



सत्यमेव जयते



महाराष्ट्र जलसंपत्ती नियमन प्राधिकरण Maharashtra Water Resources Regulatory Authority

Order No.17 of 2018

Appeal filed by Shri. Pramod Vasanttrao Gomkale in the matter arising out of the Order in Original dt. 15/12/2017 as passed by the Respondent No.2 - Case No.9 of 2018

Shri. Pramod Vasanttrao Gomkale,
R/o Simbhora Road,
At Post & Taluka – Morshi, District - Amravati

..... Appellant

V/s.

1. Collector, Amravati, Collector Office,
Camp Road, Amravati-444 602.
2. Sub Divisional Officer, Morshi,
Taluka-Morshi, Dist.-Amravati-444 905.
3. Senior Geologist,
Groundwater Surveys & Development Agency (GSDA),
GSDA Workshop, Tapovan Road, Amravati-444 602.
4. Director, Groundwater Surveys & Development Agency,
Agriculture College Campus,
Wakadewadi Marg,
Shivaji Nagar, Pune-411 005.

..... Respondents



**Record of Proceedings and the Order in respect of the hearing held on
November 13, 2018**

**Coram : Shri. V.M Kulkarni, Presiding Member (WRE)
Shri. Vinod J. Tiwari, Member (Law)
Dr. S.T. Sangle, Member (Economics)**

Date : November 15, 2018

Shri.Pramod Vasantrya Gomkale filed an appeal before this Authority on August 16, 2018 seeking relief in the matter of appeal against the Judgment and Order of District Authority, the Sub-Divisional Officer at Morshi, Dist. Amravati, the Respondent No.2 herein, upon the observations recorded in the Roznama/Record of Proceedings by the Collector, Amravati, the Respondent No.1 herein suggesting him to approach this Authority being State Groundwater Authority under the provisions of Maharashtra Groundwater (Development & Management) Act, 2009.

1. The prayers in the Appeal, in substance before this Authority are :
 - i) To inquire the matter through Water Technical Senior Geologist after making inspection of the well situated in Moje-Nashirpur, Taluka-Morshi, District-Amravati bearing Gut No. 12/2, owned and possessed by the Appellant.
 - ii) To set aside the impugned Order passed by the Respondent No. 1 and remand back the mater for fresh inquiry before the Collector as per Maharashtra Groundwater (Regulation for Drinking Water Purposes) Act, 1993.
 - iii) Call the report from the Senior Geologist for the current year and Technical Survey, technical Audit and flow of water for the current year 2018. May kindly be called.
 - iv) Grant any other suitable legal relief may kindly be granted in favour of the appellant in justice interest.



The hearing was held on November 13, 2018 to which following were present:

- 1) Shri. Lavkesh Pramod Gomkalebeing authorized representative of the Appellant
- 2) Shri. Manohar Kadu Sub Divisional officer, Morshi
.....For Respondent No.2
- 3) Shri. Sanjay V. KaradFor Respondent No.3 & 4

2. Pleadings by Parties and the facts on record :

- i) The Authority having perused the facts on record, asked the Respondent No. 2 that whether the well existed earlier in the field of Appellant. The Respondent No. 2 replied in negative, whereas, the Appellant pleaded about the existence of well which according to him is not a deep well being just 20 feet deep. The officials present on behalf of Respondent No. 3 & 4 submitted that the said well is situated in the notified over-exploited/ critical watershed area and hence, no new well can be constructed as per the provisions of the Maharashtra Groundwater (Regulation for Drinking Water Purposes) Act, 1993.
- ii) Having perused the facts on record, the Authority found that the Order in Original dt. 15/12/2017 as passed by the Respondent No. 2 was based on Maharashtra Groundwater (Regulation for Drinking Water Purposes) Act, 1993. However, Maharashtra Groundwater (Development & Management) Act, 2009 has come into existence since June 1, 2014 and Section 59 (1) of this act has repealed the Maharashtra Groundwater (Regulation for Drinking Water Purposes) Act, 1993. Hence, the Order should have been passed under Maharashtra Groundwater (Development & Management) Act, 2009 considering the legal provisions contended therein, in which the Respondent No.2 has been designated and empowered as jurisdictional District Authority for the Sub-Division of Morshi in Amravati district.



3. Observations by the Authority :

- i) The Authority observed that the Appellant has not made the original complainant as party Respondent to the present appeal which ought to have been added being relevant and necessary party.
- ii) As apparent from the facts on the record and the submissions made by the parties , it is observed by this Authority that the present Order in Original under appeal has not been passed by following the provisions contended in Maharashtra Groundwater (Development & Management) Act, 2009 under which the Respondent No.2 being jurisdictional District Groundwater Authority ought to have exercised his powers and authority, as the old Act - Maharashtra Groundwater (Regulation for Drinking Water Purposes) Act, 1993 has now stands repealed with the condition or stipulated in Section 59 of the Maharashtra Groundwater (Development & Management) Act, 2009.
- iii) Moreover, it is also observed that the Respondent No.2 while passing the Order as District Authority, has mixed different issues. Issues under Maharashtra Land Revenue Code, 1966 (MLR Code) ought to have been dealt with separately. So far as the points No. 2 and 4 in the Order in Original dt. 15/12/2017 as passed by the Respondent No.2 are concerned, this Authority has no powers to adjudicate and intervene, which seems to have been passed under the powers and authority with the Respondent No.2 under the MLR Code, 1966, for which the Appellate Authority is separate under the said MLR Code, 1966.
- iv) In light of above observations, the Authority is of opinion that the matter be remanded back to the Respondent No.2 in terms of the Order being passed herein below.



4.

Final Order

Having observed above, this Authority found it prudent to pass the following Order in the interest of justice:

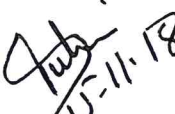
- i) The Order in Original dt. 15/12/2017 as passed by the Respondent No.2 – the Sub Divisional officer, Morshi is set aside and remanded back to decide the matter in light of the provisions contended in the Maharashtra Groundwater (Development & Management) Act, 2009, after giving reasonable opportunity of hearing to all parties concerned including original Complainant. The Order a fresh to be passed within a period of 4 (four) weeks from the receipt of this Order by the Respondent No. 2.
- ii) Since, the said well is said to be situated in the over-exploited / critical watersheds as notified by the competent authority after following due process of law as confirmed by the concerned officer for & on behalf of the Respondent No. 3 and 4, there shall be status-quo on the withdrawal of water from the said well, until an Order a fresh is passed by the Respondent No. 2.
- iii) As far as other points in the said Order in Original under the present appeal, this Authority do not intend to interfere and Order anything on it as these are concerned with the powers and authority exercised by the Respondent No.2 under the provisions of Maharashtra Land Revenue Code, 1966 and hence, do not call for any interference from this Authority and thus the Appellant shall be free to avail the opportunity of appeal with the proper forum to challenge against the said points at Sr.No. 2 and 4 of the said Order, if advised so.
- iv) The Appeal is disposed of accordingly as per the Orders herein above.
- v) There shall be no Order as to the costs.


15/11/2018

Vinod J. Tiwari
Member (Law)


15.11.18

Dr. S.T. Sangle
Member (Economics)


15-11-18

V.M Kulkarni

Presiding Member (WRE)



Issued under my sign and seal as per the Orders of the Authority.

Date : 15/11/2018

Place : Mumbai


(Dr. Suresh Kulkarni)

Secretary

Copy for information & necessary action to :-

- 1) The Collector, Amravati, Collector Office, Camp Road, Amravati-444 602.
- 2) The Sub Divisional Officer, Morshi, Taluka-Morshi, Amravati-444 905.
- 3) The Senior Geologist, Groundwater Surveys & Development Agency,
GSDA Workshop, Tapovan Road, Amravati-444602.
- 4) The Director, Groundwater Surveys & Development Agency,
Agriculture College Campus, Wakadewadi Marg, Shivaji Nagar, Pune-411 005.
- 5) Shri.Pramod Vasantao Gomkale (Appellant)
Simbhora Road, At Post - Morshi, Tq. - Morshi, Dist. Amravati-444 905.
- 6) Smt. Durga Ramjivan Tiwari (Original Complainant)
C/o. Ishwar Namdeorao Shirsat (Dudhbhau)
Gujari Bazar, At Post - Morshi, Tq. - Morshi, Dist. - Amravati-444 905.

