

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.18014 of 2013

O R D E R:

This Writ Petition is filed by the petitioners challenging the proceedings D.Dis(J)/109/2013, dt.17.02.2013 of 2nd respondent and order No.C-921/PCB/CFE/RO/TPT/2013-1142, dt.15.03.2013 of the 7th respondent in according permission and consent, respectively, to 8th respondent for conversion and use of his land admeasuring Acres 3.32 cents in survey No.148/6 of Chedulpakam village, Varadaiahpalem Mandal, which is adjacent to the land of the petitioners in Battulavallam Village in same Mandal.

2. Petitioners contend that when they came to know that 8th respondent was setting up a ready-mix concrete mixing unit in the land owned by him, petitioners made representation on 04.12.2012 to the 3rd respondent and on 05.12.2012 to the 7th respondent stating that if the 8th respondent is permitted to establish the said unit, their lands would get polluted and they will not get any crops in their lands. Petitioners also made a representation on 22.01.2013 to the 2nd respondent not to grant certificate under Andhra Pradesh Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006 to 8th respondent for setting up the ready-mix concrete mixing plant in the land adjacent to their agricultural lands.

3. When the respondents 2 to 7 did not take any action on the petitioners' representation, petitioners filed W.P.No.13615 of 2013 in this Court complaining of the inaction of respondents.

4. During the course of hearing of said Writ Petition, 8th respondent produced before this Court proceedings of the Revenue Divisional Officer, Tirupati Division, Tirupati, Chittoor District in D.Dis(J)/109/2013, dt.17.02.2013 and order No.C-921/PCB/CFE/RO/TPT/2013-1142, dt.15.03.2013 of the Environmental Engineer of the A.P. Pollution Control Board, Regional Office, Tirupati granting consent for establishment of ready-mix concrete mixing unit in terms of Section 21 of Air (Prevention & Control of Pollution) Act, 1981.

5. Therefore this Court ~~closed~~ the Writ Petition granting liberty to petitioners to challenge the above proceedings issued by the Revenue Divisional Officer as well as the Environmental Engineer.

6. Thereafter, petitioners filed the present Writ Petition assailing both the orders.

7. It is the contention of the counsel for the petitioners that under Rule 4 of the Rules framed under Andhra Pradesh Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006 objections should be invited whenever applications

for conversion of agricultural land for non-agricultural purpose are made to the Revenue Divisional Officer, that an enquiry also should be done whether the proposed conversion is objectionable or not, and only then an order should be passed by the respondents accepting or rejecting the objections for proposed conversion.

8. Petitioner contends that the Revenue Divisional Officer did not invite any objections and he also did not consider the objections sent on 22.01.2013 by the petitioners.

9. They further contended that in the permission granted by the Environmental Engineer on 15.03.2013 to the 8th respondent, it is stated that the Assistant Environmental Engineer visited the site on 18.01.2013 and found that the site was surrounded by East-vacant land, West-agricultural land, North-agricultural land and South-thada road, that these boundaries were wrong, that in fact the land of the 8th respondent was surrounded on East by agricultural land, West by Koneru, North by thada road and south by agricultural lands; and that the alleged inspection by the Assistant Environmental Engineer, is obviously not with regard to the land claimed by the 8th respondent, but somewhere else.

10. When the matter came up for admission on 05.07.2013, the Government Pleader for Revenue requested time to

produce records to ascertain whether petitioners' representation dt.22.01.2013 was received by the Revenue Divisional Officer, before permission was granted to the 8th respondent on 17.02.2013 or not.

11. The matter was again listed on 08.07.2013 and on that date, further time was sought by the Government Pleader to obtain instructions. Even subsequently time was sought on 16.07.2013 and 17.07.2013 on which date, counsel for petitioner sought to ascertain from the Post Office regarding the delivery of registered letter dt.22.01.2013 to the office of the Revenue Divisional Officer.

12. Counsel for petitioners has filed an affidavit on 20.04.2017 annexing the response dt.18.07.2013 of the Post Master, Tirupati H.O., Tirupati stating that the registered letter cover containing representation dt.22.01.2013 which was booked on 23.01.2013 was delivered to the 2nd respondent on 24.01.2013.

13. Though four years have elapsed since the filing of the Writ Petition, 2nd respondent has not chosen to file any counter affidavit stating when he actually received the objection letter submitted by the petitioner.

14. Rule 4 of the Andhra Pradesh Agricultural Land (Conversion for Non-Agricultural Purposes) Rules, 2006 referred to above states that:

“4. Procedure to be followed by the Competent

Authority: *The Competent Authority i.e., Revenue Divisional Officer who receive the applications for conversion of agricultural land for non agricultural purposes:-*

- a) may cause such enquiry as may be necessary to determine whether the conversion applied for is objectionable or not;*
- b) may invite objections in this regard, if necessary;*
- c) may inspect or cause inspection of the land in order to determine whether or not the proposed conversion is objectionable.*
- d) Shall take cognizance of the Master Plan and such other land use restrictions in determining whether the proposed conversion is objectionable or not;*
- e) Shall thereafter proceed to pass orders, ordering or rejecting the proposed conversion.”*

15. Thus a reading of the above Rule indicates that the 2nd respondent should invite objections, cause enquiry and then pass an order accepting or rejecting the proposed conversion.

16. In the absence of counter affidavit filed by the 2nd respondent, it has to be held that 2nd respondent never invited any objection for the application made by the 8th respondent for conversion of land use of the subject land owned by the 8th respondent. He thus acted contrary to law. It is further clear that having received objection dt.22.01.2013, of the petitioners on 24.01.2013 he simply ignored the same and passed order on 17.02.2013 granting permission to the 8th respondent to convert his agricultural land into non-agricultural land. This is in clear violation of principles of natural justice.

17. Thus the 2nd respondent has clearly violated the mandatory provisions of the Act, which are intended for protection of persons like the petitioners, who may be affected by the grant of permission by the 2nd respondent.

18. The counsel for 8th respondent filed counter stating that the 8th respondent has setup the ready-mix concrete mixing plant in the subject land to cater the needs of its clients in and around SRICITY SEZ after obtaining permission from Pollution Control Board and Inspector of Factories apart from the Grampanchayath of Battulavallam. It also denied that any activity done by the 8th respondent in its land would affect the petitioners and that the petitioners land could be polluted. According to it, as on the date of establishment, the ready-mix cement plants were classified under orange category by the Pollution Control Board and presently classified in green category and are non-polluting industries, and there is no emission from the plant as no manufacturing activity is involved. It denied that the Revenue Divisional Officer did not conduct any enquiry before granting permission to the 8th respondent. It also contended that only the word 'may' is used in Rule 4 of the Rules framed under Act and therefore it is not obligatory on the part of the Revenue Divisional Officer to invite objections.

19. Counsel for the 8th respondent also relied upon a decision of the Supreme Court in ***Union of India and others v. Alok Kumar and others***¹ and sought to contend that there is no prejudice to the petitioners at all and so the petitioners cannot complain that their objections have not been considered by the Revenue Divisional Officer before granting permission for conversion to the 8th respondent.

20. The 7th respondent has not filed any counter affidavit till date disputing the petitioner's allegation that the boundaries were wrongly noted in the order dt.15.03.2013 passed by the 7th respondent. However, its counsel contended that permission was accorded to 8th respondent by the Pollution Control Board after following all the procedures and therefore, there is no warrant to set aside the order dt.15.03.2013 granted by the Environmental Engineer of the A.P. Pollution Control Board to the 8th respondent.

21. It is pertinent to note that the counsel for the 8th respondent did not dispute that the boundaries of the 8th respondent's lands mentioned in the permission/consent order dt.15.03.2013 issued by the 7th respondent are not correct.

22. Therefore, it has to be inferred that the order dt.15.03.2013 was passed by the 7th respondent either

¹ 2010(5) SCC 349

without inspection or after inspecting a different site with different boundaries and not the 8th respondent's site.

23. That apart, the counsel for the 7th respondent admitted petitioners' objection dt.11.12.2012 was received by the 7th respondent immediately thereafter, but he has not placed before this Court any material to show that the said objection was considered and the said decision was communicated to the petitioners. He has only produced proceeding dt.18.07.2013 of the 7th respondent referring to some complaint dt.11.12.2012.

24. Post decisional consideration of the complaint cannot be treated as valid since the grant of consent by the 7th respondent has serious repercussions. So there has to be a pre-decisional consideration of the objections.

25. Therefore, the order dt.15.03.2013 passed by the 8th respondent cannot also sustain.

26. In view of these facts, I am of the opinion that prejudice to the petitioners, by order dt.17.02.2013 passed by the Revenue Divisional Officer and the order dt.15.03.2013 of the Environmental Engineer of the Pollution Control Board, is obvious. Petitioners, being agriculturists, are certainly entitled under law to raise objections if lands adjacent to their lands are sought to be converted into non-agricultural use,

since their livelihood would be affected by grant of such permission.

27. This being the intent of the Andhra Pradesh Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006 as well as the Air (Prevention & Control of Pollution) Act, 1981 and since it would have direct bearing on the fundamental right guaranteed to the petitioners under Article 21 of Constitution of India, I am of the opinion that non-consideration of the petitioners' objections by the Revenue Divisional Officer (2nd respondent) as well as the Environmental Engineer of the Pollution Control Board (7th respondent) is clearly arbitrary, illegal and violative of principles of natural justice and Articles 14 and 21 of the Constitution of India.

28. The decision in **Alok Kumar**(1 supra) cited by the counsel for 7th respondent relates to disciplinary proceedings. But in a situation where environment is likely to be affected as well as the right of livelihood of agriculturists such as petitioners, the said decision cannot be applied.

29. Therefore, this Writ Petition is allowed; the proceedings D.Dis(J)/109/2013, dt.17.02.2013 of the 2nd respondent- Revenue Divisional Officer, Tirupati Division, Tirupati, Chittoor District and order No.C-921/PCB/CFE/RO/TPT/2013-1142, dt.15.03.2013 of the 7th respondent-

Environmental Engineer of the A.P. Pollution Control Board, Regional Office, Tirupati, are both set aside; and the 8th respondent is restrained from operating the ready-mix concrete mixing plant in the extent of Acres 3.32 cents in survey No.148/6 of Chedulpakam village. The Revenue Divisional Officer(2nd respondent) and the Environmental Engineer (7th respondent) shall consider the objections filed by the petitioners afresh after making fresh inspection of the land belonging to the 8th respondent after notice to the petitioners and pass a reasoned order within a period of six (06) weeks from the date of receipt of a copy of this order and communicate the same to the petitioners. The respondents 2, 7 and 8 shall pay costs of Rs.10,000/- to the petitioners.

30. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

20th April, 2017.

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