Y. Lakshminarayana Reddy and Others

Vs

The State of Andhra Pradesh

Civil Appeal No. 614 of 1961

(S. K. Das, J. L. Kapur, A. K. Sarkar JJ)

26.09.1962

JUDGMENT

S.K. DAS, J. –

This is an appeal by special leave and the short question for decision is the true scope and effect of s. 4 of the Madras Irrigation Tanks (Improvement) Act, 1949 (Mad. XIX of 1949), hereinafter referred to as the Act. The section is in these terms :-

> "No Court shall entertain any suit or application for the issue of an injunction to restrain the exercise of any powers conferred on the Government by section 3."

The courts below have dismissed the suit brought by the appellants, holding on a preliminary issue that s. 4 aforesaid applies and the suit cannot be entertained. The question before us is, whether this finding is correct.

We must first state the relevant facts. The appellants were the plaintiffs in the first court. They brought the suit in a representative capacity on behalf of the ryots of several villages whose lands are irrigated by what is locally known as the "Gudur anicut system". There is a stream or small river known as Venkatagiri river which flows west to east and then takes a turn to the south. It passes by or near villages Chennur, Gudur etc. The case of the appellants was that from time immemorial their lands were irrigated from four tanks; three of the tanks received their supply of water from the Venkatagiri river through a channel emanating from the Gudur anicut at a place called Ananthamadugu. The fourth tank also received its supply of water from the same river through a channel emanating from near the "Pumbaleru anicut" further down the river. In addition, a separate channel from the "Pumbaleru anicut" directly irrigated about Ac. 600-00 of land. It was stated that on the whole, about Ac. 4000-00 of the land of the appellants were irrigated in the manner indicated above under the "Gudur anicut system". The ryots of Chennur, a village situate higher up the river, had also a tank for irrigating their lands. These ryots made several attempts to secure a portion of the water of Venkatagiri river by having an anicut constructed over the river at a place called Gollapalli, about one mile up the river, in order to get supply of water to Chennur tank to means of supply channel emanating from near the place of the proposed Gollapalli anicut. These attempts failed in 1929-1930. But they renewed their attempts and in 1935, the Madras Government passed an order (G.O. No. 2241/1 dated October 16, 1935) directing the construction of an anicut at Gollapalli for supply of water to the Chennur tank with certain safeguards to ensure that the supply to the "Gudur anicut system" was not adversely affected and to utilise only the excess water going to waste during the flood season for the Chennur tank. The appellants objected to the scheme of G.O. No. 2241/1 dated October 16, 1935 and the matter was further investigated by Government. Finally

G.O. No. 1161 dated May 6, 1939, was issued modifying the earlier order in some respects. In pursuance of that order, a masonry anicut known as the Chennur anicut was constructed in 1944, the details whereof were stated in Ex. A-6 and summarised in paragraph 11 of the plaint. With those details we are not at present concerned, except merely to state that the anicut consisted of two portions : a 'free' portion about 61 feet long on the west and a 'fixed' portion about 114 feet long, the free portion to be kept fully planked only when the river was in flood with a view to divert surplus water to Chennur tank and was not to be planked until the Gudur anicut was "surplusing". The appellants alleged that the Chennur ryots did not stick to the arrangements made as a result of G.O. No. 1161 dated May 6, 1939, but renewed their attempts for getting a larger supply of water from Venkatagiri river and the appellants came to know that behind their back and without notice to them, the State Government passed another order in 1952 in which they directed (i) the extension of the Chennur anicut by another 46 feet, (ii) removal of the dam stones and planks altogether and the constriction of a permanent masonry wall over the crest of the anicut to the entire length of 175 feet, (iii) raising the height of the wall by 3 feet more, and (iv) installation of three vents with screw-gearing-shutters for the flow of water down the Chennur anicut. The appellants alleged that this would seriously affect their accustomed right to the supply of water from Venkatagiri river under the "Gudur anicut system" and practically deprive them of water during the low supply and spring periods. They, therefore, prayed for a decree -

> (a) declaring that the defendant has no right in the circumstances stated above to alter or extend or add to the Chennur anicut over Venkatagiri river at Gollapalli in any manner whatsoever;
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> (b) for costs of the suit; and
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> (c) and for such other and further reliefs as in the circumstances the court may deem fit and proper in the circumstances.

They specifically said in the plaint that it was not necessary to ask for a permanent injunction "as the defendant (meaning the State of Andhra Pradesh) was bound and certain to give effect to the declaration granted by the court". At first, the State of Andhra Pradesh was the only defendant. Certain other defendants, presumably ryots of Chennur, were made parties-defendants on a later date.

We have given above a summary of the case of the appellants as alleged in the plaint. A written statement was filed by the State of Andhra Pradesh as also by the 4th defendant, in which it was averred that the proposed alterations to the Chennur anicut would not injuriously affect the rights of the appellants and certain details were given at to the flow of water in the river at different times. As we are no deciding this case on merits, we are not proposing to enter into those details. By a supplemental written statement the defendant-State, respondent before us, took the plea that s. 4 of the Act was a bar to the entertainment of the suit. This plea was taken up for trial as a preliminary issue. The trial court held in favour of the State. An appeal to the District Judge failed and so also a Second Appeal to the High Court.

The points which have been urged on behalf of the appellants are these :-

> (1) The provisions of s. 3(1) of the Act are restricted to effecting improvements to a tank as defined in s. 2(d), and such improvement covers, for example, raising the height or increasing the width of the bund, or lengthening the weir, or extending the

> bed of the tank; it may even extend to improving the supply channel but does not go any further; the State Government in proposing the alterations in the Chennur anicut are proposing to do something which is in excess of the powers given by s. 3(1) and, therefore, s. 4 does not bar the entertainment of the suit of the appellants.
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> (2) on any view, s. 4 bars the entertainment of a suit for the issue of an injunction to restrain the exercise of powers conferred on the Government by s. 3(1); the present suit is not a suit for injunction and the appellants have specifically said that they do not ask for an injunction; therefore, s. 4 in no bar.
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> (3) The State Government did not purport to act under s. 3(1) when they passed G.O. Ms. 53 F. and A (F.P.) dated February 15, 1952, and as they did not issue a notice as required by r. 5 of the Madras Irrigation Tanks (Improvement) Rules, 1950, the action proposed to be taken by them cannot come under s. 3(1); therefore, s. 4 does not apply.
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> (4) Section 3(1) is ultra vires the Constitution and s. 4 must fall within s. 3.

We shall now proceed to consider these points one by one. Earlier in this judgment, we have read s. 4 of the Act. That section is closely connected with sub-s. (1) of s. 3 and we may now set out that sub-section.

> "S. 3(1) Notwithstanding anything contained in any other law for the time being in force, the Government shall have power to raise the full-tank level of any tank or to take any other measures for increasing its capacity or efficiency, wherever it may be situated and whether in a ryotwari, zamindari, inamdari or other area."

It will be useful if we briefly refer here to the preamble and some of the other provisions of the Act in order to show what is the object or purpose of the Act. The long title of the Act shows that it is an Act "to empower the State Government to increase the capacity and efficiency of irrigation tanks in the State of Madras." The preamble also states :-

> "Whereas it is expedient to empower the State Government to increase the capacity and efficiency of irrigation tanks in the State of Madras;..."

Section 2(d) of the Act defines a tank to mean an irrigation tank in the State of Madras. Then come ss. 3 and 4 which we have already quoted. Section 5 deals with the payment of compensation where, in consequence of anything done in pursuance of s. 3, the owner of any land or property sustains loss or damage including any diminution of the supply of water to any land or any tank or other source from which water is supplied. The compensation is to be determined in the manner laid down in s. 5. Section 6 provides for an appeal against the order of the Collector under s. 5 to the Subordinate Judge's court having Jurisdiction over the area in which the land or property for the damage to which compensation is to be paid is situated. Section 7 deals with the power to make rules and one of the rules, viz., rule 5 of the Madras Irrigation Tanks (Improvement) Rules, 1950, made in pursuance of that power will be considered by us later.

Very briefly put, the object of the Act is to increase the capacity and efficiency of irrigation tanks in the State of Madras and s. 3(1) gives the State Government power to take measures for the purpose of increasing the capacity or efficiency of irrigation tanks, whether the irrigation tanks be situated in a ryotwari, zamindari, inamdari or other area. Obviously, the purpose is to increase facilities for

irrigation of agricultural lands from irrigation tanks. Now, there is no dispute before us that the Chennur tank as well as the four tanks from which the appellants get a supply of water for irrigating their lands are irrigation tanks within the meaning of the Act. The controversy before us has centered round the expression "to take any other measures for increasing its capacity or efficiency." The expression "its capacity or efficiency" undoubtedly means the capacity or efficiency of the irrigation tank in question which, in this case, is the Chennur tank. The word 'capacity' in its ordinary dictionary sense means "holding-power" or "receiving-power" and must, we think, depend on the cubic content of the tank. Learned counsel for the respondent-State has conceded before us that the proposed alterations in the Chennur anicut do not increase the capacity of the Chennur tank. He has however very strongly contended that the proposed alterations in the Chennur anicut will increase the efficiency of the Chennur tank by making a larger supply of water available within the holding-power of the tank. He has also contended that there is no reason why a narrow interpretation should be put on s. 3(1) so as to restrict the improvement measures to the width, breadth or depth of the tank or its supply channel only. He has submitted that if by the proposed alterations in the Chennur anicut there is a larger supply of water to the Chennur tank through its supply channel, then the measures which the State Government are proposing to take are undoubtedly measures for increasing the efficiency of the Chennur tank. Learned counsel for the appellants, on the other hand, has submitted that the word 'efficiency' read in the context of the definition clause in s. 2(d), means only efficiency in the distribution of water from the tank itself. The same contentions were urged in the High Court also and, dealing with these contentions, the learned Chief Justice said :-

> "The efficiency of a tank depends in a large measure upon the quality of water that is available for irrigation purpose. Without sufficient volume of water, a tank could not fulfil the purpose for which it was dug. Therefore, it should have sufficient quantity of water to maintain 'its efficiency'. To construe it in the manner suggested by the counsel for the appellants is to deprive these words of a part of their content."

We are in agreement with the view thus expressed by the learned Chief Justice. Learned counsel for the appellants has submitted that the Chennur tank and its supply channel only can be the objects of improvement measures by the State Government, but not the Chennur anicut on the Venkatagiri river. We are unable to agree and see no reason why such a narrow construction should be put on sub-s. (1) of s. 3. The supply channel to the Chennur tank takes off water from the Venkatagiri river and it starts from near the Chennur anicut. It is obvious that if the supply channel does not supply sufficient water to the tank, then the take loses its efficiency. If the supply of water is increased, then the efficiency of the tank is also increased. The proposed alterations in the Chennur anicut are intended to increase the volume of water which will go through the supply channel to the Chennur tank and in that sense, the measures proposed to be taken are measures to improve the efficiency of the Chennur tank. A question was mooted before us as to how far the State Government can go up river in order to improve the Chennur tank. Perhaps, the answer to that question is that the improvement measures proposed to be taken must have a direct and proximate relation to the tank, the efficiency of which is to be increased. The State Government cannot go up the river to a distance of several miles and take measures which have no direct or proximate relation to the tank in question. In the case before us, however, the supply channel to the Chennur tank emanates from the very place where the Chennur anicut has been made. Obviously, therefore, the Chennur anicut is meant for the purpose of feeding the supply channel to the Chennur tank. The connection is both direct and proximate. We are, therefore, of the opinion that the view concurrently taken by the courts below is the correct view and the measures which the State Government are proposing to take in the matter of improving the Chennur anicut are measures which come within s. 3(1) of the Act.

The first contention urged on behalf of the appellants must therefore be over-ruled.

In the High Court as also before us, learned counsel for the appellants wished to read from the speeches made by the some of the members of the State legislature and the answers given by the Minister piloting the Bill, in order to show that s. 3(1) was not intended to cover alterations to an 'anicut'. It is, however, well settled and this court has so ruled in more than one decision, that legislative proceedings cannot be referred to for the purpose of construing an Act or its provisions, though such proceedings may be relevant for the proper understanding of circumstances under which the legislation was passed and the reasons which necessitated it. Learned counsel for the appellants has also referred to the provisions of the Madras Irrigation Works (Repairs, Improvement and Construction) Act, 1943 (Mad. XVII of 1943) and submitted that those provisions authorised the Government to repair or improve irrigation works or construct new irrigation works. This contention was also considered by the learned Chief Justice, and he rightly pointed out that the scope of the two statutes was different : one dealt with private irrigation works and the other with improvement of irrigation tanks situate in a ryotwari, zamindari, inamdari, or other area; and furthermore, the proposed alternations in the Chennur 'anicut' would not amount to improvement of any irrigation work within the scope of the 1943 Act.

We proceed now to a consideration of the second point. Here again, we think that the courts below are right. It is indeed true that the appellants did not formally ask for an injunction; but, in effect, what they asked for was a declaration which they said the State Government must obey and would be thus restrained from exercising the powers conferred on it by s. 3(1). We agree with the courts below that having regard to the pleadings and the reliefs asked for, the suit was in reality a suit for restraining the State Government from exercising its powers under s. 3, though framed in such a manner as to give the appearance of a suit for mere declaration. In our opinion, it would be a circumvention of s. 4 to entertain a suit of this nature. Under s. 42 of the Specific Relief Act, any person entitled to any right as to any property may institute a suit against a person denying such right, and the court may, in its discretion, make therein a declaration that he is so entitled; but no court shall make a declaration which would be futile, assuming that by reason of s. 4 of the Act the appellants are prohibited by law from asking for an injunction. If, on the contrary, the State Government be bound by the declaration asked for (if granted by the Court) as is pleaded by the appellants, then the effect would be to restrain the State Government from exercising its powers under s. 3(1) of the Act. If that be true nature of the reliefs asked for by the appellants, s. 4 would undoubtedly apply and the entertainment of the suit would be barred under that section. Learned counsel for the respondent-State suggested an alternative submission for our consideration. He attempted to construe s. 4 in such a way as would, in his view, bar even a suit for declaration against the State Government. This construction introduced into the section a number of words which do not occur there and dissected the section in a way not warranted by the plain words used therein. We have come to the conclusion that the somewhat novel reconstruction of s. 4 attempted by learned counsel for the respondent-State does not merit any further examination and we prefer to rest our decision as to be second point on the finding concurrently arrived at by the courts below.

As to the third point, it may be disposed of on a very short ground. The High Court has rightly pointed out that the order dated February 15, 1952, (Ex. B-1) was based on the communication of the Board of Revenue dated April 8, 1950 (Ex. B-10) and that communication states clearly enough that Government was advised that it could take action under s. 3(1) of the Act. Obviously, therefore, it is not correct to say that Government did not purport to exercise its powers under s. 3(1) as the order (Ex. B-1) did not mention it. If the entire proceeding is considered, it is clear that Government was purporting to act under the powers given to it by s. 3(1).

Rule 5 of the Madras Irrigation Tanks (Improvement) Rules, 1950 states :

> "A notice specifying the nature of the improvement to be effected under section 3 and the probable cost thereof, according to the technical plan and estimate, shall, in all cases, be published or caused to be published by the Collector of the district. The notice shall be in form B. Such publication shall be -
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> (1) in the District Gazette;
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> (2) by affixture at the site of the proposed work;
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> (3) by affixture in the village Chavadi in the village or villages where the lands under ayacut of the tank and the lands proposed to be benefitted under the work are situated; and
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> (4) by beat of tom-tom in the said village or villages."

The argument based on this rule is that the notice required by it in not having been published, it must be held that the State Government did not purport to act under s. 3; secondly, the rule being mandatory in nature, failure to publish the notice as required by the rule invalidates the order of the State Government dated February 15, 1952, (Ex. B-1). We are unable to accept either or these two contentions as correct. We have already pointed out earlier that Ex. B-10 on which Ex. B-1 is based, shows that the State Government was proposing to exercise its powers under s. 3(1) and asked the Board of Revenue "to get suitable rules and regulations made." Secondly, the High Court rightly pointed out that the proposed action had not been taken when the appellants filed their suit and there was still time for the State Government to publish the notice under r. 5. In this view of the matter, it is unnecessary to determine at this stage whether r. 5 is mandatory or merely directory, and we do not think that non-publication of the notice in the circumstances can stand in the way of the application of s. 4 of the Act.

As to the fourth and last point, it is sufficient to point out that the validity of s. 3(1) was not challenged in any of the courts below and in an appeal by special leave, counsel for the appellants cannot be allowed to take a point which was not urged before.

For the reasons given above, we would dismiss this appeal with costs. We may, however, point out that Narasimham, J., in the course of his judgment made some observations regarding the merits of the claim of the appellants which were not justified and may prejudice the appellants in subsequent proceedings. The learned Judge said that it was not correct to say that the appellants would suffer diminution of water-supply by reason of the proposed alterations in the Chennur anicut; and furthermore that the proposed measures would augment the supply of water to both Chennur ryots and Gudur ryots. Perhaps, the learned Judges forgot that he was not dealing with the case on merits. The only point before him was whether s. 4 barred the entertainment of the suit. We must therefore say that the learned Judge's observations on the merits of the claim of either party were premature and not necessary for determination of the only issue which was before the court.

Appeal dismissed.

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