

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 12/12/2014

DATED: 30/09/2015

CORAM

THE HONOURABLE **MR.JUSTICE C.S.KARNAN**

W.P.No.26020 of 2014 &
M.P.No.1 of 2014

Mr.V.Subbarayam ... Petitioner
Vs.

1.The Assistant Engineer,
Operation and Maintenance,
The Tamil Nadu Generation and Distribution
Corporation Limited,
Ethapur-636 117.

2.The Chairman,
The Tamil Nadu Generation and Distribution
Corporation Limited,
NPKRR Maaligai,
No.144, Anna Salai, Chennai-600 002.

3.The President,
Kalayanagiri Panchayat,
Padaiyachiyur, Kaveripatti Post,
Athur Taluk, Salem District - 636 117.

4.The Assistant Director of Fisheries (Inland Fisheries),
Square Market,
Mettur Dam - 636 401.

5.The Divisional Development Officer,
Pethanaickenpalayam - 636 109.
Salem District.

6.The District Collector,
Salem District. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Certiorari or any other appropriate writ in the nature of Certiorarified Mandamus to call for the records of the first respondent vide Ka.No.2 Po./I.Pa/E.Th./Ko.Kattu/A.No.173/14-15, dated 05.07.2014 and quash the same and to direct the first respondent to provide electricity connection to petitioner's land without insisting on the No Objection Certificate from the third respondent.

For Petitioner : Mr.G.L.Ramshankar

For Respondents : Mr.S.K.Rameshwar (TNEB) for R1 and R2

Mr.M.S.Ramesh
Addl. Govt. Pleader for R3 to R6

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ORDER

The petitioner submits that he is the absolute owner of the patta lands being agricultural lands totally measuring acres 7.22 cents in various Suvey Numbers which includes Acre 1.03 cents in Survey No.71/2. The petitioner further submits that patta bearing No.418 issued by Head Quarters Deputy Tahsildar, Attur, Adangal Extract stands in his name evidencing his possession and enjoyment of the property. The petitioner further submits that he was doing agricultural activity in the said lands and since it was not yielding much profit, he had submitted an application to the fourth respondent for financial assistance and for permission to undertake fish cultivation in his lands. The petitioner further submits that on the perusal of

his application, authorities from the fourth respondent came and surveyed his lands and suggested to ensure uninterrupted water supply is available in the lands which is essential for the fish culture. The petitioner further submits that based on the suggestion, he spent Rs.2,00,000/- and installed a bore well in his land and the authorities re-surveyed his lands and made all arrangements to establish fish cultivation in his lands and also fitted a motor pump to pump out water from the bore well. The petitioner further submits that the authorities from the Fisheries Department have dug 5 huge pits for breeding fish in his land.

2. The petitioner further submits that he made all arrangements to commence breeding of fish and the fourth respondent is also ready to supply the fishing required for the breeding purpose immediately. The petitioner further submits that in such circumstances, he had in parallel submitted all necessary application and documents to the first respondent for electricity connection for his land which is very important to pump water from the bore well. The petitioner further submits that though he has given all papers and documentations, the respondents were delaying in providing the electricity connection as required and in spite of several representations, the first respondent did not take any step. The petitioner further submits that the third respondent wantonly identified a spot near to his bore well to dig bore well for drinking water to the Village knowing fully that he is in the process of

starting the fish breeding and that he has applied for EB connection from the first respondent. The petitioner further submits that he has dug the bore well in his land long time back and it is purely with malafide intention that the third respondent had fixed a spot near his bore well. The petitioner further submits that in Kalayanagiri Village, there are several other places where there is good source of water and which are ideal for installing bore well and will help the people of the Village with ample source of drinking water. The petitioner further submits that the third respondent without considering the benefit of the people, is only bent upon the spot near his bore well which itself goes to prove that the third respondent is trying to stop him from continuing fish breeding activity and is taking extreme steps to achieve their goal.

3. The petitioner further submits that the actions of the third respondent is not only creating lot of hardship to him, but it is also trying to waste the money spent by the Government in converting his land into a fish breeding centre. The petitioner further submits that the third respondent is fully aware of his activities and is wantonly trying to affect his business and is doing all possible hindrances with ulterior motive. The petitioner further submits that the land selected by the third respondent to dig bore well is a poramboke land and the third respondent has not got any approval from authorities concerned and therefore, it is clear that the third respondent has

not followed any protocol that is involved in digging bore wells. The petitioner further submits that he has received the impugned order, dated 05.07.2014 stating that the third respondent had raised objection to provide electricity connection to his land as they have proposed to dig a bore well very near to his bore well and thereby objecting to provide electricity connection to his land. The petitioner further submits that the third respondent is very well aware of all the steps taken by him to establish the fish breeding farm in his land and about the bore well in his land. The petitioner further submits that he has already obtained No Objection Certificate from the fifth respondent which clearly states that there is no bore well in and around 100 meters from his bore well and that there is no objection to provide electricity connection to his land. The petitioner further submits that this proves that the third respondent is trying to wantonly create a problem and is unnecessarily hampering his fish cultivation. The petitioner further submits that electricity is very important for this fish breeding and the Government vide proceedings in Do.IR.No.40580/F2/2011, dated 08.07.2013 had given concession in the EB tariff for all farmers who wish to indulge in fish cultivation. The petitioner further submits that when the Government is encouraging farmers like the petitioner to take up fish cultivation and is providing all financial and other support in that regard, the third respondent is for her own cause trying to wantonly stop him from continuing the fish cultivation process. The petitioner further submits that he had spent a huge amount for this fish breeding

activity and his land has also been converted specifically to carry on fish breeding activity and therefore, the land cannot be used for any other purpose. Hence, the petitioner entreats the Court to allow the above writ petition.

4. The first and second respondents have filed a counter affidavit and resisted the above writ petition. These respondents submit that an application was given by the petitioner on 13.06.2014 in an incomplete shape even without the particulars of purpose and load and required documents and hence, the same was returned to applicant vide letter dated 20.06.2014. These respondents further submit that again another application dated 27.06.2014 was given by the petitioner on 02.07.2014 at this office requesting service for fish hatcheries with certain documents. Before that on 25.06.2014 an objection letter dated 23.06.2014 with Kalyanagiri Panchayat resolution letter was received from the President, Kalyanagiri Panchayat by registered post, objecting to effect supply to the bore well dug by petitioner at S.F.No.71/2, since this bore well is situated within 100 mtrs from Panchayat Bore well which is being utilized for public drinking water purpose. These respondents further submit that as per Board's Instruction vide Memo dated 11.03.1992, supply to the private bore well could be effected only with the clearance certificate of local bodies if the private bore well is situated within 100 meters from the public bore well / well. These respondents further submit

that while inspecting the site on 05.07.2014 it was physically confirmed that there exists a public bore well at a distance of 41 meters from this petitioner's bore well and also it came to know that an application requesting drinking water service for this public bore well was given by th President Kalyanagiri Panchayat registered on 18.06.2014 at S.F.No.63/2 for a load of 7.5 HP + 40 w (near by SF of this applicants SF No.71/2) and proposal sanctioned on 28.06.2014.

5. The first and second respondents further submit that based on the above points, a letter was given to the petitioner vide order dated 05.07.2014 requesting to produce a no objection certificate from concerned local body to enable them to take action to effect supply regarding his application. Since, he has not produced the no objection certificate within the stipulated time mentioned in letter dated 05.07.2014, his application was recorded at office, subsequent to that a letter was given by this applicant on 18.08.2014, requesting to give the details of documents given by him with his application. Based on his request, the original application with original documents were returned to him vide letter dated 12.09.2014, which was refused to be received by the individual on 16.09.2014 in person and hence, the whole documents were sent to the petitioner through Registered post on 17.09.2014 and it was received by him on 18.09.2014. These respondents further submit that from the above there is no delay in processing the new

service connection application given by the petitioner and it is false to state that there is delay in providing the new service connection as requested in spite of several representations. Necessary informations are communicated to the petitioner in writing then and there regarding the new service connection application given by petitioner without any delay in processing in Ethapur O & M Office. These respondents further submit that since the petitioner has not produced the no objection certificate from concerned local body as requested from this office as per existing board's rule, this application could not be considered to effect supply as per his request. Hence, these respondents entreat the Court to dismiss the above writ petition.

6. The third respondent has filed a counter affidavit and resisted the above writ petition. The third respondent submits that the petitioner is having agricultural lands measuring about acres 7.22 cents in various Survey Numbers which includes Acre 1.03 cents in Survey No.71/2. The third respondent further submits that it was proposed by the Panchayat to dig a bore-well in the locality as there was water scarcity and the public are also suffering from water scarcity. Therefore, permission was sought for from the District Collector and the District Collector has also granted permission on 24.02.2014, to the Panchayat to dig a bore-well on 24.02.2014 for public usage. Therefore, the Panchayat has consulted with the Government Geologist and in the Survey made by the experts, they have marked to dig a

bore-well in Ward 2, Kalleripatti Junction at Survey No.63. Therefore, the Panchayat has decided to dig a bore-well for public use where the Government Water Falls expert has marked the above place. Thereafter, since there were Parliamentary Election Rules, the work could not be started for two months. The third respondent further submits that in the meantime, the neighbourhood landowner, petitioner herein in Survey No.71.2 has dug a bore-well in his land overnight for commercial purpose during the election period. Thereafter, to hide his fault, the petitioner has not shown the marked place where the Government experts has marked to dig a bore-well for panchayat for public usage. Further, the petitioner has not told the fact to the Block Development Officer (incharge) and he has informed the false information to him and obtained No Objection Certificate. Based on this, the petitioner has filed the present writ petition.

7. The third respondent further submits that after the election was over, the Panchayat has dug a bore-well and the water level was 2" only. More than 1500 persons residing at Kalyanagiri Panchayat are depending upon only this bore-well. The third respondent further submits that the bore-well dug by the petitioner is against the Government Rules. He has dug the bore-well within 41.0 metres from the bore well dug by the Panchayat. (as per Government Rules, no bore-well is to be dug within 100 metres). Further, the petitioner has commenced breeding of fish in front of the bore-well dug by

the Panchayat for public usage. Further, the petitioner has submitted application to the first respondent for electricity connection with an intention to sell the bore-well water. If it is not questioned, there will be additional scarcity of water for the public. Further more than 1200 Kalleripatti Village people also are benefited from the bore-well put up by the Panchayat. The third respondent further submits that the people of two villages are utilizing the water from the bore-well erected by the Panchayat.

8. The third respondent further submits that they sent several representations to the Chief Minister's Special Cell, Tahsildar, Athur, Revenue Divisional Officer, Assistant Director of Panchayat, District Collector, Block Development Officer, Pethanaickenpalayam, Village Administrative Officer, Padayatchiyur, Assistant Engineer, TNEB, Ethapur, Inspector of Fish Development, Mettur Dam, District Forest Officer, Forest Department, Athur on 23.06.2014 and 25.06.2014, 26.06.2014, 30.06.2014, 09.10.2014 etc., respectively stating that a resolution was made by the Panchayat to stop the usage of bore-well by the petitioner and action has to be taken against him, as otherwise the public and the Village people would suffer again for want of drinking water. The third respondent further submits that the Village Administrative Officer by his letter dated 12.11.2014 had stated that on considering the representations of the Panchayat President dated 09.10.2014 the Survey was made in the land and submitted his report. Further, it is stated

in his report that in Survey No.63/2 (0.5.1.0), one bore-well was erected by the Panchayat for the usage of public. The Village Administrative Officer in his report has also informed that the distance between the bore-well dug by the panchayt in Survey No.63/2 and the bore-well dug by the petitioner in Patta No.418, Survey No.71/2 is 41.0 meter. The third respondent further submits that in the resolution conducted by the third respondent Panchayat President, it was decided by the Panchayat that as the erection of the bore-well dug by the petitioner is within 41 meters, it is against the Rules. Further, the petitioner has dug the bore-well within 100 meter distance from the bore well erected by the Panchayat for usage of public. Hence, the third respondent entreats the Court to dismiss the above writ petition.

9. The highly competent counsel Mr.G.L.Ramshankar appearing for the petitioner submits that the petitioner is the absolute owner of the cultivable lands to an extent of 7.22 cents. The petitioner has submitted an application to the fourth respondent herein / Fisheries Department for inland fish cultivation. The said application is under process and under the circumstances, the petitioner has installed a bore well for necessary water supply for cultivating inland fish. Subsequently, the petitioner submitted an application to the first respondent for getting new electricity service connection. The same was rejected by the first respondent without assigning any valid reasons. The petitioner had spent about Rs.2 lakhs to install a bore-well. Further, the third respondent, who is the President, attached to the

Kalyanagiri Panchayat had installed a bore-well on the poramboke land without getting any approval from the Revenue Department. However, the petitioner had installed bore-well on his own land. The local people have made false complaints and raised objections to give new electricity service connection. Actually, the distance between the petitioner's bore well and the third respondent's bore well is more than 100 meters. Therefore, no objection certificate is not necessary. Besides, the third respondent had not conducted any comprehensive enquiry before passing the impugned order. Hence, the highly competent counsel entreats the Court to allow the above writ petition.

10. The highly competent Additional Government Pleader Mr.M.S.Ramesh appearing for the respondents 3 to 6 submits that the third respondent had proposed to dig a bore-well in the locality as there is water scarcity and the public are also suffering due to water scarcity. The sixth respondent / District Collector had granted permission to the third respondent to dig a bore-well for public usage. Accordingly, the third respondent has consulted with the Government Geologist, who also marked a spot to dig a bore-well. In the meantime, the petitioner has dug a bore well in his land overnight for commercial purpose, which is causing water scarcity to the public bore-well. Further, in the said local area, more than 1500 people are residing. As per the Government Rules, no bore-well should be dug within 100 meters from another bore-well. Therefore, the Electricity Board rejected the petitioner's application, after receiving objection from the general public.

11. The highly competent counsel Mr.S.K.Rameshwar appearing for the respondents 1 and 2 submits that the petitioner has submitted an incomplete application without furnishing all details. The third respondent had passed resolution in the panchayat on 25.06.2014 and made objection to the Electricity Board to give new electricity service connection to the petitioner since the petitioner's bore-well is situated within 100 meters from another bore-well. After physical verification, it was found that the petitioner's bore well is at a distance of 41 meters from another bore-well, which is against the Government Rules. Therefore, the petitioner's application has been rejected and he was directed to produce no objection certificate from the third respondent which is mandatory for providing new electricity service connection.

12. Per contra, the highly competent counsel appearing for the petitioner submits that the petitioner has already dug a bore well in his land for the purpose of inland fish cultivation after availing loan and after availing assistance from the Fisheries Department. The petitioner has borrowed the loan from private individuals and dug a bore-well. He has also purchased motor pump sets. However, the third respondent had not dug a bore well, but it is under process. Besides, an alternative site belongs to the Government and it is available for digging a bore well for the public purpose for drinking water.

13. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on all sides and on perusing the typed-set of papers, it is seen that the impugned order has been passed by the first respondent on the basis of representation submitted by the local people. After receipt of the said representation, no detailed enquiry has been conducted in the presence of both parties. Hence, this Court directs the first respondent to issue prior notice to both parties and conduct a comprehensive enquiry in their presence and also inspect the spot, where the bore-well is located and also find the spot where the proposed bore-well is to be installed and decide the issue on merits.

14. With the above direction, the writ petition is disposed of. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

30/09/2015

Index : Yes.
Internet : Yes.

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To

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C.S.KARNAN, J.
r n s

Pre Delivery Order made in
W.P.No.26020 of 2014 &
M.P.No.1 of 2014

30/09/2015