

# Guntu Boyina Kumar S/O. G. Chandraiah vs The State Of Andhra Pradesh Rep. By Its ... on 30 November, 2021

**Bench: K. Ramakrishnan, Satyagopal Korlapati**

Item No.11:

BEFORE THE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE, CHENNAI

Original Application No. 215 of 2016 (SZ)  
(Through Video Conference)

IN THE MATTER OF:

Guntu Boyina Kumar Kommadi

...Applicant(s)

Versus

The State of Andhra Pradesh  
Rep. by its Secretary,  
Revenue Department,  
Secretariat, Hyderabad and Ors.

...Respondent(s)

Date of hearing: 30.11.2021.

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER  
HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

For applicant(s): None.

For Respondent(s): Mrs. Madhuri Donti Reddy represented  
Mr. P. Subash for R1 to R4.

## ORDER

1. The above case has been posted to today for consideration of Joint Committee report and also for hearing.
2. The Joint Committee has filed the report signed by some of the members on 24.10.2021, e-filed 11.11.2021 which reads as follows:-

REPORT OF JOINT COMMITTEE APPOTINED BY THE NATIONAL GREEN TRIBUNAL, CIIENNAI IN O.A. NO.215 OF 2016 &&& The Hon'ble National Green Tribunal vide order in O.A. No.215 of 2016 dt: 18.03.2021 has appointed a Joint Committee consisting of (I) District Collector, Visakhapatnam (2) Commissioner,

Greater Visakhapatnam Municipal Corporation (3) Senior Officer MoEF & CC, Regional Office, Chennai (4) Senior Officer not below the rank of Joint Secretary of Revenue Department, State of A.P. and a Senior Engineer from the irrigation department to inspect the Sy.No.83 of Kommadi Village of Visakhapatnam (Rural) mandal and submit factual and status report before the tribunal in order to ascertain its original status, the present status and whether there was any environmental degradation caused on account or the construction of the houses in the place which was originally a water body.

Keeping in view of the directives of the Hon 'ble National Green Tribunal, Chennai, the Principal Secretary to Government, Revenue Department has issued Memo No. REVoI - LANAoMISC/ 227/ 2021 - LANDS-I dt:10.08.2021 duly nominating the following officers as the members of the Joint Committee to inspect and examine and to submit its report in the subject matter to the Hon 'ble National Green Tribunal.

SI.

Name of the Officer& Designation No. Sri A. Mallikarjuna, I.A.S., District I. Nodal Officer Collector, Visakhapatnam

2. Sri K.R.H.B.N. Chakravarthi, I.A.S., Secretary to CCLA O/o CCLA, Gollapudi, Member Vi jayawada. I I

3. Dr. Suresh Babu Pasupuleti, Scientist-C, MOEF and Climate Change, Green House Member Complex, Gopalareddy Road, Vijayawada

4. Smt. G. Srijina, I.A.S., Commissioner GVMC Visakhaoatnam Member I

5. K. Surya Kumar, Superintendent Engineer, Water Resource Department, Member i Visakhaoatnam . I In pursuance of the orders of the Hon 'ble National Green Tribunal.

Chennai in O.A.No.215/2016 dt:18.03.2021 , the above constituted Joint Committee has inspected the land measuring Ac.6.74 cts in S.No.83 of Kommadi .

village of Visakhapatnam Rural Manda! on 17.09.2021. The Complainant was also present before the Committee.

Before submitting the report on the Points/ Observation s made by the Hon'ble Tribunal, the following brief facts of the case are submitted for better adjudication of the case.

Brief facts of the case :-

(I) Sri Guntuboyina Kumar S/o Chandraiah reside nt of Ramalayam Street, Kommadi, Visakhapatnam has filed Original Application No.215/2016 before the Hon'ble National Green Tribunal, (Southern Bench ) Chennai with a prayer to issue an order of injunc tion restraining the respon dents permanently from carrying on any development/construction activit y at Sy.No.83 of Kommadi village which is classified as Tank and pass such further or other orders as the Hon 'ble court may deem fit and proper in the facts and circumstances of the case.

(II) During October 2014, a very severe cyclone "Hudhud" hit the city of Visakhapatnam and rural areas of North Coastal Distric ts, badly affecting the livelihood and causing huge loss to Private and Government properties. The Government took all the relief and rehabilitation measu res and restored the situation to normalcy. Due to this havoc, many house s/dwelling units were damaged in a large number and as a relief, compensatio n amount was paid to the victims of house damages. The Government vide G.O.R T.No. 12, Housing (R&UH) Department, Dated:- 09.02.2015 sanctio ned and accorded permission to the MD, APSCHL to take up Reconstructi on & rehabilitation or 1100 houses in Rural Areas and 6,000 houses in Urban Areas to the Cyclone victims of Srikakulam, Vizianagaram, Visakhapatnam & East Godavari Districts. Under the above HUDHUD housing schem e, 5462 houses were sanctioned in Visakhapatnam district only and around 4000 houses arc planned in City area based on the need. In orders to provid e the houses to the victims under this scheme Government land parcel s were identified at different places including the suit schedu led land in Sy.No .83 of Kommadi village, Visakhapatnam Rural Manda!. Sy.No.83 of Kommadi village is classified as Tank Poramboke as per original revenue records and locally known as "Chinna Tank". The land measuring an extent of Ac.6.74 cts in Sy.No.83 of Kommadi village is notified under section 22(A)( 1)(a) published in the year 1997, 2012, 2014 and 2017. The said Surve y number is not excluded from the list of Govt. prohibited properties i.e., 22(A)(I )(a). The administrative sanction orders were issued vide proceedings No.180/2015/Hud-Hud CycloneNSP/dt:05.05.2015 of the Collector, Visakhapatnam.

(III) As the subject land is a water body, and in order to comply the directive s of the Hon'ble Apex Court, a Joint Inspection team consisting of Joint Collecto r, Superintending Engineer, Water Resource Circle, Visakhapatnam, EE.

Dy.EE, Revenue Divisional Officer, Visakhapatnam and Tahsilda r, Visakhapatnam-(R) inspected the land on 3.6.2015 and found that the existing "Chinna Tank" (erstwhile known as Panchayat Raj tank) is not having any ayacut due to urbanization. The inspection further reveals that there are two feeder channels to feed the tank when the tank is in active use. One feeder channel is flowing from South to North and another is flowing from East to West and the excess water use to flow through a culvert. Already a master plan road is formed by VUDA across this bit of the land and excess water is flowing through a single pipe culvert parallel to the existing road from West to East and finally passing by a slabed culvert it joins another tank in Sy.No.46 known as "Pedda Tank" ofKommadi (V). (IV) After Inspection, the Irrigation authorities have given the following conditions as per the

Hon'ble Supreme Court Directives and State Government Regulations to develop the land classified as Water Body. I. The Gedda flowing in the vicinity of the tank should be strengthened with revetment for required discharge.

2. The Geddas which is passing Parallel to the existing VUDA Road should be widen to cater the maximum flood discharge to curb inundation of local area upto Pedda tank which is located in downstream side i.e., S.No.83 to Sy.No.46.

(V) Based on the above conditional recommendations, the Housing authorities submitted final layout proposals to the VUDA authorities vide Lr.Rc.No.199/2015/Layouts/Hud-Hud, Dt:-17.6.2015 and in turn VUOA issued layout approval vide LT.No.63/2015/L5, Dt: 25.7.2015 subject to the compliance of conditions implied.

(VI) The complainant Sri Guntuboyina Kumar S/o Chandraiah filed an OA of 2016 before the Hon'ble National Green Tribunal on 05.07.2016 after commencement of work of construction of houses under the Scheme in the year 2015. A Counter affidavit was filed in the said OA by the District Collector, Visakhapatnam. After perusing the counter affidavit and also further report of the District Collector, Visakhapatnam on the present status of the land, the Hon 'ble National Green Tribunal have issued orders dt: 18.03.2021 directing to constitute a Joint Committee.

(VII) The Hon'ble Tribunal directed the Joint Committee to submit the report on 21.09.2021 on the following aspects.

(1) Ascertain original status, present status of the land, from when onwards the water storing capacity of the tank has lost its characteristics.

(2) What are all the procedures adopted by the authorities before converting this to be used for other public purposes. (3) Whether there was any subsequent event of any natural calamity occurred in that area during monsoon like flood, 'Hud-Hud' cyclone etc., (4) On account of such construction, what are all the remedial measures taken by the Government to meet the situation at the relevant time for providing safety measures for those persons if any affected by the flood after the construction was made in this area (5) Whether any environmental damage has been caused on account of such construction and whether the ground water recharge capacity in that area gone down on account of non availability of water for long period as alleged by the authorities.

The observations of the Joint Committee on the above five (05) points are as follows:

Point No.I : Ascertain original status, present status of the land, from when onwards the water storing capacity of the tank has lost its characteristics

a) As per the revenue records the land in S.No.83 of Kommadi village, Visakhapatnam Rural Manda! with a total extent of Ac.6.74 cts is classified as "Tank" Poramboke and it is notified under section 22(A)(J)(a) published in the year 1997, 2012, 2014 and 2017. The tank is locally called as "Chinna Tank" H,,;! : r, • l .

Long back, when the tank was in active use, there used to be two feeder channels feeding the tank. There are no features of tank on the subject land. The land is parallel to the ground level in such a way that there was no requirement for filling work before starting the project. As could be seen from the approved DPR also such provision for filling the site was not made for development of the site and hence no work was given for the Executive Agency for site levelling.

b) Present status of the land is covered with 19 G+3 Housing blocks on ground containing 32 houses in each block. Internal roads are formed.

The Construction is in un-finished stage. This Housing project was sanctioned and started after Hudhud cyclone which occurred on 12.10.2014 in order to provide pennant houses to 608 Hudhud Cyclone victims in the city. The project Plan was approved by the VUDA for G+3 structures i.e., Ground plus Three floors with plinth area of 297 Sq. Mts. of each block. The building layout was approved by the VUDA vide Progs. LT No.63/2015/LS, dt:25.07.2015 and after approval of layout the Housing project work was started.

The contractor who was originally entrusted in the I<sup>st</sup> instance became defaulter and he was terminated from the work by imposing penalty. The balance work was entrusted to a new contractor and the finishing works to the buildings are in progress. Already 90% of the work was completed and only finishing works are in progress and expected to be completed by January 2022.

The two feeder channels are lined with concrete upto VUDA master plan road which leads to Pedda Tank in Sy.No.46 of Kommadi village. Retaining cum CC Drain (Catchment drain) was also constructed with 3.00 Mts depth and 3.00 Mts width along the existing Gedda/ natural rain water path to carry forward the rain water coming from the existing Hill area and other catchment area to the existing Pedda tank to safeguard the flood water during rains.

There is no ayacut to the Tank in S.No.83 due to total urbanization. There are no agricultural lands below the Pedda Tank in Sy.No.46 of Kommadi village also as the entire area in the vicinity is completely urbanized.

- The total houses built are 19 X 32 608 Houses • The built up area (plinth area) of each house is 34.12 Sq. Mts. • Therefore, the total built-up area (excluding overhead tank area) is 608 X 34.12 Sq. Mts. 20,744.96 Sq. Mts.

- The above total area of 20744.96 Sq. Mts is excluding the built up area of the overhead tank.

c) The water storing capacity of the tank lost its characteristics and the Irrigation department is also unable to specify the period from which the tank lost its storing capacity.

Point No.2 : What are all the procedures adopted by the authorities before converting this to be used for other public purposes As the subject land is a water body as per revenue records, and in order to comply the directives of the Hon 'ble Apex Court, a Joint Inspection team consisting of Joint

Collector, Visakhapatnam Superintending Engineer, Water Resource Circle, Visakhapatnam, EE. Dy.EE, Revenue Divisional Officer, Visakhapatnam and Tahsildar. Visakhapatnam-(R) inspected the land on 3.6.2015 and found that the existing "Chinna Tank" (erstwhile known as Panchayat Raj tank) is not having any ayacut due to urbanization. The inspection further reveals that there are two feeder channels to feed the tank when the tank is in active use. One feeder channel is flowing from South to North and another is flowing from East to West and the excess water used to flow through a culvert. Already a master plan road is formed by VUDA across this bit of the land and excess water is flowing through a single pipe culvert parallel to the existing road from West to East and finally passing by a slabed culvert it joins another tank in Sy.No.46 known as "Pedda Tank" of Kommadi (V).

After the inspection, the Irrigation authorities have given the following conditions as per the Supreme Court Directives and State Government Regulations to develop the land classified as Water Body. I. The Gedda flowing in the vicinity of the tank should be strengthened with revetment for required discharge.

2. The Gedda which is passing parallel to the existing VUDA Road should be widened to cater the maximum flood discharge to curb inundation of local area upto Pedda tank which is located in downstream side i.e., S.No.83 to Sy.No.46.

At the time of inspection of the said team there was no trace of water in this Tank. There was no Ayacut under this Tank. Hence, the said team came to a conclusion that this tank is an abandoned one. The photographs at the time of inspection of team have also been enclosed. More over the Geddas (Channels) were strengthened by cement revetment. All measures were taken in widening the Gedda which is passing parallel to VUDA road so as to allow maximum flow of guidelines discharge to Pedda Tank. Hence, there are no violations issued by Hon'ble Supreme Court in its order in dt:25.07.2001 of any natural calamity Point No.3 : Whether there was any subsequent event such as cyclone etc., occurred in that area during monsoon like flood, till 17.09.2021.

During the inspection of the Joint Committee on record in and around the local people have stated that no inundation occurred that there is no the subject land for the last 10 yrs which shows no traces of tank.

influence of this project on inundation. There are with structures.

There are no agricultural lands. The area is covered Point No.4 : On account of such construction, what are all the remedial on at the relevant time for measures taken by the Government to meet the situations if any affected by the flood after the providing safety measures for those persons construction was made in this area since of Subject land is not a low lying area, there is no occurrence of inundation in the habitation during the monsoon season care according to this tank. More than sufficient infrastructure and ample proper route to the conditions of the Irrigation were taken up to deal with cement flood water to Pedda Tank by strengthening the channeling area and revetments. The rain water coming from the existing Pedda other catchment area is properly carried forward to of constructing tank to safeguard the flood water during rains by way of Mts

depth and retaining · cum CC Drain (Catchment drain) with 3.00 waler path.

3.00 Mts width along the existing Gedda/natural rain red in this After construction, no inundations/ calamities occur such the question area during monsoon seasons, flood and cyclones as of remedial measures does not arise.

been caused on account of Point No.5 : Whether any environmental damage has ge capacity in that area such construction and whether the ground water rechar for long period as alleged by gone down on account of non availability of water the authorities.

such construction. Filling No environmental damage is caused on account of site is almost natura lly up work was not done before starting the project, as the to the ground level. Such provision was also not made for development site/filling work in the approved DPR.

The Joint Committee has also enquired the complainant Sri Guntuboyina Kumar S/o Chandraiah resident of Kommadi village who has stated that at the time of taking over the tank poramboke by the GVMC for the Housing project, nearly an extent of Ac.2.00 els of land had water storage, nearly Ac.4.00 cts of land was cultivated by himself and few others and that an extent of Ac.0.74 cts was used as Cart track. He further stated that they demanded for allotment of the land in S.No.83 (subject land) for their communal purposes like construction of School, Hospital els., He stated that the houses under construction are proposed for the beneficiaries other than their village. Hence, he filed this complaint before the Hon 'ble National Green Tribunal. He finally requested to allot the Tank Porambokc land for their community purposes.

From this enquiry, it is revealed that the main contention of the complainant is only to allot the subject land for their village to its communal purposes but not to outer people by way of Housing Project. This also gives strength ta the version of the officers that the said tank is already abandoned one.

The rain fall in this Visakhapatnam Rural Manda! is also analyzed. The details are furnished here under.

Year	Normal Rain fall in (mm)	Actual Rain fall in (mm)
2012	1006	1122
2013	1006	1451.6
2014	1006	1159.4
2015	1006	1342.2
2016	1006	1186.4
2017	1006	781.2
2018	1006	173.8
2019	1006	1083
2020	1006	1570.6

It is further reiterated that the habitation in and around this tank never got inundated due to heavy rains. The flood water was properly managed to reach the Pedda Tank.

In view of the above observations, the Joint Committee came to a conclusion that the said site is not an inundation area and there are no traces of water. In fact, though the land is classified as a tank Poramboke as per records, there are no characteristics or structure of tank long back. Presently, the site is covered with G13 housing blocks with plinth area of 20,744.96 Mts. As per Environmental Impact Assessment Notification, 2006 and subsequent amendments, 8(a) column 4, the project requires prior Environmental Clearance (EC) from State Environmental Impact Assessment Authority (SEIAA), Andhra Pradesh. But, the project was constructed without obtaining prior Environmental Clearance from SIEAA, Andhra Pradesh.

Regarding ground water recharge capacity, it is recommended to conduct a survey on ground water levels in and around the project area by competent authority to verify the impact on ground water by the project. There is no sign of inundation in and around this subject land covered by Sy. No.83 of Kommadi Village in Visakhapatnam Rural Mandal due to heavy rains in the past recent times."

3. The learned counsel representing the Government Pleader wanted adjournment, as the Government Pleader was appearing on behalf of the State Government has got some personal inconvenience today.

Being the matter of 2016, we are not much inclined to grant an adjournment. However, considering the fact that there is no representation for the applicant and also the Government Pleader wanted some accommodation, we feel that some short accommodation can be granted. They are directed to get ready with the matter on the next hearing date and no further adjournment will be granted on that date.

4. It is seen from the report that earlier, it was the water body and due to non availability of water, the extent has been reduced to a smaller extent and that was the reason why, they opted this area for allotting to the Housing Board, for construction of houses to the people affected by cyclone. They never dispute the fact that it was a water body as per the revenue records and their grievance was that there was no inflow of water, thereby water is not stored to full capacity for quite long time and it is not having any ayacut areas as well. But we cannot agree with that proposition, as the Hon'ble Apex Court has held that not only the perennial water bodies but also non-perennial water bodies which have become disused on account of the negligence on the part of the authorities will have to be restored in order to protect environment.

Since the Government itself has invested huge amount, we have not made up our mind as to whether that will have to be removed or not to restore this water body. But in alternate, we direct the Government to identify an alternate place having double the extent of this water body for the purpose of creating a new water body for protecting environment and also the necessary steps which they can make for the purpose of restoring the inlet and outlet of the existing water body where atleast some portion is being retained as water body now to explore the possibility of restoring the existing water body to the extent available to its original position. They are directed to come with



proposal before the next hearing date i.e. 17.01.2022.

5. If they did not come with any proposal, this Tribunal will be compelled to pass appropriate orders in the matter in accordance with law.

6. The Registry is directed to communicate this order to the official respondents and also to the Chief Secretary, State of Andhra Pradesh, Principal Secretary for Environment and Irrigation and District Collector by e-mail immediately for their information and compliance of the direction.

7. For consideration of report and also for hearing, post on 17.01.2022.

Sd/-

.....J.M. (Justice K. Ramakrishnan) Sd/-

.....E.M. (Dr. Satyagopal Korlapati) O.A. No.215/2016 (SZ), 30th November, 2021. Mn.