v. Halar Utkarsh Samiti](#)" was pleased to expound on the issue. Their Lordships held : "This, therefore, is the sole aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in population together with the consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, filling up of lakes and the pollution of water resources and the very air that we breathe. However there need not necessarily be a deadlock between development on the one hand and the environment

on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other."

A similar view was taken by the Apex Court in "[Indian Council for Enviro-Legal Action v. Union of India](#)⁹" where their Lordships held: "While economic development should not be allowed to take place at the cost of ecology or by causing widespread environmental destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment should go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but 2004 (2) SCC 392 1996 (5) SCC 281 MSM,J wp_16274_2021 there should be development while taking due care and ensuring the protection of the environment."

In light of the above discussions, it seems fit to hold that merely asserting an intention for development will not be enough to sanction the destruction of local ecological resources. What this Court should follow is a principle of sustainable development and finds a balance between the developmental needs which the respondents assert, and the environmental degradation, that the appellants allege. Another legal doctrine that is relevant to this matter is the Doctrine of Public Trust, This doctrine, though in existence from Roman times, was enunciated in its modern form by the US Supreme Court in *Illinois Central Railroad Company v. People of the State of Illinois*. [146 US 537(1892)] where the Court held:

The bed or soil of navigable waters is held by the people of the State in their character as sovereign, in trust for public uses for which they are adapted. The State holds the title to the bed of navigable waters upon a public trust, and no alienation or disposition of such property by the State, which does not recognize and is not in execution of this trust is permissible. What this doctrine says therefore is that natural resources, which include lakes, are held by the State as a "trustee" of the public, and can be disposed of only in a manner that is consistent with the nature of such a trust. Though this doctrine existed in the Roman and English Law, it related to specific types of resources. The US Courts have expanded and given the doctrine its contemporary shape whereby it encompasses the entire spectrum of the environment.

MSM,J wp_16274_2021 [Article 48-A](#) of the Constitution of India mandates that the State shall endeavor to protect and improve the environment to safeguard the forests and wild life of the country. [Article 51A](#) of the Constitution of India, enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve national environment including forests, lakes, rivers, wild life and to have compassion for living creatures.

The question of applicability of doctrine of „sustainable development“ came up for consideration before the Apex Court in "[Vellore Citizen Welfare Forum vs. Union of India](#)¹⁰". The petitioners therein had filed a petition in public interest under [Article 32](#) of the Constitution of India against the pollution caused by discharge of untreated effluent by the tanneries and other industries in the river Palar in the State of Tamil Nadu. In the instant case, the Supreme Court held that the precautionary principle and polluter pays principle are a part of the environmental law of India. The Court also held that : "Remediation of damaged environment is part of the process of „sustainable development“ and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology."

Thereafter, in a number of judgments, the Apex Court explained and implemented the doctrine of Sustainable Development. The Hon^{ble} Supreme Court of India in "[Narmada Bachao Andolan vs. Union of India](#)¹¹" observed that "Sustainable Development means what type or extent of development can take AIR 1996 SC 2715 (2000) 10 SCC 664 MSM,J wp_16274_2021 place which can be sustained by nature or ecology with or without mitigation."

In view of the law declared by the Apex Court in the judgments in order to maintain balance between development and environment, the principle of sustainable development which encompasses the precautionary principle must be followed while envisaging a project. This would prevent any anticipated environmental impact a project may have by following and incorporating mitigating measures. Right from the stage of selection of site, to adopting efficient and environmental friendly measures at each stage and facet of construction to avoid or minimize environment de-gradation, to providing mitigatory measures and monitoring the impact of a project on the environment/eco-system and thereafter providing for restorative action in case of any degradation is imperative in today's pro-environment climate and is also the need of the hour.

The Constitution obligates the State to protect river water, lakes etc., with a view to enhance environment and to avoid environmental degradation. While the Constitution does not specifically recognize a fundamental right to water, but court decisions deem such a right to be implied in [Article 21](#). Also [Article 39\(b\)](#) mandates that the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good. In "[Subhash Kumar v. State of Bihar](#)" (referred supra) the Apex Court recognized that the right to life „includes the right of enjoyment of pollution free water and air for full enjoyment of life.“ MSM,J wp_16274_2021 Viewed from any angle, it is the obligation of the State to protect the water pollution and protect lakes, rivers, tank beds etc., in terms of [Article 48A](#) and [51A\(g\)](#) of the Constitution of India.

If the issue is considered in human rights perspective, the protection of environment is a human right. [Article 25](#) of universal declaration guarantees everyone a right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. [Article 12](#) of International covenant on economic social and cultural rights deals with human rights to enjoy pollution free environment. [Article 12](#) is extracted hereunder for better appreciation:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Thus, clause-2(b) obligates State parties to the covenant to improve all aspects of environmental and industrial hygiene. To implement those human rights guaranteed under [Article 12 \(2\)\(b\)](#) several covenant declarations are formulated, including World Summit on sustainable development, 2002 and prepared draft MSM,J wp_16274_2021 principles of human rights and the environment, which are as follows :

"Draft Declaration of Human Rights and the Environment:

Preamble Guided by the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Vienna Declaration and Program of Action of the World Conference of Human Rights, and other relevant international human rights instruments, Guided also by the Stockholm Declaration of the United Nations Conference on the Human Environment, the World Charter for Nature, the Rio Declaration on Environment and Development, Agenda 21: Programme of Action for Sustainable Development, and other relevant instruments of international environmental law, Guided also by the Declaration on the Right to Development, which recognizes that the right to development is an essential human right and that the human person is the central subject of development, Guided further by fundamental principles of international humanitarian law, Reaffirming the universality, indivisibility and interdependence of all human rights, Recognizing that sustainable development links the right to development and the right to a secure, healthy and ecologically sound environment, Recalling the right of peoples to self-determination by virtue of which they have the right freely to determine their political status and to pursue their economic, social and cultural development, Deeply concerned by the severe human rights consequences of environmental harm caused by poverty, structural adjustment and debt programmes and by international trade and intellectual property regimes, Convinced that the potential irreversibility of environmental harm gives rise to special responsibility to prevent such harm, Concerned that human rights violations lead to environmental degradation and that environmental degradation leads to human rights violations, Declare the following principles :

Part I

1. Human rights, an ecologically sound environment, sustainable development and peace are interdependent and indivisible.

2. All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, MSM,J wp_16274_2021 economic, political and social rights, are universal, interdependent and indivisible.

3. All persons shall be free from any form of discrimination in regard to actions and decisions that affect the environment.

4. All persons have the right to an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs. Part II

5. All persons have the right to freedom from pollution, environmental degradation and activities that adversely affect the environment, threaten life, health, livelihood, well-being or sustainable development within, across or outside national boundaries.

6. All persons have the right to protection and preservation of the air, soil, water, sea-ice, flora and fauna, and the essential processes and areas necessary to maintain biological diversity and ecosystems.

7. All persons have the right to the highest attainable standard of health free from environmental

8. All persons have the right to safe and healthy food and water adequate to their well-being.

9. All persons have the right to a safe and healthy working environment.

10. All persons have the right to adequate housing, land tenure and living conditions in a secure, healthy and ecologically sound environment. 11 . All persons have the right not to be evicted from their homes or land for the purpose of, or as a consequence of, decisions or actions affecting the environment, except in emergencies or due to a compelling purpose benefiting society as a whole and not attainable by other means. All persons have the right to participate effectively in decisions and to negotiate concerning their eviction and the right, if evicted, to timely and adequate restitution, compensation and/or appropriate and sufficient accommodation or land.

12. All persons have the right to timely assistance in the event of natural or technological or other human-caused catastrophes.

13. Everyone has the right to benefit equitably from the conservation and sustainable use of nature and natural resources for cultural, ecological, educational, health, livelihood, recreational, spiritual or other purposes. This Includes ecologically sound access to nature. Everyone has the right to preservation of unique sites, consistent with the fundamental rights of persons or groups living in the area.

14. Indigenous peoples have the right to control their lands, territories and natural resources and to maintain their traditional way of life. This includes the right to security in the enjoyment of their means of subsistence. Indigenous peoples have the right to protection against any action or course of conduct that may result in the destruction or degradation of their territories, including land, air, water, sea-ice, wildlife or other resources.

MSM,J wp_16274_2021 Part III

15. All persons have the right to information concerning the environment. This includes information, howsoever compiled, on actions and courses of conduct that may affect the environment and information necessary to enable effective public participation in environmental decision-making. The information shall be timely, clear, understandable and available without undue financial burden to the applicant.

16. All persons have the right to hold and express opinions and to disseminate ideas and information regarding the environment.

17. All persons have the right to environmental and human rights education.

18. All persons have the right to active, free, and meaningful participation in planning and decision-making activities and processes that may have an impact on the environment and development. This includes the right to a prior assessment of the environmental, developmental and human rights consequences of proposed actions.

19. All persons have the right to associate freely and peacefully with others for purposes of protecting the environment or the rights of persons affected by environmental harm.

20. All persons have the right to effective remedies and redress in administrative or judicial proceedings for environmental harm or the threat of such harm.

Part IV

21. All persons, individually and in association with others, have a duty to protect and preserve the environment.

22. All States shall respect and ensure the right to a secure, healthy and ecologically sound environment. Accordingly, they shall adopt the administrative, legislative and other measures necessary to effectively implement the rights in this Declaration.

These measures shall aim at the prevention of environmental harm, at the provision of adequate remedies, and at the sustainable use of natural resources and shall include, inter alia, □ collection and dissemination of information concerning the environment;

□ prior assessment and control, licensing, regulation or prohibition of activities and substances potentially harmful to the environment; □ public participation in environmental decision-making; □ effective administrative and judicial remedies and redress for environmental harm and the threat of such harm; □ monitoring, management and equitable sharing of natural resources; □ measures to reduce wasteful processes of production and patterns of consumption;

□ measures aimed at ensuring that transnational corporations, wherever they operate, carry out their duties of environmental protection, sustainable development and respect for human rights; and □ measures aimed at ensuring that the international organizations and agencies to which they belong observe the rights and duties in this Declaration.

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23. States and all other parties shall avoid using the environment as a means of war or inflicting significant, long-term or widespread harm on the environment, and shall respect international law providing protection for the environment in times of armed conflict and cooperate in its further development.

24. All international organizations and agencies shall observe the rights and duties in this Declaration.

Part V

25. In implementing the rights and duties in this Declaration, special attention shall be given to vulnerable persons and groups.

26. The rights in this Declaration may be subject only to restrictions provided by law and which are necessary to protect public order, health and the fundamental rights and freedoms of others.

27. All persons are entitled to a social and international order in which the rights in this Declaration can be fully realized." The Hon^{ble} Supreme Court in "[Hinch Lal Tiwari v. Kamala Devi](#)" (referred supra) observed as follows:

"Forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under [Article 21](#) of the Constitution. The Government, including the Revenue Authorities, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites."

The Apex Court in "[Sarvepalli Ramaiah v. District Collector, Chittoor](#)" (referred supra) held that, water bodies cannot be alienated even if they are dry, and cultivation carried on dried bed of water bodies does not denude land of its character as water bodies.

In view of the judgment in "[Sarvepalli Ramaiah v. District Collector, Chittoor](#)" (referred supra), even if the tank bed is dried, it cannot be used for any other purpose and it is the duty of the State to protect such water bodies to preserve environment. Though the State is under obligation to protect the environment and water MSM,J wp_16274_2021 bodies, the State itself indulged in such activity of conversion of water body into Government building complex, such act of the State is totally contrary to the law laid down by the Apex Court in various judgments (referred supra) and the [Article 12](#) of International covenant on economic social and cultural rights.

Conversion of farmland, tank beds and forests to urban development reduces the amount of land available for food and timber production. Soil erosion, salinization, desertification, and other soil degradations associated with agricultural production and deforestation reduce land quality and agricultural productivity. Conversions of farmland and forests to urban development reduce the amount of open space and environmental amenities for local residents. If tank bed is converted to Government Offices building complex, the authorities have to assess the impact of such conversion both on environment and ecology.

One of the major contentions of the learned counsel for the petitioners is that the State converted Ac.3.13 cents of water bed into Government Building complex and laid foundation for construction of Grama Sachivalayam, Rythu Bharosa Kendra and Milk Chilling Centre. If these offices are allowed to be constructed, it is difficult for the petitioners to cultivate their land by drawing water from Dahala Koneuru through the irrigation canal dug from sluice, which is the main source for irrigation of their land.

Similar case came up before the High Court of Andhra Pradesh at Hyderabad in "M/s. Krishna 70 MM theatre, Rep. by its Proprietor J.Satyanarayana v. The State of Andhra Pradesh MSM,J wp_16274_2021 (W.P.No.14468 of 2011) adverted to Section 24 of the Land Revenue Act and Section 2 of the Land Encroachment Act.

Section 24 of the Land Revenue Act, reads as under: "24. All lands etc., are property of Government:-- All public roads, lanes, paths, bridges, ditches, dikes, rivers, streams, tanks, ponds, canals, lakes, and flowing water and all lands, wherever situated, together with all rights appertaining thereto are the property of the Government excepting:-

(a) those belonging to persons or class legally capable of holding property and to the extent so far as their such rights are established;

(b) those in respect of which any other order under any law may have been given. It may be lawful for the Collector or other officer appointed by the Government for this purpose subject to rules sanctioned by the Government and contained in notification and the order of the Board of Revenue, to dispose of them in his discretion; but the right of way or other right legally vesting in any person or the public shall subsist."

Section 2 of the Land Encroachment Act, reads as under:

"Section 2 of the Land Encroachment Act:

2. Right of property in public roads, etc., water and lands:- (1) All public roads, streets, lanes and paths, the bridges, ditches dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark, and of rivers, streams, nalas, lakes and tanks, and all canals and water- courses, and all standing and flowing water, and all lands, whenever situated, save in so far as the same are the property--

(a) of any zamindar, poligar, mittadar, jagirdars, shrotriendar or any persons claiming through or holding under any of them, or

(b) of any, person paying shist, kattubadi, jodi, poruppu or quit-rent to any of the aforesaid persons, or

(c) of any person holding under ryotwari [.....] tenure, of in any way subject to the payment of land revenue direct to Government, or

(d) of any other registered holder of land in proprietary right, or

(e) of any other person holding land under grant from the Government otherwise than by way of licence and as to lands, save also in so far as they are temple sites or owned as hose site or backyard, are and are hereby declared to be the property of Government except as may be otherwise provided by any law for the time being in force, subject always to all rights of MSM,J wp_16274_2021 way and other public rights and to the natural and easement rights of other land owners, and to all customary rights legally subsisting. (2) All public roads and streets vested in any local authority shall, for the purposes of this Act, be deemed to be the property of Government. Explanation:- In this section "high water mark" means the highest point reached by ordinary spring tides at any session of the year."

Finally, learned single Judge, dismissed the writ petition specifically observed as follows:

"It is, no doubt, true that in "[Government of Andhra Pradesh v. Tummala Krishna Rao](#) (AIR 1982 SC 1081) the Supreme Court held that provisions of Land Encroachment Act cannot be invoked in case there are disputes as to title, or if the encroachment is spread over a long period . In the instant case, there is no dispute as to title. The right of the Government on the one hand, and the respondents on the other, over the Nala or on a land to the extent of FTL of an irrigation tank are spelt out by the provisions of the Land Revenue Act and Land Encroachment Act. Further, the steps were initiated soon after the violations or encroachment was noticed. The petitioners does not deserve any indulgence, particularly, in view of the fact that though the respective owners are said to be having land on the other portion, they have chosen the land within the FTL and the Nala, for construction of the Theatres. The Officer, who passed the impugned order, deserves to be complimented for the courage she has exhibited, overcoming threats and gestures of the petitioners. Ultimately, it is the officers with such commitment, who constitute ray of hope for the protection of public properties."

The act of the respondents obstructing the irrigation canal dug from sluice under Ayacut would seriously infringe the right of the petitioners and such right to draw water is protected under [Section 24](#) of the Revenue Act and Section 2 of the Land Encroachment Act. Hence, by applying the principle laid down in the above judgment, the act of the respondents obstructing canal to irrigate the lands of the petitioners is arbitrary, illegal and contrary to the principles laid down by the Apex Court in the judgments (referred supra) and the MSM,J wp_16274_2021 High Court of Andhra Pradesh at Hyderabad in "[Shankar Narayan Ranade v. Union of India](#)".

Yet another contention of the learned counsel for the petitioners is that no constructions can be raised within a specific distance from the water bodies.

Here, in this case, entire extent of Ac.11.18 cents in Sy.No.294 is classified as "Dahala Koneru", another tank known as Muragada Banda @ Chinna Koneru is also located in the same survey number and the excess water from Dahala Koneru is being let out to Muragada Banda. The ryots are irrigating their lands with the water of Muragada Banda @ Chinna Koneru. Part of it is now converted into Government Offices poramboke i.e. Ac.3.13 cents. Whether the respondents followed the procedure under BSO is not in dispute before this Court. However, conversion is admitted, learned Standing Counsel for respondent No.7 denied the construction of government offices in the tank bed. But learned Assistant Government Pleader for Revenue admitted that there is proposal to raise construction for Grama Sachivalayam, Rythu Bharosa Kendra and Milk Chilling Centre in the land. The land is part of tank or tank poramboke, which is water bed, as such construction in the tank or tank poramboke is impermissible in view of the G.O.Ms.No.168 Municipal Administration and Urban Development (M) Department dated 07.04.2012. In the said G.O.Ms.No.168 dated 07.04.2012 the State issued the Andhra Pradesh Building Rules, 2012 (for short "Rules") and imposed certain restrictions on building activity in the vicinity of AIR 1964 SC 24 MSM,J wp_16274_2021 certain areas. Rule 3 (a) of the Rules deals with "Water Bodies", which reads as follows:

(a) Water Bodies

(i) No building / development activity shall be allowed in the bed of water bodies like river or nala and in the Full Tank Level (FTL) of any lake, pond, cheruvu or kunta / shikam lands. Unless and otherwise stated, the area and

the Full Tank Level (FTL) of a Lake / Kunta shall be reckoned as measured and as certified by the Irrigation Department and Revenue Department.

(ii) The above water bodies and courses shall be maintained as Recreational/Green Buffer Zone and no building activity shall be carried out within:

(1) 100m from the boundary of the River outside the Municipal Corporation / Municipality / Nagara Panchayat limits and 50m within the Municipal Corporation / Municipality / Nagara Panchayat limits. The boundary of the river shall be as fixed and certified by the Irrigation Department and Revenue Department.

(2) 30m from the FTL boundary of Lakes / Tanks / Kuntas of area 10Ha and above.

(3) 9m from the FTL boundary of Lakes / Tanks / Kuntas of area less than 10Ha / shikam lands;

(4) 9m from the defined boundary of Canal, Vagu, Nala, Storm Water Drain of width more than 10m.

(5) 2m from the defined boundary of Canal, Vagu, Nala, Storm Water Drain of width up to 10m.

(iii) Unless and otherwise specified in the Master Plan / Zonal Development Plan.

(1) In case of (ii) (1) & (2) above, the buffer zone may be utilised for road of minimum 12m width, wherever feasible. (2) In case of (ii) (2) above, in addition to development of recreational / green belt along the foreshores, a ring road or promenade of minimum 12m may be developed, wherever feasible.

(3) The above buffer zone to be left may be reckoned as part of tot lot or organized open space and not for setback requirements.

(iv) In case of Protection of Catchment area of Osmansagar and Himayatsagar lakes covered under the G.O.Ms.No.111 MA dated 08.03.1996, the restrictions on building and development activity imposed there in shall be applicable in Hyderabad Metropolitan Development Authority (HMDA) area.

(v) In case of areas along the Sea Coast, the Coastal Regulation Zone (CRZ) regulations shall be followed.

In view of these guidelines, raising any construction within the limits prescribed therein is prohibited. Though, the said G.O.Ms.No.168 dated 07.04.2012 was issued by the Municipal Administration and Urban Development Department, still, the same can be applied to the buildings proposed to be constructed within MSM,J wp_16274_2021 Panchayat with a view of protect the environment and ecology and to see that no further damage is being caused to the water bodies. Here, the respondents are proposing to construct a building within tank bed poramboke, which is a water body and the photographs produced along with the writ petition prima facie established

that, the State laid foundation stone for construction of Government offices. As such, prohibition directly applies to the present facts of the case, thereby proposed construction in the tank bed land or tank poramboke is illegal and arbitrary.

In view of my foregoing discussion, proposed construction of Government Building Complex in the tank poramboke is violative of principles laid down by the Apex Court in various judgments (referred supra), contrary to Section 24 of the Land Revenue Act and Section 2 of the Land Encroachment Act and the principle laid down by the learned Single Judge of the High Court of Andhra Pradesh in "M/s. Krishna 70 MM theatre, Rep. by its Proprietor J.Satyanarayana v. The State of Andhra Pradesh (W.P.No.14468 of 2011)" and further violative of G.O.Ms.No.168 dated 07.04.2012. Accordingly, the point is answered in favour of the petitioners and against the respondents.

The petitioner also sought a direction against the respondents for removal of encroachments on Dahala Koneru and Muragada Banda @ Chinna Koneru are situated in Sy.No.294 of Korlakota Village (after sub-division Sy.No.294/1 & 2). But, the alleged encroachers are not to before this Court and in their absence, this Court cannot issue any direction for removal of the encroachments, more particularly, when the affected parties are not impleaded to the present writ petition. However, it is the duty of the respondents to MSM,J wp_16274_2021 take steps to remove encroachments of water body, in view of the law declared by the Apex Court in various judgments referred above. In case, the respondents fail to discharge their duty in protecting the water body, the person(s) aggrieved by such inaction may approach the Court impleading the encroachers. Hence, I am not inclined to issue any direction for removal of encroachments. But, I am sure that the respondents will take appropriate action on whoever is in illegal occupation of the land in Sy.No.294 of Korlakota Village (after sub-division Sy.No.294/1 & 2), which is known as Dahala Koneru and Muragada Banda @ Chinna Koneru.

In the result, the writ petition is allowed declaring the action of respondent Nos.2 to 4 in proposing to construct the Grama Sachivalayam and other buildings by changing the classification of Sy.No.294 by making sub-division and closing the tank called Muragada Banda @ Chinna Koneru an extent of Ac.3.13 cents out of Ac.11.18 cents in Sy.No.294 of Korlakota Village, Amadalavalasa Mandal, Srikakulam District as illegal, arbitrary, without any authority of law, consequently directed the respondents not to allow any encroachments or make any constructions including Grama Sachivalayam etc. on the tank bed of Muragada Banda. No costs.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

18.08.2021 Note: Mark L.R. copy.

JUSTICE M. SATYANARAYANA MURTHY

B/o Ksp