

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.13495 OF 2012

ORDER:

Heard Mr.Sinivas Rao Bodduluri for petitioner, the Assistant Government Pleader for respondents 1 to 4 and Mr.Cheemalapati Ravi for 5th respondent.

The petitioner calls in question the communication dated 26.04.2012 of 5th respondent - Gram Panchayat cancelling the permission granted to petitioner on 31.03.2012 for laying pipeline, as illegal, violative of principles of natural justice and contrary to the A.P.Panchayat Raj Act, 1994.

The circumstances relevant for disposal of the writ petition are as follows:

The petitioner was a Society registered under the A.P. Cooperative Societies Act, 1964 and later on incorporated as a Company under the Companies Act, 1956. The petitioner for the purpose of both industrial and ancillary purposes requires water and the requirement of petitioner was accepted by Government by issuing G.O.Ms.No.299, Irrigation dated 11.11.1993 permitting the petitioner to draw 5 lakh gallons of water per day from Commamur Canal at M.20/7 R.B by constructing a separate pipe sluice and permitted the petitioner to dig four bore wells in PWD limits at 6.10 metres away from the right bank of Commamur Canal vide G.O.Ms.No.319 dated 26.11.1993. The petitioner had dug bore wells as permitted and it is alleged the permission has been renewed from time to time. It is further alleged that due to laying of loop railway track at Sangam Jagarlamudi Railway Station near

Sangam Diary, the existing A.C pipeline was damaged and it requires replacement. The proposal for replacement could not be materialized due to pending doubling of Guntur-Tenali railway line. Therefore, to meet the exigencies, the petitioner Society examined various options and finally decided to lay a new water pipeline with PVC pipes from water source to unit. The proposed pipeline is passing through village, abutting roads. The petitioner requested the Gram Panchayat to grant permission for laying pipeline, particularly in an extent of 525 metres through Vasavinagar East West Donka Road etc. The 5th respondent through Resolution No.279 dated 24.05.2010 approved the proposal of petitioner. Later on, the alignment was changed on the suggestion of Gram Panchayat and the same was approved on 21.03.2012. The plan approved on 21.03.2012 is to be laid out in an extent of 1190 running metres through Garuvupalem Village of Vadlamudi Gram Panchayat. The petitioner claims to have taken permission from the Central Warehousing Corporation, P.W. Department to lay the underground PVC pipe through the precincts of respective departments. While matters stood thus, at the execution of work, the 5th respondent issued notice impugned in the writ petition calling upon the petitioner to stop the work immediately and also remove the pipeline. Hence, the writ petition.

On 11.05.2012, this Court granted interim suspension of notice dated 26.04.2012. The 5th respondent filed counter affidavit and did not file petition for vacating the interim order. This circumstance has relevance for the petitioner during the

pendency of writ petition claims to have completed the work and the statement is not disputed by 5th respondent.

Mr.Srinivas Rao contends that the impugned communication firstly calling upon the petitioner to stop construction is contrary to the approval granted on 31.03.2012; the permission for laying pipeline was approved and the 5th respondent, if intends to change its mind on the approval already granted, should have put petitioner on notice, considered the objections and thereafter as the circumstances warrant, would have taken a decision. On the contrary, the impugned notice concludes as if the petitioner is executing the pipeline work contrary to approval, which observation is erroneous and illegal. As a matter of fact, it is sated that by virtue of the interim order granted by this Court, the petitioner has already laid the pipeline and the same is put to use and there is no objection even from the villagers.

Mr.Cheemalapati Ravi draws the attention of the Court to counter affidavit and contends that the panchayat never granted permission to petitioner to lay pipeline in Government land and the permission granted by Gram Panchayat shall not be understood as giving full power to petitioner to lay pipeline where it likes. Since serious objections are received against execution of work, with a view to avoiding law and order problem, and also preserving the physical features of land through which the pipeline is proposed to be laid, communication impugned in the writ petition was issued. On instructions from his client, he submits that as on date the petitioner has completed laying of pipeline and the problems which

necessitated issuing the impugned notice are also substantially pacified. These submissions are adverted to keeping in view the final conclusions of the order.

On the pointed out query of the Court as to whether the communication impugned in the writ petition shall have to be read as a notice or an order directing removal of pipeline already laid by the petitioner, and whether the communication was preceded by enquiry or opportunity to petitioner, counsel for 5th respondent submits that the intention of 5th respondent is to issue a notice, however, a few conclusions recorded in the notice show the communication as an order passed by 5th respondent. On whether opportunity was afforded or not, it is submitted that as the situation was charged with law and order problem etc., the 5th respondent issued the communication impugned in the notice without giving opportunity to petitioner on any of the allegations levelled against petitioner. From the stand it is clear that before directing the petitioner to remove the pipeline, the petitioner was not afforded opportunity. I am satisfied, to meet the ends of justice and to give quietus to the problem, the writ petition can be disposed of by this order:

- (a) the communication impugned in the writ petition shall be treated as notice and the petitioner is given four weeks time from today to file detailed explanation before the 5th respondent and the 5th respondent is directed to consider and take a decision as is presently warranted in the facts and circumstances of the case;

(b) the interim order granted by this Court on 11.05.2012 is directed to be continued till a decision is taken and communicated to petitioner; and

(c) the exercise directed to be carried out shall be undertaken and completed within three months from the date of receipt of copy of this order.

The writ petition is, accordingly, disposed of. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, stand closed.

18th January, 2017
Lrkm



S.V.BHATT, J