

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 14.05.2013

+ W.P.(C) 3112/2013

PRADEEP KUMAR SAGAR

..... Petitioner

Through: Mr. L.K. Verma with Mr. Dinkar Verma,
Adv.

versus

THE STATE (GOVT OF NCT OF DELHI) & ORS. Respondents

Through: Mr. Sanjeev Sahay, Adv. for L&B
Ms. Reeta Kaul, Adv.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

CM 5908/2013 (exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

W.P.(C) 3112/2013

The petitioner claims to have purchased agricultural land comprised in Khasra no.567/588/589/597/598 measuring 12 bighas and 1 biswas in Village Ghitorni sometime in the year 1990. According to him, he had installed a bore-well in the aforesaid land sometime in the year 1995. The said bore-well, according to the petitioner, failed sometime in the year 2011. The petitioner accordingly applied,

vide application dated 8.1.2012, for permission to re-bore the bore-well which he had earlier installed. The said application was rejected by respondent no.3 vide communication dated 2.4.2013. One grievance of the petitioner is that though his application for digging the bore-well has been rejected, the application filed by another person has been allowed by SDM, South vide letter number 8265, 8280 and 8281.

2. A perusal of the impugned communication would show that the application of the petitioner was considered by District Level Advisory Committee of New Delhi District in its meeting held on 2.4.2013. The said Committee has as many as 17 members who were present in the meeting, presided over by the Deputy Commissioner, New Delhi. The application of the petitioner was rejected on the basis of the reports confirming that the proposed site of bore-well was not being used for agricultural and the premises in question was a building being used for residential purposes.

3. The grievances of the learned counsel for the petitioner are two-folds. The first grievance is that the report relied upon by the Committee is factually incorrect, since the site of the bore-well is being used only for agricultural purposes and not for residential purposes. According to the learned counsel for the petitioner, the building has been constructed only on a small portion of the agricultural land. The second grievance of the petitioner is that applications filed by some other persons

have been allowed by SDM, South. The copies of the letter dated 27.4.2012 issued by Deputy Commissioner, South to Mr. J.P. Sharma, Mr. Vijay Mohan Singh and Mr. Lajpat granting of permission for re-boring has been placed on record.

4. In a writ petition, this Court cannot go into the disputed questions of facts. It is neither necessary nor feasible for this Court to undertake an inquiry in these proceedings to ascertain whether the site proposed for the bore-well was being used for agricultural purposes as is claimed by the petitioner or was being used for non-agricultural purposes as was reported to the Committee. Such an exercise can be appropriately undertaken either by the Authority Competent to grant/refuse permission or by a Civil Court and not by a writ Court. Therefore, if the petitioner is aggrieved on account of a factually wrong report having been placed before the Committee, it would be open to him to ventilate his grievance before a Civil Court which can go into such disputed questions of facts and record evidence to verify the correct factual position. A writ petition in such a case would not be an appropriate remedy.

5. As regards permission granted to other persons, there is no material on record and not even an allegation that the persons to whom such permissions were granted were using the site for proposed bore-well or for a purpose other than agricultural. Unless it is shown that those persons were also using the site where bore-well was proposed to be installed, for a purpose other than agriculture, the

petitioner cannot say that his case is identical to the case of those persons. In any case, what is material is whether the respondent were justified in refusing permission if the proposed bore-well is sought to be installed at a site being used for non-agricultural purposes or not.

6. The following, *inter alia*, are the directions issued by Government of NCT of Delhi under Section 5 of the Environment (Protection) Act, 1986 with respect to grant of permission for bore-wells:-

“Sub: Directions under Section 5 of the Environment (Protection) Act, 1986

Whereas, the Central Government has authorized the Lieutenant Governor of the National Capital Territory of Delhi vide notification S.O. 667 (E) dated the 10th September, 1992 to exercise powers under Section 5 of the Environment (Protection) Act, 1986 for the National Capital Territory of Delhi and to issue directions thereunder, to any person, officer or any authority for the closure, prohibition or regulation of any operation or process or stoppage or regulation of the supply of electricity or water or any other services.

Now, therefore in exercise of powers conferred by section 5 of the Environment (Protection) Act, 1986 (29 of 1986) read with the Ministry of Home Affairs, Government of India Notification S.O. 667 (E) bearing F. No. U011030/1/91-UTL dated the 10th September, 1992 and in suppression of directions issued vide Order Nos F8(348)/EA/Env/09/14433-14451 and F8(348)/EA/Env/09/14452-14470 dated the 30th March 2009 as well as Order Nos. F8(348)/EA/Env/09/555-582 and

F8(348)/EA/Env/09/583-610 dated the 30th April 2009, the Lt. Governor of the National Capital Territory of Delhi, hereby issues the following directions, namely:

(1) In the whole of the National Capital Territory of Delhi, no person, group, authority, association or institution shall draw ground water through bore-well or tube-well (both new as well as existing and drawing ground water without permission of Central Ground Water Authority) for domestic, commercial, agricultural and or industrial uses without the prior permission of the “Competent Authority” that is to say, the Delhi Jal Board or the New Delhi Municipal Council as the case may be.

(2) The issue of grant of permission for borewell/tubewell shall be dealt by Competent Authority through the Deputy Commissioner (Revenue) of each revenue area, GNCTD, who is hereby appointed as “Authorized Officer” for the purpose of regulation of ground water development and management in the respective revenue areas under the jurisdiction.

(5) The Advisory Committee shall meet atleast once in every month to take up various issues related to ground water regulation and management in the concerned revenue area and give recommendations to the Deputy Commissioner for further consideration and enforcement. Only the recommended groundwater boring cases shall be forwarded to Competent Authority for grant of permission.

(7) If any person, group, authority, association or institution, intends to draw ground water through bore-well or tube-well (both new as well as existing and drawing ground water without permission of Central Ground Water Authority), he shall take prior permission from Competent

Authority. Such permission shall be obtained through submission of an application to Zonal Offices of the Competent Authority, in the form specified by the Competent Authority.

(8) The Executive Engineer of the Competent Authority, incharge of the concerned area shall recommend the case, based on the facts on the ground, to the concerned Deputy Commissioner (Revenue) of the revenue area who shall issue orders in the light of the recommendations of Executive Engineer of the Competent Authority and the and the Advisory Committee.

(12) The permission of borewell installation for agricultural purpose may be granted to genuine agriculturists by the Advisory Committee under concerned Deputy Commissioner (Revenue) based on the recommendation of Block Development Officer and Agriculture Department / Irrigation & Floor Control Department, Govt of NCT of Delhi. Agriculture activity may be verified from Khasra Girdawari documents and also based on actual evaluation.”

7. A perusal of the application submitted by the petitioner to the Deputy Commissioner would show that he claimed that he was unable to do production in his agricultural land, without water from the tube well and accordingly he sought permission for re-boring of the tube well being cultivator of the said land. Thus, the permission for re-boring was sought by the petitioner for agriculture purposes. In such a situation, if the Competent Authority found, on the basis of the report submitted to it, that the site where re-boring was sought to be done by the petitioner was not being used for agricultural purpose, it was fully justified in refusing to

grant such a permission to the petitioner and no fault can be found with the decision taken by it on the application of the petitioner.

8. For the reasons stated hereinabove, I find no merit in this petition and the same is hereby dismissed. There shall be no orders as to costs.

V.K. JAIN, J

MAY 14, 2013

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