

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.4986 OF 2013

ORDER:

This writ petition is filed by the petitioner challenging the action of the 1st respondent-Tahsildar for refusing to grant permission for digging two bore wells in Sy.No.540-A and 547-2B2, Patrapalli Village, Tadimarri Mandal, Anantapur District, through his endorsement dated 30.01.2013, basing on the report dated 29.01.2013, of the 2nd respondent-Deputy Director, Ground Water Department.

It is the case of the petitioner that he is having the lands over an extent of Ac.11.28 cents in Patrapalli Village, Tadimarri Mandal, Anantapur District and cultivating the same by raising sweet lemon trees, tamoto and ground nut crops. It is stated that the petitioner submitted an application to the 2nd respondent-Deputy Director, Ground Water Department on 18.07.2012 after complying the necessary formalities requesting him to grant permission for digging two bore wells in the above said survey numbers in view of the drying and fading of the crops without water. The same was endorsed and forwarded to the 1st respondent-Tahsildar, but the 1st respondent has not taken any action. Thereafter, the petitioner filed a Writ Petition No.40330 of 2012 against the District Collector, Anantapur and the 1st respondent-Tahsildar herein before this Court for not considering his applications dated 18.07.2012 and 13.08.2012 and 24.09.2012 and this Court while disposing of the said writ petition by order dated 04.01.2013 directed the 1st respondent-Tahsildar herein to consider and pass orders on the representations of the petitioner, in accordance with law, within a period of four weeks from the date of receipt of copy of the order. Thereafter, the 2nd respondent herein conducted the survey on 28.1.2013 and submitted a report to the 1st respondent-Tahsildar and then the 1st respondent without serving the copy of the report served the impugned endorsement to the petitioner by rejecting the permission for digging the two bore wells. Hence, the present writ petition.

A counter-affidavit sworn by the Deputy Director, Ground Water Department, Anantapuram District-2nd respondent, is placed on record. Para No.3 of the counter-affidavit reads as under:

“It is submitted that, a new bore well is not recommended in the petitioner’s land bearing Sy.No.540-A, as the existing irrigation bore well belonging to Sri J. Narapa Reddy is located 239 meters distance from the above land in Sy.No.540-A, as against 250 meters distance stipulated as per the guidelines in “Failed bore well compensation scheme” issued by the Administrator, APWALTA, Hyderabad read with Section 13 of APWALTA Act, 2002. Condition No.4 of Annexure-I, stipulates that, no well shall be proposed within a radius of 250 mts of any other well.”

No counter-affidavit has been filed either on behalf of the 1st respondent or on behalf of the 3rd respondent. The endorsement dated 18.07.2012 made by the 2nd respondent is liable to be set aside on the ground that the copy of the report submitted by the 2nd respondent to the 1st respondent was not furnished to the petitioner while issuing the impugned endorsement to the petitioner. As such, the petitioner did not have the opportunity of making his submissions to the 1st respondent-Tahsildar as to why and in what manner the said report need not be taken into consideration. Further, in view of Section 10(3) of the Andhra Pradesh Water, Land and Trees Act, 2002 (for short, “the Act”), the 2nd respondent is not the competent authority either to grant permission or to refuse to sanction permission as such power is not vested with him. Inasmuch as the 1st respondent has blindly accepted and implemented the report of the 2nd respondent without application of mind and without giving opportunity to the petitioner to file objections, if any to the report dated 28.1.2013 of the 2nd respondent, the impugned endorsement made by the 1st respondent cannot be sustained.

In this context, it may be noticed that as per Section 10(3) of the Act, a refusal to grant permission to sink a bore well can be made if it is likely to affect the public drinking water source. In the present case, there is no such conclusion reached by the 1st respondent-Tahsildar and there is no such finding recorded and there was no material to reach such finding. In that view of the matter, the impugned endorsement of the 1st respondent is liable to be set aside. However, considering the fact that the petitioner is an agriculturist and the standing sweet lemon crop is being starved for want of water, the 1st respondent is directed to reconsider the applications submitted by the petitioner and pass appropriate orders in accordance with law and in the said

process the 1st respondent shall consider as to whether there are any objections from the others whose bore wells registered in terms of the provisions of the Act and such exercise shall be completed within a period of three weeks from the date of receipt of copy of this order.

Accordingly, the writ petition is allowed setting aside the endorsement dated 30.01.2013 of the 1st respondent. Miscellaneous Petitions, if any pending in this writ petition shall stand closed. No order as to costs.

CHALLA KODANDA RAM,J

Date:07.04.2015.

Note:

Issue CC in two days.

B/o.

Gk.

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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