

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.28195 of 2004

Subbiah Gowder

... Petitioner

vs.

1. The State of Tamil Nadu,
rep. By the Secretary,
Public Works Department,
Fort St. George, Chennai - 9.
 2. The Chief Engineer (Irrigation),
Public Works Department,
Bhavani Sagar Circle,
Bhavani Sagar,
Coimbatore District.
 3. The Junior Engineer (Irrigation),
Public Works Department,
Bhavani Sagar Circle,
Bhavani Sagar,
Coimbatore District.
- Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records of the 1st respondent in his proceedings vide G.O.No.499, dated 03.09.2004, Public Works (Q1) Department and quash the same and consequently forbear the respondents from obstructing the petitioner from drawing water from Bhavani River by means of 5HP pump set for irrigation of mulberry plants by sprinkler method.

For Petitioner : M/s.Anand, Abdul & Vinodh Associates

For Respondents : Mr.Akhil Akbar Ali,
Government Advocate

O R D E R

The petitioner has come up with this Writ Petition seeking to quash the proceedings of the 1st respondent vide G.O.No.499, dated 03.09.2004, Public Works (Q1) Department and consequently forbear the respondents from obstructing him from drawing water from Bhavani River by means of 5HP pump set for irrigation of mulberry plants by sprinkler method.

2. According to the petitioner, he is a small farmer in Sirumugai Village and his major cultivation is Mulberry plants. He, along with 12 other farmers represented to the 1st respondent on 29.11.1982 for permission to draw water from Bhavani river by means of 5HP pump set to irrigate Mulberry plants raised in their lands by adopting Sprinkler method of irrigation and the 1st respondent, vide G.O.Ms.No.1879, dated 29.10.1985 granted such permission to the petitioner and 12 others. Since then, the petitioner and 12 others have been carrying on cultivation of Mulberry plants by adopting Sprinkler irrigation method.

3. In such circumstances, the 3rd respondent, in the year 1990, withdrew the facility extended to the petitioner and 12 others by virtue of the aforesaid Government Order and the petitioner along with 12 others approached this Court by way of a Writ Petition in W.P.No.16245 of 1990 and this Court, after granting an interim order, finally allowed the said Writ Petition on 13.10.1998. Pursuant thereto, the petitioner and 12 others were carrying on cultivation of Mulberry plants by adopting Sprinkler Irrigation method by drawing water from Bhavani river through 5 HP pump set. While so, to their shock and surprise, the petitioner and 12 others received a notice dated 18.07.2003 from the 1st respondent, contemplating that they were not cultivating Mulberry plants and not adopting Sprinkler irrigation method and hence, required them to show cause within 15 days as to why the facility granted under the aforesaid Government Order should not be withdrawn. The petitioner submitted his explanation to the 1st respondent on 18.12.2003 by way of Registered Post and when the petitioner approached this Court in W.P.No.39271 of 2003, this Court directed the 1st respondent to consider and pass orders on the petitioner's representation within a period of six weeks from the date of receipt of a copy of the order.

4. In pursuance thereof, the 1st respondent, without giving any opportunity of hearing to the petitioner and without even conducting an inspection, suo motu withdrew the facility extended to him by way of the aforesaid Government Order and issued a Government Order on 03.09.2004 vide G.O.No.499, Public Works (Q1) Department and is taking steps to restrain the petitioner from drawing water from Bhavani River. Challenging the said Government Order, the petitioner, having no other alternative, has come up with the present Writ Petition.

5. Learned counsel for the petitioner contended that the 1st respondent ought to have conducted an inspection as to whether the petitioner is carrying on cultivation of Mulberry plants and the action of the 1st respondent in issuing the impugned Government Order without carrying on any inspection is in violation of the principles of natural justice.

6. In reply, learned Government Advocate appearing for the respondents submitted that inspection was conducted, but it is silent in the Government Order impugned in this Writ Petition and in the Written instructions produced by him, it is seen that inspection cannot be taken into account. Hence, the submissions of the learned Government Advocate are rejected.

7. Heard the learned counsel on either side and perused the material documents available on record.

8. The fact remains that the petitioner has been initially permitted to draw water from Bhavani River by means of 5HP pump set for irrigation of mulberry plants by sprinkler method. Whenever, permission to draw water from Bhavani River was denied to him, the petitioner approached this Court for extension of the said relief. The grievance of the petitioner is that no inspection was conducted to ascertain whether he was cultivating Mulberry plants or not. Though according to the respondents, they have carried out inspection, there is no proof to that effect. In such view of the matter, this Court feels it appropriate to interfere with the impugned order passed by the 1st respondent only on the ground that no opportunity of hearing was given to the petitioner.

9. In view of the above, the impugned order dated 03.09.2004 passed by the 1st respondent vide proceedings in G.O.No.499 Public Works (Q1) Department, is quashed. However, it is open to the respondents to go and inspect the petitioner's agricultural land and ascertain as to whether cultivation of any other crops is being done by the petitioner apart from the irrigation of mulberry plants. It is also open to the respondents to take photographs/video of the agricultural land in question, to substantiate their case and if it is found that irrigation of other crops is being carried out by the petitioner in his land, it is open to them to pass appropriate orders in accordance with law.

This Writ Petition is allowed with the above observation. No costs. Consequently, connected W.P.M.P.Nos.34231 and 34232 of 2004 are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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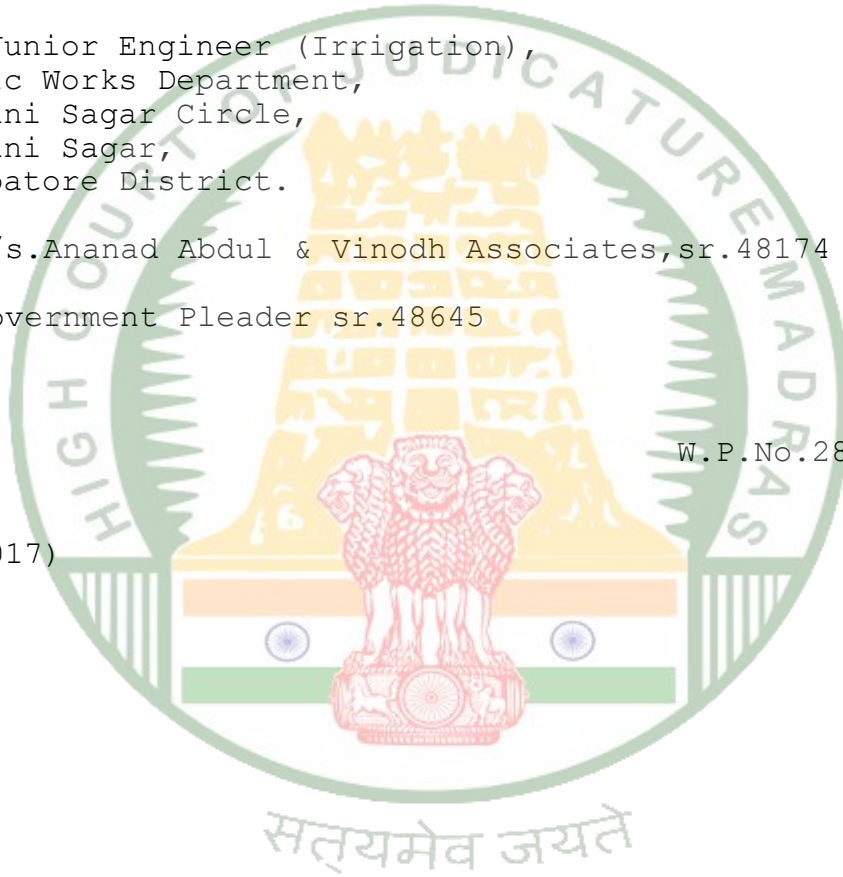
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+1cc to M/s.Ananad Abdul & Vinodh Associates,sr.48174

+1cc to Government Pleader sr.48645

W.P.No.28195 of 2004

vgII(co)
ss(29/8/2017)



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