

(2006) 01 KAR CK 0089
In the Karnataka High Court
Case No : Writ Petition No. 16223 of 2003

Dr. G.K. Devdas

APPELLANT

Vs

The Chief Executive Officer and Others

RESPONDENT

Date of Decision : 30-01-2006

Acts Referred:

Citation : (2006) 1 KCCR 65 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : A.G. Shivanna and N.R. Jayaprakash, for the Appellant; Uday Kumar Singh, for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The petitioner in this petition has sought for a declaration, to declare that, the action of respondents in taking steps to sunk and install the borewell on the shoulder of the road in a sharp curve and also within the radius of 120 ft. from the existing borewell of the petitioner situate in Sy. No. 15 of Thanikal Village, is illegal and contrary to the circular dated 26th May, 1999 issued by Karnataka Power Transmission Corporation Limited vide Annexure-C.

2. The grievance of the petitioner in the instant writ petition is that, he is the absolute owner in possession of the lands bearing Sy. Nos. 15 and 17/1 situate at Thanikal Village, Thirthahalli Taluk, Shimoga District. It is the case of petitioner that, he is residing in the house constructed in Sy. No. 15 and that, petitioner has sunk a borewell for the purpose of irrigating his garden land and also for providing drinking water facility by obtaining power connection from the KPTCL. When things stood thus, the respondents 1 and 2, at the instance and instigation of fifth respondent, who is inimical towards petitioner and in order to take a political revenge, has sunk a borewell within the radius of 120 ft. from the borewell of the petitioner and that, the said borewell sunk by respondents 1 and 2 is on the shoulder of the road in between the carriage way and side drain, which would affect the free movement of vehicular traffic as the said borewell is

sunk in the sharp curve of the road. Further, it is the case of petitioner that, on account of digging of borewell by respondents within the radius of 120 ft. from the existing borewell of the petitioner, which is being used for agricultural as well as for drinking purpose, would decrease the availability of ground water level of the borewell of the petitioner, which would affect the agricultural operations as well as drinking water facility to the petitioner. Further, it is his case that, considering these aspects and to avoid digging of borewells in the competitive manner, the KPTCL has issued a circular on 26th May, 1999 with instructions not to grant power connections to the borewells sunk within the radius of 825 feet from the existing borewell. Therefore, the respondents have sunk the borewell contrary to the instructions issued by KPTCL in their aforesaid circular. Having regard to this background, petitioner felt necessitated to present the instant writ petition.

3. I have heard learned Counsels appearing for petitioner and learned Counsel appearing for respondents. When this matter had come up for consideration on 25th August, 2005, this Court, after hearing both sides, had directed the learned Counsel appearing for fourth respondent-Panchayat to secure a report from the Executive Engineer as regards the location of the borewell and to state whether it would cause obstruction to the vehicles and pedestrians and the matter was adjourned after two weeks. Subsequently, when this matter is taken up for consideration today, after careful evaluation of the material available on record, it is seen that, learned Counsel appearing for fourth respondent has filed a memo dated 3rd December, 2005, along with the report of the Assistant Executive Engineer, Zilla Panchayat. In the said report, it is stated that, when he made the spot inspection, he found that, there is no obstruction for movement of vehicular traffic nor the same affects the pedestrians in any way. The said report has also been certified by the Executive Engineer and along with the report, he has also produced a sketch of the location and pointed out the ground reality stating that, the asphalted width is 3.70 mtrs., road formation width is 10.00 mtrs., borewell from road edge is 1.50 mtrs., and pump house from road center is 6.5 mtrs. and that, the said sketch has been duly signed by the Junior Engineer, Panchayat Raj Engineering Sub-Division, Thirthahalli, Assistant Executive Engineer, Panchayat Raj Engineering Sub-Division, Thirthahalli and the Executive Engineer of the Panchayat Raj Engineering Division, Shimoga. In view of the report submitted by the Competent Authority, as stated supra, stating that, the installation of the borewell by respondents 1 and 2 would not cause any obstruction to the vehicular traffic and also the pedestrians, the grievance of the petitioner cannot be accepted. The said borewell has been sunk for the purpose of supply of drinking water to the villagers, which is for the public purpose and in particular for the villagers. Even after careful perusal of the photograph, vide Annexure-B, produced by petitioner along with the instant writ petition, it reveals that, the said borewell in no way obstructs the vehicular traffic or the pedestrians nor the same is in the shoulder of the road, as stated by petitioner.

4. Therefore, having regard to the facts and circumstances of the case, as stated

above, I do not find any good grounds or justification for considering the grievance of the petitioner in the instant writ petition. Hence, the writ petition filed by petitioner is liable to be dismissed as devoid of merits. Accordingly, it is dismissed.