

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

Writ Appeal No. 1258 of 2017

And

Writ Petition No.27613 of 2017

Common Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the ad-interim order passed by the learned Single Judge in W.P. No. 27613 of 2017 dated 21.8.2017. The appellants herein filed the said writ petition questioning the show cause notice issued by the 3rd respondent dated 8.8.2017, in the purported exercise of his powers under the Andhra Pradesh Water, Land and Trees Act, 2002 (hereinafter called "the WALTA Act"), as without jurisdiction, in violation of principles of natural justice and in violation of his fundamental rights under Article 14, 19(1)(g) and 21 of the Constitution of India.

The learned Single Judge has, in the order under appeal, observed that, *prima facie*, Sections 13 and 15 of the WALTA Act and Rule 2 of the Rules, confer power on the Mandal Revenue Officer to issue the notice; the question whether the Tahsildar could issue notice, and take action on the complaint of a borewell being dug within a short distance from the existing borewell, necessitated consideration when the writ petition was finally heard; and he was not inclined to suspend the notice. The Learned Judge made it clear that, if a final order was passed, it was always open to the appellants-writ petitioners to work out their remedies in accordance with law.

Sri S. Rahul Reddy, learned counsel for the appellants-writ petitioners, would submit that the Tahsildar lacks jurisdiction, under the WALTA Act, to initiate action against any person who has dug a borewell; such a power is conferred under the WALTA Act, and the Rules, on the authority which consists of 13 members including the Tahsildar, and not the Tahsildar alone; the impugned proceedings is in gross violation of principles of natural justice, as the appellants-petitioners were asked to show cause within two days; the impugned notice was issued at the behest of the 4th respondent, who has himself dug four borewells including two wells without obtaining prior permission; and the learned Single Judge was, therefore, not justified in refraining from interference.

This Court is no doubt entitled to entertain a writ petition where the complaint is that the show cause notice is without jurisdiction or in violation of principles of natural justice or that the appellants-writ petitioners' fundamental rights, under Part-III of the Constitution, are violated by such proceedings. As to whether or not the writ petition should be entertained, and whether the petitioner should be relegated to the remedy of filing of reply thereto, is again a matter of discretion, and the petitioner cannot claim, as of right, that the Writ Petition should be entertained.

This Court would, ordinarily, not interfere with a notice to show cause, as the appellants-writ petitioners can as well show cause to the authority concerned. The contention that the Tahsildar lacks jurisdiction can also be urged by way of a reply to

the show cause notice, which the Tahsildar would examine and pass a reasoned order, as it is only if he has jurisdiction to pass an order, can he proceed thereafter to take action against the appellants-writ petitioners. We see no reason, therefore, to entertain either the writ petition or the writ appeal.

Suffice it to permit the appellants-writ petitioners to submit a reply to the show cause notice within ten days from today raising all such contentions, as are available to them in law, including that the impugned show cause notice is without jurisdiction; no action has been taken against the 4th respondent for having dug four borewells; the complaint filed by such a person should not have been entertained by the Tahsildar; and the appellants-writ petitioners have not violated the provisions of the WALTA Act and the Rules made thereunder.

In case a reply is filed to the show cause notice within the aforesaid period of ten days, the 3rd respondent shall consider the objections raised in the reply to the show cause notice, and pass a reasoned order in accordance with law dealing with all the contentions put forth by the appellants-writ petitioners in their reply to the show cause notice; and communicate the same to enable the appellants-writ petitioners, if they are aggrieved thereby, to challenge the validity of such an order in appropriate legal proceedings. The 3rd respondent shall not take any coercive action against the appellant-Writ Petitioner for a period of one week after service of a copy of the order on the appellants-writ petitioners. Needless to state that, if the appellants-writ petitioners' complaint against the 4th respondent, of having

illegally dug four borewells, is found to have some merit, any action, which the 3rd respondent may take against the 4th respondent, shall only be after the 4th respondent is put on notice, and is given an opportunity of being heard.

Both the writ appeal and the writ petition are disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

31st August, 2017

Note:

Furnish c.c. by tomorrow.

b/o

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