



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2016

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P (MD) .No.12195 of 2016

and

W.M.P. (MD) .No.9290 of 2016

PACKIARAJ

PRESIDENT AGRICULTURISTS ASSOCIATION,

VENDRILINGAPURAM

PATTADAIKATTI PANCHAYAT

MELANEELITHANALLUR PANCHAYAT UNION

SANKARANKOIL TALUK, TIRUNELVELI DISTRICT.

... PETITIONER

Vs

1 THE BLOCK DEVELOPMENT OFFICER (BLOCK PANCHAYATS)
MELANEELITHANALLUR PANCHAYAT UNION,
SANKARANKOIL TALUK,
TIRUNELVELI DISTRICT.

2 THE TASHILDAR, TALUK OFFICE
SANKARANKOIL, TIRUNELVELI DISTRICT.

3 THE DISTRICT COLLECTOR
TIRUNELVELI AT THE COLLECTOR'S OFFICE
TIRUNELVELI.

... RESPONDENTS

Prayer: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the records and quash the communication of the 1st Respondent vide Na.Ka.No.A.2/3529/2015 dated 29.06.2016 and direct the respondents to take a decision only after conducting a Scientific Study as to the respective Water Needs and Entitlements of the Singathukulam Tank Ayacut and the Patta Lands lying within the Water Spread Areas of the Singathukulam Taluk, after affording ample opportunities to the rival parties and desist from any hasty removal of the existing Kalingal Constructions of the Singathukulam Tank either on 13.07.2016 or on any other date.



For petitioner : Mr.S.Ramesh alias Ramiah
For Respondents : Mr.N.S.Karthikeyan
AGP for RR-2 & 3
Mr.R.Murugan for R-1

WEB COPY

ORDER

Challenging the order passed by the first respondent, dated 29.06.2016, directing the petitioner to remove the constructions, put up in the Kalingal in Singathukulam Tank, Pattadaikatti Village in Melaneelithanallur, Sankarankovil Taluk, Tirunelveli District, the present writ petition has been filed.

2. According to the petitioner, he is the President of Agriculturists Association in Vendrilingapuram Village and there is a tank called Singathukulam Tank, having Ayakat of 90 hectares of nanja lands and in a water spread area of about 29 hectares, and there is a kalingal on the east side of the tank, the Surplus Sluice is on the western side of the tank, due to non-maintenance of the tank, the Kalingal was heavily damaged and require repairs. Hence, the petitioner's agricultural association carried out repairs, since due to the damage in the Kalingal, water could not be effectively stored in the Kalingal in the earlier years. Now, because of the repair works done by the petitioner, they are able to store more water.

3. That being the position, in view of the construction made by the petitioner i.e Kalingal, nearly 120 acres of lands in water-spread area belongs to Naduvukurichi panchayat have submerged. The persons, who have encroached the area gave a petition to the 1st respondent in December 2015. Based on that petition, the Block Development Officer, without affording an opportunity, directed the Assistant Engineer to remove the construction put up by the petitioner. Aggrieved over the same, the writ petition has been filed.

4. When the matter came up for hearing, on an earlier occasion, the learned counsel appearing for the petitioner submitted that because of the construction put up by the petitioner, only the water storage level of the Singathukulam Tank will be increased and it is in no way affect the agriculturists and the reason given by the first respondent in the impugned order is also not correct. In the above circumstances, this Court directed the Revenue Divisional Officer, Tirunelveli to inspect the tank, regarding the construction put up by the petitioner and file a comprehensive report over the total tank's storage capacity and also the effect of the construction put up by the petitioner.

<https://hcservices.ecourts.gov.in/hcservices/> 5. Today, the Revenue Divisional Officer, Tirunelveli, after inspection, filed a detailed report stating as follows:

**"Findings:**

During inspection of the tank, it was observed that the tank is made-up of earthen bund and the surplus weir (left flank) has been constructed at right angles to the flow of water. The surplus weir consists of the following standard structures viz., i)Apron ii)Abutment iii)Body Wall. Therefore, it is clear that the Singathukulam tank has been constructed as per existing engineering norms.

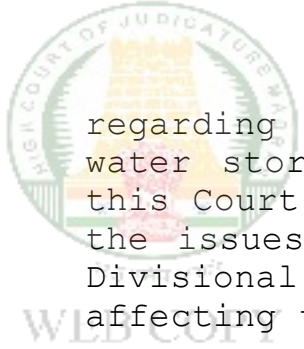
I humbly submit, that from the abovementioned technical details, it is quite evident that the determination of the height of a surplus weir is a highly technical aspect falling under the purview of Water Resource Engineering. The unauthorized alteration of the existing structures would only lead to dire consequences at an unprecedented level. Therefore, I hereby humbly submit that the unauthorized construction of a structure in a public resource water body is an offence.

It is hereby humbly submitted that the Singathukulam tank has been prevalent with the existing structures from time immemorial without any issues. However, a sudden unauthorized, illegal, construction of the brick wall has led to inundation of paddy fields. Therefore, taking into consideration larger public interest, the original position of the tank may be restored."

6.For which, the petitioner filed an objection stating that the Revenue Divisional Officer had failed to note that if the Tank Bed Lands are so submerged, they cannot have any grievance either against the Ayacutdars or against the Government, as it is more due to the Nature of their lands being on the Tank Bed.

7.Heard the learned counsel for the petitioner, learned counsel appearing for the first respondent and the learned Additional Government Pleader appearing for the respondents 2 and 3.

8.Admittedly, the petitioner has put up a surplus weir in the Singathukulam Tank, without obtaining any permission from any authority and construction was put up by their own, for which, the petitioner has no right at all. It is a public water body and the petitioner has no right to put up any construction, without the permission of the authorities. Hence, the construction put up by the petitioner is illegal and on that score, the construction made by the petitioner should be removed. Apart from that,



regarding the other contention of the petitioner regarding the water storage capacity of the tank and other technical aspects, this Court is of the view that it is for the experts to decide all the issues and now, as per the report submitted by the Revenue Divisional Officer, the construction put up by the petitioner is affecting the tank.

9. In the above circumstances, there is no illegality or irregularity in the order passed by the first respondent. Hence, the writ petition is liable to be dismissed. Accordingly, the same is dismissed. However, since the petitioner has any grievance regarding the raising of the height of the surplus weir, the petitioner is directed to make necessary application before the authorities regarding the same. If any representation is made, the authorities are directed to consider the same on merits and in accordance with Law. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Deputy Registrar

/True Copy/

Sub Assistant Registrar

To

1 THE BLOCK DEVELOPMENT OFFICER (BLOCK PANCHAYATS)
MELANEELITHANALLUR PANCHAYAT UNION,
SANKARANKOIL TALUK,
TIRUNELVELI DISTRICT.

2 THE TASHILDAR, TALUK OFFICE
SANKARANKOIL, TIRUNELVELI DISTRICT.

3 THE DISTRICT COLLECTOR
TIRUNELVELI AT THE COLLECTOR'S OFFICE
TIRUNELVELI.

+ 1 CC TO Mr.S.RAMESH @ RAMAIAH, ADVOCATE IN SR No. 68962
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 69320

VS

TE/SKN : 27/12/2016 : 4P/6C

W.P(MD).No.12195 of 2016 and
W.M.P.(MD).No.9290 of 2016
14.11.2016