
(2003) 08 AP CK 0096

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7135 of 2003

Rachamalla Amruthamma

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 06-08-2003

Acts Referred:

Andhra Pradesh (Telangana Area) Irrigation Act, 1357 — Section 3, 43
Andhra Pradesh Water Land and Trees Act, 2002 — Section 10, 12
Constitution of India, 1950 — Article 226

Citation : AIR 2004 AP 15 : (2003) 5 ALD 596 : (2004) 7 ALT 972

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : C. Ramesh Sagar, for the Appellant; Government Pleader for Panchayat Raj for Respondent Nos. 1 to 3 and P. Raghavender Reddy, SC for Gram Panchayat, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The petitioner claims to be the owner of land in Sy.No. 225 of Mannempalli Village, Thimmapoor Mandal, Karimnagar District. She claims to have dug an irrigation well in the land for the purpose of irrigating her land.

2. This writ petition is filed alleging that the Gram Panchayat of the village, 4th respondent and its Contractor, 5th respondent are proposing to dig an open well for the purpose of providing drinking water to the village just by the side of the well of the petitioner. Relying upon the provisions of Andhra Pradesh (Telangana Area) Irrigation Act, 1357 Fasli (for short "Irrigation Act") and the Andhra Pradesh Water, Land and Trees Act 10 of 2002 (for short "Act 10 of 2002), the petitioner seeks writ of mandamus declaring the action of the respondents in proposing to dig the well by the side of the well of the petitioner.

3. The respondents 4 and 5 filed counter-affidavit. It is their case that the well dug by the petitioner is in Shikam Poramboke land vested in the Government and the petitioner had no right to object to the well being dug for the benefit of the

entire village. They disputed the very right of the petitioner over Ac.0.30 Guntas of land in which she dug the well. It is also stated that necessary permission was accorded by the competent authority under the Act 10 of 2002.

4. Sri C. Ramesh Sagar, learned Counsel for the petitioner submits that Section 43 of the Irrigation Act prohibits excavation of well within two hundred yards from the boundaries of an existing well or irrigation sources. According to him, the well proposed to be excavated by the respondents is hardly within two hundred metres from the well of the petitioner. He has also referred to the provisions of the Act 10 of 2002 and submits that unless a specific permission was accorded by the competent authority, it was not open to the respondents to dig the well in question.

5. The main plank of the arguments advanced on behalf of the petitioner is the prohibition contained u/s 43 of the Irrigation Act. It reads as under:

"Excavation of well adjoining irrigation work prohibited:--No new well shall be excavated within two hundred yards from the boundaries of an irrigation work without the permission of the Irrigation Officer."

6. The prohibition contained in Section 43 of the Irrigation Act is for excavation of well within two hundred yards from the boundaries of "an irrigation work". The petitioner can have the advantage of this prohibition if only, the well dug by her comes within the definition of irrigation work. The term irrigation work is defined u/s 3 (a) of the Irrigation Act. It reads as under:

"3(a) "irrigation work" includes --

(i) all kuntas, reservoirs, tanks, anicuts, canals, their distributaries, channels, and sluices constructed, maintained or controlled wholly or partly by or with the consent of the Government for the supply, conveyance or storage of water;

(ii) all construction works, embankment, structures, supply and escape channels, connected with the aforesaid water reservoirs, tanks, anicuts, canals, and their distributaries, pipes and sluices and all roads constructed for the purpose of facilitating the construction or maintenance of the said water reservoirs, tanks, anicuts, canals, distributaries, and their channels, pipes and sluices;

(iii) all drainage works and flood embankments;

(iv) any part of a river, stream, lake, natural water reservoir or drainage channel, to which the Government may apply the provisions of Section 6 or the water of which has been used before the commencement of this Act for the purposes of any existing irrigation work;

(v) all lands appropriated by the Government for the purposes of water reservoirs, tanks, anicuts, canals and their distributaries, pipes and sluices and all buildings, machinery, fences, gates and other erections on such lands;

(vi) all pumping sets which are owned or constructed or maintained or controlled

wholly or partly by the Government and not handed over to any person.

A reading of the same discloses that the expression "irrigation work" refers to the sources of irrigation provided by the Government or those vested in the Government. Extensive reference to such works as tanks, anicuts, canals, distributaries, reservoirs etc. leaves no doubt in this regard. Sources of irrigation are referred to in various clauses of Section 3(a). None of them includes the wells that too those dug by the private individuals. Even by way of analogy, the wells dug by private individuals do not come in any one of the items of irrigation work contained in the definition. Therefore, the very reliance of the petitioner on Section 43 of the Irrigation Act is without basis.

7. Now comes, the purport of the Act 10 of 2002. This Act contains several provisions for preservation of ground water; wells intended for drinking water are treated on priority basis. Sections 10 and 12 provide for adequate protection to such sources of drinking water. In the counter-affidavit, it has been categorically stated that the competent authority had accorded "permission for digging the well by the Gram Panchayat for providing drinking water. This fact has not been disputed by the petitioner by filing any reply affidavit. Though the respondents pleaded that the petitioner does not hold the title over the land in which she has excavated the well, this Court is not inclined to adjudicate on that aspect.

8. From the above discussion, it emerges that neither the Irrigation Act nor Act 10 of 2002 prohibit digging of well by a Gram Panchayat for the purpose of providing drinking water. This Court does not find any basis to grant any relief to the petitioner.

9. The writ petition is accordingly dismissed. No costs.