

(2011) 11 AP CK 0020
In the Andhra Pradesh High Court
Case No : Writ Petition No. 15992 of 2011

B. Venkatesu

APPELLANT

Vs

The Tahsildar, Puttaparthi, Anantapur Dist, The Assistant
Divisional Engineer (Rural) A.P. Transco., Puttaparthi,
Anantapur District and Smt. K. Chandramma

RESPONDENT

Date of Decision : 18-11-2011

Acts Referred:

Andhra Pradesh Water Land and Trees Act, 2002 — Section 10, 11(1), 8(2), 9, 9(2)
Andhra Pradesh Water Land and Trees Rules, 2004 — Rule 12, 13, 14, 25, 26

Citation : (2011) 11 AP CK 0020

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : K. Maheswara Rao in WP. 15992/11, A.G.P. for Revenue in WVMP. 3221/2011 and Sri. T. Amarnath Goud in WVMP. 4031/2011, for the Appellant; K. Maheswara Rao Respondent No. 1 in WVMP. 3221/11 and Respondent No. 3 in WVMP. 4031/2011, A.G.P. for Revenue for the Respondent No. 1 in WP. 15992/11 and WVMP. 4031/12011, SRI. O. Manohar Reddy, SC for the Respondent No. 2 in WP. 15992/11, WVMP. 403/2011, VMP. 3221/11 and Sri. T. Amarnath Goud Respondent No. 3 in WP. 15992/11, for the Respondent

Judgement

C.V. Nagarjuna Reddy

1. At the interlocutory stage, the Writ Petition is taken up for hearing and disposal with the consent of the learned counsel for the parties.
2. This Writ Petition is filed for a Mandamus to declare the action of respondent No. 1 in issuing proceedings vide Rc.No.574/2010/B, dated 03.12.2010, as illegal, arbitrary and violative of provisions of the Andhra Pradesh Water, Land and Trees Act, 2002 (for short "the Act"). He also sought for a direction to the respondents not to interfere with his possession and enjoyment of the bore-well situated in Survey No. 7-K of Jaggarajupalli Village, Puttaparthi Mandal, Anantapur District.

3. The petitioner pleaded that he has succeeded to the land admeasuring Ac.2.56 cents in Sy.No.7-K of Jaggarajupalli Village, Puttaparthi Mandal, Anantapur District from his late father-D. Govindappa. He further pleaded that about 12 years back his father has dug a bore-well and obtained electricity connection and that, crops are being raised through irrigation from the said bore-well. He felt aggrieved by proceedings vide Rc.No.574/2010/B, dated 03.12.2010, of respondent No. 1, wherein while stating that the report of the Mandal Revenue Inspector-II, Puttaparthi, revealed that the petitioner has violated the provisions of the Act, the bore-well of the petitioner was seized and respondent No. 1 has requested respondent No. 2 not to continue power supply to the petitioner's bore-well. He contended that since his is an existing bore-well, no action can be taken. Alternatively, the petitioner submitted that even G.O.Ms.No.478, dated 04.12.2008, had the effect only for a period of six months, which expired on 05.05.2009 and therefore, no action can be taken against him for closure of the bore-well. He also pleaded that before seizing the bore-well, no notice was given to him and therefore, the seizure itself is illegal.

4. A counter-affidavit has been filed on behalf of respondent No. 1. After filing of the Writ Petition, Smt K. Chandramma, whose objection was referred to in the impugned order, got herself impleaded as respondent No. 3. She also filed a counter-affidavit.

5. In the counter-affidavit filed by respondent No. 1 it is inter alia stated that the bore-well of the petitioner was dug without permission under the Act; that the bore-well was accordingly seized by the Mandal Revenue Inspector-II, Puttaparthi; that respondent No. 1 has addressed a letter to the Deputy Director, Ground Water Department, Anantapur, to send a feasibility report; and that, in the meantime, the petitioner filed the present Writ Petition and secured an order of interim suspension of the impugned proceedings. It is further stated that the Deputy Director, Ground Water Department, Anantapur, vide his letter No. 725/M.P./T/2011, dated 15.06.2011, informed that Jaggarajupalli Village of Puttaparthi Mandal, is notified as "over exploited village" and the Government in G.O.Ms.No.409, dated 30.11.2011, have imposed ban on drilling of new bore-wells until further orders in over exploited villages.

6. Respondent No. 3 in her counter-affidavit stated that she is the owner of the agricultural lands admeasuring Ac.2-97 cents in Survey No. 387/2A of Locherla Village, Kothacheruvu Mandal, Anantapur District; that she is irrigating the said lands with the support of a bore-well; that the lands of the petitioner are situated near her lands; and that the petitioner has dug his bore-well up to a depth of 500 feet without prior permission under the Act. It is further stated that the respondents have given reasonable opportunity to the petitioner, vide proceedings, dated 07.03.2011 and 03.12.2010, to represent the matter.

7. While it is the case of the petitioner that the bore-well was dug about 12 years back during the life time of his father, neither of the counter-affidavits controverted this averment.

8. u/s 8(2) of the Act, on or from the date of commencement of the Act, the owners of all the wells including those which are not fitted with power driven pumps and water bodies in the State, shall register their wells/water bodies with the Authority in such manner as may be prescribed.

9. Section 9 of the Act imposes prohibition of water pumping by individuals, groups of individuals or private organisations in any particular area, which is likely to cause damage to the level of ground water or cause deterioration or damage to natural resources or environment for a period of not more than six months which after review may be extended for a further period of not more than six months at a time.

10. u/s 9(2) of the Act, the Authority may issue directions to A.P. Transco not to raise and collect electricity bills during stoppage of pumping of water in pursuance of order issued under sub-section (1) thereof.

11. u/s 10 of the Act, sinking of a well within a distance of 250 meters in areas other than the areas covered by Section 9 and sub-section (1) of Section 11 is prohibited, subject to the provisions of sub-section (2) thereof

12. Andhra Pradesh Water, Land and Trees Rules, 2004 have been, made under the Act (for short "the Rules").

13. Under Rule 12 of the Rules, every owner of the well shall register as per sub-section (2) of Section 8 of the Act by giving an application in Form-1.

14. Under Rule 13 of the Rules, in respect of new wells, permission is required to be obtained after following the procedure prescribed therein.

15. Rule 14 of the Rules envisages grant of permission for sinking a well subject to the conditions stipulated therein.

16. Even though there is a plea in the counter-affidavit of respondent No. 1 that a prior notice was issued to the petitioner, the impugned order does not show that before seizing the bore-well of the petitioner and making a request to respondent No. 2, such a notice has been issued to the petitioner.

17. This Court in P. Narayana Reddy Vs. Mandal Revenue Officer, Morthad Mandal and Others, held that a prior notice before seizure of the bore-well is mandatory. In case of existing wells, the only requirement is the registration. Under Rules 25 and 26 of the Rules, penalties have been prescribed for violation of any of the provisions of the Act and the Rules. If the petitioner has not registered his well, he is liable for the penalties, which includes seizure of the machinery or any other device, etc.

18. As noted above, in the absence of any proof of prior notice even such penalties cannot be imposed. It is not in dispute that the validity of G.O.Ms.No.409, dated 30.11.2010, (wrongly mentioned as 30.11.2011 in the counter-affidavit) is only six months. Therefore, even if under the said G.O., prohibition on exploiting the ground water was imposed, its validity has already

expired. Therefore, the only reason for which the petitioner's bore-well could have been seized was its non-registration.

As noted above, there is nothing on record to show that prior notice was issued to the petitioner before effecting seizure of the bore-well. Such action alls foul of the judgment of this Court in P. Narayana Reddy (cited supra).

19. For the above-mentioned reasons, the Writ Petition is allowed and the impugned proceedings are set aside. Respondent No. 1 is, however, given liberty to take appropriate action against the petitioner for non-registration of the bore-well after following the due procedure. The petitioner is also given liberty to approach respondent No. 1 for registration of the bore-well.

20. As a sequel to disposal of the Writ Petition, W.V.M.P. Nos. 3221 and 4031 of 2011 filed by the respondents are disposed of as infructuous.