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W.A.No.2299 of 20213

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. B.BALAJI

W.A.No.2299 and 2300 of 2013

1. K.Rajendran
2. T.Ponnuchamy
3. T.Aruchamy

... Appellants in
W.A.No.2299/2013

K.Shanmugavel

... Appellant in
W.A.No.2300/2013

//vs/

1. The Chief Engineer,
Water Resources Organization,
Public Works Department,
Coimbatore Region, Coimbatore District.
2. The Superintending Engineer,
Water Resources Organization,
Public Works Department,
Parambikulam, Aliyar Project,
Pollachi.



W.A.No.2299 of 2013

3. The Executive Engineer,
Water Resources Organization,
Public Works Department,
Parambikulam, Aliyar Project,
Pollachi.

4. Parambikulam Aliyar Project,
Thirumoorthi Reservoir, Project Committee,
Rep. by its Chairman K.Paramasivam.

... Respondents in
both writ appeals

Prayer in W.A.No.2299/2013 : Writ appeal filed under Clause 15 of Letters
Patent to set aside the order made in W.P.No.23733/2012 dated 22.08.2013.

Prayer in W.A.No.2300/2013 : Writ appeal filed under Clause 15 of Letters
Patent to set aside the order made in W.P.No.23545/2012 dated 22.08.2013.

For appellant/s in both : Mr.M.Krishnakumar
appeals for M/s Sarvabhauman Associates

For Respondents in : Mrs.R.L.Karthika, Govt.Advocate
both appeals for R1 to R3.

Mrs.R.Hemalatha for R4

COMMON JUDGMENT

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

The appellant/appellants is/are the unsuccessful petitioner/petitioners



W.A.No.2299 of 2013

before the Writ Court in W.P.No.23733/2012 and W.P.No.23545/2012, in and by which, their prayer to quash the impugned proceedings dated 19.09.2011, prescribing new norms for granting permission to lay pipes in PAP area, was dismissed by common order dated 22.08.2013.

2. The facts and circumstances and the issues involved in these writ appeals are one and the same and hence, this Court passes the common judgment.

3. The brief facts leading to the filing of the writ appeals are briefly as follows.

The appellants in W.A.No.2299/2013 are the co-owners of the lands situated in S.No.117/3, 108/2, 118/1B, 119/A and 214/A in Pannaikinar Village and in S.No.514, 516, 517/4, 518 and 519/3 in Kongal nagar Village and also owners of the well situated in S.No.105/1A. The appellant in W.A.No.2300/2013 is owner of the lands situated in S.No.11 and 12/2 measuring to an extent of 13.63 acres and also owner of the lands as well as Well in S.No.237/3 in A.Nagoor village.



W.A.No.2299 of 20213

3.1. The appellants wanted to carry the water from their respective Well to their lands and in view of the same, they sought permission from the third respondent to lay pipelines from their Well to their lands, crossing the Parambikulam Aliar Main Canal. However, the third respondent has not given no objection certificate for laying such pipelines. The appellants came to know that the Thirumoorthi Reservoir Committee, Parambikulam Aliyar Project had filed W.P.No.18163/2011 to direct the respondents 3 to 5 to implement the order issued by the first respondent dated 16.11.2010, whereby, all the Superintending Engineers were advised to find out the illegal water drawal by laying pipelines across the canals and also direct them to consider the request of the farmers to issue no objection, only as per the rules and regulations of the government order. Subsequently, pursuant to the order of this Court dated 10.08.2011 in W.P.No.18163/2011, the second respondent, by his proceedings dated 19.09.2011 had issued guidelines and conditions for drawing water from the wells and carrying it through pipelines for irrigation and also ordered that no objection certificate cannot be issued for the wells situated within 300 metres from the canals. To quash the above said proceedings, the appellants have filed the writ petitions.



W.A.No.2299 of 20213

The writ court, by common order dated 22.08.2013, has dismissed the writ petitions and challenging the same, the present writ appeals have been filed.

4. Heard the learned counsel for the appellants and the learned counsel for the respondents and we have also perused the materials on record.

5. The main contention of the appellants/petitioners is that, the Government had issued order, vide G.O.Ms.No.2261, dated 3.11.1967, in which drawing of waters from the wells situated within 50 metres from the canal is prohibited. However, contrary to the above said order, the second respondent had issued the impugned proceedings dated 19.09.2011 prescribing new norms that no objection certificate cannot be issued for the wells situated within 300 metres from the canals. The another contention of the appellants is that, the second respondent has no power to issue such proceedings. Hence, the impugned proceedings shall be quashed.



W.A.No.2299 of 20213

6. A perusal of the order passed by the Writ Court shows that, the above said issues have been elaborately discussed and it has been observed thus.

7. The petitioners are now relying on the guidelines issued by the Government in G.O.Ms.No2261 dated 3 November 1967 to quash the proceedings dated 19 September 2011. The circular dated 19 September 2011 has nothing to do with the Government Order in G.O.Ms.No.2261. The Government Order issued long back for a different purpose, cannot be taken shelter by the petitioners to contend that the impugned guidelines would go against the earlier decision of the Government. The second respondent, being a Field Officer, issued the impugned proceedings in the larger interest of the agriculturists. The petitioners are agriculturists, having substantial land and they wanted to tap the local resources to undertake agricultural operations to be detriment of the local agriculturists who are very much dependent on water from the Paramikulam main canal, to save their crops. The materials produced by the petitioners are not sufficient to arrive at a finding that the proceedings dated 19.09.2011 was issued in violation of the Government Order in G.O.Ms.No.2261 dated 3 November 1967. Therefore, I do not find any merit in the contentions raised by the petitioners.

8. In the result, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.



W.A.No.2299 of 20213

7. At this juncture, it is brought the notice of this Court that the issue of granting permission by the authorities to the ayacutadars was questioned by the Chairman of the Parambikulam Aliyar Project, Thirumoorthi Reservoir Project Committee by way of filing writ petitions in W.P.Nos.10545 and 957 of 2016 and vide order dated 06.01.2022 at paragraph No.47, the learned single Judge has passed a detailed order, directing the authorities concerned to review the permission granted for extraction of water by private individuals and reassess the situations prevailing and accordingly regulate the same in accordance with the Government Policy in force; and further directed the authorities concerned to intensify the operations of tracing out illegal tapping of water in the entire locality, with the assistance of the police department and register criminal case, if theft of water is identified or any mischief has been committed and also blacklist the persons, against whom criminal cases are registered from availing the government welfare schemes. Further directions have also been given to the authorities concerned to communicate the factum of criminal complaint registered against the erred persons to the TANGEDCO authorities for effecting disconnection of electricity services.



W.A.No.2299 of 20213

8. It is also brought the notice of this Court that challenging the above said order, an association has filed ***Writ Appeal SR Nos.67305 and 67319/2022 along with CMP Nos.10746 and 10747/2022*** seeking to grant leave to appeal, stating that the above said direction may affect the writ appellant association. However, a Division Bench of this Court has dismissed the above applications, vide order dated 14.07.2022.

9. Further, in the yet another decision in ***W.P.No.3181/2017 (S.Vijayasekaran Vs. The Chief Secretary, Government of Tamilnadu and others), etc. Batch, vide order dated 13.07.2023***, this Court has elaborately discussed the scope of G.O.Ms.No.2261 as well the contentions of the parties therein and has given the following directions.

99.

Answer to issue No.1

The ayacutadars, who wherein possession of lands within the ayacut zones, in which open wells were in existence, could very well draw water from the existing open wells situated on either side of the PAP canal and use the same for agricultural activity within the ayacut zone.



WEB COPY



W.A.No.2299 of 20213

Answer to issue No.2

The protected distance prescribed in G.O.Ms.No.2261 would be only with regard to sinking of new open wells and deepening of existing open wells and other than that, usage of water from the well already in existence is nowhere barred. Ayacutadars, who are in possession of lands as also open wells, which were sunk, prior to the formation of PAP canal could very well use the open wells for the purpose of drawal of water through motors of the horsepower prescribed under G.O.Ms.No.2261 for irrigating their lands during off-season and there could be no bar on the usage of the open wells already in existence prior to the formation of PAP canal.

Answer to issue -3.

The prescription of motors of 5 HP and 10 HP prescribed in G.O.Ms.No.2261, dated 3.11.1967, more particularly spelt out at S.No.(V) of the said government order must scrupulously followed and any installation of motors beyond the said horse power is illegal and impermissible and has to be necessarily removed by the PAP authorities and electrical service connection given to such of those motors should be disconnected in accordance with law.

Answer to issue -4.

in adherence to G.O.Ms.No.2261, dated 3.11.1967, the usage of water drawn, from open wells situated adjacent to the PAP canal in the ayacut zone by any person, be it the ayacutadars or non-ayacutadars could be only for utilisation of the water within the ayacut region and not outside the ayacut region.

Answer to Issue-5.

The ayacutadars are not permitted to transport water through pipelines from the open wells within the ayacut zone without approval of



W.A.No.2299 of 20213

the water management committee and such transportation could be only within the ayacut zone and not beyond the ayacut zone. Further, the transportation of water from open wells situated adjacent to the PAP canal is not permitted and no approval could be granted by the Water Management Committee and the PAP authorities.

Answer to Issue-6

Water from the PAP canal is earmarked only for agricultural purposes and not for any other purpose. Therefore, water from PAP canal cannot be used for industrial and commercial purposes and any supply of water from the PAP canal for industrial or commercial purposes is to be stopped forthwith.

Answer to issue-7

No bore well is permitted to be dug or permitted to be operated on either side of the PAP canal and also throughout the ayacut region and if any such bore well is in operation, the PAP authorities have to take necessary action to immediately seal the bore well and stop it from being used to draw water.

Answer to issue-8

None of the land owners would be entitled to modify the sub-channels for taking water to their lands, which is outside the ayacut zone, thereby preventing flow of water to the tail-end farmers, within the ayacut zone, for the purpose of carrying out their agricultural operations.

Answer to issue-9

The lesser diameter of the pipeline used for the purpose of drawing water from the PAP canal or sub-chanel cannot be said to impermissible and the said contention deserves to be negated.



W.A.No.2299 of 20213

Answer to issue-10.

There arises no necessity to revisit the Government Order in G.O.Ms.No.2261, dated 3.11.1967, even after passage of more than five decades and the directions given in the government order needs to be followed scrupulously in letter and spirit.

It is brought to the notice of this Court that, as against above said order, so far, no appeal has been filed.

10. Admittedly, in the present appeals, the appellants have approached the authorities concerned to grant permission for laying pipelines across the PAP zones to transport water from their respective wells to their respective lands. However, their wells are situated, within 300 meters, viz., within the prohibited area, as prescribed in the proceedings dated 19.11.2011. As observed in the above decision cited supra, the impugned proceedings was issued by the second respondent for the larger interest of the agriculturists and it cannot be said to be illegal and contrary to the G.O.Ms.No.2261, dated 3.11.1967, as contended by the appellants/petitioners. Further, in view of the orders passed by a Division Bench of this Court as well as the writ court in W.P.No.3181 of 2017 etc. batch as stated supra, we do not find any fault on the orders passed by the learned Single



W.A.No.2299 of 2013

Judge and hence, the same does not warrant any interference by this Court.

Therefore, the present appeals deserves for dismissal.

11. Accordingly, the writ appeals in W.A.Nos.2299 and 2300/2013 are dismissed. No costs.

(D.K.K.J.)

(P.B.B.J.)

26.09.2023

Internet: Yes/No

Index : Yes/No

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2. The Superintending Engineer,
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W.A.No.2299 of 20213

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WEB COPY



W.A.No.2299 of 20213

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W.A.Nos.2299, 2300 of 2023

26.09.2023