

APHC010249542020



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3233]

WEDNESDAY ,THE THIRD DAY OF APRIL
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE B KRISHNA MOHAN

WRIT PETITION NO: 16411/2020

Between:

B. Venugopal Rao,

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.K RATHANGA PANI REDDY

Counsel for the Respondent(S):

1.ADDL ADVOCATE GENERAL (AP)

2.ADDL ADVOCATE GENERAL (AP)

3.ADDL ADVOCATE GENERAL (AP)

4.ADDL ADVOCATE GENERAL (AP)

APHC010129092020



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3233]
(Special Original Jurisdiction)**

WEDNESDAY ,THE THIRD DAY OF APRIL
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE B KRISHNA MOHAN

WRIT PETITION NO: 7736/2020

Between:

K. Murali Mohan Reddy,

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.K RATHANGA PANI REDDY

Counsel for the Respondent(S):

1.ADDL ADVOCATE GENERAL (AP)

2.ADDL ADVOCATE GENERAL (AP)

3.ADDL ADVOCATE GENERAL (AP)

APHC010249552020



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3233]

WEDNESDAY ,THE THIRD DAY OF APRIL
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE B KRISHNA MOHAN

WRIT PETITION NO: 16410/2020

Between:

P. Viswanatha Reddy

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.K RATHANGA PANI REDDY

Counsel for the Respondent(S):

1.ADDL ADVOCATE GENERAL (AP)

APHC010265762020



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3233]

WEDNESDAY ,THE THIRD DAY OF APRIL
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE B KRISHNA MOHAN

WRIT PETITION NO: 17541/2020

Between:

K Murali Mohan Reddy

...PETITIONER

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.K RATHANGA PANI REDDY

Counsel for the Respondent(S):

1.ADDL ADVOCATE GENERAL (AP)

The Court made the following:

C O M M O N O R D E R

In the years 1992, 1993 and 2001, the SRBC [Srisailam Right Branch Canal] authorities have acquired the lands belonging to the private persons located in Banganapalle, Bhanumukkala, Bathulurupadu Villages of Banaganapalle Mandal, Kurnool District vide Award No.4/92-93 (Ac.79.71 Cents), Award No.6/91-92 (Ac.23.48 Cents), Award No.14/91-92 (Ac.29.73

Cents), Award No.18/92-93 (Ac.31.37 Cents), and Award No.34 (Ac. 49.30 Cents) for the following purposes:

- a) For Srisailam Right Bank Canal;
- b) For Approach and Trial Channel of Mutchatla Vagu aqueduct for package No.9 of SRBC;
- c) For excavation of Additional Quarry for C.N.S. Soils to Block No. X of Srisailam Right Bank Canal.

On 30.12.2019, the Government issued the G.O.Ms.No.510, (Revenue)-lands Department authorizing the District Collectors of the respective Districts to resume the unutilized Government Lands on the grounds of violation of conditions or non utilization of the allotted land which was earlier alienated in favour of private individuals/private organizations/Government Organizations/Government Departments/Public Sector Undertakings/State Government Corporations/Urban Development Authorities & Urban Local Bodies on the ground of violation of conditions or non-utilization of the alienated lands in terms of G.O.Ms.No.57, Revenue (Assn. I) Department, dated 16.02.2015 and they are further authorised to utilise the lands acquired by various Government departments/Organizations for any public purpose but not put into use for the same purpose. These lands shall be utilized for providing House sites to eligible beneficiaries under the flagship programme of "Navaratnalu Pedalandariki Illu".

The District Collectors shall furnish details of such lands utilized for house sites purpose to the Government. The District Collectors are further instructed not to propose any lands belonging to Endowments, Educational

Institutions, Wakf or any other religious related lands, environmentally sensitive and fragile areas such as tank beds, river beds, other water bodies and hillocks with afforestation etc., for house site purpose.

By virtue of G.O.Ms.No.510 dated 30.12.2019, the District Collector, Kurnool has issued the impugned orders in Rc.E1/494/2020, Rc.E1/495/2020, Rc.E1/496/2020 dated 04.03.2020 to utilize the lands acquired by various departments for any public purpose but not put into use for the same purpose for issuance of house sites under the programme “Navaratnalu – Pedalandariki Illu”. The Revenue Divisional Officer, Nandyal reported that the lands belonging to the Water Resource Department – SRBC were not utilized for the purpose for which they were acquired and the same was kept unutilized for 32 years. As the said lands are fit for house sites, the Collector directed the Tahsildar, Banaganapalli Mandal to takeover the possession of the lands in the below mentioned survey numbers for provision of house sites to the eligible beneficiaries under “Navaratnalu–Pedalandariki Illu”.

Banaganapalle Village Lands (Total to an extent of Ac. 46.00 cents)¹

S.No.	Sy.No.	Extent
1.	55/5B1	Ac.10.50 cents
2.	61/2A2	Ac.2.80 cents
3.	62/1B1	Ac.3.00 cents

¹ Rc.E1/494/2020

4.	67/1	Ac.2.00 cents
5.	68/1	Ac.1.68 cents
6.	69/1A	Ac.6.11 cents
7.	70/1A	Ac.7.33 cents
8.	72/1	Ac.1.48 cents
9.	133/1	Ac.3.00 cents
10.	132/2B	Ac.3.40 cents
11.	134/1	Ac.3.00 cents
12.	146/1B1	Ac.1.70 cents

Bathulurupadu Village Lands (Total to an extent of Ac. 5.53 cents)²

S.No.	Sy.No.	Extent
1.	2/1B1	Ac.2.48 cents
2.	2/1B3	Ac3.05 cents

Bhanumukkala Village Lands (Total to an extent of Ac. 65.11 cents)³

S.No.	Sy.No.	Extent
1.	311/2C/1A	Ac.9.14 cents
2.	311/2C2	Ac.1.58 cents
3.	312/3	Ac.6.00 cents

² Rc.E1/495/2020

³ Rc.E1/496/2020

4.	312/2A2	Ac.9.52 cents
5.	314/2	Ac.5.09 cents
6.	316/1	Ac.9.99 cents
7.	317/1A	Ac.9.57 cents
8.	318	Ac.6.00 cents
9.	319	Ac.8.22 cents

The said impugned orders of the District Collector is challenged in the present four Writ Petitions (i.e., W.P.No.16410/2020, W.P.No.16411/2020, W.P.No.7736/2020, W.P.No.17541/2020) as illegal, arbitrary, colourable exercise of power and consequently sought to set aside the aforesaid impugned orders of the 2nd respondent (District Collector) by passing such other order or orders as are deemed fit and proper.

CONTENTIONS OF THE PETITIONERS:

1. Petitioners herein are the natives of Banaganapalle (W.P.No.16411/2020), Bhanumukkala (W.P.No.7736/2020, W.P.No.17451/2020), Bathulurupadu and Yanakandla villages (W.P.No.16410/2020) of Banaganapalli Mandal having lands and house properties. A big canal named as "SRBC CANAL" was dug and the same is administered by the Respondent Government Water Resource Department. The Canal has the capacity of 2500 cusecs and it flows from Gorakallu reservoir to Owk and Kadapa.

2. A canal margin/buffer zone is created on either side of the canal to avert destruction of property and life in times of natural calamities such as floods, breach of canal etc. In the recent times, the Canal got breaches for 5 to 6 times and the neighbouring colonies of Banaganapalle town got inundated and the same was reported in the news dailies also. The aforesaid SRBC Canal also flows through the petitioners' villages and there also buffer zone exists on either side of the Canal.

3. The 1st respondent Government in the year 2019 has come up with a flagship project of "Navaratnalu" to provide house site pattas to poor and needy eligible beneficiaries in the State and issued G.O.Ms.No.510 dated 30.12.2019 authorizing the District Collectors of the respective Districts to resume the unutilized Government Lands on the grounds of violation of conditions or non-utilization of the allotted land which was earlier alienated in their favour. It also categorically stated in paragraph 8 of the said G.O. that *"not to propose any lands belongs to Endowments, Educational Institutions, Wakf or any other religious related lands, environmentally sensitive and fragile areas such as tank beds, river beds, other water bodies and hillocks with afforestation etc., for house site purposes."*

4. But by circumventing the aforesaid G.O.Ms.No.510, dated 30.12.2019, the 2nd respondent (District Collector) has issued the impugned order in Rc.E1/494/2020, Rc.E1/495/2020, Rc.E1/496/2020 dated.04-03-2020 directing the Tahsildar, Banaganapalli Mandal to take over the possession of the lands in the below mentioned survey numbers of Banaganapalle (W.P.No.16411/2020), Banumukkala (W.P.No.7736/ 2020,

W.P.No.17451/2020), Bathulurupadu and Yanakandla villages (W.P.No.16410/2020) of Banaganapalle Mandal, Kurnool District belonging to the Water Resource Department on the ground of non-utilization of the land for the purpose to which they were acquired.

A. W.P.No.16411/2020 (Banaganapalle Village)

SURVEY NO	EXTENT
55/5B1	Ac.10.50 Cents
61/2A2	Ac.2.80 Cents
62/1B1	Ac.3.00 Cents
67/1	Ac.2. 00Cents
68/1	Ac.1.68 Cents
69/1A	Ac.6.11 Cents
70/1A	Ac.7.33 Cents
72/1	Ac.1.48 Cents
132/2B	Ac.3.40 Cents
133/1	Ac.3.00 Cents
134/1	Ac.3.00 Cents
146/1B1	Ac.1.70 Cents
Total to an extent of Ac. 46.00 Cents	

B. W.P.No.16410/2020 (Bathulurupadu and Yanakandla villages)

SURVEY NO	EXTENT
2/1B1	Ac.2.48 Cents
2/1B3	Ac.3.05 Cents
Total to an extent of Ac.5.53	

C. W.P.No.7736/2020 (Bhanumukkala Village)

SURVEY NO	EXTENT
312	Ac.6.00 Cents
319	Ac.8.22 Cents

D. W.P.No.17451/2020 (Banumukkala Village)

SURVEY NO	EXTENT
311/2C/1A	Ac.9.14 Cents
Sy.No.311/2C2	Ac.1.58 Cents
Sy.No.312/3	Ac.6.00 cents
Sy.No.312/2A2	Ac.9.52 cents
Sy.No.314/2	Ac. 5.09 cents
316/1	Ac.9.99 cents

317/1A	Ac.9.57 cents
318	Ac.6.00 cents
319	Ac.8.22 cents
Total to an extent of Ac. 65.11 cents	

5. The said land in the aforesaid survey numbers is being used as canal margins/buffer zone for both the sides of the canal meant for safeguarding against the huge flow of water. The statement of the 2nd respondent (District Collector) that it is an unutilized land shocks the ordinary prudence and amounts to non application of mind on the part of 2nd respondent.

6. The respondent has issued the impugned orders in Rc.E1/494/2020, Rc.E1/495/2020 and Rc.E1/496/2020 dated.04.03.2020 without correctly appreciating the G.O.Ms.No.510 dated. 30-12-2019 and in utter violation of Para 8 of the aforesaid G.O.Ms.No.510 and has put thousands of lives at stake including the petitioners and their family members and also if the said construction of houses takes place on either side of the canal, it will also result in huge loss of lives in the event of any unfortunate unforeseeable event as stated supra.

7. If the construction of houses takes place in the open vacant land of water resource department and human habitation takes place in view of the pucca houses to be constructed as proposed by the government then it will become impossible for the authorities to swiftly and readily respond,

in the case of breach of canal or floods which is a common occurrence in the State. In that event, there will be loss of life and property and if the houses are also constructed, then huge machinery which would be required to be present at the spot of the canal to mitigate the damage of breach of canal or floods cannot be brought into narrow lanes of human habitation which may result in not only loss of human lives and also complete destruction of house sites formed under the flagship project of Navaratnalu and noble cause of providing houses to the poor and needy will result in tragedy.

8. The respondent in utter violation of G.O.Ms.No.510 has proposed to take away the vacant land of water resource department citing the reason of non-utilization of lands lacks *bona fides* and has grossly misunderstood the said G.O. In the present case it can be said that the proper utilization of the above said proposed lands is by actually keeping them vacant to meet the future emergencies and it amounts to proper utilization of the same. But just because the said land is vacant, it cannot be construed as non-utilization of the above said land and this non appreciation of facts by the respondent would render the petitioners and other villagers vulnerable to natural calamities and make them shelter less.

9. In the similar circumstances, this Hon'ble High Court of Andhra Pradesh in W.P.No.7736 of 2020 by order dated 19.03.2020 has declared the action of respondents who proposed to allot the SRBC Canal/Buffer Zone lands for the purpose of "Navartnalu Pedalandariki Illu" scheme as illegal by relying on the Hon'ble Supreme Court Judgment in *Intellectual*

*Forum, Tirupati vs. State of Andhra Pradesh*⁴. The present subject matter is squarely covered by the order dated.19-03-2020 passed in W.P.No.7736 of 2020.

PRAYER:

10. It is therefore prayed that this Hon'ble Court may be pleased to issue any appropriate writ, order or direction more particularly one in the nature of Mandamus, declaring that the impugned orders of 2nd respondent in Rc.E1/494/2020, Rc.E1/495/2020, Rc.E1/496/2020 dated.04-03-2020 and taking over the SRBC canal/Buffer Zone lands in

1. Sy.No.55/5B1 to an extent of Ac.10.50 cents, Sy.No.61/2A2 to an extent of Ac.2.80 Cents, Sy.No.62/1B1 to an extent of Ac.3.00 Cents, Sy.No.67/1 to an extent of Ac.6.11 Cents, Sy.No.68/1 to an extent of Ac.1.68 Cents, Sy.No.69/1A to an extent of Ac.6.11 Cents, Sy.No.70/1A to an extent of Ac.7.33 Cents, Sy.No.72/1 to an extent of Ac.1.48 Cents, Sy.No.132/2B to an extent of Ac.3.40 Cents, Sy.No.133/1 to an extent of Ac.3.00 Cents, Sy.No.134/1 to an extent of Ac.3.00 Cents, Sy.No.146/1B1 to an extent of Ac.1.70 cents (Total to an extent of Ac. 46.00 cents) of Banaganapalle Village and Mandal;
2. Sy.No.2/1B1 to an extent of Ac.2.48 cents, Sy.No.2/1B3 to an extent of Ac.3.05 Cents (Total to an extent of Ac. 5.53 cents) in Bathulurupadu and Yanakandla village of Banaganapalle Mandal;
3. Sy.No. 312 & 319 to an extent of Ac.6.00 cents and Ac.8.22 cents respectively in Banumukala Village, Banganapalle Mandal;

⁴ AIR 2006 SC 1350

4. Sy.No.311/2C/1A to an extent of Ac.9.14 cents, Sy.No.311/2C2 to an extent of Ac.1.58 cents, Sy.No.312/3 to an extent of Ac.6.00 cents, Sy.No.312/2A2 to an extent of Ac.9.52 cents, Sy.No.314/2 to an extent of Ac.5.09 cents, Sy.No.316/1 to an extent of Ac.9.99 cents, Sy.No.317/1A to an extent of Ac.9.57 cents, Sy.No.318 to an extent of Ac.6.00 cents and Sy.No.319 to an extent of Ac.8.22 cents (Total to an extent of Ac.65.11 cents) of Banumukkala Village, Banaganapalle Mandal;

for the purpose of the house sites under “Navaratnalu” scheme though the aforesaid lands are prohibited from using for any other purpose as illegal, arbitrary, colourable exercise of power and consequently set aside the aforesaid impugned orders of the 2nd respondent and pass such other order or orders as are deemed fit and proper.

COUNTER AFFIDAVIT FILED BY THE RESPONDENT NO.2 [THE DISTRICT COLLECTOR]:

1. In view of restructuring of Districts and Divisions in the State of Andhra Pradesh, Dhone Revenue Division has been formed with effect from 04-04-2022 within the new District of Nandyal with the following Revenue Mandals as territorial jurisdiction of Dhone Revenue Division vide G.O.Ms.No.192 Revenue (Lands-IV) dated. 02-04-2022:

1.Dhone 2.Peapully 3.Bethamcherla 4. Banaganapalli

5.Koilakuntla 6.Owk Banaganapalli Mandal which was earlier in the territorial jurisdiction of Nandyal Revenue Division of Kurnool District, now falls in the territorial jurisdiction of Dhone Revenue Division of Nandyal District.

2. The petitioners have no locus standi over the lands mentioned in the writ petitions. The petitioners should have filed a PIL (Public Interest Litigation). But the petitioners have filed these writ petitions instead of filing the PIL (Public Interest Litigation).
3. With respect to the issue of Canal breach, as seen from the news clipping regarding damages to the canal it is clearly mentioned that the breaches have occurred only because of not taking up repairs to the canal bunds which was constructed twenty years back. Thus it has no relevance with the construction of the houses.
4. With respect to the allegation of taking over of SRBC lands for providing house sites violating the conditions stipulated in G.O.Ms.No.510, dated 30.12.2019, it is submitted that the petitioners are not well acquainted with the facts of the case and they do not have detailed technical knowledge about the facts of SRBC canal and actual status on the ground regarding the present vacant land fit for house site purposes. The Petitioners does not have knowledge about existing canal area and buffer zone area which is not proposed for the house sites. Thus the Petitioners have furnished false information to this Hon'ble Court stating that they are acquainted with the facts of the case.
5. In fact the Government acquired the land for various purposes like construction of canals, aqueducts to prevent damage to canals by allowing free flow of natural course of water streams or to divert their natural course, extraction of certain soils for strengthening of bunds or beds or lining of canals, taking gravel from barrow for residential

quarters etc., With the SRBC water available in aplenty for irrigation purposes, the cultivation extent has largely increased and some of the lands have outlived their purposes completely or partially and thus they kept waste as on this date and are being encroached by private individuals by way of cultivation. Some lands acquired for excavation of barrow area required for the strengthening of the bund, bed or lining of the canals have outlived their purposes and are kept waste with some excavation here and there and those lands are lying far away from the canal. Likewise some of the lands acquired for aqueducts in order to prevent damage to the canal and to allow free flow of natural streams like vanka, vagu are being encroached by the private individuals or those pattadars who parted with their lands to the government after receiving compensation.

The details of lands covered in these Writ Petitions are submitted for better understanding of the case and for kind consideration.

Banaganapalli Village Lands

Land Details furnished in the Writ Petition			Lands acquired for SRBC vide Award No. and Date	Extent proposed for House Sites	Distance from the Canal in Meters	Remarks
S.No.	Sy.No.	Extent				
1.	55/5B	17.20	18/92 dt. 20-03-93	10.50	200	

2.	61/2A	7.23	4/92 dt. 15-10-92	2.80	52	
3.	62/1B	7.66	4/92 dt. 15-10-92	3.00	52	
4.	67	5.06	4/92 dt. 15-10-92	2.00	52	
5.	68	7.20	4/92 dt. 15-10-92	1.68	52	
6.	69/1A	6.11	4/92 dt. 15-10-92	6.11	52	
7.	70/1A	7.33	4/92 dt. 15-10-92	7.33	52	
8.	72/1	1.48	4/92 dt. 15-10-92	1.48	52	
9.	133/1	5.57	4/92 dt. 15-10-92	3.00	52	
10.	132/2B	5.11	4/92 dt. 15-10-92	3.40	52	
11.	134/1	7.42	4/92 dt. 15-10-92	3.00	52	
12.	146/1B	1.70		1.70		

Bathlurupadu Village Lands

Land Details furnished in the Writ Petition			Lands acquired for SRBC vide Award No. and Date	Extent proposed for House Sites	Distance from the Canal in Meters
S.No.	Sy.No.	Extent			
1.	2-1B1	2.48	14/91-92 dt. 31-03-92	2.48	52
2.	2-1B3	3.05	14/91-92 dt. 31-03-92	3.05	52

Bhanumukkala Village Lands

Land Details furnished in the Writ Petition			Lands acquired for SRBC vide Award No. and Date	Extent proposed for House Sites	Distance from the Canal in Meters	Remarks
S.No.	Sy.No.	Extent				
1.	311-2C1A	9.14	34 dt. 26-11- 2001	9.14	52	
2.	312-3	6.00	34 dt. 26-11- 2001	6.00	82-92	
3.	312-2A2	9.52	34 dt. 26-11- 2001	9.52	82-92	
4.	314-2	5.09	34 dt. 26-11- 2001	9.52	102-110	
5.	316-1	9.09	34 dt. 26-11- 2001	9.09	82-92	
6.	317-1A	9.57	34 dt. 26-11- 2001	9.57	82-92	
7.	318	14.50	6/91-92 dt. 29-02- 92	14.50	132-142	
8.	319	8.22	6/91-92 dt. 29-02- 92	8.22	192-202	
9.	311-2C2	1.58	Not proposed for House sites			

The proposed lands are neither related to canal nor related to canal bund nor Buffer zone nor canal margins.

6. With respect to Bhanumukkala Village Lands, the lands from S.No.1 to 6 above were acquired for excavation of Quarry for C.N.N.S Soils to Block No.X of Srisailam Right Bank Canal and also for keeping large number of vehicles (open area) used by Irrigation Department. Sy.No.311/2C2 is not proposed for House Site and the lands in Sy.No.318 and 319 were acquired for staff quarters and the staff quarters still exist on the ground in a dilapidated condition.
7. In the Joint Inspection report of the Executive Engineer, SRBC Division-2, Nandyal; the Executive Engineer, Housing, Nandyal and the Revenue Divisional Officer, Nandyal, it was reported that the un utilized Lands by SRBC are fit for providing house sites to the eligible beneficiaries of Banaganapalli and Bhanumukkala Villages of Banaganapalli Mandal under "Navaratnalu – Pedalandariki Illu". The Sketches prepared by the Mandal Deputy Surveyor, Banaganapalli Mandal with 30 meters buffer zone along with proposed layout of SRBC Borrowing area with Google Maps (Latitude and Longitude) are enclosed for kind perusal of the Hon'ble Court.
8. As the above said lands are unutilized by the SRBC authorities and as per the G.O.Ms.No.510 (Revenue)-lands Department, dated.30-12-2019, the District Collector, Kurnool has issued orders in Rc.E1/494/2020,

Rc.E1/495/2020, Rc.E1/496/2020 dated.04-03-2020 directing the Tahsildar, Banaganapalli Mandal to take over the possession of the above mentioned lands in Banganapalle, Bhanumukkala, Bathulurupadu Villages of Banaganapalle Mandal to utilize the same for provision of House sites to the eligible beneficiaries under the flagship programme of “Navaratnalu - Pedalandariki Illu”.

9. The District Collector (the 2nd respondent) has not circumvented any guidelines of the above said G.O. which authorized him to resume those lands acquired by several departments that are unutilized and are kept waste and not served the purpose for which they are acquired. Sufficient distances from the canal as per the mandatory instructions have been maintained taking into account the safety and security of the lives and that of the canal and the resumption of unutilized government lands for grant house sites to the weaker sections is the policy of the government. The respondents have not violated Para.No.8 of GOMs.No.510 dated.30-12-2019. The District Collector i.e., the respondent No.2 has taken a decision to resume the lands and to propose the lands for house sites as the lands proposed for house sites are neither related to canal, related to canal bund, Buffer zone nor Canal margin. The subject lands do not come under the category of lands mentioned in Para 8 of G.O.Ms.No.510, Revenue (Lands-1) Department, dated. 30-12-2019. They come under the category of unutilized Government lands for which the District Collector is the competent authority to resume the lands and to utilize the same for providing house sites to eligible beneficiaries under the flagship

programme “NAVARATNALU-PEDALANDARIKI ILLU”. Hence the above said lands were proposed for provision of house sites to the poor people. Already housing layouts were developed by forming internal roads and also stones were planted for individual plots. Allotment of individual plots to the beneficiaries was also completed.

10. The petitioners have furnished incorrect information stating that the canal/Buffer Zone/Bund is existing in the lands proposed for house site though there is no canal on the ground or those lands are not close by to the canal as per the records. The description of the canal along with the map is very clear on this aspect.

11. In fact while proposing these lands, wherever a canal exists, canal area and buffer zone were included and maintained as per the instructions of Irrigation authorities and excluded from the house site proposals. Hence there will not be any problem for the canal. Moreover, the Municipal Administration and Urban Development (H) Department under Andhra Pradesh Land Development (Layout and Sub-Division) Rules 2017 issued the G.O.Ms.No.275 dated.18-07-2017 which states that the distance from the building or layouts to the Railways or religious structures or Water Bodies has been prescribed differently so as to avoid disasters due to accidents or floods or otherwise.

According to Rule 11 (b), the water bodies and courses shall be maintained as Recreational /Green Buffer zone and no building activity/Land Development shall be carried out within:

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

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

The width of the canal on the ground as per records is more than 10 Meters. Thus the building activity shall not be carried out within 9 Meter from the canal boundary. But in the instant case, there is 8 Meters path way for Inspection of the canal and 14 Meters back side slope is provided along the canal. Moreover, after the above said measurements, a 30 Meters buffer zone is also provided along the canal which is more than the prescribed width as per the Andhra Pradesh Land Development (Layout and Sub-Division) Rules 2017. Thus the contention of the petitioners is beyond the law governing the lay out formation and precautionary measures prescribed under the law in force. Hence the contentions of the petitioners are baseless and without the support of the relevant law in force.

12. The allegation of the petitioners that the destruction of the houses and result of tragedy are only based on assumptions and presumptions. The petitioners have no knowledge about the flow of the canal water and effect of the breaches of canals. The petitioners have not produced any expert opinion or report in support of their averments.

All the measures required for prevention of damages have been taken by the Irrigation authorities as submitted here after as reported in the joint inspection report submitted by the Revenue Divisional Officer, Nandyal, The Executive Engineer SRBC, Banaganapalli and the Executive Engineer Housing Nandyal.

The Joint Inspection Report of Revenue Divisional Officer, Nandyal, Executive Engineer, SRBC, Banaganapalli and Executive Engineer, Housing, Nandyal dated. 28-02-2020 reads as follows.

“The Officers have inspected the following lands of Banganapalli and Banumukkala Village of Banganapalli Mandal. On 28-02-2020 which are already acquired by the Special Deputy Collector, LA, SRBC, Banaganapalli and Nandyal and kept unutilized by the SRBC Department since a long time and now proposed for providing house sites to the eligible beneficiaries of Banaganapalli & Banumukkala Villages of Banaganapalli Mandal under Navaratnalu – Pedalandariki Illu Programme in the lands bearing Sy.Nos. 55/5B1 - Ac 10.50: 61/2A2-2.80: 62/1B1-3.00: 67/1-2.00: 68/1-1.68: 69/1A-6.11: 70/1A-7.33 72-1- 1.48: 132-2B-3.40: 133-1-3.00: 134-1-3.00 & 146-1B1-1.70 to a total extent of Ac 46.00 of Banaganapalli Village and lands bearing Sy.Nos. 311-2C-1A - AC.9.14: 311/2C2 - 1.58, 312/3 - 6.00: 312/2A2 - 9.52: 314/2 - 5.09: 316/1 - 9.99: 317/1A - 9.57: 318 - 6.00: 319 - 8.22 to a

total extent of Ac.65.11 Bhanumukkala Village of Banaganapalli Mandal, Kurnool District.

The lands are classified as Government land as per Column No.6 of Adangal and the then Special Deputy Collector, LA, SRBC, Banaganapalli and Nandyal had acquired for formation of SRBC canal, SRBC quarters, as borrow area for Soils and also for keeping / movement of large number of vehicles.

Due to excavation of large quantities of soils in the borrow areas, at the time of formation of the canal there were large pits in the borrow areas. These pits have to be levelled by the Revenue authorities and to keep fit for providing House sites.

During the field inspection, it is noticed that the SRBC Department dug pits from the borrow area of the acquired lands which are to be levelled for providing house sites. The buffer zone wherever canal exists on either side of the SRBC canal for a distance of 30 Mts from the banks of the canal is to be left to safeguard the canal. Hence the area proposed for house sites are fit for providing house sites to the beneficiaries as the canal area and buffer zone were left and maintained as per the instructions of the Water Resources authorities and excluded from house site proposals. The discharge capacity of the canal in this SRBC reach is about 1800 Cusecs and the entire canal is lined. Even if any breaches occur, there is an emergency bed level escape at Km 89.442 of the SRBC

main canal with a discharge capacity of 400 Cusecs to decrease the flow of water in the canal. It was noticed by the Executive Engineer, SRBC Division No. 2 Banaganapalli and the Revenue authorities that about 17.39 Acres of lands in Sy.Nos.51/5A, 55/1B, 55/2B, 57/1B1, 57/1C1, 70/2A1, 66/2A1B, 70/1B2, 69/1B, 60/2A2A, 72/1, 73/1A & 67 are left out and not proposed for house sites. So the soils that are available in these lands can be utilized, whenever necessity arises for SRBC purposes.

The Executive Engineer, Housing, Nandyal also stated that if the jungle / pits existing in the land are cleaned and levelled, the above lands are feasible for housing purposes.

In view of the above, the above team of officers has concluded that as there is a maintenance of 30 Mts of buffer zone on either side of the canal while preparing the house site layouts wherever canal exists in the above mentioned lands, there will not be any problem for the canal banks. For the remaining lands, where the SRBC canal does not exist which were taken as borrow area at the time of excavation of the canal, there is no objection for preparation of house site layouts and fit for providing house sites to the eligible beneficiaries of Banaganapalli & Banumukkala Villages of Banaganapalli Mandal.”

13. The Petitioners in these Writ Petitions and W.P.NO.10901/2020 have filed these Writ Petitions with a *mala fide* intention to grab the

Government Lands in question. In order to vindicate the version of respondent No.2, order of the erstwhile Hon'ble High Court of Andhra Pradesh dated.28-12-2011 in W.P.No.19560/2011 is submitted where the Hon'ble Court has dismissed the Writ Petition in a similar Case in respect of the lands in Sy.No.55-5B to an extent of Ac.17.20 and the order of the same is narrated hereunder.

“This Writ Petition is filed by some of the owners of the lands, which were acquired for construction of tail channel of SRBC, as far back as the year 1990 with the grievance that a part of the said acquired land is now sought to be used for construction of houses for weaker sections.

The admitted position is that the petitioners' lands were acquired in the year 1990 for construction of a tail channel under SRBC. The petitioners alleged that, instead of utilizing the said land for the purpose for which it was acquired, the respondents are intending to use a part of the said acquired land for house sites. They apprehend that, if the acquired property is used for housing purpose, there is every possibility of their remaining property being inundated as free flow of water will be obstructed by construction of houses.

A detailed counter-affidavit has been filed by respondent No.3 wherein it is inter alia averred that an extent of Ac.17-20 cents in Survey No.55/5B of Banaganapalle Village was acquired, for construction of aqueduct of Muchatla Vagu for changing the direction of the course of Vagu due to formation of SRBC main canal, vide award, dated.20-03-1993 and; that the compensation amount was paid to the land owners. It is further averred that the Joint Collector has inspected the said land on 15-06-2011 and noticed that the same is fit for provision of house sites and instructed to prepare a layout in consultation with the Project Director, Andhra Pradesh State Housing Corporation Limited, Kurnool. It is further stated that construction of houses for weaker sections over the said land will not affect the free flow of water from the aqueduct of Muchatla Vagu and that there is no threat of submergence of the petitioners' lands. It is further stated that even though the land was acquired, the petitioners have been unauthorisedly cultivating the same

and that they have filed the present Writ Petition with a mala fide intention to prevent use of the said land for public purpose so that they can continue with unauthorized cultivation.

Except expressing an apprehension that there is a likelihood of floods in the event of construction of houses over part of the acquired land, the petitioners have not supported their plea by filling any material such as expert's opinion. Once the property is acquired after paying compensation, the land absolutely vests in the Government under Section 16 of the Act. The petitioners, who received compensation, have lost their title and interest over the acquired land. The State is, therefore, entitled to use the property for any public purpose. Therefore, I am of the opinion that, in the absence of any proof of the petitioners' apprehension that construction of houses over a part of the acquired land may lead to inundation of their remaining lands, the respondents cannot be prevented from using the said acquired land for construction of houses for weaker sections, which, undoubtedly is a public purpose.

For the above mentioned reasons the Writ Petition is merit less and hence, the same is dismissed. ”

14. The efforts of the government to utilize the said lands for the purpose of house sites have been thwarted by the vested interests since a long time when the Joint Collector, Kurnool on 15-06-2011 inspected the land and gave a green signal but as on date it is not materialized. In this connection it is to be seen that the present Writ Petitions attract the provisions of *res judicata* under section 11 of the Civil Procedure Code 1908.

15. The Petitioners in these Writ Petitions and WP.NO.10901/2020 have filed these Writ Petitions with a malafide intention to grab the Government Lands in question. It appears that the petitioners in this Batch of cases and in W.P.NO.10901/2020 were provoked or influenced

by the Petitioners in W.P.NO.19560/2011. Moreover some of the Petitioners in W.P.NO.19560/2011 are one and the same or family members or relatives to the present Petitioners.

16. With respect to the order of this High Court in WP.No.7736/2020 in favour of the petitioners, it is to be seen that in WA.No.256/2021, the Hon'ble High Court has set aside the order dated 19-03-2020 passed in W.P.No.7736/2020 and remanded the matter for fresh disposal by the learned single Judge. Hence there is no relevancy of the averment made by the petitioners in their affidavit at this juncture.

It is to be seen that the ruling in the judgment of the Apex Court between the ***Intellectual Forum, Tirupati's case*** (*supra*) relates to the alleged proposal of assignment of tank bed land which has no relevancy to this case. The schedule land in question was acquired by the department of SRBC for various purposes like construction of canals, aqueducts to prevent damage to canals by allowing free flow of natural course of water streams or to divert their natural course, extraction of certain soils for strengthening of bunds or beds or lining of canals, for residential quarters etc. The land in question is already government land belonging to the Water Resources Department (SRBC) and the Collector is the competent authority for transfer of land from one category to another category as per Para No. 15 of BSO and the resumption orders have been passed by the District Collector. The Writ Petitioners filed the present petitions in the Hon'ble High Court seeking quashing of the said

resumption orders, only to prevent well measured public purpose.

17. These writ petitions are not maintainable since writ petitioners are estopping the public cause and interest and they are neither aggrieved party nor affected by the decision of Government.
18. There are no sufficient grounds on the part of the Writ Petitioners for setting aside the orders of the government in G.O.Ms.No.510 Revenue (Lands-1) Department dated. 30-12-2019 and the resumption orders issued therein by the District Collector. Hence they are liable to be dismissed with costs.

REPLY AFFIDAVIT BY THE PETITIONERS TO THE COUNTER FILED BY THE 2ND RESPONDENT:

1. The Government vide Memo No. 24698/LA.II/A1/2012-3⁵, dated.16-02-2013 rejected earlier proposals for using the SRBC Lands for house sites and as such the 2nd respondent can't pass the impugned orders contrary to the Government orders.
 2. The concerned irrigation department after taking in to consideration of all the aspects specifically acquired the land for the purpose of aqueducts and now the same cannot be used for house sites in most clandestine and whimsical manner by putting the human life in danger.
 3. Now the 2nd respondent simply says 30 meters of buffer zone is enough to safeguard the SRBC canal by forgetting the fundamental fact that it is not a small canal, whereas it is one of the biggest canals in the state with
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2500 cusecs flow of water and there were breaches for about eighteen times whereby huge water escaped from the canal not only inundating the canal margin area but also surrounding colonies of Banaganapalle town and abetting villages thereon.

4. It is not the case of the respondents that this land is excess land or unutilized land, on the other hand this land was acquired specifically for the purpose of digging SRBC canal along with margins and soil borrow areas (to take the soil and fill the breaches whenever they occur on emergency basis it takes more time to get soil from far of places). As stated supra when the land was acquired for the specific purpose now the capricious action of the respondents in trying to use the SRBC canal margin land for house sites speaks volumes about the colorable exercise of power of the respondents.
5. A joint inspection report of the 3rd respondent, Executive Engineer, SRBC Division-2 and the Executive Engineer, Housing, Nandyal stated that leaving buffer zone of 30 meters, the available lands can be utilized for house sites. The Executive Engineer, SRBC, Division-2, Banganapalle is not competent to say so when there is no other material to show that there was a change or modification of the Government

COUNTER AFFIDAVIT OF RESPONDENT NO.4 (THE TAHSILDAR, BANAGANAPALLI, KURNOOL DISTRICT):

1. The District Collector, Kurnool in Rc.E1/494/2020, Rc.E1/495/2020, Rc.E1/496/2020 dated 04-03-2020 issued orders for resumption of the non utilized lands belonging to SRBC Authorities in the below mentioned

survey numbers for the purpose of providing house sites to the weaker sections. The purpose of providing house sites to the weaker sections is necessitated by the policy of the Government and the Government in their orders in G.O.Ms.No.510 Revenue (lands-I) Department dated.30-12-2019 authorized the District Collectors to resume those lands that are alienated or acquired by various departments of government for any public purpose but are not put into use for the same.

Banaganapalli Village Lands

Village	Sy. No	Acquired ext Ac. C	Award No. & Date	Purpose of Acquisition	Present Status	Extent for HS
1	2	3	4	5	6	7
	55/5B	17.20	18/92 dt. 20-03- 93	Aqueduct	Cultivation	10.50
	61/2A	7.23	4/92 dt. 15-10-92	Aqueduct	Cultivation	2.80
	62/1B	7.66	4/92 dt. 15-10-92	Aqueduct	Cultivation	3.00
	67	5.06	4/92 dt. 15-10-92	Aqueduct	Cultivation	2.00
	68	7.20	4/92 dt. 15-10-92	Aqueduct	Cultivation	1.68
	69/1A	6.11	4/92 dt. 15-10-92	Aqueduct	Cultivation	6.11
	70/1A	7.33	4/92 dt. 15-10-92	Aqueduct	Cultivation	7.33
	72/1	1.48	4/92 dt. 15-10-92	Aqueduct	To be Deleted	1.48

	133/1	5.57	4/92 dt. 15-10-92	Aqueduct	Cultivation	3.00
	132/2B	5.11	4/92 dt. 15-10-92	Aqueduct	Cultivation	3.40
	134/1	7.42	4/92 dt. 15-10-92	Aqueduct	Cultivation	3.00
	146/1B	1.70			Canal	1.70
		79.07				46.00

Bathulrupadu Village Lands

Land Details furnished in the Writ Petition			Lands acquired for SRBC vide Award No. and Date	Extent proposed for House Sites	Distance from the Canal in Meters
S.No.	Sy.No.	Extent			
1.	2-1B1	2.48	14/91-92 dt. 31-03-92	2.48	52
2.	2-1B3	3.05	14/91-92 dt. 31-03-92	3.05	52

Bhanumukkala village lands statement⁶

As per the WP filed			As per the Revenue Authority Report				
Village Name	Sy.No.	Extent in Acres	Land acquired for SRBC Vide Award No. & Date	Acquired lands for SRBS	Extent propose d for House Sites	Whet- her SRBC Canal existi- ng in this	Remarks

⁶ The lands where canal exists only are mentioned.

				Sy.No.	Extent Ac. C		Sy.No or not	
Bhanu- mukkala	311/2C /1A	9.14	34 dt. 26-11- 2001	311/2C /1A	9.14	9.14	No	No canal is existing in this lands of 9.14 acres
Bhanu- mukkala	314/2	5.09	34 dt. 26-11- 2001	314/2	5.09	5.09	No	No canal is existing in this lands of 5.09 acres
Bhanu- mukkala	316/1	9.09	34 dt. 26-11- 2001	316/1	9.99	9.99	No	No canal is existing in this lands of 9.99 acres
Bhanu- mukkala	317/1A	9.57	34 dt. 26-11- 2001	317/1A	9.57	9.57	No	No canal is existing in this lands of 9.57 acres.
Bhanu- mukkala	246	17.95	Not Acquired	Nil	Nil	Not propose d	No	Nil

Bhanumukkala village lands

S.No.	Sy.No.	Extent	Lands acquired for SRBC vide Award No. and Date	Exten t propo sed for House Sites	Distance from the Canal in Meters	Remarks
1.	312/3	6.00	34 dt. 26-11-2001	6.00	82-92	
2.	312/2A2	9.52	34 dt. 26-11-2002	9.52	82-92	
3.	319	8.22	6/91-92 dt. 29-02-92	14.50	132-142	

2. A big canal by name “Srisailam Right Branch Canal (SRBC)” exists and it is built for the purpose of flowing of water from Gorakallu to Owk Reservoir for irrigation purpose and it has been passing through the

margins of north and west of Banaganapalli town. It has breached but not to the extent of inundation of Banaganapalli town.

3. It is true that the lands belonging to the SRBC in the above mentioned survey numbers have been proposed for distribution of house sites to the weaker sections under the government flagship programme of Navaratnalu - Pedalandariki Illu. Those lands are private patta lands acquired by SRBC for the purpose of construction of Muchatla Vagu across the SRBC Channel in order to divert the flow of that vagu and in order to protect the ryots/ pattadars existing downstream. Those lands are not categorized as belonging to endowments, educational institutions, wakf or any religious institutions, environmentally sensitive like tank bed, river bed, hillocks with afforestation etc.

4. The District Collector/2nd respondent in this case has not circumvented any guidelines of the G.O.Ms.No.510 and the G.O. itself authorized him to resume those lands acquired by several departments that are unutilized and are kept waste and not served the purpose for which they were acquired. It is the policy of the government to resume unutilized government lands for granting house sites to the weaker sections. Sufficient distances from the canal related lands as per the mandatory instructions have been maintained taking into account the safety and security of the lives and that of the canal.

The orders of the District Collector, Kurnool vide Rc.E1/494/2020, Rc.E1/495/2020, Rc.E1/496/2020 dated.04-03-2020 are issued in

accordance with the powers vested in him by the Government vide G.O.Ms.No.510 dated 30-12-2019. There is no violation of instructions in Para 8 of the said G.O. as those lands are not categorized as belonging to endowments, educational institutions, wakf or any religious institutions, environmentally sensitive like tank bed, river bed, hillocks with afforestation etc.

5. The breaching of canals is not a common occurrence but it is a rare event which cannot be avoided when it is there for irrigation and drinking water. The margins are being encroached in general but if the government takes up the matter it would systematically prevent harmful encroachments by constructing houses at a mandatory distance from the canal.
6. The department of SRBC has acquired the land for various purposes like construction of canals, aqueducts to prevent damage to canals by allowing free flows of natural course of water streams or to divert their natural course, extraction of certain soils for strengthening of bunds or beds or lining of canals, for residential quarters etc. With the SRBC water available in plenty for irrigation purposes, the cultivation extent has largely been increased and some of the lands have outlived their purposes completely or partially and thus they are kept waste as on this date and are being encroached by private individuals by way of cultivation or construction of residential or other structures. Moreover the vast areas acquired literally near the water flowing canal are being

encroached upon indiscriminately by the public for the residential huts or houses and other purposes without any civic sense.

Hence keeping in view of the guidelines enumerated in the G.O.Ms.510, certain surplus lands near the water flowing canals along with lands acquired for other purposes excluding those lands that were meant for construction of canals have been proposed for issue of house sites. The encroachers of certain structures or residential huts or katcha houses are coming forward on their own to remove their encroachments to enroll themselves as beneficiaries with the hope that the government would construct new houses in the areas encroached by them.

Accordingly the layouts are also being proposed keeping in view the minimum mandatory distance from the base of the bund of the water flowing canal's buffer zone. Some of the lands acquired for excavation of certain soils required for strengthening the bund, bed or lining of the canals have outlived their purposes and are kept waste with some excavation here and there. And the lands acquired for aqueducts in order to prevent damage to the canal and to allow free flow for the natural streams like vanka, vagu are being encroached by the private individuals or those pattadars who parted with their lands to the government after receiving compensation. Some of the lands acquired for construction of official or residential quarters are partly kept vacant.

7. The SRBC authorities have acquired lands in the above mentioned survey numbers for the purpose of diverting the natural flood flow water of existing Mutchatla vagu by constructing an aqueduct across the SRBC Channel in order to prevent damage to canal and to protect the agricultural lands of those pattadars/ryots existing downstream due to the said diversion of flood water of the Mutchatla Vagu. But now with the increase in area of cultivation of lands upwards in the catchment area and the construction of GNSS canal, a flood flow channel just at a distance to the west of SRBC on parallel lines, the volume of water and the strength of its currents of Mutchatla Vagu stream reduced to a minimum. Some of the vested interests have gone to the extent of laying plots in the said lands and are selling them unauthorizedly and some temporary and permanent constructions have started to come. Thus the acquired land is being wasted and has become a venture for real estate and peaceful cultivation. Those lands are located very near to the Banaganapalle town and located besides the Banaganapalle road towards its east and west.

In order to vindicate the version of Respondent No. 4, a copy of the Judgment in WP.No.19560/2011⁷ dated. 28-12-2011 delivered by the

⁷The Writ Petition is filed by the owners of the lands whose lands were acquired for the purpose of constructing tail channel of SRBC in the year 1990. The grievance of the petitioners is that, instead of utilising the said land for the purpose for which it was acquired, the respondents are intending to use a part of the said acquired land for house sites. They apprehend that, if the acquired property is used for housing purpose, there is every possibility of their remaining property being inundated as free flow of water will be obstructed by construction of houses.

The then Hon'ble High Court of Andhra Pradesh held that "Except expressing an apprehension that there is a likelihood of floods in the event of construction of houses over part of the acquired land, the petitioners have not supported their plea by filing any material such as expert's opinion. Once the property is acquired after paying compensation, the land absolutely vests in the Government under Section 16 of the Act. The petitioners,

erstwhile Hon'ble High Court of Andhra Pradesh is relied. The efforts of the government to utilize the said lands for the purpose of house sites have been thwarted by the vested interests since a long time when the Joint Collector, Kurnool on 15-06-2011 inspected the land and gave a green signal but as on date it was not materialized.

Some of those pattadars who have already parted with their lands to the government (SRBC) after receiving the LA amount, Enhanced amount from the lower and Higher court from the time of its Award in the year 1993, have gone to the extent of filing a SLP in the Supreme Court for enhancement of compensation.

8. The Hon'ble High Court may, in the interest of justice and security and safety of the public in general be pleased to pass strict guidelines to maintain the distance of the buffer area from the foot of the canal bund to the proposed site in the event of passing of canal in that particular survey number.
9. The Hon'ble court may be pleased to take a pleasant view in respect of the lands in other survey numbers which are nothing to do with the passing of canal and which are acquired for other purposes as stated above and also in respect of some lands for the excavation of certain

who received compensation, have lost their title and interest over the acquired land. The State is, therefore, entitled to use the property for any public purpose.

Therefore, I am of the opinion that, in the absence of any proof of the petitioners' apprehension that construction of houses over a part of the acquired land may lead to inundation of their remaining lands, the respondents cannot be prevented from using the said acquired land for construction of houses for weaker sections, which, undoubtedly, is a public purpose.

For the above-mentioned reasons, the Writ Petition is merit less and hence, the same is dismissed."

minerals required for strengthening the bund or bed or lining of the canal as has happened in Bhanumukkala village of this same gram panchayat of Banaganapalli town and Mandal and the Writ petitions filed by some persons with vested interest and who have an axe to grind may be put to strict scrutiny and may be dismissed.

10. The petitioner has filed the W.P. on the basis of Memo No.24698/LA.II/A1/2012-3⁸, dated.16-02-2013 issued by the Principal Secretary to Govt., Irrigation & CAD (PW.LA.II) Department for the Sy.No:62/1B to 147/2A of SRBC Lands in Banaganapalli Village & Mandal. But the Sy.No.55/5B to an extent Ac.10.50 cents and Sy.No 61/2A2 to an extent of Ac.2.80 cents of Banaganapalli Village of Banaganapalli Mandal are not covered by the Memo.

In addition to that, the Principal Secretary to Govt., Irrigation & CAD (PW.LA.II) Department has issued only Memo but not Orders, because it is to avoid the misuse of the Govt. lands by the then MLA. But now the Government took decision in Cabinet Meeting by passing Orders and the Government has issued G.O.Ms.No.510, Revenue (Lands-I) Department, dated. 30-12-2019, for use of unutilized Government Lands for which the District Collector is the competent authority to resume the lands and to

⁸ The Chief Engineer (Projects), Irrigation, Kurnool was requested to accord necessary permission for sparing SRBC land for house site pattas to poor of Banaganapalli (V) from Km.91.00 to Km.92.650 on the request of Hon'ble MLA Banaganapalli Constituency. The Chief Engineer (Projects,) Irrigation, Kurnool is informed that once human settlements are allowed near the canal, there will be further encroachments along the canal, moving space along the canal will be reduced. It is not advisable to allow the Quarry area for house sites. Either the Government land or private land can be acquired for house sites. Hence, this proposal is herewith rejected.

utilize the same for providing house sites to eligible beneficiaries under the flagship programme of “NAVARATNALU-PEDALANDARIKI ILLU”. Hence the above said lands were proposed for provision of house sites to the poor people.

11. The erstwhile High Court of Andhra Pradesh in W.P.No.19560/2011 held that once the property is acquired after paying compensation, the land absolutely vests in the Government under Section 16 of the Act and construction of houses over a part of the acquired land may lead to inundation of their remaining lands, the respondents cannot be prevented from using the said acquired land for construction of houses for weaker sections, which, undoubtedly, is a public purpose.

12. For the reasons stated above, the writ petition may be dismissed with costs.

REPLY AFFIDAVIT BY THE PETITIONER TO THE COUNTER FILED BY THE 4th RESPONDENT:

1. The 4th respondent who is the Tahsildar is neither competent nor technically qualified to state about the reduction/currents of water flow which is to be decided by the technically skilled Engineers keeping in view of the safeguards for protection from floods, and on this ground alone, the counter of the 4th respondent has to be rejected.
2. The subject land proposed for construction of house sites under Navaratnalu Scheme is admittedly SRBC canal bund land acquired vide Awards during the years 1992, 1993 and 2001 by the Irrigation

department for the construction of aqueducts across the SRBC Canal in order to prevent damage to the canal and to protect agricultural lands in the downstream as admitted by the respondent in the counter affidavit. Now it is shocking and surprising to note the averments in counter affidavit that due to increase in the area of cultivation of lands upwards in the catchment area and construction of GNSS flood flow channel has reduced the volume of water, currents etc is totally untenable contention without competence or knowledge as 4th respondent Tahsildar cannot assess the volume of the water/currents flowing in the catchment areas.

3. When the subject land is acquired for the specific purpose of construction of aqueducts to prevent the floods and the said requirement is perennial and whenever there are unprecedented rains and heavy floods, all the aforesaid imaginations and assumptions of 4th respondent without any competence or manner of right will not save the lives of the people.
4. In this case, the subject land is acquired for construction of aqueducts and to prevent the floods apart from safeguarding the SRBC canal from damages and breaches and the said purpose of acquisition is permanent and the 2nd respondent Collector has no power or authority to resume such lands meant for specific purpose.

Board Standing Orders (15.4) prohibits even assignment of the lands in the water courses, channel margins etc.

5. Earlier, proposals were sent to the Government for utilizing the subject lands for house sites and such proposal was refused by the Government vide Memo No. 24698/LA.II/A1/2012-3, dated. 16-02-2013 categorically

stating that it is not at all safe to allow the human settlements near the canal and either the Government lands or private lands can be acquired for house sites. The said rejection orders of the Government have become final and binding on the respondent no. 2 to 4 herein, whereas the 2nd respondent by brushing aside/ignoring the aforesaid orders of the Government passed the impugned order for construction of houses in the subject land is capricious.

6. For the reasons stated above, the Writ Petition is to be allowed.

**COMMON COUNTER AFFIDAVIT FILED BY THE RESPONDENT NO.8
[Executive Engineer (FAC), SRBC Division No.2, Banaganapalli, Nandyal
District]:**

1. The 8th respondent herein is also filing the counter affidavit on behalf of the respondent no. 5 to 7 as he is authorized to do so. In W.P.No.16410/2020, W.P.No.7736/2020, W.P.No.17541/2020 and W.P.No.16411/2020 the respondents from 5 to 8 by an order dated 06.09.2023 were impleaded.
2. It is not correct to state that the SRBC canal discharges 2500 cusecs where house sites are allotted to the poor people. The total capacity of the canal water flow would accommodate a discharge of 1800 cusecs of water. The petitioners also stated that there was a history of 18 times breaches earlier inundating not only the proposed land but also surrounding colonies of Banaganapalli town, which is not correct and denied. The water flow of the canal is from Gorakallu Reservoir to Owk reservoir. Since the construction of the canal till today only 800 to 1000

cusecs of water was released from Gorakallu Reservoir to Owk reservoir, that is during the months between August to March (only 9 months). Remaining period there would not be any flow of water in the canal. During the period when there is no flow of water, checking of the entire canal will be conducted and if any breaches or pipings found are immediately acted upon. In fact, the SRBC Canal was breached during the year 2014 at Km 88.750 on Right side of the bank; and in the year 2017 at Km 91.500 on Left side of bank. The breaches and pipings occurred were only meager which is only 10 cusecs of water in pipings (leakages) & 20 to 25 cusecs of water was leaked in breaches. Immediately the same was attended to closing the same on war footing basis without any loss of property and human life.

3. With respect to the issue of Canal breach, the Revenue Divisional Officer, Nandyal (3rd Respondent) has requested the Executive Engineer, SRBC Division No.2, Banaganapalli (8th respondent) for inspecting the location of the canal and proposed house site lands as some of the villagers had made certain allegations by filing writ petitions before the Hon'ble High Court. The joint inspection was done on 28-02-2020 and immediately a report was drafted clarifying the allegations for the purpose of submitting to the Hon'ble High Court of Andhra Pradesh.

During the joint inspection, the 8th respondent has requested the Revenue authorities to maintain 30 m of buffer zone on either side of the canal while preparing the house site layouts wherever canal exists, so that there will not be any problem for canal banks and stated no objection for house sites in the proposed place where SRBC canal does

not exist. The Proposed lands were taken for the barrow area at the time of formation of the canal.

4. The Revenue Divisional Officer Nandyal (3rd respondent) has addressed a letter to the 7th respondent vide Letter No. Rc.B 274/2020 dated.07-07-2020 requesting to offer the remarks for the averments made by the Petitioner K.Venkateswar Reddy in W.P.No. 10934/2020. The remarks were sought on following averments.

I. The adangal copies filed by the petitioner for the above survey numbers clearly shows as canal.

II. The house sites proposed to distribute in the buffer zone/canal is not only illegal but also endangers the human habitation not only on the proposed banks, but also our other colonies as rescue operations for repairing/filling the breaches occurring to the canal cannot be done on war footing if the buffer zone is covered with dwelling houses which will be an obstacle for moving men and machinery whereby causing loss to our neighboring colonies also.

III. The canal breached five to six times in recent times whereby huge quantity of water flown into the neighboring colonies of Banaganapalli town which were in fact inundated.

Accordingly the 7th respondent endorsed the above mentioned letter to the 8th respondent vide Endt No. 263 S dated.08-07-2020 to offer his remarks and in turn the 8th respondent replied to the 7th respondent for the averments vide Letter No. 160 SE dated.08-07-2020. Subsequently the 7th respondent has replied to the 3rd respondent stating that there is

no objection for preparation of house sites layout beyond the buffer zone of 30 meters.

5. The Government in fact rejected the proposal submitted by the Chief Engineer (Projects), Kurnool, vide Government Memo No.24698/LA.II/A1/2012-03 dated 16-02-2013, for according permission for giving the SRBC lands for house sites pattas for poor people of Banaganapalli (V) located between Km 91.000 to Km 92.650 of SRBC informing that once human settlements are allowed near the canal, there will be further encroachments along the canal and moving space along the canal will be reduced.
6. Subsequent to the above Memo dated.16-02-2013, the Government vide Memo No.24698/LA.II/A1/2012-04 dated.06-05-2013 issued clarification and the relevant portion is as below:
 - “3. On either side of canal at Km 91.000, i.e., 2A1 on right side of canal and area between canal boundary and IB1/1B2 on the left side of canal can be spared for giving house site pattas to poor people.
 4. The Chief Engineer (P), Irrigation, Kurnool is requested to inspect the said site to identify the portion of land suitable to spare for the house sites duly marking on a site map. The land so identified shall be away from the embankment/drainage arrangements etc, so that there shall be no interference with the functions of the maintenance of the canal. The land identified should be segregated piece of land so that once land is allotted for house sites there should not be encroachments on open land belonging to our department and land which is not allotted should be fenced and used for tall tree plantations to prevent encroachments.”
7. The Government of Andhra Pradesh subsequently issued the G.O.Ms.No.510, Revenue (Lands-1) Department, dated.30-12-2019

authorizing the District Collectors of the respective Districts to resume the unutilized Government lands on the grounds of violation of conditions or non-utilization of the allotted land which was earlier alienated in favour of the private individuals/private organizations/ Government authorized to utilize the lands acquired by various (Government) departments /organizations for any public purpose but not put into use for the same purpose. These lands shall be utilized for providing house sites to eligible beneficiaries under the flagship program of “Navaratnalu-Pedalandarikilllu”.

8. The District Collector, Nandyal has issued proceedings vide Rc.E1/494/2020 dated.04-03-2020, Rc.E1/495/2020 dated.04-03-2020, Rc.E1/496/2020 dated.04-03-2020 and Rc.E1/418/2020 dated.05-03-2020 ordering to utilize the unutilized SRBC lands for providing the house sites to the eligible beneficiaries under “Navaratnalu-Pedalandarikilllu” in terms of G.O.Ms.No.510, Revenue (Lands-I) Department, dated.30-12-2019. Based on the proceedings issued by the District Collector, the Irrigation Authorities issued No Objection to the Revenue Authorities for preparation of house site layouts by maintaining 30 Meters buffer Zone on either side of the canal.
9. It is submitted that as per the Andhra Pradesh Land Development (Layout and Subdivision) Rules 2017 issued vide G.O.Ms.No.275 Municipal Administration and Urban development (H) Department dated.18-07-2017, the distance from the building or layouts to the Railways or religious structures or water bodies has been prescribed

differently, so as to avoid disasters due to accidents or floods or otherwise. According to Rule 11 (b), the water bodies and courses shall be maintained as recreation/Green Buffer zone and no building activity shall be carried out within

(iv) 9m from the defined boundary of Canal, Vagu Nala, Storm water drain of width more than 10m

(v) 2m from the defined boundary of Canal, Vagu, Nala, Storm water drain of width up to 10m.

10. The width of the canal varies from 7.50 meters to 10 meters, where the house sites are now proposed. As per the above G.O, it is sufficient to maintain the buffer zone of 9 meters. But the instant case there is 8 meters path way for inspection of the canal and additional 14 meters back side slope is provided along the canal. More over after the above said measurements, a 30 meters Buffer zone is also provided along the canal which is more than the prescribed width as per the Andhra Pradesh land development (Layout and Sub-Division) Rules 2017. Hence, there will not be any effect on proposed house sites and the canal.

11. As on today there is no flooding of water from the canal and no overflow damaging any human life or properties or surrounding agriculture crops. There is every chance of encroachment of these proposed lands and sometimes there is a possibility of illegal lifting of soil from the proposed lands. As the irrigation department is not utilizing this proposed land, the same can be used for allotting the house sites to the poor people in and around the Banaganaplli Mandal.

Hence, it is therefore prayed to dismiss the above Writ petitions with costs.

REPLY TO THE COMMON COUNTER OF RESPONDENT NO. 8:

1. A joint inspection was conducted by the 8th respondent along with the Executive Engineer, Housing, RDO, Nandyal and the report was given on 28-02-2020 without stating as to whether the 8th respondent is competent and authorized to give such report by giving no objection for location of residential colonies beyond the 30 meters of buffer zone of the SRBC canal. Buffer Zone is only to protect the canal but this will not give license to the respondents to locate the residential colonies besides the canal which is dangerously flowing 6 meters above the ground level and its breach will wash away the habitation.

The SRBC authorities vide Award No.4 of 1992, dated.15-10-1992, had acquired the lands required for the canal keeping in view all the contingencies in mind as per the advice and drawings given by the Drawings and Designs Wing of the Irrigation Department who actually draws the technical drawings and required lands for that purpose. The respondents lost sight of the fundamental aspect that SRBC canal is running in full embankment (earth banks above the ground level on both sides of canal) above the ground level and in fact canal is flowing 6 meters above the ground level and breach of canal will make the water to escape in a very speedy manner as it is flowing above the ground level and not only inundates surroundings but also nearby colonies of Banganapalle town as it happened earlier due to the breach of canal for 18 times. The petitioner relied upon the map describing the typical cross

section of the SRBC main canal. It is also further contended that there is no escape channel for SRBC canal to divert flood water or water out of breach of canal.

2. The 8th respondent has no competence or jurisdiction to state that the SRBC margin lands can be used for providing house sites.
3. The margin land to the SRBC canal beyond buffer zone is very much essential for filling the breaches on emergency basis as bringing the soil from faraway places will consume time resulting in more inundation and damage. As per the joint inspection report there are pits in the aforesaid margin lands which are formed due to excavation and filling of the breaches. And now it is proposed to fill up the pits to give them for house sites and if big pits are filled up with soil no houses can be constructed in that loose soil.
4. The Government earlier rejected the proposals vide Memo dated 16.02.2013 clearly stating that it is not advisable, however issued another memo dated 06.05.2013 and Para 4 reads as follows:

“Therefore, the Chief Engineer (P), Irrigation, Kurnool is requested to inspect the said site to identify the portion of land suitable to spare for the house sites duly marking on a site map. The land so identified shall be away from the embankment/drainage arrangements etc. So that there shall be no interference with the functions of the maintenance of the canal. The land identified should be segregated piece of land so that once land is allotted for house sites there should not be encroachments on open land belonging to our department and land which is not allotted should be fenced and used for tall tree plantations to prevent encroachments.”

Hence the aforesaid orders of the 1st respondent Government is very clear that it is the Chief Engineer i.e., 6th respondent who is the competent

authority to go and inspect the site to identify the land suitable to spare for the house sites. Admittedly the 6th respondent has not inspected the site nor given any report, whereas the 8th respondent in an unwarranted manner gave the joint inspection report.

5. The impugned orders of the 2nd respondent District collector in directing the revenue authorities to take SRBC margin lands for house sites is without consulting and taking NOC from the irrigation department which is apparent on the face of impugned orders. That apart they are relying upon the 8th respondent counter.

For the reasons stated above, the writ petition may be allowed.

CASES REFERRED BY THE PETITIONERS:

1. Intellectual Forum, Tirupathi Vs. State Of A. P. & Ors⁹

The present case relates to the preservation of and restoration of status quo ante of two tanks i.e., Avilala Tank and Peruru Tank which are located in the suburbs of Tirupati Town and were historical in nature, being in existence since 1500 AD. The grievance of the appellants Society was in respect of systemic destruction of percolation, irrigation and drinking water tanks in Tirupati town namely, Avilala and Peruru Tank and alienation of Avilala tank bed land to the Tirupati Urban Development Authority (TUDA) and the A.P. Housing Board and Peruru Tank bed lands to Tirumala Tirupati Devasthanam (TTD) for housing purposes.

The following questions of law arise for consideration by this Court:-

1. Whether Urban Development could be given primacy over and above the need to protect the environment and valuable freshwater resources?

⁹ AIR 2006 SC 1350

2. Whether the action of the A.P. state in issuing the impugned G.Os could be permitted in derogation of Articles 14 and 21 of the Constitution of India as also the Directive Principles of State Policy and fundamental duties enshrined in the Constitution of India?

3. Whether the need for sustainable development can be ignored, do away with and cause harm to the environment in the name of urban development?

4. Whether there are any competing public interests and if so how the conflict is to be adjudicated/reconciled?

The Hon'ble Supreme Court considered the sensitive issues raised in the appeals by the appellants and countered by the respective respondents with reference to the pleadings, the documents, annexures filed and judgment of the High Court. The Hon'ble Supreme Court also carefully perused the report submitted by the Expert Committee and also considered the rival submissions made by the respective counsel.

The Hon'ble Supreme Court observed that the nature of the question in this case is twofold.

Firstly, the jurisprudential issues. In the event of conflict between the competing interests of protecting the environment and social development, this Court in *M.C. Mehta v. Kamal Nath*¹⁰, in paragraph 35 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

¹⁰ 1997(1) SCC 388

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 resources 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 resources.”

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*]. This responsibility is clearly enunciated in the United Nations Conference on the Human Environment, Stockholm 1972 [*Stockholm Convention*], to which India is a party. The relevant Clause of this Declaration in the present context is Paragraph 2, which states:

“The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.”

Thus, there is no doubt about the fact that there is a responsibility bestowed upon the Government to protect and preserve the tanks, which are an important part of the environment of the area.

Sustainable Development

The respondents, however, have taken the plea that the actions taken by the Government were in pursuance of urgent needs of development. The debate

between the developmental and economic needs and that of the environment is an enduring one, since if the environment is destroyed for any purpose without a compelling developmental cause, it will most probably run foul of the executive and judicial safeguards. However, this court has often faced situations where the needs of environmental protection have been pitched against the demands of economic development.

In response to this difficulty, policy makers and judicial bodies across the world have produced the concept of “Sustainable Development”. This concept, as defined in the 1987 report of the World Commission on Environment and Development [*Brundtland Report*] defines it as “Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs”. Returning to the Stockholm Convention, a support of such a notion can be found in Paragraph 13, which states:

“In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve the environment for the benefit of their population.”

Subsequently the Rio Declaration on Environment and Development, passed during the Earth Summit at 1992, to which also India is a party, adopts the notion of sustainable development. Principle 4 of the declaration states:

“In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.”

This court in *Essar Oil v. Halar Utkarsh Samiti*¹¹, was pleased to expound on this. 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,

¹¹ 2004 (2) SCC 392, Para 27

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 the 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 this Court in *Indian Council for Enviro-Legal Action v. Union of India*¹², where their Lordships said:

“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 the environment and vice versa, but there should be development while taking due care and ensuring the protection of the environment.”

The concept of sustainable development also finds support in the decisions of this court in *M.C. Mehta v. Union of India (Taj Trapezium Case)*¹³, *State of Himachal Pradesh v. Ganesh Wood Products*¹⁴, and *Narmada Bachao Andolan v. Union of India*¹⁵.

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 find a balance between the

¹² 1996 (5) SCC 281 Para 31

¹³ (1997) 2 SCC 653

¹⁴ (1995) 3 SCC 363

¹⁵ (2002) 10 SCC 664

developmental needs which the respondents assert, and the environmental degradation, that the appellants allege.

Public Trust Doctrine

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*¹⁶, 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 includes 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.

The doctrine, in its present form, was incorporated as a part of Indian law by this Court in *M.C. Mehta v. Kamal Nath*, (supra) and also in *M.I. Builders v. Radhey Shyam Sahu*¹⁷. In *M.C. Mehta*, Kuldeep Singh J., writing for the majority held:

¹⁶ 146 US 537 (1892)

¹⁷ (1999) 6 SCC 464

[our legal system] includes the public trust doctrine as part of its jurisprudence. The state is the trustee of all natural resources which are by nature meant for public use and enjoyment. The state as a trustee is under the legal duty to protect the natural resources. The Supreme Court of California, in *National Audubon Society v. Superior Court of Alpine Country*¹⁸, also known as the *Mono Lake case* summed up the substance of the doctrine. The Court said:

Thus the public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering the right only in those rare cases when the abandonment of the right is consistent with the purposes of the trust. This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the state holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny upon any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinize such actions of the Government, the Courts must make a distinction between the government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources, [Joseph L. Sax "The public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", *Michigan Law*

¹⁸ 33 Cal.419

Review, Vol.68 No.3 (Jan.1970) PP 471-566]. According to Prof. Sax, whose article on this subject is considered to be an authority, three types of restrictions on governmental authority are often thought to imposed by the public trust doctrine [ibid]:

1. The property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;
2. The property may not be sold, even for fair cash equivalent
3. The property must be maintained for particular types of use. (i)Either traditional uses, or (ii) some uses particular to that form of resources.

In the instant case, it seems, that the Government Orders, as they stand now, are violative of principles 1 and 3, even if we overlook principle 2 on the basis of the fact that the Government is itself developing it rather than transferring it to a third party for value.

Therefore, our order should try to rectify these defects along with following the principle of sustainable development as discussed above.

Inter-Generational Equity

Further the principle of “Inter-Generational Equity” has also been adopted while determining cases involving environmental issues. This Court in the case of *A.P. Pollution Control Board vs Prof. M.V. Nayudu & Ors*¹⁹ in paragraph 53 held as under:

“The principle of inter-generational equity is of recent origin. The 1972 Stockholm Declaration refers to it in principles 1 and 2. In this context, the environment is viewed more as a resource basis for the survival of the present and future generations.

¹⁹ (1999) 2 SCC 718

Principle 1 - Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for the present and future generations.

Principle 2 - The natural resources of the earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of the present and future generations through careful planning or management, as appropriate.”

Several international conventions and treaties have recognized the above principles and, in fact, several imaginative proposals have been submitted including the locus standi of individuals or groups to take out actions as representatives of future generations, or appointing an ombudsman to take care of the rights of the future against the present (*proposals of Sands and Brown Weiss referred to by Dr. Sreenivas Rao Permmaraju, Special Rapporteur, paras 97 and 98 of his report*).

The principles mentioned above wholly apply for adjudicating matters concerning environment and ecology. These principles must, therefore, be applied in full force for protecting the natural resources of this country.

Article 48-A of the Constitution of India mandates that the State shall endeavour to protect and improve the environment to safeguard the forests and wildlife 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 the national environment including forests, lakes, rivers, wildlife and to have compassion for living creatures.

These two Articles are not only fundamental in the governance of the country but also it shall be the duty of the State to apply these principles

in making laws and further these two articles are to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 of the Constitution of India and also the various laws enacted by the Parliament and the State Legislature.

On the other hand, we cannot also shut our eyes that shelter is one of the basic human needs just next to food and clothing. Need for a National Housing and Habitat Policy emerges from the growing requirements of shelter and related infrastructure. These requirements are growing in the context of rapid pace of urbanization, increasing migration from rural to urban centers in search of livelihood, mis-match between demand and supply of sites and services at affordable cost and inability of most new and poorer urban settlers to access formal land markets in urban areas due to high costs and their own lower incomes, leading to a non-sustainable situation. This policy intends to promote sustainable development of habitat in the country, with a view to ensure equitable supply of land, shelter and services at affordable prices.

The World has reached a level of growth in the 21st Century as never before envisaged. While the crisis of economic growth is still on, the key question which often arises and the Courts are asked to adjudicate upon is whether economic growth can supersede the concern for environmental protection and whether sustainable development which can be achieved only by way of protecting the environment and conserving the natural resources for the benefit of the humanity and future generations could be ignored in the garb of economic growth or compelling human necessity. The growth and development process are terms without any content, without an inkling as to the substance of their end results. This inevitably leaves us to the conception of growth and development which sustains from one generation to the next in order to secure 'our common future'. In pursuit of development, focus has to be on sustainability of development and policies towards that end have to be earnestly formulated and sincerely observed. As Prof. Weiss puts it, "conservation, however, always takes a back seat in times of economic stress." It is now an accepted social principle that all human

beings have a fundamental right to a healthy environment, commensurate with their well being, coupled with a corresponding duty of ensuring that resources are conserved and preserved in such a way that present as well as the future generations are aware of them equally.

The Parliament has considerably responded to the call of the Nations for conservation of environment and natural resources and enacted suitable laws.

The Judicial Wing of the country, more particularly, this Court has laid down a plethora of decisions asserting the need for environmental protection and conservation of natural resources. The environmental protection and conservation of natural resources has been given a status of a fundamental right and brought under Art. 21 of the Constitution of India. This apart, the Directive Principles of State Policy as also the fundamental duties enshrined in Part IV and Part IVA of the Constitution of India respectively also stresses the need to protect and improve the natural environment including the forests, lakes, rivers and wildlife and to have compassion for living creatures.

This Court in *Dahanu Taluka Environmental Protection Group and Ors. Vs. Bombay Suburban Electricity Supply Co. Ltd. & Ors*²⁰ held that the concerned Government should “consider the importance of public projects for the betterment of the conditions of living people on one hand and the necessity for preservation of social and ecological balance and avoidance of deforestation and maintenance of purity of the atmosphere and water free from pollution on the other in the light of various factual, technical and other aspects that may be brought to its notice by various bodies of laymen, experts and public workers and strike a balance between the two conflicting objectives.”

However, some of the environmental activists, as noted in the “The Environmental Activities Hand Book” authored by Gayatri Singh,

²⁰ (1991) 2 SCC 539

Kerban Ankleswaria and Colins Gonsalves, that the Judges are carried away by the money spent on projects and that mega projects, that harm the environment are not condemned. However, this criticism seems to be baseless since in *Virender Gaur & Ors. Vs. State of Haryana & Ors*²¹, , this Court insisted on the demolition of structure which have been constructed on the lands reserved for common purposes and that this Court did not allow its decision to be frustrated by the actions of a party. This Court followed the said decision in several cases issuing directions and ensuring its enforcement by nothing short of demolition or restoration of status quo ante. The fact that crores of rupees was spent already on development projects did not convince this Court while being in a zeal to jealously safeguarding the environment and in preventing the abuse of the environment by a group of humans or the authorities under the State for that matter.

The set of facts in the present case relates to the preservation of and restoration of status quo ante of two tanks, historical in nature being in existence since the time of Srikrishnadevaraya, The Great, 1500 A.D., where the cry of socially spirited citizens calling for judicial remedy was not considered in the right perspective by the Division bench of the High Court of Andhra Pradesh despite there being overwhelming evidence of the tanks being in existence and were being put to use not only for irrigation purpose but also as lakes which were furthering percolation to improve the

²¹ (1995) 2 SCC 577

groundwater table, thus serving the needs of the people in and around these tanks.

The Division Bench of the High Court, in the impugned order, has given precedence to the economic growth by completely ignoring the importance and primacy attached to the protection of environment and protection of valuable and most cherished fresh water resources. No doubt, the wishful thinking and the desire of the appellant- forum , that the Tanks should be there, and the old glory of the tanks should be continued, is laudable. But the ground realities are otherwise. We have already noticed the ground realities as pointed out by the Government of Andhra Pradesh, TUDA and TTD in their reply to the Civil appeals by furnishing details, datas and particulars. Nowadays because of poverty and lack of employment avenues, migration of people from rural areas to urban areas is a common phenomenon. Because of the limited infrastructure of the towns, the towns are becoming slums. We, therefore, cannot countenance the submissions made by the appellant in regard to the complete restoration and revival of two tanks in the peculiar facts and circumstances of this case. We cannot, at the same time, prevent the Government from proceeding with the proper development of Tirupathi town. The two Government Orders which are impugned have been issued long before and pursuant to the issuance of the Government Orders, several other developments have taken place. Constructions and improvements have been made in a vast measure. Because of spending crores and crores of rupees by various authorities, the only option now left to the appellant and the respondents is to see that the

report submitted by the Expert Committee is implemented in its letter and spirit and all the respondents shall cooperate in giving effect to the Committee's report.

It is true that the tank is a communal property and the State authorities are trustees to hold and manage such properties for the benefits of the community and they cannot be allowed to commit any act or omission which will infringe the right of the Community and alienate the property to any other person or body. Taking into account all these principles of law, and after considering the competing claims of environment and the need for housing, this Court holds the following as per the facts of this case.

The Respondents have claimed that the valuable right to shelter will be violated if the impugned Government Orders are revoked. On the facts of the present case, it seems that the respondents intend to build residential blocks of flats for High and Middle income families, institutions as well as infrastructure for the TTDS. If the proposed constructions are not carried on, it seems unlikely that anyone will be left homeless or without their basic need for shelter. Therefore, one feels that the right to shelter does not seem to be so pressing under the present circumstances so as to outweigh all environmental considerations.

Another plea repeatedly taken by the respondents corresponds to the money already spent on developing the land. However, the decision of this case cannot be based solely upon the investments committed by any party. Since, otherwise, it would seem that once any party makes certain investment in a project, it would be a fait accompli and this Court will not have any option but to deem it legal. Therefore, under the present

circumstances, the Court should do the most it can to safeguard the two tanks in question. However, due to the persistent developmental activities over a long time, much of the natural resources of the lakes has been lost, and considered irreparable. This, though regrettable, is beyond the power of this court to rectify.

One particular feature of this case was the competing nature of claims by both the parties on the present state of the two tanks and the feasibility of their revival. We thought that it would be best, therefore, if we place reliance on the findings of the expert committee appointed by us which has considered the factual situation and the feasibility of revival of the two tanks. Thus in pursuance of a study of that committee, this Court passes the following orders.

The appeals are disposed of with the following directions:

With regard to Peruru tank:

- (i) No further constructions to be made.
- (ii) The supply channel of Bodeddula Vanka needs to be cleared and revitalized. A small check dam at Malapali to be removed to ensure the free flow and supply to the tank.
- (iii) Percolation tank to be constructed and artificial recharge to be done to ensure the revival of the tank, keeping in mind its advantage at being situated at the foothills.
- (iv) The area allotted by Mandal Revenue Office for construction of the tank to be increased to a minimum of 50 acres. Percolation tank with sufficient number of recharge shafts to be developed to recharge the unsaturated horizons up to 20 m. The design of the shafts etc. to be prepared in consultation with the CGWB. The proposed percolation tank to be suitably located along the bund keeping in view the inlets, irrigation sluices and surplus water.

(v) Feasibility and cost estimation for the revival of the old feeder channel for Swarnamukhi River should be carried and a report to be submitted to the Court.

(vi) Each house already constructed by the TTD must provide for roof top rain water harvesting. Abstraction from ground water to be completely banned. No borewell/ tubewell for any purpose to be allowed in the area.

(vii) Piezometers to be set up at selected locations, in consultation with the CGWB to observe the impact of rain water harvesting in the area on ground water regime.

With regard to Avilala tank:

(i) No further construction to be allowed in the area.

(ii) Each house already constructed by the APHB/ TUDA must provide structure for roof top rain water harvesting. All the storm water in the already built colonies to be recharged to groundwater. Structures for such purposes to be designed in consultation with the CGWB.

(iii) No borewell/ tubewell for any purpose to be allowed in the area.

(iv) An area of 40 acres presently reserved for the Government should not be developed in any way that may lead to concretization of the ground surface. Recharge structures to be constructed for rainwater harvesting.

(v) Piezometers to be set up at selected locations, in consultation with the CGWB to observe the impact of rain water harvesting in the area on ground water regime.

2. Hari Krishna Mandir Trust Vs. State of Maharashtra & Ors²²

The Hon'ble Supreme Court observed that "The High Courts exercising their jurisdiction under Article 226 of the Constitution of India, not only have the power to issue a Writ of Mandamus or in the nature of Mandamus, but are duty bound to exercise such power, where the Government or a public authority has failed to exercise or has wrongly exercised discretion conferred upon it by a Statute, or a rule, or a policy decision of the Government or has exercised such discretion malafide, or on irrelevant consideration.

²² (2020) 9 SCC 356

In all such cases, the High Court must issue a Writ of Mandamus and give directions to compel performance in an appropriate and lawful manner of the discretion conferred upon the Government or a public authority.”

3. Delhi Development Authority & Another Vs. Joint Action Committee, Allottee of SFS Flats and Others²³

The Hon’ble Supreme Court observed that “An executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the nitty-gritty of the policy, or substitute one by the other but it will not be correct to contend that the court shall lay its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the superior court would not be without jurisdiction as it is subject to judicial review.

Broadly, a policy decision is subject to judicial review on the following grounds:

- (a) if it is unconstitutional;
- (b) if it *de hors* the provisions of the Act and the Regulations;
- (c) if the delegatee has acted beyond its power of delegation;
- (d) if the executive policy is contrary to the statutory or a larger policy.”

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS:

1. The Writ petitioners are farmers of the Lands situated adjacent to the canal and their lands were acquired in the years 1992, 1993 and 2001 by the SRBC Authorities for the purpose of

- a) For Srisailam Right Bank Canal;

²³ (2008) 2 SCC 672

- b) For Approach and Trial Channel of Mutchatla Vagu aqueduct for package No.9 of SRBC;
- c) For excavation of Additional Quarry for C.N.S. Soils to Block No. X of Srisailam Right Bank Canal.

They have *locus standi* to file the Writ Petition. With respect to filing of earlier petition regarding the same cause of action in W.P.No.19560/2011, it is submitted that the earlier petition was filed with respect to barrow area land and now it is filed with respect to canal bund only.

2. The properties allotted for house sites are private lands acquired by SRBC Authorities for a specific purpose i.e., to have more margins. So it should be used only for the purpose for which they are acquired.

3. When the earlier breaches occurred, it could be corrected swiftly because there was no obstruction at that time. If the houses are built now, then it would be difficult to mitigate the breaches or floods swiftly that may occur in future because huge machinery which is required for mitigating the breaches cannot be brought in the narrow lanes of houses.

The learned Additional Advocate General was not correct in submitting that even if the floods occur, the people living in the house sites will be affected first and not the petitioners.

4. All the present four Writ Petitions challenge the impugned orders of the District Collector Rc.E1/494/2020, Rc.E1/495/2020, Rc.E1/496/2020 dated.04-03-2020. The District Collector cannot simply say that he took possession of the lands belonging to the SRBC. The District Collector has

not taken the opinion of the Irrigation Department before issuing the impugned orders.

5. The Respondent No.5 (Irrigation Department) cannot say that the property can be taken when the same is rejected by the Government vide Memo No.24698/LA.II/A1/2012-03 ²⁴ dated 16-02-2013 and in Memo No.24698/LA.II/A1/2012-04 ²⁵ dated 06-05-2013 the report of the Chief Engineer is sought to decide whether the SRBC lands can be given for house site purpose.

In the present case, the report of the Chief Engineer is not sought by the respondents and to cure this, they brought in the Joint Inspection Report. A land acquired for a particular purpose cannot be taken away by the Joint Inspection Report.

6. The houses cannot be built on loose soil.

²⁴ The Chief Engineer (Projects), Irrigation, Kurnool was requested to accord necessary permission for sparing SRBC land for house site pattas to poor of Banaganapalli (V) from Km.91.00 to Km.92.650 on the request of Hon'ble MLA Banaganapalli Constituency.

The Chief Engineer (Projects,) Irrigation, Kurnool is informed that once human settlements are allowed near the canal, there will be further encroachments along the canal, moving space along the canal will be reduced. It is not advisable to allow the Quarry area for house sites. Either the Government land or private land can be acquired for house sites. Hence, this proposal is herewith rejected.

²⁵ It is noticed that on either side of canal at Km 91.000, i.e., 2A1 on right side of canal and area between canal boundary and IB1/1B2 on the left side of canal can be spared for giving house site pattas to poor people.

The Chief Engineer (P), Irrigation, Kurnool is requested to inspect the said site to identify the portion of land suitable to spare for the house sites duly marking on a site map. The land so identified shall be away from the embankment/drainage arrangements etc, so that there shall be no interference with the functions of the maintenance of the canal. The land identified should be segregated piece of land so that once land is allotted for house sites there should not be encroachments on open land belonging to our department and land which is not allotted should be fenced and used for tall tree plantations to prevent encroachments.

He is also requested to submit a report duly attending to the above issues along with plans duly marking the lands to be spared for the said purpose.”

With respect to G.O.Ms.No.275 is concerned, it is for safeguarding the Canal and not the people and the present Petitions were filed not for safeguarding the canal but the people.

7. According to Para 8 of G.O.Ms.No.510, environmentally sensitive and fragile areas such as tank beds, river beds, other water bodies shall not be used for house site purposes fragile areas such as tank beds should not be taken.

What is meant by Fragile needs to be determined.

Further the canal has breached 18 times and the same has not been denied by the respondents.

SUBMISSIONS OF THE LEARNED ADDITIONAL ADVOCATE GENERAL:

1. The W.P.No.19560/2011 was filed earlier with respect to the same survey number and the same pleas were taken before the erstwhile Hon'ble High Court of Andhra Pradesh. The said Writ Petition was dismissed vide order dated 28-12-2011 by making the following observations:

“This Writ Petition is filed by some of the owners of the lands, which were acquired for construction of the tail channel of SRBC, as far back as the year 1990 with the grievance that a part of the said acquired land is now sought to be used for construction of houses for weaker sections.

The admitted position is that the petitioners' lands were acquired in the year 1990 for construction of a tail channel under SRBC. The petitioners alleged that, instead of utilizing the said land for the purpose for which it was acquired, the respondents are intending to use a part of the said acquired land for house sites. They apprehend that, if the acquired property is used for housing purpose, there is every

possibility of their remaining property being inundated as free flow of water will be obstructed by construction of houses.

A detailed counter-affidavit has been filed by respondent No.3 wherein it is *inter alia* averred that an extent of Ac.17-20 cents in Survey No.55/5B of Banaganapalle Village was acquired, for construction of aqueduct of Muchatla Vagu for changing the direction of the course of Vagu due to formation of SRBC main canal, vide award, dated.20-03-1993 and; that the compensation amount was paid to the land owners. It is further averred that the Joint Collector has inspected the said land on 15-06-2011 and noticed that the same is fit for provision of house sites and instructed to prepare a layout in consultation with the Project Director, Andhra Pradesh State Housing Corporation Limited, Kurnool. It is further stated that construction of houses for weaker sections over the said land will not affect the free flow of water from the aqueduct of Muchatla Vagu and that there is no threat of submergence of the petitioners' lands. It is further stated that even though the land was acquired, the petitioners have been unauthorisedly cultivating the same and that they have filed the present Writ Petition with a mala fide intention to prevent use of the said land for public purpose so that they can continue with unauthorized cultivation.

Except expressing an apprehension that there is a likelihood of floods in the event of construction of houses over part of the acquired land, the petitioners have not supported their plea by filling any material such as expert's opinion. Once the property is acquired after paying compensation, the land absolutely vests in the Government under Section 16 of the Act. The petitioners, who received compensation, have lost their title and interest over the acquired land. The State is, therefore, entitled to use the property for any public purpose. Therefore, I am of the opinion that, in the absence of any proof of the petitioner's apprehension that construction of houses over a part of the acquired land may lead to inundation of their remaining lands, the respondents cannot be prevented from using the said acquired land for construction of houses for weaker sections, which, undoubtedly is a public purpose.

For the above mentioned reasons the Writ Petition is merit less and hence, the same is dismissed.”

It is further submitted that the petitioner suppressed the 2011 order and the inundation pleas were dismissed in the 2011 order too.

2. The petitioners are unauthorisedly cultivating the said lands and they do not want to part with the same. So they filed the present Writ Petitions.
3. The petitioners have not filed any expert opinion to support their contentions.
4. The petitioners are contending that the lives would be lost if the construction of houses are allowed on the said lands then they should file Public Interest Litigation (PIL) and not Writ Petition.
5. The G.O.Ms.No.275 dated.18-07-2017 issued as per the Andhra Pradesh Land Development (Layout and Subdivision) Rules 2017 states that the distance from the building or layouts to the Railways or religious structures or Water Bodies has been prescribed differently so as to avoid disasters due to accidents or floods or otherwise.

According to Rule 11 (b), the water bodies and courses shall be maintained as Recreational /Green Buffer zone and no building activity/Land Development shall be carried out within:

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

The width of the canal varies from 7.50 Meters to 10 Meters, from the place where house sites are now proposed. As per the G.O., it is sufficient to maintain the buffer zone of 9 Meters. But in the instant case, there is 8 Meters path way for Inspection of the canal and 14 Meters back side slope is provided along the canal. Moreover, after the above said measurements, a 30 Meters buffer zone is also provided

along the canal which is more than the prescribed width as per the Andhra Pradesh Land Development (Layout and Sub-Division) Rules 2017. So the distance from the boundary of the canal exceeds 9 meters by any stretch of imagination.

6. With respect to the issue of inundation, it is submitted that even if the house sites are not given, the Government cannot stop inundation. Further the house sites were allotted after leaving the buffer zone and before the petitioners lands. So even if the inundation occurs, the people living in the house sites will be the first affected and then the petitioners.

Previous experience of Inundation

It is not correct to state that the SRBC canal discharges 2500 cusecs where house sites are allotted to the poor people. The total capacity of the canal water flow would accommodate a discharge of 1800 cusecs of water. The petitioner also stated that there was a history of 18 times breaches earlier inundating not only the proposed land but also surrounding colonies of Banaganapalli town, which is not correct and denied. The water flow of the canal is from Gorakallu Reservoir to Owk reservoir. Since the construction of the canal till today only 800 to 1000 cusecs of water was released from Gorakallu Reservoir to Owk reservoir, that is during the months between August to March (only 9 months). Remaining period there would not be any flow of water in the canal. During the period when there is no flow of water checking of the entire canal will be conducted and if any breaches or pipings found are

immediately acted upon. In fact, the SRBC Canal was breached during the year 2014 at Km 88.750 on Right side of the bank; and in the year 2017 at Km 91.500 on Left side of the bank. The breaches and pipings that have occurred were only meager through which only 10 cusecs of water was leaked in pipings (leakages) & 20 to 25 cusecs of water was leaked in breaches. Immediately the same was attended too closing the same on war footing basis without any loss of property and human life.

7. With respect to the plea of petitioners that the Executive Engineer was forced to give the affidavit, it is submitted that it is not a proper argument on the part of the petitioners' counsel.

An inspection was done by the Joint Collector in 2011 itself and noticed that the said lands are fit for provision of house sites and instructed to prepare a layout in consultation with the Project Director, Andhra Pradesh State Housing Corporation Limited, Kurnool.

And the erstwhile Hon'ble High Court of Andhra Pradesh too in W.P.No.16450 of 2011 held that in the absence of any proof of the petitioner's apprehension that construction of houses over a part of the acquired land may lead to inundation of their remaining lands, the respondents cannot be prevented from using the said acquired land for construction of houses for weaker sections, which, undoubtedly is a public purpose.

At any rate, the petitioners cannot have any grievance if the Government is giving a house site which is a laudable object.

The Joint Inspection Report conducted on 28-02-2020 stated that “The team of officers has concluded that as there is a maintenance of 30 Mts of buffer zone on either side of the canal while preparing the house site layouts wherever canal exists in the above mentioned lands, there will not be any problem for the canal banks. For the remaining lands, where the SRBC canal does not exist which were taken as borrow area at the time of excavation of the canal, there is no objection for preparation of house site layouts and fit for providing house sites to the eligible beneficiaries of Banaganapalli & Banumukkala Villages of Banaganapalli Mandal.”

8. With respect to use of lands acquired for a particular purpose and using it for another public purpose, it is submitted that as per the order of the erstwhile Hon'ble High Court of Andhra Pradesh in W.P.No. 16450 of 2011, it is clear that “Once the property is acquired after paying compensation, the land absolutely vests in the Government under Section 16 of the Act. The petitioners, who received compensation, have lost their title and interest over the acquired land. The State is, therefore, entitled to use the property for any public purpose.”
9. With respect to the authority of the Collector to order resumption of unutilized lands, it is submitted that the Government has authorised the Collector under G.O.MS.NO.510, dated.30-12-2019 to utilise any unutilised lands by the Government Department for provision of house sites under Navaratnalu – Pedalandariki Illu. With respect to Para 8 of the said notification, it is submitted that it is just a canal and not

environmentally sensitive and fragile areas like tank bed, river bed. Further no deaths have occurred till date due to the breaches or floods.

10. It is submitted that the SRBC authorities acquired Ac. 79.07 Cents vide Award No. 4/92 dated 15-10-1992 and 18/92 dated 20-03-1993 for the purpose of diverting the natural flood flow water of existing Mutchatla vagu by constructing an aqueduct across the SRBC Channel in order to prevent damage to the canal and to protect the agricultural lands of those pattadars/ryots existing downstream due to the said diversion of flood water of the Mutchatla Vagu. But now with the increase in the area of cultivation of lands upwards in the catchment area and the construction of GNSS canal, a flood flow channel just at a distance to the west of SRBC on parallel lines, the volume of water and the strength of its currents of Mutchatla Vagu stream reduced to a minimum. Some of the vested interests have gone to the extent of laying plots in the said lands and are selling them unauthorizedly and some temporary and permanent constructions have started to come. Thus the acquired land is being wasted and has become a venture for real estate and peaceful cultivation. Those lands are located very near to the Banaganapalle town and located besides the Banaganapalle road towards its east and west.

It is submitted that in order to vindicate the version of Respondent No.4, a copy of the Judgment in **WP.No.19560/2011**²⁶ dated 28-12-2011

²⁶ The Writ Petition is filed by the owners of the lands whose lands were acquired for the purpose of constructing tail channel of SRBC in the year 1990. The grievance of the petitioners is that, instead of utilising the said land for the purpose for which it was acquired, the respondents are intending to use a part of the said acquired land for house

delivered by the then Hon'ble High Court of Andhra Pradesh is filed. It is submitted that the efforts of the government to utilize the said lands for the purpose of house sites have been thwarted by the vested interests since a long time when the Joint Collector, Kurnool on 15-06-2011 inspected the land and gave a green signal but as on date it is not materialized.

Upon consideration of the above said facts and circumstances, the rival submissions made, and the cases cited, it can be reasoned as under:

(1) The respondent No.1 issued the G.O.Ms.No.510, Revenue (Lands-I) Department, dated 30.12.2019 authorising the District Collectors of the respective Districts to resume the unutilized Government lands on the grounds of violation of conditions or non utilization of the allotted land which was earlier alienated in favour of the Private Individuals/Private Organizations/ Government Organizations/ Government Departments/ Public Sector Undertakings/State Government Corporations/Urban

sites. They apprehend that, if the acquired property is used for housing purpose, there is every possibility of their remaining property being inundated as free flow of water will be obstructed by construction of houses.

The then Hon'ble High Court of Andhra Pradesh held that "Except expressing an apprehension that there is a likelihood of floods in the event of construction of houses over part of the acquired land, the petitioners have not supported their plea by filing any material such as expert's opinion. Once the property is acquired after paying compensation, the land absolutely vests in the Government under Section 16 of the Act. The petitioners, who received compensation, have lost their title and interest over the acquired land. The State is, therefore, entitled to use the property for any public purpose.

Therefore, I am of the opinion that, in the absence of any proof of the petitioners' apprehension that construction of houses over a part of the acquired land may lead to inundation of their remaining lands, the respondents cannot be prevented from using the said acquired land for construction of houses for weaker sections, which, undoubtedly, is a public purpose.

For the above-mentioned reasons, the Writ Petition is merit less and hence, the same is dismissed."

Development Authorities & Urban Local Bodies on the grounds of violation of conditions or non-utilisation of the alienated lands in terms of G.O.Ms.No.57, Revenue (Assn.I) Department, dated 16.02.2015 and they are further authorised to utilize the lands acquired by various government departments/organisations for any public purpose but not put into use for the same purpose. These lands shall be utilized for providing House sites to the eligible beneficiaries under the flagship programme of “Navaratnalu-Pedalandariki Illu”. Paragraph 8 of the said GO prohibits the District Collectors from proposing any lands belonging to the Endowments, Educational Institutions, Wakf or any other religious related lands, environmentally sensitive and fragile areas such as tank beds, river beds, other water bodies and hillocks with afforestation etc., for the house site purposes.

In the light of the above said GO, the revenue officials inspected the subject lands belonging to the Water Resources Department-SRBC land and found that they are available as unutilized lands by the SRBC and in the portion of the total extent of the land available, about 1453 beneficiaries and above can be accommodated by converting them into house sites for providing house sites to the eligible house less poor. Accordingly, they submitted a report to the respondent No.2/District Collector and upon consideration of the matter thoroughly the respondent No.2 issued the impugned Memo dated 04.03.2020 directing the Tahsildar concerned to take over the possession of the subject lands for providing house sites to the

eligible beneficiaries under the welfare scheme of Navaratnaluv-pedalandariki illu.

The said impugned proceedings dated 04.03.2020 also refers to the G.O.Ms.No.367, Revenue (Assignment-I) Dept., dated 19.08.2019 which deals with the distribution of house site pattas to all the eligible beneficiaries residing in rural and urban areas in the State under the flagship programme of “Navaratnaluv-Pedalandariki illu” following the policy guidelines for implementation of the programme.

(2) There was a Memo issued by the respondent No.1 dated 06.05.2013 requesting the Chief Engineer (Projects) to inspect the said site in Survey No.62/1B to 147/2A in Banaganapalli Village and Mandal, Kurnool District to identify the portion of the land suitable to spare for the house sites duly marking on a site map. The land so identified shall be away from the embankment/ drainage arrangements etc so that there shall be no interference with the functions of the maintenance of the canal. The land identified should be a segregated piece of land so that once land is allotted for the house sites there should not be encroachments on open land belonging to the department and the land which is not allotted should be fenced and used for tall tree plantations to prevent encroachments.

Subsequently, the Andhra Pradesh Land Development (Layout and Sub-division) Rules, 2017 were framed by the Government of Andhra Pradesh vide G.O.Ms.No.275, Municipal Administration and Urban Development (H) Department, dated 18.07.2017 in which the then existing lay out rules were revised by issuing a common and comprehensive lay out

Rules for all the Urban Development Authorities and Urban Local Bodies in the State for achieving transparency and also for easy implementation so as to encourage faster development. Under the said Rules of the Andhra Pradesh Land Development (Layout and Sub-division) Rules, 2017, the land development/layout shall be considered subject to the condition as under:

“11. Water Bodies

(a) No building/Land Development shall be approved 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.

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

(i)...

(ii)...

(iii)...

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

(v)...

(c)...”

(3) There was a joint Inspection Report of the Revenue Divisional Officer, Executive Engineer, SRBC, Banaganapalli and Executive Engineer, Housing, Nandyal on 28.02.2020. As per the said report they inspected the subject lands in Banaganapalli and Banumukkala villages of Banaganapalli Mandal which were already acquired by the Special Deputy Collector, Land Acquisition, Nandyal and kept unutilised by the SRBC Department for a long time and now proposed for providing house sites to the eligible beneficiaries of Banaganapalli and Banumukkala Villages of Banaganapalli Mandal under Navaratnalu- Pedalandiriki Illu Programme in different survey numbers for different extents in total to an extent of Ac.65.11 cents. The said lands were classified as Government lands as per column No.6 of Adangal and the then Special Deputy Collector, LA, SRBC, Banaganapalli

and Nandyal had acquired the lands for formation of SRBC Canal, SRBC quarters as borrow area for Soils and also for keeping/movement of large number of vehicles. Due to excavation of large quantity of soils in the borrow areas, at the time of formation of canal there were large pits in the borrow areas. These pits can be leveled by the Revenue authorities making it suitable for providing the house sites. They also noted that the Government of Andhra Pradesh vide G.O.Ms.No.510 (Revenue) Lands Department, dated 30.12.2019 authorized the District Collector, Kurnool to resume the unutilized lands for providing house sites to the eligible beneficiaries under the flagship programme of Navarathnalu – Pedalandariki Illu. During the field inspection, the joint inspection team noticed that the SRBC department dug the pits from the borrow area of the acquired lands which have to be leveled for providing house sites. They further opined that the buffer zone where ever the canal exists on either side of the SRBC Canal, for a distance of 30 mts from the banks of the canal is to be left to safeguard the canal. They further observed that the area proposed for house sites are fit for providing house sites to the beneficiaries as the canal area and buffer zone were left and maintained as per the instructions of the Water Resources authorities and excluded from house site proposals. They further noted that the discharge capacity of the canal in this SRBC reach is about 1800 Cusecs and the entire canal is lined. Even if any breaches occurs there is an emergency bed level escape at Km.89.442 of the SRBC main canal with a discharge capacity of 400 cusecs to decrease the flow of water in the canal. The lands in Survey Nos.51/5A, 55/1B, 55/2B, 57/1B1, 57/1C1, 70/2A1, 66/2A1B,70/1B2, 69/1B, 69/2A2A, 72/1, 73/1A & 67 are left out and not

proposed for house sites which relates to the SRBC. So the soils that are available in these lands can be utilized, whenever necessity arises for SRBC purposes. The Executive Engineer Housing, Nandyal also stated that if the jungle/pits existing in the land are cleaned and levelled, the above lands are feasible for housing purpose. Finally they submitted that 30 mts buffer zone is to be left, wherever canal exists on either side of SRBC canal in the above said lands so that there will not be any problem for the canal banks. For the remaining lands, where the SRBC canal does not exist which were taken as borrow area for the soils at the time of excavation of the canal there is no objection for preparation of house site layouts, as these lands are fit for providing house sites to the eligible beneficiaries of Banaganapalli & Banumukkala Villages of Banaganapalli Mandal.

(4) The Executive Engineer, SRBC Division II, Banaganapalli also addressed a letter to the Superintending Engineer, SRBC, Circle-2, Nandyal dated 08.07.2020 stating that the revenue authorities may be requested to maintain 30 mtrs of buffer zone wherever canal exists in the above mentioned lands so that there will not be any problem for the canal banks. For the remaining lands, where the SRBC canal does not exist which were taken for borrow area at the time of excavation of the canal, there is no objection for preparation of house site layouts. In turn the superintendent Engineer, SRBC Circle No.2, addressed a letter to the Revenue Divisional Officer, Nandyal, dated 08.07.2020 requesting the revenue authorities to maintain 30 mts of buffer zone on either side of the canal while preparing the house site layouts wherever canal exists in the above mentioned lands.

For the remaining lands where the SRBC Canal does not exist which were taken for borrow area at the time of excavation of the canal, there is no objection for preparation of house site layouts.

In the instant case, the width of the canal varies from 7.50 metres to 10 metres, from the place where house sites are now proposed. As per the G.O.Ms.No.275, Municipal Administration and Urban Development (H) Department, dated 18.07.2017, it is sufficient to maintain the buffer zone of 9 metres. As per Rule 11(b) (iv) of the above said GO, it is necessary to maintain 9 metres from the defined boundary of canal but in this case they left 8 metres path way for inspection of the land and 14 metres back side slop is provided along the side of the canal. Apart from the said measurements, another 30 metres buffer zone is also provided along the side of the canal which is more than the prescribed rules.

It is the experience of the respondents that right from the construction of the canal till date only 800 to 1000 cusecs water was released from Gorakallu Reservoir to Owk reservoir, between the months of August to March and in the remaining period there was no flow of water in the canal. During that period, checking for the canal will be conducted and if any breaches or pipings found they were attended immediately. When it was breached in the year 2014 at K.M. 88.750 on the right side of the Bank and in the year 2017 at K.M. 91.500 on the left side of the Bank. Only 10 cusecs of water was leaked in pipings and 20 to 25 cusecs of water was leaked through breaches. Immediately by acting upon the same the said problem was solved without there being any loss of property and human life.

(5) The next thing is that the case cited by the petitioner's counsel reported in ***Intellectual Forum's case***²⁷ has no application to the facts of this case as it relates to the case of alienation of Avilalla tank bed land and Peruru tank bed land to the Tirupati Urban Development Authority and the AP Housing Board and TTD for housing purpose and whereas in this case no tank bed land is involved. Hence absolutely it has no application for the cases on hand dealt with by this common order.

But the facts of these cases are more or less similar to the facts in W.P.No.19560 of 2011, which was dismissed by the erstwhile High Court vide order dated 28.12.2011. In that case also the petitioners who were the earlier owners of the lands therein which were acquired for construction of the Tail channel of SRBC on payment of compensation under the land acquisition proceedings and they raised grievance much later in the year 2011 when the said lands were proposed for construction of houses for the weaker sections.

It is a settled legal position that once the property is acquired after paying compensation, the land absolutely vests in the Government and the petitioners who received compensation cannot claim any title and interest over the acquired lands. Therefore, the State is entitled to use the acquired lands for any other public purpose.

(6) When a policy decision is impugned, that is subject to the judicial review on the grounds that when it is unconstitutional, *de hors* the provisions of the Act, the rules and the regulations, the delegatee when

²⁷ AIR 2006 SC 1350

acted beyond its power of delegation and when the executive policy is contrary to the statutory or a larger policy.

In these cases the policy decision of the State in providing welfare scheme for the poor by identifying the real beneficiaries is not under challenge.

(7) In fact it is the constitutional obligation of the State to provide housing for the poor by identifying the real beneficiaries in a welfare state to protect their rights guaranteed under Article 21 of the Constitution of India.

It is not an out of place to discuss the relevant case law as under:

1. In Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan and Ors (1997) 11 SCC 121 it was held that

“Socio-economic justice, equality of status and of opportunity and dignity of person to foster the fraternity among all the sections of the society in an integrated Bharat is the arch of the Constitution set down in its preamble. Articles 39 and 38 enjoins the State to provide facilities and opportunities. Articles 38 and 46 of the Constitution enjoin the State to promote welfare of the people by securing social and economic justice to the weaker sections of the society to minimise inequalities in income and endeavour to eliminate inequalities in status.”

2. In Chameli Singh v. State of U.P. (1996) 2 SCC 549, it was held that

“In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection

of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself. To bring the Dalits and Tribes into the mainstream of national life, providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights.”

3. In *Shantistar Builders v. Narayan Khimalal Totame MANU/SC/0115/1990 : AIR 1990 SC 630*, it was held that the basic needs of man have traditionally been accepted to be three—food, clothing and shelter. The right to life is guaranteed in any civilised society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For an animal, it is the bare protection of the body; for a human being, it has to be a suitable accommodation which would allow him to grow in every aspect—physical, mental and intellectual. The surplus urban-vacant land was directed to be used to provide shelter to the poor.

4. *In P.G. Gupta v. State of Gujarat MANU/SC/1006/1995 : 1995(1)SCALE653* , the Hon'ble Bench of three Judges had considered the mandate of human right to shelter and read it into Article 19(1)(e) and Article 21 of the Constitution and the Universal Declaration of Human Rights and the Convention of Civic, Economic and Cultural Rights and had held that it is the duty of the State to construct houses at reasonable cost and make them easily accessible to the poor. The aforesaid principles have been expressly embodied and in-built in our Constitution to secure socio-economic democracy so that everyone has a right to life, liberty and security of the person. Article 22 of the Declaration of Human Rights envisages that everyone has a right to social security and is entitled to its realisation as the economic, social and cultural rights are indispensable for his dignity and free development of his personality. It would, therefore, be clear that though no person has a right to encroach and erect structures or otherwise on footpath, pavement or public streets or any other place reserved or earmarked for a public purpose, the State has the Constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to make the right to life meaningful, effective and fruitful. Right to livelihood is meaningful because no one can live without means of this living, that is the means of livelihood. The deprivation of the right to life in that context would not only denude life of effective content and meaningfulness but it would make life miserable and impossible to live. It would, therefore, be the duty of the State to provide right to shelter to the poor and indigent weaker sections of the society in fulfilment of the constitutional objectives.

As discussed above considering various aspects and in view of the constitutional mandate, support and back up, the welfare scheme of the State "Navaratnalu-Pedalandariki Illu" shall go on in its implementation and it cannot be hampered, hindered, scuttled or thwarted for extraneous reasons or with ulterior motives and vested interests.

8. Since the respondent authorities herein followed the above said rules, government orders, proceedings, report, circulars and letters and necessary

precautions have been taken, it can be safely held that the impugned proceedings of the respondent No.2 dated 04.03.2000 in all these cases are liable to be declared valid, just and proper for the purpose of distribution of house sites to the eligible beneficiaries in the subject lands of these writ petitions covering an extent of Ac.130.86 cents in total. However, the respondents are directed to protect the remaining open land left for SRBC Canal maintenance from encroachments and illegal cultivation by fencing and raising all the tall tree plantations to prevent such encroachments, occupations and usage. All other necessary measures/precautions shall be taken to ensure the safety and maintenance of the canal and the repairs of the canal shall be attended immediately including breaches/leakages that may occur at any time. Similarly all the necessary steps/precautions shall be taken for the safe living of the people/the beneficiaries in the subject sites by ensuring the structural stability of the houses that may be proposed to be constructed as per the specifications and norms of the project.

9) Accordingly, the Writ Petitions are disposed off. Interim orders, if any, are deemed to have been vacated. No costs.

As a sequel, the miscellaneous applications pending, if any, shall stand closed.

JUSTICE B. KRISHNA MOHAN

April 4, 2024

Note: LR Copy to be marked

{B/o}
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THE HONOURABLE SRI JUSTICE B KRISHNA MOHAN

WRIT PETITION Nos. 16411, 7736, 16410, 17541 of 2020

04.04.2024

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