

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.02.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.32814, 32815 and 31109 of 2015
and 2670 to 2673 of 2016
and M.P.Nos.1 to 1 of 2015 in
W.P.Nos.32814, 32815 and 31109 of 2015
and WMP Nos.2227 to 2230 of 2016 in
W.P.Nos.2670 to 2673 of 2016

1. A.Jayasathyanarayana
Proprietor, Sri Padmavathy Food
and Beverages
... Petitioner in W.P.32814/15
2. Vijayaragavan
Proprietor, A5 Aqua
... Petitioner in W.P.32815/15
3. Karunya Enterprises,
rep. by its Managing Partner, Asir
... Petitioner in W.P.31109/15
4. Dhinakar Babu
Partner, Evergreen Enterprises
... Petitioner in W.P.2670/16
5. M.J.Kurian
Proprietor of JMN Traders
... Petitioner in W.P.2671/16
6. Sekar
Proprietor, Varnam Aqua Farm
... Petitioner in W.P.2672/16
7. P.R.Thanigaivelu
Proprietor, Ramalinga Foods
and Beverages.
... Petitioner in W.P.2673/16

Versus

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
Date Centre Taramani Chennai-113.
5. The Managing Director
Chennai Metropolitan Area Ground Water
(Division) CMWSSB & Pumping Station Road
Chindradripet Chennai-02.

... Respondents in all WPs.

Prayer in W.P.No.32814 of 2015: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of mandamus, directing the 5th Respondent to issue No objection Certificate to transport drinking water from the safe Zone Marambedu (kokkumedu) Village Solavaram Block to the petitioner unit of Sri Padmavathy Food and Beverages No.98, GNT Road, Puzhal, Madhavaram Village, Chennai - 66 on any date to be fixed by this Honourable Court or in the alternate to allow the Petitioner extract ground water from the petition premises which comes under the Metro Safe-Zone.

Prayer in W.P.No.32815 of 2015: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of mandamus, directing the 5th Respondent to issue No objection Certificate to transport drinking water from the safe Zone Marambedu (kokkumedu) Village Solavaram Block to the petitioner unit of A5 Aqua at S.No.49/1, Plot No.11, Selvavinayagar Nagar, Annex.1, Azhinjivakkam Village, Madhavaram (T.K.), Tiruvallur - 600 052, on any date to be fixed by this Honourable Court or in the alternate to allow the Petitioner extract ground water from the petition premises which comes under the Metro Safe-Zone.

Prayer in W.P.No.31109 of 2015: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of mandamus, directing the 5th Respondent to issue No objection Certificate to transport drinking water from the

safe Zone Marambedu (kokkumedu) Village Solavaram Block to the petitioner unit karunya Enterprises at No. 4/20-A Panchayat Road Ellaiamman Koil Street Manjambakkam Madhavaram (P.O) Chennai-60 on any date to be fixed by this Honourable Court or in the alternate to allow the Petitioner extract ground water from the petition premises which comes under the Metro Safe-Zone.

Prayer in W.P.No.2670 of 2015: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of mandamus, directing the 5th Respondent to issue No objection Certificate to transport drinking water from the safe Zone Marambedu (kokkumedu) Village Solavaram Block to the petitioner unit No.2, Devi Nagar Road, Kumarappapuram, Madhavaram Milk Colony, Chennai - 51 on any date to be fixed by this Honourable Court or in the alternate to allow the Petitioner extract ground water from the petition premises which comes under the Metro Safe-Zone.

Prayer in W.P.No.2671 of 2015: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of mandamus, directing the 5th Respondent to issue No objection Certificate to transport drinking water from the safe Zone Marambedu (kokkumedu) Village Solavaram Block to the petitioner unit at Plot No.34, Kamaraj Salai, Madhavaram, Thiruvallur District, Chennai - 60 on any date to be fixed by this Honourable Court or in the alternate to allow the Petitioner extract ground water from the petition premises which comes under the Metro Safe-Zone.

Prayer in W.P.No.2672 of 2015: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of mandamus, directing the 5th Respondent to issue No objection Certificate to transport drinking water from the safe Zone Marambedu (kokkumedu) Village Solavaram Block to the petitioner unit No.101, 13th Street, Kannappaswamy Nagar, Puzhal, Thiruvallur District, Chennai - 66 on any date to be fixed by this Honourable Court or in the alternate to allow the Petitioner extract ground water from the petition premises which comes under the Metro Safe-Zone.

Prayer in W.P.No.2673 of 2015: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of mandamus, directing the 5th Respondent to issue No objection Certificate to transport drinking water from the safe Zone Marambedu (kokkumedu) Village Solavaram Block to the petitioner unit Ramalinga Foods and Beverages at No.63A, Vedantha Murugappa Naikkan Street, Selavayal, Chennai 118 on any date to be fixed by this Honourable Court or in the alternate to allow the Petitioner extract ground water from the petition premises which comes under the Metro Safe-Zone.

For Petitioner : Mr.M.Kamalanathan
in all W.Ps.

For Respondents : Mr.Rm.Muthukumar (for R1 & R4)
in all W.Ps.

Mrs.Rita Chandrasekar (for R2)

Mr.Janakiraman (for R3 & R5)

C O M M O N O R D E R

Heard the learned counsel for the petitioner, Mr.Rm.Muthukumar, learned Government Advocate, appearing for respondents 1 and 4, Mrs.Rita Chandrasekar, learned counsel for the 2nd respondent and Mr.Janakiraman, learned counsel appearing for respondents 3 and 5.

2. Petitioners are all engaged in the manufacture of packaged drinking water and they have filed these writ petitions 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 petitioners 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 petitioners have been drawing water from the area in question and when they approached this Court by way of these writ petitions an interim order of status quo was granted in W.P.No.31109 of 2015 on 07.10.2015, which order was followed in other writ petitions. Though the order of status quo 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 petitioners have 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 petitioners, 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 petitioners would state that the 5th respondent is the competent authority to consider the

petitioners' request for grant of No Objection Certificate and since the petitioners are 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 petitioners that merely because the petitioners are already drawing water in an area which is said to be a 'Safe-Zone', it would automatically entitle the petitioners 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 petitioners has to be assessed independently by the Tamilnadu Pollution Control Board (TNPCCB). 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 TNPCCB 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 Certificates are 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 petitioners, cannot be granted at this juncture, as it is absolutely necessary for an impact assessment to be done by TNPCCB before the request of No Objection Certificate is processed.

7. In the light of the above, the writ petitions are 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 areas in question and the team appointed by TNPCCB, 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 areas where the petitioners have 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 interim

order of status quo, which was granted by this Court at the time of entertaining these writ petitions shall be maintained. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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
Date Centre Taramani Chennai-113.
5. The Managing Director
Chennai Metropolitan Area Ground Water
(Division) CMWSSB & Pumping Station Road
Chindradripet Chennai-02.

+7cc's to Mr.M.Kamalanathan, Advocate, S.R.No.8915
+1cc to Mrs.Rita Chandrasekar, Advocate, S.R.No.8906
+1cc to the Government Pleader, S.R.No.9137

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KSJ(CO)
CA(17/02/2016)