

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

WRIT APPEAL No.318 of 2017

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

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P. No. 1484 of 2013 dated 19.10.2016.

The appellant herein is the petitioner in the Writ Petition. He invoked the jurisdiction of this Court seeking a direction to respondents 1 and 2 (Municipal Council, Mangalagiri and the District Collector, Guntur) to protect the open well site, and to restore the open well by cleansing the area, or to dig a bore well in the place of the open well with overhead tank at the expense of APSRTC by issuing a writ of mandamus.

In the order under appeal, the learned Single Judge observed that the petitioner's grievance was that the respondents were spoiling the water body site (public open well) which catered to the needs of the residents of the locality; and they were trying to encroach upon the water body site for construction of a shopping complex. The learned Single Judge took note of the averments in the counter affidavit that the subject well was filled and dumped with debris; the well was not being used by APSRTC or by anybody else; the Mangalagiri Municipality was supplying drinking water to the APSRTC, as well as to the nearby residents; the APSRTC had dug a bore well in the North West corner and the said well was not being put to use; the dump and debris in the well was causing inconvenience including infectious diseases; due to prevalence of mosquitoes, public in the vicinity were adversely affected; and, as such, it was proposed to close the well, since the property belonged to the APSRTC.

While Sri B. Chinnapa Reddy, learned counsel for the appellant-writ petitioner, would submit that the subject land belongs to the Municipality,

and not to the APSRTC, the fact remains that the APSRTC claims that the well is located within their land; and is not in the land belonging to the Municipality.

The question whether the subject land belongs to the Municipality or the APSRTC; whether the well is being used to provide drinking water or had become defunct on its being filled with debris etc, are all disputed questions of fact which would, ordinarily, not be adjudicated in proceedings under Article 226 of the Constitution of India. We see no reason, therefore, to interfere with the order passed by the learned Single Judge. Suffice it to make it clear that this order will not disable the appellant-petitioner, if he so chooses, from availing his common law remedy of invoking the jurisdiction of the competent Civil Court.

Subject to the aforesaid observations, the Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, ACJ

GUDISEVA SHYAM PRASAD, J

22nd December, 2017.

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