



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

WEB COPY

Crl.R.C.(MD) Nos.182 and 183 of 2017

B.Joseph Durai Anand ... Petitioner in Crl.RC(MD)No.182/17

A.Alangaram ... Petitioner in Crl.RC(MD)No.183/17

Vs.

1.The Sub Divisional Magistrate and Sub Collector,
Sub Collector Office,
Beach Road,
Thoothukudi - 1.

2.C.Thanushkodi
(R2 impleaded vide order
dated 18.04.2017 in
Crl.M.P(MD)No.3315 of 2017) ... Respondents in both RCs.

Petitions filed under Sections 397(1) read with 401 Cr.P.C,
against the orders passed in ROC.No.B1/2674/2016-(1) and
ROC.No.B1/2674/2016-(6) dated 21.12.2016 by the Sub Divisional
Magistrate and Sub Collector, Thoothukudi.

For Petitioners	: Mr.G.Prabhu Rajadurai (both cases)
For R - 1	: Mr.C.Mayilvahana Rajendran Additional Public Prosecutor
For R - 2	: Mr.D.Srinivasaraghavan (both cases)

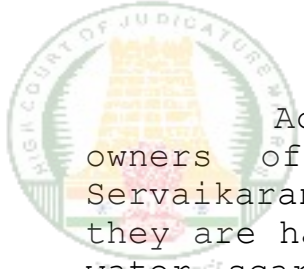
Orders reserved on	: 05.07.2017
Orders pronounced on	: 11.07.2017

COMMON ORDER

Challenging the orders passed by the first respondent,
Sub Divisional Magistrate and Sub Collector, Thoothukudi under
Section 142(1) Cr.P.C., the present Criminal Revision Cases have
been filed.

2.The brief facts leading to the filing of the Revision

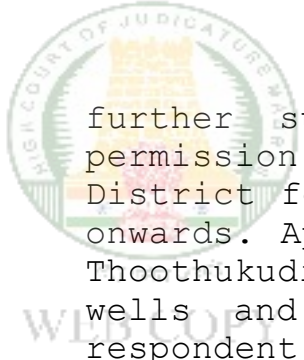
Cases are as follows:-
<https://hccases.courtserv.in/cases/>



According to the petitioners, the petitioners are the owners of the land in S.Nos.295/2 and 295/4; S.No.284/2B2 Servaikaranmadam Village, Thoothukudi District respectively, and they are having bore-wells in the above said lands. Since there is water scarcity in Thoothukudi area, at the request of general public, the petitioners are permitting the public to draw water from the said bore-wells through lorries for distribution to the general public and also to some educational institutions. Earlier, the first respondent has initiated preliminary proceedings under Section 133 Cr.P.C., against the petitioners for drawing water from the bore-wells alleging that they are drawing water for commercial purpose and the general public has also complained of the drawal of water indiscriminately which caused depletion of ground water, since the above orders have been passed without following the procedure contemplated under Section 133 Cr.P.C., the petitioners filed Crl.R.C.Nos.406 and 407 of 2015 on the file of this Court, and this Court by an order dated 16.10.2015 allowed the Revision Petitions and remanded the matter back to the respondent with a direction to follow the procedure contemplated under Section 138 Cr.P.C., Thereafter, the first respondent has issued another order under Section 133 Cr.P.C., dated 09.12.2016 and 01.11.2016, directing the petitioners to appear for enquiry and also to raise their objections. Pending enquiry, by an order dated 21.12.2016, the first respondent passed orders of interim injunction under Section 142(1) Cr.P.C., directing the petitioners to stop withdrawal of ground water for commercial purpose. Challenging the said orders, the present Criminal Revision Cases have been filed.

3.Heard Mr.G.Prabhu Rajadurai, learned counsel for the petitioners and Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor for the first respondent and Mr.D.Srinivasaraghavan, learned counsel for the second respondent.

4.The learned counsel appearing for the petitioners would submit that the impugned orders have been passed without any scientific research or by any expert opinion, that drawing water will lead to imminent danger and the orders have been passed mechanically based on the local inspection conducted by the first respondent. Apart from that, there is no water scarcity as mentioned by the first respondent, as per G.O.(Ms)No.142, Public Works (R2) Department dated 23.07.2014, drawal and transportation of ground water for domestic and drinking purpose is permitted and the petitioners are taking water only for domestic purpose, that cannot be construed as commercial purpose and as per G.O.(Ms) No.113 Public Works (R2) Department, dated 09.06.2016, the petitioners' village comes under the safe zone for water availability. Hence, taking water from the bore-wells of the petitioners will not cause any danger to the ground water, therefore, the impugned orders passed by the first respondent is illegal and without application of mind. The learned counsel would



further submit that the first respondent has already given permission to 25 packaged water companies within Thoothukudi District for drawing water from the bore-wells from the year 2014 onwards. Apart from that, as per Government report, in and around Thoothukudi District, some other persons are also having bore-wells and supplying water for commercial purpose. The first respondent did not take any action against those people and the petitioners have been singled out and discriminated, action has been taken against them. Hence, the impugned orders are punitive in nature and on that ground also the impugned orders are liable to be set aside.

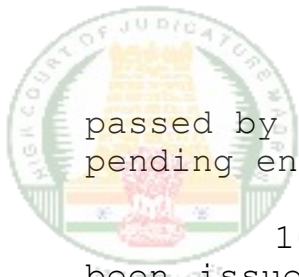
5.The learned Additional Public Prosecutor appearing for the first respondent would submit that the impugned orders have been passed under Section 142(1) Cr.P.C., based on the local investigation conducted by the respondent under Section 139(a) Cr.P.C. Since there are increasing agitations by the public to stop illegal drawal of ground water for commercial purpose and also to prevent imminent danger of depletion of ground water, pending enquiry, the first respondent has passed the impugned orders, therefore, there is no illegality in the orders passed by the first respondent and the same do not require any interference.

6.I have considered the rival submissions made on either side and also perused the records carefully.

7.The impugned orders have been passed under Section 142 (1) Cr.P.C., as an interim measure, pending enquiry under Section 133 Cr.P.C. Section 142(1) Cr.P.C. empowers the Executive Magistrate to pass an order of injunction, pending enquiry, if the Executive Magistrate is satisfied that there is imminent danger or injury to public health. Apart from that, as per Section 139 Cr.P.C., the Executive Magistrate also have power to make a local investigation for the purpose of enquiry under Sections 137 or 138 Cr.P.C.

8.In the instant case, enquiry under Section 133 Cr.P.C., is pending. The Executive Magistrate based on the local inspection has come to the conclusion that rainfall in Thoothukudi District is lower than the average expected amount and there is an increasing demand from the public to stop the illegal drawal of ground water which causes depletion of ground water and in order to prevent the imminent danger, he passed the interim order under Section 142(1) Cr.P.C.

9.From the perusal of the impugned order, it is seen that the Executive Magistrate assigned valid reasons and on application of mind passed the impugned orders. Apart from that before passing the order, the Executive Magistrate has also considered the objections filed by the petitioners and conducted a local inspection. Hence, I find no illegality or infirmity in the orders



passed by the first respondent, which are only an interim measure, pending enquiry.

10. Since already notice under Section 133 Cr.P.C. has been issued and an enquiry is pending under Section 138 Cr.P.C., the first respondent/Executive Magistrate is directed to conclude the enquiry in an expeditious manner, after giving proper opportunity to the petitioners and pass orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

11. Before parting with this order, as contended by the learned counsel appearing for the petitioners, if any unauthorised bore-wells are drawing water for commercial purpose, the first respondent is directed to take immediate action as per law.

12. With the above direction, these Criminal Revision Cases are disposed of.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

1. The Sub Divisional Magistrate and Sub Collector,
Sub Collector Office,
Beach Road,
Thoothukudi - 1.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2 ccS to Mr.G.Prabhu Rajadurai, Advocate, SR.No.64755

+One cc to Mr.D.Srinivasa Raghavan, Advocate, SR.No.63619

mj
RL/6C/4P/SKN/RSK/SAR2/13/7/2017