

(2007) 12 CAL CK 0032

In the Calcutta High Court

Case No : A.S.T. No. 3168 of 2007 with A.S.T.A. No. 1067 of 2007

Amit Kumar Sahoo

APPELLANT

Vs

Samir Baran Sahoo and Others

RESPONDENT

Date of Decision : 20-12-2007

Acts Referred:

West Bengal Ground Water Resources (Management, Control and Regulation) Act,
2005 — Section 8
West Bengal Ground Water Resources (Management, Control and Regulation) Rules,
2005 — Rule 11

Citation : (2008) 2 CHN 435

Hon'ble Judges : Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Arindam Chatterjee and Kaman Sahoo, for the Appellant; Kamallesh Bhattacharyya and Ashraful Haque for respondent No. 1, Subrata Mukhopadhyay, for State and Sumit Roy, for the Respondent

Judgement

1. Instead of disposal of the application for stay, we propose to hear out the appeal by treating it as on day's list.
2. We have heard the learned Advocates for the appellant, the writ petitioner/ respondent No. 1 and we requested Mr. Subrata Mukhopadhyay, the learned junior Standing Counsel, to appear on behalf of the State respondents and, accordingly, a copy of the stay application as well as the copy of the memorandum of appeal has been served upon Mr. Mukhopadhyay.
3. The appellant before us was a private respondent No. 9 in the writ application. In the writ application, the writ petitioner complained that the State Electricity Distribution Corporation Ltd. was going to give electric connection to the appellant before us in violation of the West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005, hereinafter referred to as the said Act and the rules framed thereunder, for the purpose of running of a submersible pump.

4. The matter was appearing in the list of Patherya, J. but subsequently, several items from the list of Patherya, J. were assigned to S.P. Talukdar, J. and the writ petition out of which the present mandamus appeal arises was actually appearing in the list of S.P. Talukdar, J. on 10th December, 2007.

5. It further appears that from 5th December, 2007 the Hon''ble Chief Justice also gave determination to the Hon''ble Justice Jayanta Biswas to take urgent matters relating to the determination of Patherya, J. and, accordingly, the writ petitioner mentioned the matter before Biswas, J. and consequently, the matter also appeared in the list of Biswas, J. on 10th December, 2007. The writ petitioner, however, did not give any notice to the appellant before us that he had mentioned the matter before Biswas, J. as urgent matter.

6. On 10th December, 2007 Biswas, J., after hearing the writ petitioner and the State Electricity Distribution Corporation Ltd. passed an interim order restraining the Electricity Distribution Corporation Ltd. from giving electric connection in favour at the appellant before us.

7. Immediately, thereafter, the appellant filed an application for variation of the said interim order before Biswas, J., but as His Lordship refused to enlist such matter before vacation, the appellant straightaway preferred the present mandamus appeal before this Court.

8. After hearing the learned Counsel for the parties, we find that the appellant before us was apparently misled by the fact that his matter was appearing before Talukdar, J. whereas on the self-same day the matter was taken up by Biswas, J. on mentioning. As the appellant was suffering interim order without getting an opportunity to make submission, we decided to entertain the appeal itself by treating it as on day''s list after giving notice to the learned junior Standing Counsel.

9. The question before the Court is whether the appellant is entitled to run his submersible pump within 200 metres of the existing pump of the writ petitioner. There is no dispute that the writ petitioner is running the said pump long before coming into operation of the Act of 2005, but it is also admitted that after coming into operation of the said Act, the writ petitioner has not taken any licence as provided in Section 8 of the Act read with the relevant Rule 11 within six months from the date of coming into operation of the Act.

10. We, therefore, find that on the date of filing of the writ application the writ petitioner had no subsisting right to run a submersible pump as he has not taken any licence in terms of Section 8 of the said Act.

11. We, therefore, find that in the fact of the present case, the learned Single Judge should not have granted any interim order in favour of the writ petitioner when the writ petitioner himself had apparently no subsisting right to run a submersible pump and, in fact, was running the said pump in violation of the law of the land. On that ground alone, the interim order granted by His Lordship is

liable to be vacated and the writ application should be dismissed on that ground alone.

12. At this stage, however, our attention was drawn to the fact that another pump was being run by a school authority which was made respondent No. 10 in the writ application, but the learned Counsel appearing for the said school authority submits that that was an handpump and, therefore, does not come within the definition of submersible pump so as to attract the provision of the Act of 2005.

13. The learned Advocate appearing on behalf of the writ petitioner tried to impress upon us that the appellant before us has not applied for changing of registration which is in the name of his father and, therefore, the appellant should also not be permitted to run the said submersible pump. It is, however, pointed out by the learned Advocate for the appellant that his father got the licence on 16th July, 2007 and thereafter on 23rd July, 2007 he transferred the land in his favour and six months" time from the said date of transfer has not yet expired and, therefore, on the basis of old registration as a transferee from a registered owner, he is entitled to run the said submersible pump.

14. Mr. Bhattacharyya, learned Advocate appearing on behalf of the writ petitioner, however, submits that fresh registration is required to be taken and on the basis of old registration the pump cannot be operated.

15. In such circumstances, although we vacate the interim order granted by His Lordship and dismiss the writ application, we direct the respondent No. 4 to see whether the submersible pump which has now devolved upon the appellant before us can be given permission to operate the same in accordance with the provisions contained in 2005 Act. The concerned officer will also consider whether all the formalities required under the Act and the rules framed thereunder are complied with by the appellant.

16. The concerned respondent is also directed to take appropriate step against the writ petitioner who obtained interim order if it appears that he has violated any of the provision of the Act.

17. This order, however, will not stand in the way of the parties in taking appropriate step before appropriate forum in accordance with law for enforcement of the right available under the law.

18. The decision is to be taken by the concerned respondent within three weeks from the date of communication of this order.

19. Future supply of electricity to any of the parties will be given subject to the decision that will be taken by the respondent No. 4.

20. The appeal itself is disposed of with the aforesaid direction.

21. In view of disposal of the appeal itself, the connected application being ASTA No. 1067 of 2007 has become infructuous and the same is disposed of

accordingly.

Let xerox certified copies of this order, if applied for, be given to the parties within a week from the date of making of such application after reopening on compliance with requisite formalities.