

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.07.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.14547 of 2003

P.Thailappan

... Petitioner

Vs.

1.The District Collector,
Salem District, Salem.

2.The Commissioner/The Block
Development Officer,
Omalur Panchayat Union,
Omalur, Salem District.

3.A.Rajendran.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, forbearing the respondents from converting the community well in S.No.82/1 in Sikkampatti Village, Omalur Taluk, Salem District as a temple well or for any other purpose other than the irrigation purpose of the beneficiaries including the petitioner as mentioned in the proceedings of the first respondent in Roc.No.Y.1 42679/72 dated 18.01.1973.

For Petitioner : Mr.T.Murugamanickam

For Respondents: Mr.R.Govindasamy,
Special Government Pleader [R1]
Mr.N.Subbarayalu [R2 & R3]

O R D E R

The petitioner claims that he own agricultural lands in S.Nos.82/6, 82/4 and 82/8 admeasuring to an extent of 1.62 acres in Sikkampatti Village and he is cultivating paddy, pulses and vegetables in the said land and according to the petitioner, his wife viz., Tmt.V.Maragathamani also own lands in S.Nos.82/2B, 82/3, 82/6a, 82/7 and 82/9 admeasuring to an extent of 2.990 acres, which located next to the land of the petitioner. The petitioner would further state that in pursuant to the proceedings of the first respondent dated 18.01.1973, for

implementation of Agricultural schemes in Panchayat union for the year 1972-1973, approval was accorded for digging a community well in S.No.82/1, at Sikkampatti Village, Omalur Taluk, utilising the Government grant out of the allotment made under Agricultural Schemes for 1972-1973 and according to the petitioner, the purpose for digging the community well was to irrigate not less than 10 acres of land and other 9 beneficiaries.

2. In the proceedings, conditions have also been mentioned among other things that the beneficiaries were asked to pay the water charges to be fixed by the Panchayat Union or by the Government and the beneficiaries were asked to enter into an agreement with the 2nd respondent. Accordingly, an agreement dated 10.04.1973 came into entered and well was also dug and the third respondent had also obtained electricity service connection on 10.12.1975 for using 10 HP motor pump set and the petitioner claims that the community well is being used as per the proceedings dated 18.01.1973 from the year 1975. The grievance expressed by the petitioner is that all of a sudden, the third respondent converted the well for other public purposes and the petitioner has not been put on notice whatsoever and on account of the same, the agricultural operations carried by the petitioner and other beneficiaries are getting affected and in this regard, has also submitted a representation dated 02.05.2003 to the respondents 1 and 2 and since no orders have been passed, came forward to file this writ petition.

3. The second respondent has filed a counter and took a stand that as per Clause 3 of the proceedings of the first respondent dated 18.01.1973, the land in which, the community well proposed to be sunk should be registered in the name of the Village Panchayat concerned, before ever starting the work. Accordingly, the land was registered in the name of the third respondent and the beneficiaries of the community well executed an agreement dated 10.04.1973 in favour of the second respondent, wherein they agreed to pay the water charges and the electric charges and further they agreed to abide by rules and regulations of the Government. The second respondent would further aver that due to monsoon failure and the acute scarcity of water, the people from the Villages such as Manganoor, Parthuthikaranur and Kuppanur, located in Sikkampatty Panchayat have approached the third respondent and requested to provide drinking water facilities and since there was apprehension of law and order problem, an amicable settlement has been arrived at and a local body meeting was also convened, wherein it has been resolved that water from the said community well can be taken through pipe line from the community well by installing a motor pump for the purpose of providing drinking water to the Village public. It is also the stand of the second respondent

that the petitioner cannot claim exclusive right over the well and its water, as he is one of the beneficiaries and he also fails to comply with the other terms and conditions and since the well is used only to provide drinking water to the public, the petitioner cannot have any grievance and prays for dismissal of this petition.

4. The learned counsel appearing for the petitioner has drawn the attention of this Court to the proceedings of the first respondent dated 18.01.1973, and would submit that the petitioner had scrupulously complied with the conditions and without putting the petitioner on notice, a decision has been taken to lay a pipe line for the purpose of drawing water for providing drinking water facilities to the people residing in Manganoor Village and therefore, the petitioner is constrained to approach this Court.

5. The learned counsel appearing for the petitioner has also drawn the attention of this Court to the additional affidavit dated 09.02.2016, wherein in paragraph No.4, it has been stated that now the third respondent Panchayat is providing drinking water from the Mettur-Attur pipe line to every house hold and on account of the said development, the use of the community well as on today is not warranted and prays for appropriate orders.

6. Per contra, Mr.N.Subbarayalu, learned counsel appearing for the second respondent has drawn the attention of this Court to Section 236 of the Tamil Nadu Panchayat Act, 1995 and would submit that as per the said provision all roads, markets, wells, tanks, reservoirs and waterways vested in or maintained by a Panchayat shall be open to the use and enjoyment of all persons, irrespective of their caste or creed and admittedly on account of water scarcity, law and order problem arose and therefore, a request was made to the second respondent and accordingly, necessary permission was granted purely taking into consideration the public interest. It is the further submission of the learned counsel appearing for the second respondent that the petitioner also did not comply with the terms and conditions of the proceedings of the first respondent dated 18.01.1973 and since the petitioner fall with huge arrears, he cannot express any grievance as per the steps taken by the second respondent.

7. This Court has carefully considered the rival submissions and also perused the materials placed before it.

8. A perusal of the proceedings of the first respondent dated 18.01.1973, would disclose that certain benefits have been conferred upon the beneficiaries for developing agricultural. No doubt, it is the stand of the second respondent that on account of public interest and due to water scarcity in some of the villages falls within the Sikkampatty Panchayat, a decision

has been taken to provide drinking water facilities from the community well and such a decision has been taken purely on public interest. It is pertinent to point out at this juncture that if at all, the second respondent, on account of public interest wants to proceed further, he should have brought it to the knowledge of the first respondent, who is admittedly the superior authority and after obtaining necessary permission and orders, ought to have been proceeded accordingly. But, admittedly, he has not done so. Insofar as the petitioner not having complied with the conditions of the proceedings dated 18.01.1973, the counter of the second respondent does not disclose any such fact. It is needless to say that if the petitioner is in violation of any one of the conditions of the proceedings of the first respondent dated 18.01.1973, his attention should have been invited to such a violation for taking appropriate action. Admittedly, neither the second respondent nor the third respondent had approached the first respondent, as to the need of the community well for public purpose and also as to the violation of the condition by the petitioner. In the light of the above facts and circumstances, the following order would be meet the ends of justice:

9. The respondents 2 and 3 are of the view that the community well dug is in terms of the proceedings of the first respondent dated 18.01.1973 and if the said well still requires any other public purposes, they are at liberty to approach the first respondent or any other official authorised by him in that regard and also lodge a complaint against the petitioner as to the violation of the conditions of the proceedings of the first respondent dated 18.01.1973 and till such time, the petitioner is entitled to draw water in terms of the proceedings of the first respondent dated 18.01.1973. The respondents 2 and 3, before approaching the first respondent, shall also take into consideration the stand of the petitioner in his additional affidavit dated 09.02.2016 that the third respondent is providing drinking water supply through pipe line from Mettur - Attur pipe line and as to the user of the said well for any other public purpose.

The Writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vsm

To

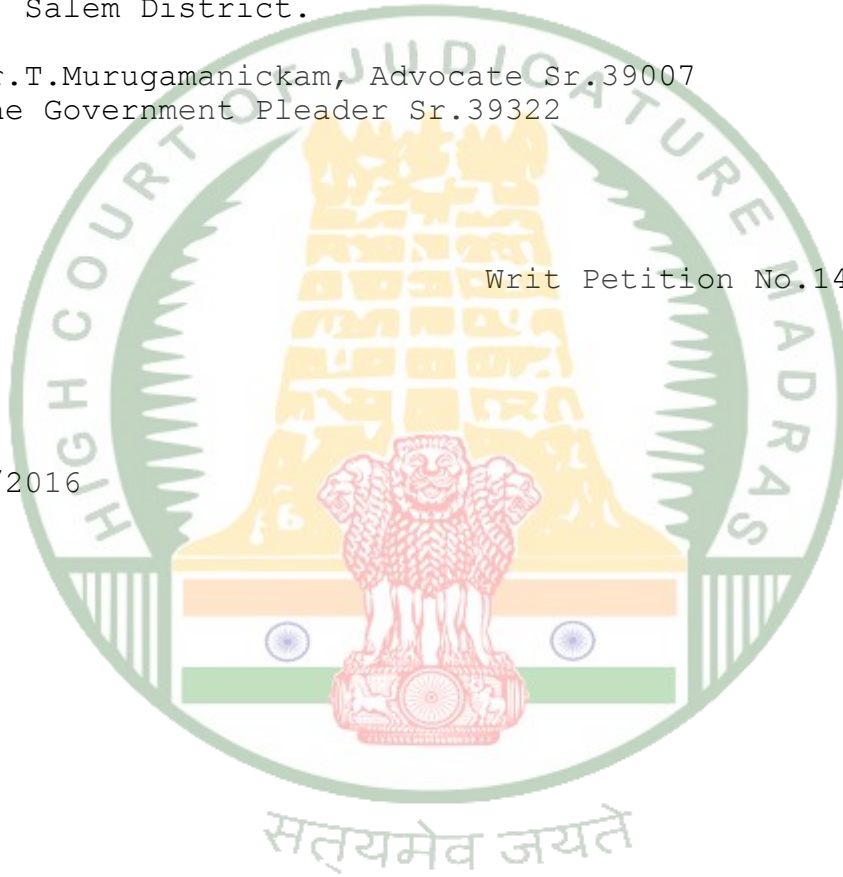
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+1cc to Mr.T.Murugamanickam, Advocate Sr.39007
+1cc to the Government Pleader Sr.39322

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gj ii[col]
srg 01/08/2016



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