

(2000) 08 AP CK 0003
In the Andhra Pradesh High Court
Case No : Writ Petition No. 2207 of 2000

P. Buchanna

APPELLANT

Vs

Mandal Revenue Officer and Others

RESPONDENT

Date of Decision : 16-08-2000

Acts Referred:

Andhra Pradesh Ground Water (Regulation for Drinking Water Purposes) Act, 1996 —
Section 2(1), 3(1), 3(2)

Citation : (2000) 5 ALT 385

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : S.V. Bhatt, for the Appellant; N. Pramod, for Respondent Nos. 2 and 3 and G.P., for the Respondent

Final Decision : Allowed

Judgement

B. Sudershan Reddy, J.—The petitioner in the instant writ petition prays for issuance of an appropriate writ particularly one in the nature of Writ of Mandamus declaring the proceedings of the first respondent in Roc. HDT/862/99, dated 8-2-2000 as illegal, without jurisdiction and contrary to the mandatory provisions of Act 7 of 1996.

2. Before advertng to the question that falls for consideration, it may be necessary to briefly notice the facts: The petitioner claims to be the owner of an extent of Ac. 5.00 of land in Survey No. 74/3 of Pothapolu Revenue village. It is stated that there is a bore-well dug by the petitioner in the said land in the year 1991 for the purpose of cultivation of the land. In the month of March, 1998 the Government got a bore-well sunk nearby the agricultural lands of the petitioner which has resulted in depletion of water source in the petitioner's bore-well. Therefore, the petitioner was constrained to dig another bore-well in his land at a distance of 15 feet from his first bore-well. We are not concerned for the present with other details. The petitioner claims to have made huge investments for the electrification, water pipeline connection etc., and converted an extent of Ac.2-00

into wet land.

3. The second respondent herein appears to have made a representation to the first respondent herein stating that the petitioner herein dug an irrigation bore-well near Sanitorium local authority area for irrigation purpose and pumping the water with the help of electric motor and due to heavy pumping the ground water level in the open well belonging to Arogyavaram Medical Centre is very much reduced resulting in acute shortage of water to the hospital. The petitioner herein was put on notice, to which a representation was submitted by the petitioner. The petitioner appeared before the Mandal Revenue Officer. The Mandal Revenue Officer inspected both the bore-wells belonging to the petitioner and open well belonging to Arogyavaram Medical Centre and noticed that the water level in the open well was very much depleted. The Mandal Revenue Officer noticed that there is acute drinking water problem in the area and accordingly concluded that priority has to be given to the drinking water. The Mandal Revenue Officer came to the conclusion that the petitioner herein drilled the bore-well within a distance of 350 feet from the existing open well, which is contrary to the mandatory provisions of Section 3(1) of Andhra Pradesh Ground Water (Regulation for Drinking Water Purposes) Act, 1996 (for short "the Act"). The Mandal Revenue Officer further found that the petitioner herein had not obtained any prior permission from the Ground Water Department before digging the bore-well as is required under the provisions of the Act. In the circumstances, the Mandal Revenue Officer came to the conclusion that it is not desirable to keep the bore-well as usual and accordingly ordered the same to be seized with immediate effect. The decision appears to have been taken by the Mandal Revenue Officer to solve the drinking water problem prevailing in the village.

4. In this writ petition, the learned Counsel for the petitioner contends that the first respondent-Mandal Revenue Officer has no jurisdiction under the provisions of the Act to initiate any proceedings whatsoever against the petitioner. According to the learned Counsel for the petitioner, it is the District Collector who is authorised to act under the provisions of the Act.

5. In the counter-affidavit filed by the Mandal Revenue Officer it is explained as to under what circumstances, the Mandal Revenue Officer was required to act in the matter. It is stated that the decision has been taken by the Mandal Revenue Officer with a view to cater the needs of drinking water for Guttakinda Arogyavaram habitation. It is contended that no new bore-well shall be sunk near a drinking water source and thereby affecting the existing water source. It is the case of the Mandal Revenue Officer that the action of the petitioner herein in digging the bore-well nearby an existing water source is prohibited by the Act. But, nothing is stated in the counter-affidavit about the jurisdiction of the Mandal Revenue Officer in the matter.

6. The counter-affidavit filed by the second respondent need not be noticed in detail. It is merely stated by the second respondent that the first respondent

being a competent authority under the Act has taken cognizance of the violation of the provisions of the Act by the petitioner, and accordingly conducted an enquiry in exercise of his powers and finally passed the impugned order. It is clearly stated in the counter-affidavit that digging of bore- well by the petitioner has resulted in alarming scarcity of drinking water in the area of the hospital. It is stated that the petitioner in spite of the prohibition dug a bore-well within a distance of 250 metres from the public drinking water source. According to respondent No. 2, the petitioner herein has contravened the provisions of the Act and has dug a bore- well and drawing the water with the help of pump, which resulted in further depletion of water in open well situated within the prohibited distance, depriving the drinking water source to the hospital.

7. The short question that arises for consideration in this writ petition is as to whether the first respondent-Mandal Revenue Officer has any authority in law to pass the impugned order.

8. The Act came into force with effect from 7th February, 1996. It is an Act enacted by the Legislature to regulate the exploitation of ground water for the protection of public drinking water sources and matters connected therewith or incidental thereto. Section 3(1) of the Act declares that notwithstanding anything contained in any law for the time being in force and having regard to the interests of the general public to have the supply of requisite quantity of water for drinking purposes from the public drinking water source, no person subject to sub-section (2) shall sink any well for any purpose in the vicinity of a public drinking water source within a distance of two hundred metres if it is a source with Hand pump or Open well, and within a distance of two hundred and fifty metres if the source is used with a Power Driven Pump.

9. Sub-section (2) of Section 3 says that any person, who intends to sink a well for purposes of irrigation or drinking or for any other purposes within a distance of two hundred metres or as the case may be, five hundred metres of a public drinking water source shall apply for permission to the appropriate authority in such manner and on payment of such fee as may be prescribed.

10. Sub-section (4) of Section 3 says that every permission granted under sub-section (3) shall be subject to the condition that the appropriate authority may for the reasons to be recorded in writing, by order, prohibit, restrict or regulate from time to time the extraction of water from such well if in his opinion it is necessary to do so in the public interest and also such other conditions and restrictions as may be prescribed.

11. There is no dispute whatsoever that the petitioner herein failed to obtain any such permission from the appropriate authority. There is also no dispute whatsoever that there is a public drinking water source located within a distance of 200 metres from the bore-well sunk by the petitioner.

12. As per Section 2(1) of the Act "appropriate authority" means the District Collector and includes any officer not below the rank of a Mandal Revenue

Officer, as the State Government may by notification in the Official Gazette, appoint for the purposes of this Act and different officers may be appointed for different local areas of the State.

13. Sub-section (1) of Section 2 makes it clear that the appropriate authority means a District Collector. It may include any officer not below the rank of a Mandal Revenue Officer, provided there is a notification to that effect by the State Government and published in the Official Gazette. The State Government in its discretion may appoint different officers for different local areas of the State. In the counter-affidavit filed by the first respondent-Mandal Revenue Officer, it is not stated as to how he could act under the provisions of the Act and initiate action against the petitioner herein. Nothing is stated in the counter-affidavit as to how the Mandal Revenue Officer could claim to be an appropriate authority.

14. This Court by an order dated 15-2-2000 required the respondents herein to show-cause as to why this writ petition should not be admitted and appropriate orders should not be passed. No records are made available by the respondents for the perusal of this Court. The learned Government Pleader for Revenue appearing on behalf of the respondents requested time for producing a copy of the notification, if any, issued by the State Government notifying the Mandal Revenue Officer to be an appropriate authority for the purposes of the Act. The learned Government Pleader submits that in spite of his best efforts he could not secure any such notification. The learned Counsel for the second respondent submits that there is no such notification issued by the State Government appointing the Mandal Revenue Officer as appropriate authority under the Act. In the absence of any such notification issued by the Government and its publication in Andhra Pradesh Gazette, the Mandal Revenue Officer cannot be treated as an appropriate authority for the purposes of the Act. The appropriate authority for the present is the District Collector alone, as provided for under Sub-section (1) of Section 2 of the Act. No notification is required notifying the District Collector to be the appropriate authority. The Act itself says that the District Collector is the appropriate authority and the appropriate authority may include any officer not below the rank of Mandal Revenue Officer if the State Government makes any notification to that effect and gets the same published in the Official Gazette. It is thus clear that the Mandal Revenue Officer has no jurisdiction or authority in law to invoke the powers under the Act conferred upon the appropriate authority.

15. It is declared that the Mandal Revenue Officer is not the appropriate authority for the purposes of the Act. In the circumstances, I do not find any difficulty whatsoever to hold that the whole of the proceedings initiated against the petitioner herein by the Mandal Revenue Officer are void ab initio. They are ultra vires the provisions of the Act.

16. The impugned order is accordingly set aside.

17. This order shall not preclude the appropriate authority to initiate appropriate action against the petitioner, if the appropriate authority is so advised. The matter is left open.

18. The writ petition is accordingly allowed. No order as to costs.