



महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण Maharashtra Water Resources Regulatory Authority (MWRRA)

9th Floor, Centre-1, World Trade Centre, Cuffie Parade, Mumbai - 400005. Tel.: 2215 2019 Fax.: 2215 3765 E-mail: mwrta@mwrta.org

No. MWRRA/ 2016/GW Petition /Case No.1of 2017/(23)/231

Date :25/05/2017

Case No. 6 of 2016

In The Matter of
Closure of Well in the Influence Area of Public Drinking Source

Petitioner :Shri. Babasaheb Tatyaba Mate, Nighoj, Tal. Rahata Dist. Ahmednagar.
Through Adv. Kamallesh Mali

Vs

Respondents : 1. Sanjay Dyaneshwar Jape, 2. Sanjay Dagadu Gavhane, 3. Rajendra
Bhausahab Katore

Through Adv.A.N.Zarekar

Please find herewith a copy of MWRRA Order dated 25/05/2017 in the matter.

Encl: As above.


(Dr.Suresh Kulkarni)
Secretary

Copy to :-

1. Adv.Kamallesh Mali (on behalf of Appellant Shri.Babasaheb Tatyaba Mate), 17 A, Annex Bldg., New Bar Room, 2nd floor. High Court, Mumbai.
 2. Adv.A.N.Zarekar (on behalf of Respondents Shri.Sanjay Dyaneshwar Jape, Sanjay Dagdu Gavhane & Rajendra Bhausahab Katore), 1st Floor, Sadaphal Complex, Near Rahata Police Station, Rahata . Dist. Ahmednagar
 3. District Authority & Sub-Divisional Officer, Shirdi, Dist. Ahmednagar.
 4. Director, Groundwater Survey & Development Agency, Bhujal Bhavan, Shivajinagar, Pune in continuation with this office Letter No.213 dated 17/05/2017
- Copy to master file.



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Coram: Shri. K. P. Bakshi, Chairman

Shri. V. M. Kulkarni, Member (W.R. Engg.)

Date : 25th May, 2017

Order

An appeal has been received on 09/02/2016 from Shri. Babasaheb Tatyaba Mate, resident of Nighoj, Tal. Rahata, Dist. Ahmednagar who is aggrieved by an order issued by the Sub-Divisional officer & District Authority, Shirdi dated 21/8/15. Further the applicant applied for the condonation of the delay vide his application dated 17 Feb 2016. The delay has been condoned by the Authority. The appeal is admissible under Section 56 of Maharashtra Ground Water (Development & Management) Act, 2009.

Appellant owns a farmland in the Gat No. 470 & 471 of the village Nighoj, and well constructed in it had no water. Therefore, Appellant has purchased a well from Hirabai Rangnath Aware in May 2015 located in Gat No. 233/1 at Savali Vihir, Tal. Rahata. The well is existing in the record of right since 1953. In order to fetch water to his farm appellant has laid a pipeline from the well at Savali Vihir up to his land located at Nighoj, after taking necessary permissions.

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Appellant stated that on receiving complaints from Respondents 1 to 3, Granpanchyat complained to Tahsildar, Rahata that the well be closed as it is within the influence area of public drinking water source. The drinking water source is a storage tank constructed by Maharashtra Jeevan Pradhikaran (MJP) in 2002. Accordingly, the Tahsildar has recommended to close the well as it is within the radius of one fifty meter from the public drinking source.

The SDO & District Authority, Shirdi had conducted hearing on 09/06/2015 & 16/09/2015. During the hearing on 16/09/2015, Advocate for the appellant, among other points, has pointed out that the Tahsildar has not taken any technical advice either from Ground Water Survey & Development Agency (GSDA) or any other committee as stated in the Sec.22 of the Groundwater Act, 2009 as a basis for giving his recommendation.

The District Authority has accepted the proposal of Tahsildar Rahata and issued order prohibiting pumping from the said well in Savli Vihir and also to cut the electricity connection vide his order dated 21/8/15 under Section 21 & 22 of the Groundwater Act, 2009.

Aggrieved by this order, appellant first approached to the Collector, Ahmednagar vide his appeal dated 05/11/2015. The Collector, Ahmednagar, in his order dated 15/01/2016, directed the appellant to submit his appeal to the State Ground Water Authority as per provisions of the relevant Act.

Hearing on the matter could not be held in 2016 as the Authority was not in place. The Government of Maharashtra vide notification MWRRA/2016/277/(91/16)/WR (Estt) dated 5th May, 2017 reconstituted the Authority by appointing the Chairman and a Member (Water Resources Engg.) and a fresh hearing was held on 18/05/2017.

Adv.Kamlesh Mali pleaded the case on behalf of Petitioner, while Adv. A.N.Zarekar pleaded the case on behalf of Respondents 1 to 3.

The summary of the hearing and written submissions made is as below :-

1. Adv.Kamlesh Mali:

- (i) The well purchased by the Appellant in 2015 is existing since 1953 and is being used for irrigation. The Appellant has made investment for laying pipeline from the well to his field with all necessary permissions.
- (ii) MJP has laid tarpaulin paper on the surface of the storage tank to stop the leakage. The letter from MJP dt. 25/11/2016 has confirmed that the leakage from the tank is stoped. Relevant news appeared in 'Punyanagari' dated 09/03/2017 re-confirm the facts.

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- (iii) There is no relation between the surface water source and the groundwater well. The Act is about Groundwater Regulation.
 - (iv) There are many wells (about 150 nos.) within influence area, however action has been taken only in case of the Appellant.
 - (v) Respondents who are complainants, are tanker suppliers, supplying water to hotels in Shirdi.
2. Adv.A.N.Zarekar :
- (i) The purchase of well is illegal.
 - (ii) Appellant intends to use the well water commercially by supplying it to hotels. For this purpose, the Appellant has constructed a big storage tank of 1 lakh liter capacity near his Beer Shoppee located at village Nimgaon.
3. Advocate Mali defended that the purchase of the well can be challenged in the civil court and not with this Authority. Regarding the issue of Beer Shoppee, he clarified that there is a separate bore-well constructed in Nimgaon village and a separate pipeline up to Beer Shoppee has been laid.

Issues framed :

1. Whether the said public drinking water source was notified under Section 20 of the Groundwater Act, 2009, which is a prerequisite for action under Section 21 / 22?
2. Whether technical advice of GSDA was taken prior to the date of order (21/ $\frac{8}{10}$ /15.)?
3. How the well has an influence on surface water source?

The order of District Authority is silent about above issues. Also, the District Authority or it's representative was not present during hearing although notice was served. Hence Authority sought clarification of the District Authority vide letter dt. 19/5/2017.

The District Authority vide it's letter dt. 23/5/2017 clarified that the source is not notified under Section 20 of the Act. Also, the technical advice of GSDA was not sought before passing the order dt. 21/ $\frac{8}{10}$ /15. However considering the water scarcity in the village and likely delay for following procedure under Sec. 20 & 22 of the Act the order was passed.

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Observations:

The Authority has observed that the District Authority has not notified the source under consideration as public drinking water source under Section 20 of the Groundwater Act 2009. Also District Authority has not sought technical advise of the GSDA which was a prerequisite as per Section 22 of the Act. Further, the Authority is not convinced about adverse effect of well on the surface reservoir which is at 200 meter away and the surface of which is protected by tarpaulin sheet to avoid seepage losses.

Order:

Considering the aforesaid facts, the impugned order cannot be sustained, as such the impugned order of the District Authority, Shirdi dated 21/⁸/₁₀/15 is quashed and set aside. Present order would not be an impediment for Respondents to take recourse to provisions of the Act of 2009, by following due procedure. The Petition is accordingly disposed off. With no costs.

Sd/-

Shri.V.M.Kulkarni (Member Engg.)

Sd/-

Shri.K.P.Bakshi (Chairman)



Dr.Suresh Kulkarni (Secretary)

