

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.10.2016**

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No.**36763** of **2016**

and

W.M.P.No.**31607** of **2016**

A.Jagaveerapandian

.. Petitioner

- Vs -

1. The Secretary to Govt. of Tamil Nadu,
Public Works (R2) Department,
St.Fort George, Chennai – 09.
 2. The Chairman,
Tamil Nadu Pollution Control Board
Guindy, Chennai-32.
 3. The Central Ground Water Board,
Govt. of India - Ministry of Water Resources,
South Eastern Coastal Region Rep. by its
Regional Director, E-1 G-Block
Rajaji Bhavan, Besant Nagar, Ch.
 4. The Chief Engineer,
Public Works Department Water Research
Organization, State Ground & Surface Water
Resources Data Centre Taramani, Chennai-113.
 - 5 The Managing Director,
Chennai Metropolitan Area Ground Water
(Division), CMWSSB & Pumping Station Road,
Chindradripet, Chennai-02.
- .. Respondents

Prayer:- Writ petition filed under Section 226 of the
Constitution of India for issuance of a Writ of Mandamus

directing the 5th Respondent to issue No objection Certificate to transport drinking water from the land comprised in S.No.410/4, Aziz Nagar, Madhavaram, Chennai – 600 060, on any date to be fixed by this Honourable Court or in the alternate to allow the Petitioner extract ground water from the petitioner premises which comes under the Metro Safe-Zone.

For Petitioner : Mr.M.Kamalanathan

For Respondents 1 & 2 : Mr.A.Kumar
Special Government Pleader

For Respondent 3 : Mr.Yasmeen Ali

For Respondents 4 & 5 : Mr.K.R.Ramesh Kumar

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ORDER

Heard the learned counsel for the petitioner, Mr.A.Kumar, learned Special Government Pleader appearing for respondents 1 and 2, Mr.Yasmeen Ali, learned counsel for the 3rd respondent and Mr.K.R.Ramesh Kumar, learned counsel appearing for respondents 4 and 5.

2. The Petitioner is engaged in the manufacture of packaged drinking water and he has filed this writ petition praying for a direction to the 5th respondent-Chennai Metropolitan Water Supply and Sewerage Board [CMWSSB] to issue No Objection

Certificates to draw and transport drinking water from the 'Safe-Zone' or in the alternative to allow the petitioner to extract ground water from the premises in question which comes under the Metro Safe-Zone.

3. It appears that even prior to obtaining a No Objection Certificate, the petitioner has been drawing water from the area in question and when they approached this Court by way of this writ petition an interim order of stay was granted in W.P.No.33673 of 2014 on 18.12.2014, which order was followed in other writ petitions. Though the interim order was initially for a limited period subsequently, it was extended from time to time and it is in force as on date. The net result is that, the petitioner has been drawing water from the places in question, even without obtaining a No Objection Certificate from the competent authority.

4. It appears that the Government had issued orders in G.O.Ms.No.51 during 2004 and G.O.Ms.No.52 during 2012. According to the petitioner, these Government Orders cannot be pressed into service as these Government Orders have been

challenged before this Court in W.P.No.2166 and 2763 of 2014 etc., batch. It is submitted that the Government issued another Government Order in G.O.Ms.142 dated 23.07.2014 and the validity of the Government Order has also been challenged before this Court and there is an order of interim stay.

5. With these facts, the petitioner would state that the 5th respondent is the competent authority to consider the petitioner's request for grant of No Objection Certificate and since the petitioner is drawing water in the Zone classified as 'Safe-Zone', there can be no impediment for granting a No Objection Certificate.

6. However, this Court is not inclined to fully accept the stand taken by the petitioner that merely because the petitioner has been already drawing water in an area which is said to be a 'Safe-Zone', it would automatically entitle the petitioner for a No Objection Certificate. The 5th respondent may be the competent authority for considering the request for No Objection Certificate. Nevertheless, the impact on drawal of water for commercial purpose as done by the petitioner has to be

assessed independently by the Tamilnadu Pollution Control Board (TNPCB). Therefore, even assuming that the area falls within the 'Safe-Zone', which is said to be an area where drawal of water is permissible, yet, there should be an assessment made by the TNPCB to find out as to what would be the effect on the environment and the ground water table in that area, if such No Objection Certificate is granted. Without such assessment, if mechanically, the 5th respondent grants No Objection Certificate, then the very purpose of protecting ground water would stand defeated. Therefore, a positive direction to the 5th respondent to grant No Objection Certificate to the petitioner, cannot be granted at this juncture, as it is absolutely necessary for an impact assessment to be done by TNPCB before the request of No Objection Certificate is processed.

7. In the light of the above, the writ petition is disposed of by directing the 2nd respondent to nominate a senior Environmental Engineer and to form a team to carry out an assessment of the impact on the environmental - ground water table in the area in question and the team appointed by TNPCB, shall work in co-ordination with the officials of respondents 4

and 5. The above team shall be constituted by the 2nd respondent viz., the Chairman, Tamilnadu Pollution Control Board, Chennai, preferably within a period of three weeks from the date of receipt of a copy of this order, which team in turn will involve the officials of Public Works Department, Water Research Organization, State Ground & Surface Water Resources Data Centre, Chennai, the 4th respondent as well as Chennai Metropolitan Area Ground Water (Division), CMWSSB, Chennai, the 5th respondent and the inspecting team shall endeavour to complete the impact assessment of the area where the petitioner has sought for No Objection Certificate within a period of two months from the date on which the team is constituted and thereafter, based on the report submitted by the team, the 5th respondent/competent authority shall take a decision on the petitioner's request for grant of No Objection Certificate after following due process of law. Till then, the status quo shall be maintained. Consequently, the connected miscellaneous petition is closed. No costs.

21.10.2016

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Index : Yes / No

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B.RAJENDRAN,J.

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