

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.NO.38615 OF 2015
AND CONNECTED MISCELLANEOUS PETITIONS

Murungatholuvu Village Panchayat
Rep. By its President M.Ravi
Upplipalayam,
K.G. Valasu - 638 060.
Erode District. Petitioner

Versus

1. The District Collector
Erode District,
Erode - 638 011.
2. The Executive Engineer
District Rural Development Agency
Collectorate Complex,
Erode - 638 011.
Erode District.
3. The Block Development Officer
Chennimalai Panchayat Union
Chennimalai - 638 051.
Erode District.

4. V.K.Palanisamy
 5. M.Palanisamy
 6. Velusamy C.
 7. S.Periyasamy
 8. Rangasamy C
 9. Krishnamurthy M.A
 10. S.Nandakumar
 11. P.Senthilkumar
 12. Arjunan
- (RR5 to R12 impleaded as per order
dated 13.04.2016 in WMP No.2013
of 2016 in W.P.No.38615/2015)

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus, forbearing the respondents from laying the pipelines to draw excess seepage water from Olakattupathy Check Dam (Murugatholuvu B Village) to Murugatholuvu Pond (Murugatholuvu A Village), Perundurai Taluk, Erode District in deviation of the original scheme submitted by the petitioner panchayat as per the Resolution No.141/2011 dated 23.11.2011 to ensure the local self-government conferred under Article 243 B of the Constitution of India by considering the petitioner's representations dated 19.11.2015 and 26.11.2015.

For Petitioner : Mr.N.Manokaran

For Respondents
1 and 2 : Mr.R.Vijayakumar
Additional Government Pleader

For Respondent 3 : Mr.N.Roofus Abraham
Government Advocate

For Respondent 4 : Mr.M.Guruprasad

For Respondents
5 to 12 : Mr.M.Shanmugam

O R D E R

Heard Mr.N.Manokaran, learned counsel for the petitioner, Mr.R.Vijayakumar, learned Additional Government Pleader for the respondents 1 and 2, Mr.N.Roofus Abraham, learned Government Advocate for the third respondent, Mr.M.Guruprasad, learned counsel for the fourth respondent and Mr.M.Shanmugam, learned counsel for the impleaded respondents 5 to 12.

2.Mr.C.Rajendran, Block Engineer, Panchayat Union, Chennimalai, Erode is present in Court.

3.The petitioner is a Village Panchayat represented by its President and they have filed this writ petition praying for issuance of writ of mandamus forbearing the respondents from laying the pipelines to draw excess seepage water from Olakattupathy Check Dam (Murugatholuvu B Village) to Murugatholuvu Pond (Murugatholuvu A Village) Perundurai Taluk, Erode District, in deviation of the original scheme submitted by the petitioner Panchayat as per Resolution No.141 of 2011 dated 23.11.2011 to ensure the local self governance conferred under

Article 243-B of the Constitution of India by taking into consideration the petitioner's representation dated 19.11.2015 and 26.11.2015.

4.The facts in issue lies in a narrow compass. Though elaborate pleadings have been made and various materials were placed before this Court, the issue to be considered is as to whether the pipelines, said to have been drawn at the behest of the private respondents, is authorized and permissible and whether the District Collector or any of the authorities have granted permission for laying the pipelines. Utilising the funds of the Members of the Parliament for Local Area Development under the MPLAD scheme, a proposal was made to lay a pipeline from Olakattupathy Check Dam (Murungatholuvu B Village) to Murungatholuvu Pond (Murungatholuvu A Village). This proposal was approved and an estimate was prepared and an amount of Rs.35 Lakhs was sanctioned, which includes the cost of the pipeline work, solar and electric motor work and other allied charges. The pipeline was drawn for more than a distance of 5 km from the said Olakattupathy Check Dam, over which, there is no dispute nor any grievance has been expressed by the petitioner panchayat. The grievance expressed by them is only with regard to the deviation, which has been done in the pipeline leading to Murungatholuvu Bund. This, according to the petitioners, was in utter breach of the original route, approved by the District Collector. The objection of the petitioner is on the ground that it is the petitioner Panchayat, under the Presidentship of its present President, who took all initiative for bringing out the project, since the seepage water from the LBP scheme was not being utilized and the water was flowing into the Noyyal river resulting in wastage. Therefore, the petitioner Panchayat passed a resolution and followed up the matter with the District Administration and the seepage water to be taken to Murungatholuvu Pond, which is more than 5 ½ kms away, by laying a pipeline and from the said Pond, the water can flow into two other ponds namely Pudupalayam Pond and thereafter, into Kalikkalavasu Pond.

5.As stated above, we are only concerned about the deviation in the original route as approved by the District Collector. The petitioner has prepared a sketch, which in fact is a sketch furnished by the respondents, duly authenticated. The Block Engineer, who is present in Court has accepted that the sketch produced by the petitioner is a true reflection of the approved sketch and the only difference is that it is for the larger scale for easy reference.

6.The pipelines have been indicated in three colours, namely, green, blue and red. The pipelines delineated in green

colour runs to about 5 ½ kms from the water source with the said tank and it should lead to Murungatholovu Pond. As per the approved route, the pipeline delineated in green colour should continue through the route shaded in blue. What has been done is that at the confluence of the area where the blue shaded line and green shaded line meet, a public temple has been shown, the pipeline has been taken along the red line, which is leading to Murungatholovu Pond. Certain sentimental reasons (Vastu) are being expressed for such deviation. If that is so, then there is absolutely no basis for such deviation and the water could have been taken to the Bund through the shortest route.

7. Prior to approval being granted all these aspects were thoroughly noticed by the District Collector and approval has been granted and the sanctioned route is via the green line into the blue line and to reach the Pond. Therefore, when the matter was heard on the previous occasion i.e. on 22.12.2015, this Court was of the prima facie view that the deviation shown through the red line was unauthorized. But however, the counter affidavits, which were placed before this Court were not clear nor the affidavit filed by the impleading petitioners had reflected the correct picture. Therefore, this Court passed an order dated 22.12.2015 directing the District Collector to file a counter affidavit highlighting five aspects. For better reference, the earlier order is quoted herein below:

"After hearing the arguments of the learned counsel on either side for the considerable length of time, this Court is of the view that the counter affidavit has to be filed by the District Collector. The counter affidavit shall indicate the following aspects:-

(i) Whether there is deviation on the original road which was proposed, which has been indicated and delineated in green colour in the map produced by the petitioner.

(ii) Whether the pipeline is now proposed to be laid along the road delineated in red colour.

(iii) If proposal as mentioned by the petitioner is shown as brown i.e., leading from Murungatholovu Bund to Pudupalayam Bund is attached, whether it will ensure the proper flow of water.

(iv) Whether the entry point of the proposed route of the pipeline would satisfy the gradient level so as to ensure water to freely flow into the Bund.

(v) Within what time the District Collector will approve the proposal for laying pipeline from the village Pudupalayam to kalikavalavas.

It is submitted by the learned Additional Government pleader that though laying of the pipeline has been completed for the considerable length, it is yet to be completed in the area where the dispute has arisen. Therefore, the learned Additional Government Pleader shall instruct the Officer to await further orders of this Court, if the work is not already completed.

List on 22.01.2016."

8.The learned counsel for the petitioner fairly submits that out of the five aspects pointed out by this Court in the above referred order, the petitioner Panchayat is concerned about the aspect described in clause 2 of the order that is "whether the pipeline is now proposed to be laid along the route delineated in red colour."

9.The first respondent District Collector, Erode has filed a counter affidavit answering each of the aspects called upon to be answered and answer given to point no.2 reads as follows:

"Additional pipe line was laid by the public of Murungatholuvu village at their own cost along the route delineated in red colour and no government exchequer involved."

10.From the stand taken by the first respondent, in the counter affidavit, it is rather surprising, as to how the District Administration could have permitted the private parties to lay a pipeline along side the road, at their own cost to deviate the flow of water through a different route that ultimately leads to the Murungatholuvu Pond. Under normal circumstances, when a private party seeks for permission to draw water to his neighbouring land through a public road either along side the road or across the road, he is required to approach the hierarchy of the authorities and there are approvals and permissions to be obtained before he can secure such an order. But however, in the instant case, the District Administration appears to be have been a silent spectator along the so-called public to lay a separate pipeline in deviation of the route proposed and approved by the District Collector. As and when such an action was initiated, the District Administration should have immediately taken steps to prohibit

the same. Whereas it is stated that now the pipeline has been laid to a distance of about 430 mts and it is stated that the same has been done only after notice was ordered in this writ petition.

11.Be that as it may, as long as there is no approval for the pipeline to be drawn through the route shown in red colour, the District Administration should immediately take action to close the said pipeline and allow the water to be taken to Murungatholuvu Pond via the blue line, which is the approved route. It is rather surprising to note that the newly impleaded respondents 5 to 12 and others are said to have been spent a sum of Rs.16.55 Lakhs for drawal of the pipeline to a distance of about 430 mts. It is not known as to how one section of the people alone had take such an action and it may lead to an interference that one section of people may be benefited on account of the deviation in the route. However, as on date, there is no such material placed before this Court. But a situation may arise in future which has to be nipped at the bud. Therefore, the District Administration should immediately take action to close the pipeline delineated in red colour in the plan and ensure that the pipeline is taken through the route delineated in blue colour as per the approved route. The above direction shall be complied with by the first respondent within a period of two weeks from the date of receipt of a copy of this order.

12.With regard to the pipeline to be drawn through the area delineated in blue colour, from the counter affidavit filed by the District Collector as could be seen from paragraphs 5 and 6 therein, the work is carried on and is now nearing final stage in the route permitted by the administration. The trial run shall be completed within a period of ten days and if there are any repairs to be done, the same shall be carried out and the pipeline shall be put to use within a period of two weeks, after the date trial run is completed and defects are rectified.

13.The writ petition is disposed of with the above observation and direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

TK

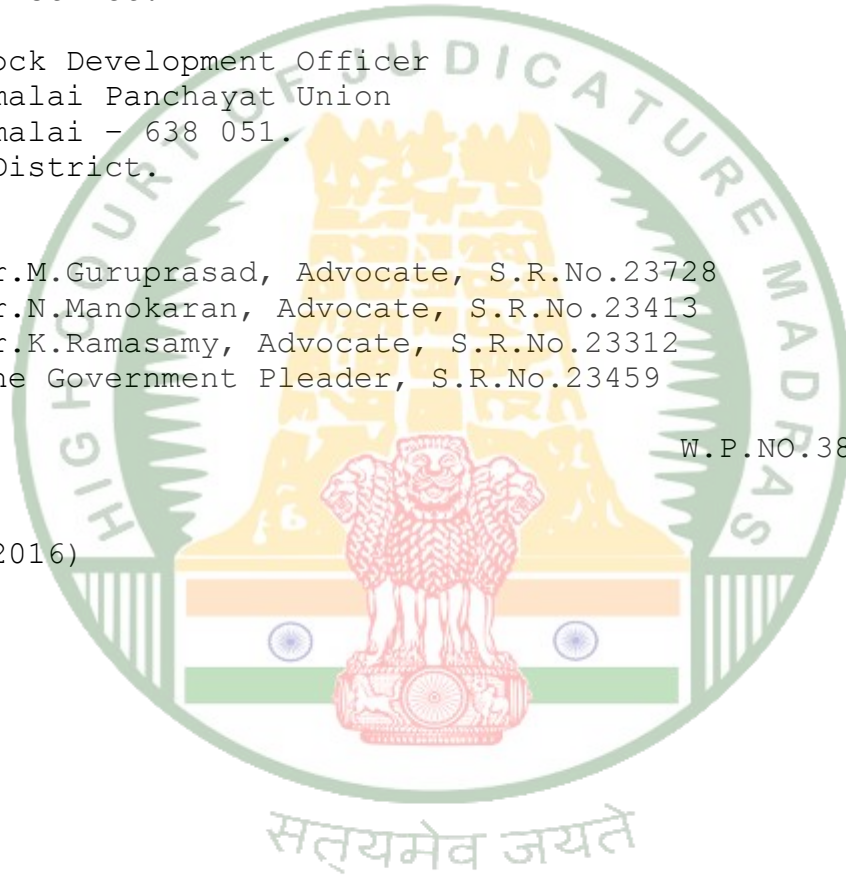
To

1. The District Collector
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Erode - 638 011.
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Chennimalai Panchayat Union
Chennimalai - 638 051.
Erode District.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.23728
+1cc to Mr.N.Manokaran, Advocate, S.R.No.23413
+1cc to Mr.K.Ramasamy, Advocate, S.R.No.23312
+1cc to the Government Pleader, S.R.No.23459

W.P.NO.38615 OF 2015

RSK(CO)
CA(05/05/2016)



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