



W.A.No.1260 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2024

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

W.A.No.1260 of 2021

and

CMP.No.8045 of 2021

1. The State of Tamil Nadu,
Rep. By its Secretary to Government,
Public Works Department,
Fort St. George,
Chennai-600 009.
2. The Commissioner of Land Administration,
Ezhilagam,
Chepauk, Chennai-600 005.
3. The Chief Engineer (Irrigation),
Public Works Department,
Water Resources Organisation,
Chepauk, Chennai-600 005.
4. The District Collector,
Coimbatore District,
Coimbatore-641 018.
5. The District Collector,
Tiruppur District, Tiruppur-641 601.
6. The Chief Engineer,
Water Resources Organisation,
Public Works Department,
Coimbatore-641 001, Coimbatore District.



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7. The Superintending Engineer,
Water Resources Organisation,
Public Works Department,
Makinampatti, Pollachi-642 003.

... Appellants

Vs.

Nallar-Palar Pasana Padugai Vivasayigal Sangam
rep. by its President,
S.Ravindran
4/9, Devanur Padur-642 207
Udumalpet Taluk, Tiruppur District.

... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 15.10.2019 passed in W.P.No.21806 of 2015.

For Appellants : Mr.S.John J.Raja Singh
Additional Government Pleader

For Respondent : Mr.N.Manokaran

J U D G M E N T

[Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.**]

The present intra-Court appeal has been instituted questioning the validity of the order dated 15.10.2019 passed in WP.No.21806 of 2015. The respondent herein is the writ petitioner instituted a writ proceedings for a Mandamus to direct the respondents to construct an Under Tunnel or Overhead Super passage at the distance of 33.200 K.Ms across Contour



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canal at the shutter point to enable the members of the petitioner's association to enjoy the riparian rights over Nallar River as sought for in their representation dated 24.12.2014. The respondent/Writ petitioner-Nallar-Palar Pasana Padugai Vivasayigal Sangam is a registered Society and they have submitted a representation to the Government to redress their grievances and not to obstruct Nallar River providing Water for irrigation purposes for the Ayacutdars in the locality. Since the representation was not considered, the respondent was constrained to initiate the writ proceedings. The Writ Court considering the plight of the Members of the respondent-Association issued a direction to construct an Under Tunnel or Overhead Super Passage at 33.200 K.Ms., marked area across Contour canal at the shutter point, within a period of three months from the date of receipt of the order impugned. Aggrieved by the said order, the State preferred the present Writ Appeal.

2. The learned Additional Government Pleader appearing on behalf of the Writ Appellants would submit that the Writ Court has not considered the technical feasibility and the Policy decisions taken by the Government to provide equal distribution of water for irrigation purposes to the Ayacutdars and utilisation of water for drinking and other purposes. Issuing a direction



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to construct an Under Tunnel or Overhead Super Passage at 33.200 K.Ms marked area across Contour canal at the shutter point would result in larger repercussions and therefore, the present Writ Appeal is to be considered.

3. Mr.N.Manokaran, learned counsel for the respondent would oppose by stating that the learned Single Judge considered all these aspects. The natural flow of water in Nallar River is sought to be protected for the benefit of the Members of the respondent-Association. Therefore, the construction of an Under Tunnel or Overhead Super Passage would not cause any prejudice to the interest of the other agriculturalists, who all are utilising the Nallar River water for irrigation and other purposes. The Members of the respondent-Association are utilising Nallar water for irrigation purposes and the representation was submitted to protect their right to use the water for irrigation purposes. Therefore, the Writ Appeal is to be rejected.

4. It is needless to state that the State has to protect the interest of the Agriculturalists in all respects by providing equal distribution of water for irrigation purpose to Ayacutdars. However, the High Court in exercise of powers of the judicial review cannot direct the Government to construct an Under Tunnel or Overhead Super Passage, which requires a deeper examination with the assistance of an Expert body or the Experts in Water



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Resources Management. In the context in which the relief has been granted in the writ proceedings, the appellants-State filed a status report, which reads as under:-

“4. It is submitted that during flood and rainy seasons, the flow in the river and odais, streams crossing the Contour Canal at various locations are surplussing through the cross masonry structures such as

- 1) Flood Regulating arrangements such as Spillway for a length of 13m and an additional weir for a length of 144.6m and totalling 157.60m to discharge the flood water from Nallar river during the rainy season.*
- 2) 8 Nos. of Super passages at L.S.32.000Km, 38.120Km, 40.670Km, 42.570Km, 42.800Km, 43.130Km, 43.810Km and 48.650Km,*
- 3) 3 Nos. of flush escapes at L.S. 33.100Km, 35.220Km and 38.670Km,*
- 4) 2 Nos. of Adueducts at L.S.30.640Km, L.S.45.470Km*
- 5) 16 Nos. of Under Tunnels at L.S.44.370Km, L.S.44.560Km, L.S.44.870Km, L.S.45.650Km, L.S.45.880Km, L.S.46.060Km, L.S.46.200Km, L.S.46.520Km, L.S.46.780Km, L.S.47.010Km, L.S.47.180Km, L.S.47.590Km, L.S.47.820Km, L.S.48.100Km, L.S.48.750Km and L.S.49.170Km*

These structures were already constructed during



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Project Period itself in the year 1960-67.

5. It is submitted that in the ustream and downstream of the weir at L.S.33.700Km Contour Canal, there are two regulators with two vents at L.S.33.600 Km and L.S.33.950Km respectively. These two regulators were constructed to regulate the flood water into the Nallar river. If rain water fallen into the Contour Canal, the upstream regulator and the downstream regulator are operated to control the rain water entering into the Contour Canal and the rain water will pass over the weir into the Nallar river through Spillway and additional weir arrangement. Hence during the rainy season the flow in the Nallar river are surplused through this weir and the regulator arrangements, into the Nallar river.

6. It is also submitted that based on the representation made by the people to release water during the dry season from Contour Canal, Government have ordered in G.O.(Ms.) No.731 Dt: 01.10.1996 for release of 60 mcft water into Nallar river from Contour Canal during drought Periods for drinking water and cattle requirement with the following conditions.

a. Water released for drinking purpose should not affect the irrigation requirements of the PAP ayacut and to decide the release only on the representations of Public representatives and public duly on the reality of drought



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prevailing.

b. Based on the requisitions received from general public and panchayat presidents and after examining the ground conditions the quantum of water release may be decided subject to maximum of 60 mcft in a year.

Hence, it is submitted that during the summer and dry periods as per G.O.(Ms).No.731 Dt: 01.10.1996 water from the Contour Canal is released into the Nallar river through the Sand vent arrangements provided in this surplus arrangements.

7. It is submitted that the Petitioner association have no riparian rights over the inflow of Nallar and Palar river since no ayacut lands irrigated through these rivers. The riparian rights of Palar river are the Dhali Channel Ayacutdars and Elavakkarai Tank Ayacutdars only. These riparian rights Ayacutdars are being given water from Thirumoorthy Dam and Aliyar Daam respectively after obtaining Government Orders for the release of water to the Dhali Channel Ayacuts and Elavakkarai Tank Ayacuts every year. Also the Seepage water from Contour Canal is not from Nallar river flow and the Petitioner have no right to claim this water.

8. It is submitted that the Respondent Association have their ayacut lands included in the Palar Sub Basin being fed by Parambikulam Main Canal of Thirumoorthy Dam only.



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These lands are giving irrigation from Thirumoorthy Dam as per the rules in force for water regulations.

9. It is submitted that wherever there is technical feasibility and considerable inflow from the streams of hilly areas and falls into the Contour Canal necessary flood protection and drainage arrangements such Spillway, Under Tunnels, Aqueducts and Super Passage were constructed during Project period to letout the rain water into the Nallar river and its tributaries itself. 3 Nos. of Super passages at L.S.37.500 Km, 37.870Km and 39.440Km are constructed recently during the Rehabilitation period of Contour Canal i.e., during the year 2011-2015.

10. It is submitted that due to following technical reasons, it is not technically feasible to construct an Under Tunnel or a Super passage at L.S.33.700Km of Contour Canal.

(i) The bed level of Contour Canal and the natural bed level of Nallar stream at the confluence point are almost the same.

Hence if we are constructing an under tunnel for passing the Nallar water to its own course away from Contour Canal, we have to dig below the existing Contour Canal and from a masonry or concrete structures which will weaken the formed Contour Canal on which the entire PAP Palar irrigation is



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relying upon. The cost of this structure may also be very huge.

(ii) As an alternative if we are constructing a super passage for conveying the water over the Contour Canal, we have to construct a weir for a height of more than 20 feet across the nallar stream course which is of hard rock. Then we can head up the water level and pass through the super passage.

If we are not getting that much of flash flow in Nallar (Usually we are not getting) to the level will not get increased and the structure will become functionless.

All these facts were already examined in depth by the eminent Engineers of Parambikulam Aliyar Project at the time of Project period itself. Considering the above fact Spillway arrangement for a length of 13m and an additional weir for a length of 144.6m with Sand vent arrangements were constructed, at L.S.33.700 km of Contour Canal.

Hence there is no technical feasibility for the construction of Under Tunnel or Super passage at L.S.33.700 Km of Contour Canal. The existing Spillway arrangement for a length of 13 m and an additional weir for a length of 144.6m with Sand vent arrangements are surplussing the flood water into the Nallar river during the rainy season. During the drought periods, water is released through the Sand vent from the Contour Canal into the Nallar river as per G.O.Ms.No.731/P.W.(Q1)/D/Dated:01.10.1996 for Drinking



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water and cattle requirement with a quantity of maximum 60 mcft per annum.

11. It is submitted that Recently 3 Nos. of Checkdams are constructed in Nallar and Palar river which benefits the lands along the river.”



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5. Mr.N.Manokaran, learned counsel appearing on behalf of the respondent would solicit the attention of this Court with reference to the report submitted by the Superintending Engineer, PWD, Water Resources Organisation in proceedings dated 13.09.2013. The said report was sent to the Chief Engineer, Water Resources Organisation for transmitting the recommendations to the Government for taking decisions. The grievance of the respondent is that the Government has not taken any decision on the report submitted by the Superintending Engineer. In this regard, the Government has to consider the report with reference to the grievances of the Members of the respondent-Association and by taking note of the technical aspects, the decision is to be taken in order to ensure equal distribution of the water to the Ayacutdars from Nallar River etc. Such an endeavour cannot be undertaken by the High Court in a writ proceedings. It requires technical assessment regarding utilisation of water and the beneficiaries, who all are the agriculturists. Therefore, we are of the considered opinion that these issues are to be considered by the Government and the decision is to be taken so as to ensure equal distribution of water for the benefit of the agriculturalists and supply of water for drinking and other purposes in that locality. Issuing a direction to construct an Under Tunnel or Super Passage



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across Contour Canal at the shutter point, in our opinion became unnecessary, since such a direction cannot be granted without looking into the technical feasibility and other aspects of the matter. Thus, we are inclined to interfere.

6. Accordingly, the writ order dated 15.10.2019 passed in W.P.No.21806 of 2015 is set aside. However, the report submitted by the Superintending Engineer and the Executive Engineer may be considered by the Chief Engineer and the Government for the purpose of looking into the grievances of the Members of the respondent-Association and appropriate decision may be taken.

7. With the above observations, the Writ Appeal stands allowed. No costs. Consequently, connected CMP is also closed.

[S.M.S., J.] [C.K., J.]
04.06.2024

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Index : Yes
Speaking order : Yes
Neutral Citation : Yes



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