value of the area and vicinity buildings rents are taking into consideration basing on marketing demand the rent of shops and buildings has been increased without any reasons and proper amenities. The powers vested with Rent Control Officers under the Act is not practically implemented, be that as it may, implementation of lease provisions are practically very difficult. In addition to this, there are some tenancy holding over cases in long standing tenancy intending to drag the matter in Courts, may it cause a wonder to a common man that at least one decade time will be taken to dispose of rental cases finally in all Courts. It is causing frustration to landlords. To find a solution the jurisdiction of Courts is divided in three types in rent cases 1. Rent Control Matter, 2. Evictions Suits, 3. Agricultural Land Tenancy matters. The stipulated period of maximum and minimum period of tenancy has to be incorporated in the proposed new legislation.

Legal Classification:

At present A.P. Buildings Act will govern the buildings which fetches a monthly rent of Rs.2500/-. If the rent exceeds this scale then Transfer of Property Act will come into operation and protection to tenants is ousted. If the landlord give a quit notice, then the tenant has to vacate the premises under T.P. Act.

Regarding Agricultural Lands Andhra Tenancy Laws is in force in respect of Andhra Area, Right of preemption, remission of rent in the event of damage of crops and additional benefits provided in the statute to safeguard the interest of agriculturalists. Non-implementation of law of seeds, punishing suppliers of poor quality of germination of seeds, lack of knowledge on the part of Agricultural Officers is the basic problem depriving expected income to farmers. Added to this spurious fertilizers, pesticides are reasons for suicides of farmers. Effective implementation of these allied Acts will solve so many problems. It also improve the Exchequer of State. Conducting of regular training of officers connected with these areas will mitigate the litigation.

International case law:

The case laws of New York City Civil Courts in respect of rental litigation is in favour of tenant up to some extent to safeguard their interest. At the same time the person who invested a lot on the building shall not suffer. The Honourable Supreme Court of India, New Delhi used to peruse the judgments of the Honourable Supreme Court of America in the event if on a particular subject no case has been reported as a yardstick, even though it is not a binding precedent. Observing the judgment of cities Civil Courts in U.K., and U.S, Australia, South Africa and other countries would give certain research oriented though process to design a new Rent Control Act in our country. A central legislation is essential in order to justify rental cases in India which would be beneficial to owners and tenants.

———————

RIPARIAN RIGHTS

By

—SAMBASIVA RAO KONDA, M.A., L.L.M.
Advocate, Narasaraopet

Rights arising to the user of water of a natural stream in favour of persons owing lands abutting the stream are called riparian rights. The Latin word RIPA means a thing which banks. A reparian owner is a person who owns land abutting a stream and who as such has a certain right to take water from the stream as held in *Secretary of State for India*

v. Subbarayudu, 1962 MLJ 213. A flow of water from a natural pond through KHAINS though smaller than a stream is a natural stream and the person on whose land the water is collected in a pond through KHAINS is a riparian owner as held in *Subbaraya Bhatta v. Lingappa Gowd and others*, AIR 1973 Mys. 171. A riparian right is a natural right. It is not an easement right and it is not lost by non-user. Coulson and Forbes define a natural water course as "a body of water issuing EX CURE NATURE from the earth and by the same law pursuing a certain direction in a defined channel, till it forms a confluence with wide water". A spring of water means a natural source of water of a definite and well marked extent. A stream of water is water which runs in the defined course so as to be capable of diversion and it does not include the percolation of water underground. A river may be fed by the rains directly without any intermediate collection of the water in the bowels of the earth and still be a river which naturally runs during a great part of the year and it does not cease to be a river merely because it is accustomed to become dry as held in *Ramsevak v. Ramgir*, AIR 1954 Pat. 320. The Indian Easements Act in the explanation to Section 7 defines a natural stream as "a stream whether permanent or intermittent, tidal or tideless on the surface of land or underground which flows by operation of nature only end in a natural and known course.

Angell in his book WATER – COURSES potrays that water course consists of a) the bed b) the bank or shores and c) the water. The bed of the river is the alveolus as distinguished from the shore and from places where flood waters occasionally collect. The bank is the outermost part of the bed in which the river naturally flows. Where the river is tidal and navigable, the river is said to belong to Government. The bed of all tidal rivers where the tide flows and reflows and of all estuaries and arms of the sea is by law vested PRIMA FACIE in Government. Where the river is non-tidal, every proprietor on either side of the bank of a non-tidal, river is entitled to the land underlying in the water upto an imaginary line drawn along the centre of the river and it is known to the law as the MEDUM FILUM AQUAE. The beds of channels of tidal navigable rivers are the property of the Government as held in *Dawood Hashim Esoof v. Tuckseim*, 1960 MLJ 593. A river only belongs to the Government when the SOLUM of the stream belongs to the Government. This will happen either when the Government is proprietor of the lands abutting the river on both sides or when the river is tidal and navigable. The Privy Council in *Maharaja of Pithapuram v. Province of Madras*, ILR (1949) Mad. 675, held that the bed of a navigable river in any part of India, whether tidal or not is vested in the Government unless it has been granted to private individuals. Under the English Common Law if a river is tidal and navigable it belongs to the Crown, and the bed of a river does not vest in the Crown unless the river is tidal. But in India the bed of a navigable river whether tidal or not is vested in the Government unless it is granted to private individuals.

The natural rights of the riparian owner are threefold : (1) he has a right of user. (2) He has a right of flow and (3) he has a right of purity as held in *State of Bombay v. Laxman*, AIR 1960 Bom. 490. The right to have a stream to flow in its natural state without diminution or alteration is an incident to the property in the land through which it passes; but flowing water in PUBLIC CURIS not in the sense that it is a BONUM VACANS to which first occupant may acquire an exclusive right. But each proprietor of the adjacent land has the right to the usufruct of the stream which flows through it. This right to the benefit and advantage of the water flowing past his land is not an absolute and exclusive right to the flow of all the water in its natural state but is a right only to the flow of the water and the enjoyment of it, subject to the similar rights of all the proprietors of the banks on each side to the reasonable enjoyment of the same gift of providence. For an unreasonable and unauthorised use of the common benefit that an action will lie even though there may be no actual damage to the plaintiff.

Every riparian proprietor has a right to the reasonable use of the water. For instance to the reasonable use of water for his domestic purposes and for his cattle and this without regard to the effect which such use may have in case of deficiency, upon proprietors lower down the stream. But further he has a right to use it for any purpose or what may be deemed the extraordinary use of it, provided that he does not thereby interfere with the rights of other proprietors either above or below him. Subject to this condition he may dam up the stream for the purpose of a mill or divert the water for the purpose of irrigation. But he has no right to interrupt the regular flow of the stream if he thereby interferes with the lawful use of the water by other proprietors and inflicts upon them a sensible injury as held in *Miner v. Gilmour*, 1958 (7) HLC 156 (Q.B.D.). Undoubtedly the lower reparian owner is entitled to the accustomed flow of the water for the ordinary purposes for which he can use the water.

As regards the riparian right to flow of the water the English Law was stated by Kerr in the following terms "when land is so located that water naturally or in the course of ordinary agricultural operations such as by deep ploughing descends from the estate of the superior proprietor to the interior estate, the owner of the latter cannot do anything to prevent the course of such water. If he builds a wall at the upper part of his estate so as to prevent the water from descending and whereby the land above is damaged there is an actionable injury. The owner of land lying on a lower level is subject to the burden of receiving water which drains naturally or in the course of ordinary agricultural operations such as by deep ploughing, from land on a higher level. The upper proprietor may not be introducing alterations in the mode of drainage cause the water to flow on his neighbour's land in an injurious manner".

Every riparian owner in English Law as well as in Indian Law is entitled to the flow of water in its natural state of purity without sensible alteration in its character or quality. The natural right to purity extends to underground water also. In a case where water percolates in an undefined course no right to the uninterrupted flow can be acquired by prescription as there is no presumed grant and hence there can be no prescriptive right in water flowing in undefined channels.

Right to flow of water in undefined channels is also recognised by the Indian Easements Act. Section 7 illustration (i) states that "the right of every owner of upper land that water naturally rising in or falling on such land and not passing in defined channels shall be allowed by the adjacent lower land, owner to run naturally thereto". The Hon'ble High Court of A.P. in *Sesha Reddy v. K. Gopala Reddy*, AIR 1987 AP Page 1, made it clear that albeit the plaintiffs are registered owners under different ayacuts would not destroy their natural right to take water from the stream abutting their lands as a supplemental source of irrigation and they can take only by manual operation such as PACCOTHS. The owner of the upper tenement has a right to drain water falling or naturally rising in his land and the owner of the lower tenement is obliged to receive the same. But the owner of the upper tenement is not entitled to use it in such a manner as to cause injury to his servient tenement. He can let out the water as long as it is not injurious to the lower owner as held in *Seshayya v. Seshayya*, 1956 ALT 778.

The main characteristic of surface water is that its identity and existence as a water body cannot be ascertained and it cannot be said that it belongs to any particular person. The test to determine the existence of such a right is to see whether the flow of water on one person's land is identified with that on his neighbour's by being traceable to it along a distinct and defined course. If the water on the two lands does not possess this unity of character they are in the same category as fish and birds, *etc.*, and are only incident to and form part of the produce of their respective soils. Section 7 of the Easements Act recognises the right of every owner of immovable property to enjoy without disturbance by another.