

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

W.P.Nos.9621 of 2016 and & 3871 of 2017

COMMON ORDER:

Petitioners in both the writ petitions are neighbours. Petitioner in W.P.No.9621 of 2016, who is 6th respondent in W.P.No.3871 of 2016 is aggrieved by the inaction of the respondents in considering his representation dt.08.01.2016 to take action against the 6th respondent, who is petitioner in W.P.No.3871 of 2017, for digging bore-well illegally adjacent to the petitioner's bore-well. Petitioner in WP.No.3871 of 2017, who is 6th respondent in W.P.No.9621 of 2016, is aggrieved by the action of the Tahsildar, Kothakota in seizing his bore-well without any prior notice under a Panchanama dt.18.01.2017.

2. The Government Pleader for Revenue appearing for Tahsildar, Kothakota states that the petitioner in W.P.No.3871 of 2017 had dug a bore-well without obtaining permission from the authorities and that a complaint was lodged against him by the 6th respondent, who is petitioner in W.P.No.9621 of 2016; that a notice dt.21.07.2015 was issued to the petitioner in W.P.No.3871 of 2017, but he refused to receive the same and it was affixed to his house. It is stated that on 29.07.2015 under cover of panchanama, the bore-well of the petitioner in W.P.No.3871 of 2017 was seized.

3. This contention is refuted by the counsel for petitioner in W.P.No.3871 of 2017, who contends that no such notice was given to him.

4. On 07.02.2017 this Court granted an interim order in WP.MP.No.4624 of 2017 in W.P.No.3871 of 2017 directing the Tahsildar to reinstall the petitioner's bore-well and not to interfere with its operation. It is observed that this would not preclude the Tahsildar in taking action by following due process of law.

5. W.V.MP.No.4820 of 2017 is filed by the 6th respondent in W.P.No.3871 of 2017, who is petitioner in W.P.No.9621 of 2016. It is contended that he had applied for registration of his bore-well, that since the said application was not being considered, he filed W.P.No.9621 of 2016 before this Court and that subsequently, his application has been considered and bore-well has been registered vide Lr.No.B/1819/2015 dt.13.07.2016.

6. In view of the said submission, the W.P.No.9621 of 2016 is dismissed as infructuous as his grievance has been redressed.

7. However, he also does not state that any order has been passed by the 4th respondent after serving notice on petitioner in W.P.No.3871 of 2017 under Section 15 of the AP WALTA Act, 2002(for short 'the Act').

8. Section 15 of the states as under:

“15. Closure of Wells:

- 1) Wherever it appears to the Authority that any well has been sunk or is being sunk or water has been extracted or is being extracted in contravention of any of the provisions of this Act, the Authority or any officer duly authorized by it in this behalf, may enter upon that land, remove obstruction, if any, close the pumping of the water, disconnect the power supply, seize any material or equipment used in connection with such extraction of water and take any such action, as may be required to stop such extraction and may by order require the owner or the person in possession of the well to close or seal off the well at his expense and in such manner as the Authority may specify in such order and such owner or person shall comply with such order.
- 2) Where such owner or person fails to comply with any order made under sub-section (1), the Authority may after giving such owner or person due notice in that behalf enter upon the land and close or seal off the well and the cost incurred thereof shall be recoverable from such owner or person as arrears of land revenue.”

9. Though the said provision does not contemplate issuance of any prior notice, principles of natural justice have to be naturally read into it(see ***Institute of Chartered Accountants v. L.K.Ratna***¹), since any action taken under the said provisions involves civil consequences on the person proceeded against. Therefore, it was incumbent on the Tahsildar, Kothakota to issue notice to the petitioner in W.P.No.3871 of 2017 as to why his bore-well shall not be removed before seizing it under the panchanama referred to above.

¹ AIR 1987 SC 71

10. Therefore, the petitioner in W.P.No.3871 of 2017 as well as 6th respondent therein shall both appear before the Tahsildar, Kothakota on 10.01.2018 at 11.00 a.m. and submit their respective pleas in respect of the petitioner's (in W.P.No.3871 of 2017) bore-well which shall be considered by the Tahsildar strictly in accordance with the provisions of the Act and the Tahsildar shall then pass a reasoned order and communicate it to the petitioner as well as 6th respondent. In case, the petitioner in W.P.No.3871 of 2017 does not appear before the Tahsildar, Kothakota on that day and file his contentions, it is open to the Tahsildar to proceed ex parte. In the meantime, the Tahsildar shall restore the bore-well of the petitioner in W.P.No.3871 of 2017 which shall abide by the final order, which the Tahsildar may pass in the matter.

11. Accordingly, W.P.No.9621 of 2016 is dismissed as infructuous and W.P.No.3871 of 2017 is allowed. No costs.

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

M.S.RAMACHANDRA RAO, J

11th December, 2017.

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