

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.32146 of 2017

and

WMP.Nos.35310 & 35311 of 2017

Noyyal River Ayacutdars Protection
Association (Regd. No.64 of 2013)
Rep.by Manickam Athappa Gounder
Coordinator-NRAPA,
7/41B, Avinashi Road,
Civil Aerodrome Post,
Coimbatore-641 014.

... Petitioner

-Vs-

- 1.The Principal Secretary,
Government of Tamil Nadu,
Fort St. George, Chennai.
- 2.The District Collector,
Tiruppur District, Tiruppur.
- 3.The District Collector,
Karur District, Karur.
- 4.The District Collector,
Erode District, Erode.
5. The Tahsildar,
Perundurai Taluk,
Erode District, Erode.
6. The Tahsildar,
Aravakurichi, Karur District.
- 7.The Tahsildar,
Kangayam Taluk, Tiruppur District.

8.The Tahsildar,
Erode Taluk, Erode District.

9. The Tamil Nadu Pollution Control Board,
Rep. by its Member Secretary,
G.S.T.Road, Guindy,
Chennai - 600 025.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Mandamus, calling for the records of 5th respondent in District Bulletin No.35 dated 06.10.2017 in Na.Ka. No.10799/ 15 E2 dated 4.10.17 quash the same and consequentially to direct the respondents 2 to 8 not to proceed with the revenue recovery proceedings against the members of the petitioners' association by considering the undertaking given by the members of the petitioners Association dated 24.06.2016 to satisfy the alternative arrangement as per Section 26 of the Revenue Recovery Act.

For Petitioner : Mr.M.L.Ramesh

For Respondents : Mr.G.Rajagopal, ASG
Asst. by Mr.E.Manoharan
for RR1 to 8
Ms.Rita Chandrasekar
for R9

ORDER

[Order of the Court was made by C.T.SELVAM, J.]

This writ petition has been filed by the Noyyal River Ayacutdars Protection Association consisting of 535 agriculturists who hold lands in down stream polluting dyeing and bleaching units and suffered huge damages to lands and losses in agricultural operations. Pursuant to orders in WP No.29791 of 2003 dated 22.12.2006 and connected proceedings, a sum of Rs.25,00,00,000/- (Rupees Twenty Five Crores only) came to be disbursed to the members of the petitioner Association. This court in passing orders in WP.No.2790 of 2012 batch on 01.11.2012 informed thus:-

"2. Due to rapid and haphazard industrialisation of Tiruppur with large number of hosiery units and consequential establishment of dyeing and bleaching units resulted in Noyyal River getting polluted causing havoc to the agricultural operations. Menace of pollution caused in Noyyal river by bleaching and dying

units has been subject matter of litigation from 1996. Based on the order in a Public Interest Litigation in W.P.No.29791 of 2003 confirmed by the Supreme Court in S.L.P.No.6963 of 2007 and in pursuance of the interim order dated 10.8.2007 passed by the Supreme Court, a sum of Rs.25.00 Crores was deposited in High Court to the credit of W.P.No.29791 of 2003. Further, Rs.42.02 Crores collected towards the fine amount and Rs.7.64 Crores ordered towards adhoc compensation available with the District Collector, Tiruppur are payable to the affected agriculturists. The applications filed by Government to withdraw the amount of Rs.25.00 Crores in High Court deposit came to be dismissed on 29.3.2011. The impugned G.O.Ms.No.209, Environment and Forests (EC-1) Department dated 31.12.2011 was passed in which Government sanctioned an interest bearing advance of Rs.75.00 Crores to Tamil Nadu Pollution Control Board for disbursing the amount to the members of 4th respondent Association. Challenging the said Government Order, writ petitions are filed seeking to quash the said Government Order and other directions.

3. Background Facts:-

W.P.No.1649 of 1996 was filed by P.R.Kuppusamy, Advocate, in public interest, as the President of Karur Taluk Noyyal Canal Agriculturists Association seeking directions to the Pollution Control Board to prevent the pollution and dyeing units at Tiruppur from polluting Noyyal river and to take steps to clean the river Noyyal of its pollution. On 26.2.1998, W.P.No.1649 of 1996 was disposed of in terms of a joint memo filed by the parties, wherein, the industries agreed to set up Common Effluent Treatment Plants (CETPs) or Individual Effluent Treatment Plants (IETPs) and Tamil Nadu Pollution Control Board (TNPCB) was to enforce it failing which to take action as per law.

4. Public Interest Litigation - W.P. No.29791 of 2003:- Joint memo filed in W.P.No.1649 of 1996 was not honoured by the polluting industries and TNPCB also did not enforce it. Noyyal River Ayacutdars Protection Association (4th respondent) filed a Public Interest Litigation - W.P.No.29791 of 2003 seeking for a writ of mandamus directing the respondents to implement the order dated 26.02.1998 in W.P.No.1649 of 1996 passed in pursuance of the joint memo. Court granted time to the industrial units to achieve Zero Liquid Discharge (ZLD) and inter alia issued directions:-

i) they should pay a fine on pro rata basis at the rate of six paise per litre for the first three months and eight paise per litre for next two months and ten paise

per litre for the subsequent two months;

ii)to deposit a sum of Rs.22,99,98,548/- being the balance of the total compensation amount of Rs.24,79,98,548/- awarded by the LoEA in its award dated 17.12.2004;

iii)Court also directed the units to deposit a sum of Rs.12.00 Crores as adhoc compensation towards the estimated loss for the years 2005, 2006 and 2007;

iv)The compensation amount as well as the fine amounts deposited and the amounts already deposited pursuant to orders of this Court shall be deposited in a Nationalised Bank as a Corpus Fund and utilized for the purpose of cleaning of Orathapalayam dam and Noyyal River and for the ultimate payment to be made to the agriculturists towards loss of ecology."

5. S.L.P.No.6963 of 2007 (Civil Appeal No.6776 of 2009 with 6777 of 2009):-

Order dated 22.12.2006 made in W.P.Nos.29791 and 39368 of 2003 was challenged by Tiruppur Dyeing Factory Owners Association in S.L.P.No.6963 of 2007. On 10.8.2007, Supreme Court granted interim stay of closure of dyeing units. In the interim order dated 10.8.2007, Supreme Court directed Tiruppur Dyeing Factory Owners Association to deposit a sum of Rs.25.00 Crores before the High Court and in compliance of the said order, a sum of Rs.25.00 Crores has been deposited in the Registry and subsequently transferred to a Nationalised Bank by the Order of the High Court dated 3.7.2012. By directing Tiruppur Dyeing Factory Owners Association to ensure compliance with all directions including the payment of dues and to ensure that the members of Tiruppur Dyeing Factory Owners Association have to carry out their industrial activities without polluting the water and issuing other directions, the Supreme Court disposed off the appeals on 6.10.1999 in Tiruppur Dyeing Factory Owners Association Vs. Noyyal River Ayacutdars Protection and others (2009) 9 SCC 737 : (2009) 8 MLJ 1164.

6. Loss of Ecology Authority (LoEA) and award dated 17.12.2004 in respect of affected agriculturists of Noyyal River Basin:-

When the said Writ Petition was pending, in Vellore Citizens Welfare Forum v. Union of India (1996) 5 SCC 647, the Supreme Court has directed the Central Government to constitute Loss of Ecology Authority (LoEA) under Section 3(3) of Environment (Protection) Act, 1986 and further directed that the authority so constituted shall implement the "Precautionary

Principle" and the "Polluter Pays Principle". Notification (SO 671 (E)) dated 30.09.1996 was issued by the Government of India constituting the Loss of Ecology (Prevention and Payment of Compensation) Authority (LoEA) for the State of Tamil Nadu. The authority has inter alia been conferred power :-

- i) to assess the loss of ecology and environment in the affected areas and also identify the individuals and
- ii) families who have suffered because of pollution and assess the compensation to be paid to the said individuals and families;
- iii) to determine the compensation to be recovered from the polluters as cost of reversing the damaged environment;
- iv) to lay down its own procedure for assessing loss and determining compensation and for recovery from polluters;
- v) to compare loss under two heads, namely, for reversing the ecology and for payment to individuals.

7. Even when the Public Interest Litigation in W.P.No.1649 of 1996 was pending before the High Court, LoEA took suo motu cognizance of the pollution by the Dyeing and Bleaching Industries in Noyyal river basin. With the assistance of an expert body on environmental issues, Centre for Environmental Studies, Anna University, Authority assessed loss of ecology and environment in the areas affected by the industries located in the Taluk of Tiruppur and its vicinity in Noyyal river basin. The Authority identified 28,596 affected agriculturists, who are eligible for compensation and an extent of 28,449 ha in 68 villages and passed the award on 17.12.2004 awarding compensation to individuals totalling Rs.24,79,98,548/- as compensation for the period from 28.08.1996 to 31.12.2004. The list of affected farmers and the list of polluting industries were prepared and they were supplied in C.Ds to various District Collectors for the purpose of recovery of the compensation amount from the polluting units for disposal to the affected farmers.

8. Writ Petitions challenging the award of LoEA:-

A batch of writ petitions came to be filed challenging the award of LoEA on various grounds including failure to assess the contamination of water resources and soil and cause of restoration of ecology, violation of principles of natural justice and inadequate compensation and failure to pass order for preventing future pollution. W.P.Nos.12999, 13549 and 39722 of 2005 were filed by the 4th respondent # Noyyal

Ayacutdars Association and its members. Ramaswami - who is the petitioner in W.P.No.3553 of 2012 along with 334 others filed W.P.No.46632 of 2006 and the said Writ Petition is pending. W.P.Nos.6607, 6619, 8662 and 6606 of 2005 were filed by the Industries challenging the award.

9. Amount of Rs.75.00 Crores:- In pursuance to the interim order of the Supreme Court dated 10.8.2007 in S.L.P.No.6963 of 2007 (C.A.No.6776 and 6777 of 2009), Tiruppur Dyeing Factory Owners Association deposited Rs.25.00 Crores before the High Court to the credit of W.P.No.29791 of 2003. In terms of the directions issued by this Court in W.P.Nos.29791 and 39368 of 2003 (judgment dated 22.12.2006) in paragraph No.30(a), Polluting units/CETPs remitted a sum of Rs.42.02 Crores with accrued interest to the District Collector. Further, in terms of direction in Paragraph No.30(d), a sum of Rs.12.00 Crores has been awarded by the Court in W.P.No.29791 of 2003 towards adhoc compensation, out of which an amount of Rs.7.64 Crores is available with District Collector, Tiruppur along with accrued interest. Total amount paid by the Polluting Units is Rs.75.00 Crores and available as stated infra.

10. W.M.P.Nos.184 to 187 of 2011 in W.P.No.39368 of 2003 were filed by the Government of Tamil Nadu seeking permission of the Court to disburse the amount lying with the District Collector, Tiruppur and in deposit in High Court to all the affected agriculturists. Petitions filed by the Government for disbursal of deposited amounts were dismissed by an Order dated 29.3.2011.

11. G.O.Ms.No.209, Environment and Forests (EC-1) Department dated 31.12.2011:-

After change of Government, the 4th respondent Association made representation for payment of compensation to their 535 members of their Association. Stating that the members of 4th respondent Association are worst affected and that 4th respondent Association had been waging the legal battle, Government issued G.O.Ms.No.209, Environment and Forests (EC-1) Department in which Government advanced interest bearing amount of Rs.75.00 Crores to the Tamil Nadu Pollution Control Board and directed the Board to disburse the said amount to the Noyyal Ayacutdars Protection Association for payment to the members of the Association numbering 535. In the Government Order, TNPCB was directed to repay the advance along with interest within a period of six months from the date of releasing the advance. The said

Government Order is the subject matter of challenge in these batch of writ petitions."

2. In WP No.2790 of 2012 batch, this Court was seized of the question of whether members of the petitioner association alone were entitled to the amount of Rs.75,00,00,000/- (Rupees Seventy Five Crores only) deposited by the polluting units pursuant to order in WP No.29791 of 2003 in preference to others holding affected agricultural lands of Noyyal River basin identified by the Loss of Ecology Authority.

3. Under orders dated 01.11.2012 in WP No.2790 of 2012 batch, this Court concluded as follows:-

"87. Conclusion:-

The order of the First Bench in the Public Interest Litigation in W.P.No.29791 of 2003 (dated 22.12.2006) and the Hon'ble Supreme Court in C.A.Nos.6776 of 2009 and 6777 of 2009 - (2009) 9 SCC 737) have taken note of the plight of 28596 affected farmers, identified by LOEA due to the pollution caused in Noyyal River. The fine amount collected/amount deposited in pursuance to the order of the First Bench and the Hon'ble Supreme Court is intended to compensate 28596 affected agriculturists, identified by LoEA. When the amount is intended to compensate the larger group of agriculturists, by the impugned G.O.(Ms) No.209 Environment and Forests (EC-1) Department dated 31.12.2011, the amount is paid to a small group of agriculturists i.e. 535 members of 4th respondent Association- Noyyal River Ayacutdars Protection Association and the impugned G.O.(Ms)No.209 dated 31.12.2011 is against the spirit of the order of the First Bench in W.P.No.29791 of 2003 (dated 22.12.2006) and the Hon'ble Supreme Court in C.A.Nos.6776 of 2009 and 6777 of 2009 (dated 06.10.2009) and the impugned G.O.(Ms) No.209 Environment and Forests (EC-1) Department dated 31.12.2011 is quashed and all the Writ Petitions are allowed.

88. Consequently, the following directions are issued:-

4th respondent Association - Noyyal River Ayacutdars Protection Association and each of its 360 members who encashed the cheques are directed to repay the amount respectively paid to each of them to Tamil Nadu Pollution Control Board within a period of six weeks from the date of this order. On failure to repay the said amount, the 4th respondent Association - Noyyal River Ayacutdars Protection Association and each of the said 360 members who encashed the cheques are jointly and severally liable to pay the amount respectively paid to them with interest

at the rate of 9% per annum for the said amount from the date of expiry of six weeks till the date of payment. On recovery of the amount, Tamil Nadu Pollution Control Board shall transmit the said amount to the Government which shall be credited to the head of account stated infra. In case, if the amount is not paid within the stipulated period, the same shall be recovered with interest from the concerned agriculturists and also the 4th respondent Association as arrears of land revenue under Revenue Recovery Act, 1864.

4th respondent Association - Noyyal River Ayacutdars Protection Association is directed to furnish list of 360 agriculturists to whom the amount was distributed, in the Court within a period of two weeks from today.

The amount of Rs.36,83,00,000/- along with accrued interest lying in Syndicate Bank, Coimbatore Main Branch in Current Account No.6120-101-5800 (now invested in fixed deposit bearing No.6120-457-10 as per the order of the Court) of the 4th respondent Association and the amount of Rs.12,87,58,001.79 along with accrued interest lying in the 4th respondent Association's Savings Bank Account No.6120-201-51354 (now invested in fixed deposit as per the order of the Court) and also Rs.76,228.00 along with accrued interest lying in the Current Account of 4th respondent Association shall immediately be transferred to Tamil Nadu Pollution Control Board, who in turn shall forthwith transmit the said amounts to the Government which shall be credited to the following head of account:-

"6402.00. Loans for soil and water conservation - 204. Water conservation - 1. Non Plan - AA - Ways and Means Advance to Tamil Nadu Pollution Control Board for distribution of compensation amount to the affected farmers of Noyyal River Basin - (DPC 6402-00-204-AA-0000) Outgo (DPC 6402-00-204-AA-000A) Receipts."

89. Distribution of the amount:-

- Loss of Ecology Authority has awarded compensation of Rs.24,79,98,548/- to 28596 affected agriculturists. Now the amount lying with the District Collector, Tiruppur as indicated in Paragraph - 35 [as per the order of the First Bench in W.P.No.29791 of 2003] and the amount of Rs.25.00 Crores in the High Court deposit [as per the order of Hon'ble Supreme Court in C.A.Nos.6776 of 2009 and 6777 of 2009] along with accrued interest shall be

utilised for paying the compensation amount awarded by LoEA to 28596 affected agriculturists identified by LoEA less the compensation amount if any already paid to them. Any other affected agriculturists of Noyyal River Basin in favour of whom Award has been passed by LoEA shall also be paid the compensation amount awarded by LoEA. An amount of Rs.15.00 Crores shall be kept in reserve to compensate the other affected agriculturists in favour of whom Award may be passed by LoEA in pending Claim Petitions. Compensation shall only be paid to agriculturists in respect of whom the award passed/to be passed by LoEA in claim applications pending before LoEA till 31.10.2012. The remaining amount of compensation shall be re-distributed to the affected agriculturists on pro rata increase to the amount awarded by LoEA to each of the affected agriculturists. Amount intended for cleaning of Orathapalayam dam shall be kept separate and utilised only for the said purpose.

- State Government is directed to file a Memo suggesting the modalities for distribution of the amount within a period of four weeks from today before this Court.
- It is made clear that this Court shall not entertain any individual Claim Petitions from any agriculturists or Association nor shall entertain any inter se dispute between the agriculturists in respect of payment of compensation."

4. The petitioner association as also Tamil Nadu Pollution Control Board challenged such order, which came to the disposed of by the Hon'ble Supreme Court in Civil Appeal Nos. 4564 to 4583 of 2013 under judgment dated 26.03.2014 stating:

"We find no reason to interfere with the impugned judgment of the High court. The appeals are, accordingly, dismissed.

However, the cut off date fixed by the High Court is extended for a period of three months from today. There will be no further extension of time and the claimants have to make their claims before the date extended.

We make it clear that since some writ petitions were withdrawn by some of the claimants on the strength of G.O.(Ms) No.209 Environment and Forests (EC-1) Department dated 31.12.2011 and since the same has already been set aside by the High Court, it is open to the claimants to agitate their grievance

before the High Court, in accordance with law.

In view of the above the application for interventions is disposed of."

5. Writ Petitioners in WP.No.2790 of 2012 moved Contempt Petition in Cont.P.No.3213 of 2014 and on this Court issuing notice to the Tamil Pollution Control Board, G.O.Ms.No.37/E & F (EC1) Department dated 17.03.2015 came to be passed, whereby members of the petitioners' association were called upon to effect return of the sums received by them. Petitioners' association moved WP No.25401 of 2015 challenging such G.O. and under orders dated 07.09.2016, this Court permitted withdrawal of such petition ordering thus:-

"After some arguments, the learned counsel for the petitioner seeks to withdraw the writ petition as he states that he will either move the Hon'ble Supreme Court seeking modification of the order so that the members of the petitioner Association would continue to retain the amount which was paid to them or in the alternative, move in the contempt petition for atleast some breathing time in view of the given facts and circumstances. Endorsement has been made.

2. The writ petition is dismissed as withdrawn in terms aforesaid. No costs. Consequently, M.P.No.2 of 2015 is closed."

6. The present writ petition has been filed to call for the records of 5th respondent/The Tahsildar, Perundurai Taluk, Erode District, in District Bulletin No.35 dated 06.10.2017 in Na.Ka. No.10799/ 15 E2 dated 4.10.17, quash the same and consequently direct respondents 2 to 8 not to proceed with revenue recovery proceedings against members of the petitioners' association by considering the undertaking given by the members of the petitioners Association dated 24.06.2016 to satisfy the alternative arrangement as per Section 26 of the Revenue Recovery Act. By way of WMP No.35311 of 2017 in the present writ petition, petitioner seeks stay of further revenue recovery proceedings pursuant to G.O.Ms.No.37/E & F (EC1) Department dated 17.03.2015 i.e., the same G.O that was challenged in WP No.25401 of 2015, which writ petition was dismissed as withdrawn by the petitioner on 07.09.2016. This writ petition is seen as an attempt to indirectly achieve that which directly could not be achieved.

7. Learned counsel for petitioner submitted that members of petitioner association have suffered huge losses owing to the River waters having been polluted and the compensation received by them was towards offsetting such losses in a small extent. If members of the petitioner association are required to effect

return of moneys paid to them, they would now be forced to sell their lands. Learned counsel submitted that the relief sought in the present writ petition is towards requiring the Collector to make arrangement for securing repayment and members of petitioner association are willing to providing security. Enabling petitioners to stave of immediate return of the entire moneys payable by them would help their cause.

8. In the light of order of Division Bench of this Court in WP. No.2790 of 2012 batch dated 01.11.2012 specifically directing the Collector to recover moneys paid to them and resort to revenue recovery proceedings if necessary, we are unable to consider the plea raised by learned counsel for petitioner.

9. We, however, refer to Division Bench order of this Court in WP No.13433 of 1996, WMP No.11 of 2015 in WP No.39722 of 2005 and WP No.23291 of 2006 dated 07.04.2016:

"81. Therefore, in fine, we pass the following order:

- (i) WP.No.23291 of 2006 praying for a direction to the Union of India to make the Loss of Ecology Authority as a permanent body, is dismissed.
- (ii) M.P.No.11 of 2015 in WP.No.39722 of 2005 filed by the Union of India is allowed and the order dated 3.12.2014 passed in W.P.No.39722 of 2005 shall stand modified to the effect mentioned in the following clauses.
- (iii) All the claims pending investigation/enquiry on the file of the LoEA shall stand transferred to the Chennai Bench of the National Green Tribunal.
- (iv) The period of limitation prescribed under Section 14(3) and Section 15(3) or Section 16 of the National Green Tribunal Act, 2010, will not apply to the claims so transferred from the LoEA, in view of the fact that those claims were entertained by an Authority which had jurisdiction to entertain them, at the time when they were taken on file and also in view of the fact that the period of limitation prescribed in the National Green Tribunal Act could not be made applicable to cases transferred from another Authority.
- (v) The prescription regarding court fee contained in Rule 12 of the National Green Tribunal

(Practices and Procedure) Rules 2011 shall not apply to the claims transferred from the LoEA, since they are transferred under orders of Court, after the abolition of an Authority.

(vi) In view of the huge volume of claims now getting transferred to the National Green Tribunal, the Central Government shall constitute, at least one additional Bench at Chennai, as undertaken by the learned Additional Solicitor General, for the present. The Central Government shall examine the constitution of another additional Bench, within six months, so that the Tribunal does not crush under the weight of such a huge volume.

(vii) The Union of India shall consider rehabilitating the employees of the Loss of Ecology Authority whose particulars are furnished in paragraph 79 above by absorbing them into the National Green Tribunal.

(viii) WP.No.13433 of 1996 is a writ petition transferred from the Supreme Court about 20 years ago. With numerous applications for impleading already allowed, the number of respondents in the said writ petition has swelled to more than 1000 as on date. We do not know whether any useful purpose will be served in keeping the said writ petition alive. However, Mr. Sriram Panchu, learned senior counsel who had earlier been appointed as Amicus Curiae in this writ petition requested us to keep the writ petition alive. But, we are of the considered view that after the constitution of the National Green Tribunal, there is no point in keeping the said writ petition pending before this Court. Therefore, we direct WP.No.13433 of 1996 to be transferred to the file of the National Green Tribunal.

There will be no order as to costs."

10. Learned Additional Solicitor General, on instructions, has informed us that owing to vacancies, the requirement in clause vi herein above reproduced could not be met and that efforts towards compliance are on. While we are able to appreciate the position that members of petitioners' association fall between two stools, we, in the light of the order of this Court in WP No.25401 of 2015 dated 07.09.2016, would not entertain the present writ petition.

10. This writ petition shall stand dismissed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

kmi

To

- 1.The Principal Secretary,
Government of Tamil Nadu,
Fort St. George, Chennai.
- 2.The District Collector,
Tiruppur District, Tiruppur.
- 3.The District Collector,
Karur District, Karur.
- 4.The District Collector,
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Erode Taluk, Erode District.
9. The Tamil Nadu Pollution Control Board,
Rep. by its Member Secretary,
G.S.T.Road, Guindy,
Chennai - 600 025.

+1cc to the Government Pleader, S.R.No. 90224
+1cc to Mr.M.L.RAMESH Advocate, S.R.No. 90228
+1cc to Mr.RITA CHANDRASEKAR Advocate, S.R.No. 90454

W.P.No.32146 of 2017

TR(20/12/2017)