

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.19422 of 2016

ORDER:

The present Writ Petition came to be filed seeking issuance of writ of mandamus declaring the proceedings Rc.No.61/2016/A, dated 19.05.2016 issued by the 4th respondent wherein and whereunder the two bore-wells said to have been situated in the patta-land of the petitioners 1 to 3 came to be seized without considering the explanations submitted by the petitioners on 17.05.2016, as illegal and arbitrary.

2) The facts, which lead to filing of the Writ Petition, are as under :-

Petitioners 1 to 3, claimed themselves to be the owners of the agricultural land admeasuring Ac.0.99 cents each of Survey No.79 of Kona Uppalapadu village, Yadiki Mandal, Anantapuram District. They also have agricultural land admeasuring Ac.8.73 cents, Ac.6.87 cents and Ac.6.40 cents respectively in the same village, in which a lemon garden was raised. It is the claim of the petitioners that they have dug a bore well about 15 years back and after obtaining electricity connection were using the same for agricultural purpose. The petitioners state that they are using the water to the lemon garden from the existing borewells by laying a pipeline across the road. It

is the case of the petitioners that 4th respondent gave permission to lay a pipe line from the bore well in Sy.No.79 to their land situated in other survey numbers. No objection certificate was also issued by the Executive Engineer, R & B for laying of a pipeline through the road. It is the case of the petitioners that due to political pressures in the village, the 4th respondent without issuing any notice, straightaway seized one of the bore-wells on 02.04.2016. Challenging the action of the 4th respondent in seizing the bore-well, the petitioners approached the High Court by way of filing W.P.No.11274 of 2016 wherein this Court directed the authorities to remove the seal put by the 4th respondent. Thereafter, the said Writ Petition was disposed of on 12.05.2016 directing the 4th respondent to enquire into and pass an order before 19.05.2016. Pursuant thereto, a notice dated 17.05.2016 came to be issued directing the petitioners to appear before the Authorities on 19.05.2016. A detailed explanation was said to have been given by the petitioners on 17.05.2016, but without considering the explanation submitted by the petitioners, the impugned order came to be passed on 19.05.2016. Challenging the same, the present Writ Petition came to be filed.

3) A counter came to be filed by the official respondent/R-4 denying the allegations made in the affidavit filed in support of the Writ Petition except to the extent admitted by them. It is stated that Kona Upalapadu village has been notified as over exploited

village and as such sinking of bore-well was said to be impermissible. It has been stated that except for drinking purpose, no bore-well was allowed to be laid.

4) A counter came to be filed by the unofficial respondent/R-5 disputing the averments made in the affidavit filed in support of the Writ Petition. It is the case of the 5th respondent that the petitioners have dug two bore-wells without the permission of the 4th respondent in the years 2015 and 2016 and that the allegations of the petitioners digging the borewell about 15 years back is absolutely false. It is submitted in the averments of the affidavit that the petitioners were running the bore-wells after obtaining electrical connections 15 years back, is also false as they have stated in their explanation about the usage of bore-wells by oil engines. It is further submitted that since the petitioners have an alternative remedy of preferring an appeal, this Court cannot go into the factual aspects and decide the issue.

5) Heard Sri I.Koti Reddy, learned counsel for the petitioners and learned Government Pleader for Revenue for 4th respondent and Sri N.Sreedhar Reddy, learned counsel for 5th respondent.

6) It is to be noted that various disputed questions of fact are raised in the Writ Petition. One of the main questions appears to be is

that; "Whether the bore-wells were laid recently or were in existence since 15 years?"

7) By an order dated 21.06.2016, this Court while issuing notice, ordered interim suspension of the impugned proceedings initially for a period of 10 days and subsequently extended the same from time to time. It is to be noted that against an order passed by the Tahasildar directing closure of the bore-well, an appeal would lie under Section 13 of the A.P.WALTA Act.

8) At this stage, the learned counsel for the petitioners submits that the committee as required by law has not been constituted and as such he is forced to file the present Writ Petition. But, however the learned Government Pleader on instructions submits that the committee, as required under Law has been constituted and that if an appeal is filed, the Committee would definitely hear the matter.

9) Having regard to the above, the petitioners shall prefer an appeal under the relevant provision of A.P. WALTA Act within a period of two weeks from today, in which event the said appellate authority shall decide the same as early as possible preferably within a period of 8 weeks thereafter, in accordance with law. Till such time, *status-quo* as on today with regard to usage of bore-well shall be maintained.

10) With the above direction, the Writ Petition is disposed of. No costs. Miscellaneous petitions, pending if any, in this Writ Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:28.12.2016

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