

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2015

Date of Reserving the Order	Date of Pronouncing the Order
03.08.2015	28.08.2015

Coram

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.17098 of 2015

Universal Human Rights Protection Council
Rep., by its President,
V.Padmanaban
No.1, Velrampattu Main Road,
Velrampattu, Mudaliar Pet,
Puducherry - 605 004.

... Petitioner

Vs

1. The Under Secretary to Govt., (Agri),
Chief Secretariat, (Agricultural and Forest)
Puducherry.
2. The Director,
Agricultural Department,
Puducherry.
3. The Director,
Pollution Control Board,
Puducherry.
4. The Chairman,
The Pondicherry Ground Water Authority,
Puducherry.
5. Mr.Ramesh
Environmental Engineer,
Department of Science, Technology and Environment,
Puducherry.

6. The T-Sunami Affected People Welfare Association,
Represented by its President,
Tmt.Shanthi
W/o.Ramesh
Pillaiyarkuppam Village,
Bahoor Commune,
Puducherry.

... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the records in Letter No.35011/CS/(Agri)2014/A2, dated 03.02.2014, issued by the first respondent and quash the same as illegal and consequently directing the 2nd and 4th respondents to remove the deep Tube bore well situated in the Survey No.197/3, Manappattu Revenue Village, Valluvar medu, Bahour Commune, Puducherry.

For petitioner : Mr.T.Arunkumar

For Respondents : Mrs.N.Mala AGP (Pondy) for RR1to R4

Mr.D.S.Ekambaram for R5

Mr.S.Muthukumar for R6

O R D E R

This Writ Petition designed as a Public Interest Litigation has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the proceedings of the first respondent, dated 03.02.2015 in and by which the Lt. Governor, Union Territory of Puducherry accorded approval for the construction a new community tube well in R.S.No.197/3 at Manappattu Revenue village, Bahour Commune, Puducherry, which is located within 6 kms from the Sea Coast, under Tsunami Relief Programme to a depth of 200mts.

2. The petitioner is an Association called the Universal Human Rights Protection Council and the deponent Mr.V.Padmanaban, states that he is the President-cum-Trustee of the Association. The objections, raised by the petitioner to the approval granted for construction of a community tube well to a depth of 200mts within 6kms from the Sea Coast, are on the following lines:-

(i) the impugned project, if permitted to be proceeded, would pave way for intrusion of Sea water as the proposed bore well is within the 350mts of the Coast;

(ii) the President of the sixth respondent association using the influence of the fifth respondent has furnished false particulars and secured the impugned approval;

(iii) if the tube well is constructed, the ultimate beneficiaries will be the private holiday resorts as they are presently procuring drinking water through lorries and the first respondent did not assign any reasons for relaxing the Rules;

3. The learned counsel for the petitioner referred to the provisions of the Pondicherry Ground Water [Control and Regulation] Act, 2002, (Act) and submitted that in terms of Section 6(1) of the Act any user of ground water as defined under Section 2(g) desiring to sink a well in the notified area for any purpose either personal or community basis, shall apply to the Ground Water Authority for grant of permit and shall not proceed with any activity, unless a permit has been granted by the Ground Water Authority. It is further submitted that in terms of Section 5 in granting or refusing a permit under sub-section (3) of Section 6 of the Act, the Ground Water Authority shall have regard to among other things, the existence of other competitive users. It is further submitted that in terms of Rule 11(2) of the Pondicherry Ground Water (Control and Regulation) Rules, on receipt of an application under Rule 11(1), the Ground Water Authority shall make an inspection and inquiries, as it deems necessary and if it is satisfied that there is no objection to grant permit to sink a well, it may grant such permit to the applicant subject to such condition as may be specified. It is further submitted that in terms of notification in G.O.Ms.No.30, dated 02.02.2005, in case of construction of tubewells for agriculture and industrial purpose within 6kms from the Sea Coast, the Ground Water Authority shall examine each case on merit and submit the same with their recommendations to the Government for approval. It is submitted that these statutory provisions and the notification issued by the Government have been thoroughly ignored, while according the impugned approval. It is submitted that the petitioner obtained information under the Right to Information Act and pointed out that in the file notings, the Chief Secretary on perusal of the report of the Chairman, Pondicherry Ground Water Authority, has made a note to re-examine the matter and without any re-examination, the impugned order has been passed.

4. When the matter was heard on 17.06.2015, the submission made by the learned counsel for the petitioner based on the notification in G.O.Ms.No.30, dated 02.02.2005, was taken note of and it was pointed out that in the long representation of the petitioner, the only real aspect is that whether the competent authority being the

fourth respondent had granted his recommendations in terms of sub-para 5 of the notification, dated 02.02.2005, as it was the submission of the learned counsel appearing for the petitioner that the competent authority had only asked the matter to be re-examined. Therefore, the learned Government Advocate was directed to produce before the Court, the recommendation of the fourth respondent in terms of sub-para (V) of the notification on which the Government had granted its approval. On the next adjourned date, the affidavit and records were placed and on subsequent hearings, the parties made their oral submissions and the fourth respondent placed the original file for the consideration of this Court.

5. The emphasise of the petitioner is that in terms of Rule 11 of the said Rules, it is not sufficient to take a mere view of the matter, but there should be due inspection adhering to the norms. Further, the file notings show that upto 160mts, the water is salient and fresh water was available below 160mts and the tube well has to be constructed to a depth of 200mts tapping Cuddalore Sand Stone Formation. It is further submitted that there has been no physical verification as prescribed under the provisions of the Act and the control, operation and maintenance of deep bore well should be handed over to the local authority or any other functionary of Government and not the sixth respondent to prevent it from using the water for commercial activity. Thus, it is the submission of the petitioner that the impugned project is in clear violation of the provisions of the Act, the Rules and the notification and hence, the impugned approval is liable to be revoked.

6. The stand taken by the official respondents is that the sixth respondent submitted a representation to the Agriculture Department for construction of a community group tube well for their lands located at Manappattu Revenue Village measuring about 50 acers affected by Tsunami during 2004. The Agriculture Department inspected the site and identified a Government land in R.S.No.197/3 with good ground water potential located 630mts from the Coast and proposal was submitted to the Government through the Secretary (Agriculture) for getting administrative approval. This proposal was referred to the Puducherry Ground Water Authority for their views.

7. The Chairman of the Authority inspected the site and examined the proposal and observed that casuarina cultivation is the main activity which does not require huge water for irrigation and it will not have any impact on ground water of the area and suggested to sink tube well to the depth of 200mts after obtaining approval of the Lt. Governor. Thereafter, the Secretary (Agriculture) requested the

Under Secretary to Government to re-examine the proposal in the light of the views of the Chairman of the Ground Water Authority. The proposal was re-examined and submitted to the Government and after the approval of the Lt. Governor, the community tube well was constructed on 15.11.2014. It is submitted that Section 2(h) of the Act exempts tube well sunk by the authorised officials of the Government from the definition of the 'well' under the Act. Further, it is submitted that the definition of 'user of ground water' as defined under Section 2(g) of the Act, does not include the projects undertaken by the Government for public usage and the community project of the Government, like the present one, is not covered by the definition of user of ground water as well as under Section 2(g) and Section 2(h) respectively.

8. It is further submitted that as the subject tube well falls within 6kms from the Sea Coast, administrative approval and exemption from Lt. Governor had to be obtained, even though the project is exempted under the provisions of the Act. For such purpose, proposal was submitted to the Lt. Governor in terms of sub-para (V) of the notification in G.O.Ms.No.30, dated 02.02.2005, an inspection was conducted on 23.10.2013, and the Ground Water Authority submitted its comments to the Secretary on 09.12.2013, in which there was a recommendation to sink a bore well of depth of 200mts after obtaining approval of the Lt., Governor. Once again the file was put up to the Secretary to direct the matter to be re-examined and after re-examination, the file was submitted to the Lt. Governor through proper channel and exemption was granted in terms of sub-para 5 of the G.O.Ms.No.30. It is submitted that only after obtaining such approval, the bore well was constructed and completed on 15.11.2014.

9. The learned counsel appearing for the sixth respondent which is an association called the Tsunami Affected People Welfare Association submitted that the only contention of the petitioner is that the fourth respondent has not made his recommendation specifically to the Government for granting approval for construction of a tube well in question and this contention is absolutely baseless in the light of the facts placed before this Court by producing the original files. Further, it is submitted that the Writ Petition lacks bonafide and the attempt of the petitioner is to prevent the welfare scheme from being implemented by the Government and the Public Interest Litigation is to settle personal enmity against the fifth respondent whose family members is the President of the sixth respondent Association and one of the beneficiaries of the community bore well.

10. After hearing the learned counsel appearing for the parties, the only issue which falls for consideration is as to whether there has been any breach of the provisions of the Act the Rules and the notification.

11. Section 2(h) of the Act defines 'well' and exclude wells sunk by authorised officials of the Union Territory of Puducherry for providing water for irrigation and includes bore wells and tube wells. Section 2(g) defines 'user of ground water' to mean the person or persons or an institution including the company or establishment, whether the Government or not, who or which use ground water for any purpose including domestic use made either on a personal or community basis or industrial use.

12. As rightly pointed out by the learned Government Pleader, the above definition do not include the projects undertaken by the Government for public usage. Therefore, the submission made by the learned counsel for the petitioner by referring to the definition of 'well' as defined under Section 2(h) does not in any manner advance the case of the petitioner. Perusal of files disclosed that the Ground Water Authority submitted its recommendations for constructing a tube well to a depth of 200 mts, there were certain justifications made for such recommendation and such recommendation was subject to the approval of the Lt. Governor. The necessity to obtain the approval of the Lt. Governor arose in view of the notification issued by the Government in G.O.Ms.No.30, dated 02.02.2005. The said Government Order was issued in exercise of the power conferred under Section 5(1) of the Act and directions were issued in the public interest to the Pondicherry Ground Water Authority.

13. Sub-para (V) of the said notification states that in the case of construction of tube wells for agriculture and industrial purpose within 6kms from the Sea Coast, the Ground Water Authority shall examine each case on merit and submit the same with their recommendations to the Government for approval.

14. The learned counsel appearing for the petitioner pointed out that the recommendation of the Ground Water Authority was placed before the Chief Secretary, who directed the matter to be re-examined and without proper re-examination or inspection of the site etc., the impugned approval has been granted and therefore, the same is illegal.

15. In order to ascertain the correctness of the said submission, we perused for the original files, which were placed before this

Court. On a perusal of the files, it is seen that after the matter was directed to be re-examined, the files were placed before the Under Secretary, who has re-examined the proposal and it was placed before the Lt. Governor through proper channel and thereafter, the approval has been granted as required in the notification in G.O.Ms.No.30, dated 02.02.2005.

16. Therefore, we find that there is no procedural infirmity or illegality in the decision making process. This leaves us with the only issue as to the safeguards which have to be adopted to ensure that water from the said tube well is only use for the community purpose and not for commercial purpose. The petitioner would state that there are several holiday resorts in the near vicinity and the tube well under the control of the sixth respondent association is liable to be misused and the water drawn for commercial purposes and therefore, the management of the tube well should be entrusted with the Government or a limb of the Government. In this regard, google maps were produced to show the location of the holiday resorts.

17. The sixth respondent would state that the Writ Petition itself is motivated and out of enmity with the fifth respondent and the President of the sixth respondent association is a close relative of the fifth respondent. We are not inclined to go into the said controversy nor express any opinion on the apprehension of the petitioner that there is a likelihood of misuse of water from the said tube well. However, we observe that the permission to construct a tube well was accorded, pursuant to a request made by the sixth respondent association stating that there is a shortage of water and they require the same for cultivation. The Ground Water Authority inspected the site and submitted its comments, which are as follows:-

- (i) Most of the land area of the aforesaid farmers is found to be fallow condition;
- (ii) Most of the farmers who have requested a community tubewell belongs to small farmer and scheduled caste category;
- (iii) As explained the proposed community tubewell has to be sunk to a depth of 200mts for which the prior approval of Lt. Governor has to be obtained;
- (iv) Only casurina crop can be cultivated in the land holdings of the aforesaid farmers, as it is found to be sandy soil terrain;
- (v) The said casurina crop does not require huge quantity of water for cultivation and it may require water only or twice in a month. More over it does not require any water during monsoon period of three months.

18. From the above, it is seen that the water was to benefit the community, which consists of small farmers belonging to Schedule Caste category and intended to be used for cultivation of casuarina crop and that the water requirement for the crop is minimal, as the plant need to be watered only twice in a month and does not require water during monsoon period of three months.

19. In such circumstances, the authorities especially the fourth respondent, the Puducherry Ground Water Authority, has to ensure that the water is used for the purpose for which, sanction was accorded for (i.e) establishing the community bore well within the prohibited distance by exercising the power of exemption vested with the Lt. Governor. Therefore, the fourth respondent should ensure by directing periodic inspections or even surprise inspections to be conducted to ensure that the water drawn from the tube well is used for the purpose for which it was established. Apart from these observations, we do not find any grounds to quash the impugned approval and we may take note of the stand taken by the fourth respondent that the tube well has been established and construction of the tube well has been completed as early as on 15.11.2014.

20. Accordingly, the Writ Petition is dismissed with the aforesaid observations and directions. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

pbn

To

1. The Under Secretary to Govt., (Agri),
Chief Secretariat, (Agricultural and Forest)
Puducherry.
2. The Director,
Agricultural Department,
Puducherry.

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3. The Director,
Pollution Control Board,
Puducherry.
4. The Chairman,
The Pondicherry Ground Water Authority,
Puducherry.
5. Mr.Ramesh
Environmental Engineer,
Department of Science, Technology and Environment,
Puducherry.
6. The T-Sunami Affected People Welfare Association,
Represented by its President,
Tmt.Shanthi
W/o.Ramesh
Pillaiyarkuppam Village,
Bahoor Commune,
Puducherry.

+1cc to Mr.V.R.Rajasekaran, Advocate, S.R.No.45958
+1cc to Mr.R.Kumaravel, Advocate, S.R.No.45992
+1cc to the Senior Advocate Government Pleader Cum Senior
Senior Public Prosecutor for Puducherry, S.R.No.46192

W.P.No.17098 of 2015

KM(CO)
CA(18/09/2015)

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