

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.13233 of 2005

and

W.P.M.P.No.14472 of 2005

Chinnaswamy

..Petitioner

vs

1. The State of Tamilnadu,
rep.by its Secretary,
Public Works Department,
[Irrigation Department]
Fort St.George,
Chennai - 600 009.
2. The District Collector
Erode District, Erode.
3. The Superintending Engineer,
Parambikulam Aliar Project
Pollachi, Coimbatore District.
4. The Junior Engineer
Parambikulam Aliar Project
Palladam Camp
Coimbatore District.
5. The District Collector
Thiruppur District
Thiruppur.

(R5-Impleaded as per order dated 21.8.12
in W.P.M.P.No.235/15 in W.P.No.13233/05)

..Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Mandamus,
directing the Respondents to notify the existence of Sluice No.2
situate in S.No.1143 of Kasilingampalayam Azhiar Tank.

For Petitioner
For Respondents

: Mr.T.S.Baskaran
: M/s.R.Janaki
Additional Government Pleader

O R D E R

The relief sought for in the present writ petition is for a direction to direct the respondents to notify the existence of Sluice No.2 situated in S.No.1143 of Kasilingampalayam Azhiar Tank.

2.The learned counsel for the writ petitioner states that the petitioner is the owner of the property in S.No.932 of Kasilingampalayam, Dharmapuri Taluk, measuring an extent of 13.61 Acres in the Village of Nandavanampalayam now Kasilingampalayam Village in Dharmapuri Taluk. The source of irrigation for the property belongs to the writ petitioner is the Parambikulam Aaliyar Canal Project, which is situate far away from the East of the property belongs to the writ petitioner.

3.The grievances of the writ petitioner is that on account of not notifying the Sluice No.2, the petitioner was unable to get water for irrigation purposes. The petitioner under those circumstances, filed a Civil Suit in O.S.No.83/1992 and a judgment and decree was passed in favour of the writ petitioner on 30.03.1993.

4.Relying on the said judgment and decree passed in a Civil Suit, the learned counsel for the writ petitioner states that the respondents are bound to notify the existence of Sluice No.2, enabling the writ petitioner to utilize the water for irrigation purposes.

5.The learned Additional Government Pleader appearing on behalf of the respondents disputed the contentions raised on behalf of the petitioner by stating that the petitioner did not allow the water to go to the lands belongs to the other farmers, hence, the problems aroused, between the petitioner and all other Ayacutdars of S.F.No.1143. During the last irrigation period, the problems between the above farmers aroused and a petition had been filed before the Police Station, Kundadam by the Department.

6.It is further stated in the counter affidavit filed by the Superintendent Engineer, Water Resources Organization, Pollachi, that the petitioner is unlawfully obstructing the free flow of water for the adjoining agricultural lands as if he is the only person entitled to enjoy the natural sources as per the decree and judgment passed in O.S.No.83/92 of Dharapuram Munsif Court. At no point of time, the water flowing to the petitioner was obstructed by the respondent. Due to the rival quarrel between the petitioner and the adjacent land owner, the water is being obstructed without the knowledge of the respondent. The

respondent issued memo's to both the parties, not to obstruct the free flow of water to each other and utilize the same for agricultural purposes equally. A Police complaint was also preferred against both the parties and therefore, the present writ petition is liable to be dismissed.

7.This Court is of an opinion that free flow of water in the canal can never be obstructed by any individual person. The Aaliyar Canal project is meant for the usage of farmers of the entire locality. The free flow of water to all the agricultural lands must be provided equally and the authorities competent are bound to regulate the free flow of water to all the agricultural lands in accordance with the schemes and as per the procedures as contemplated. It is a constitutional directive that the "State" must provide equal opportunity for irrigation amongst all the farmers and there cannot be any discrimination in respect of providing water for agricultural purposes.

8.There is an allegation against the writ petitioner raised by the Superintending Engineer, Water Resources Department that the petitioner has obstructed water to other agricultural lands situated adjacent to his lands. Such an attitude or conduct of the writ petitioner can never be accepted and if at all, there is any obstruction by the writ petitioner, suitable legal actions are to be initiated against the writ petitioner. Equally, the petitioner is also entitled to use the water for irrigation purposes. Thus, the respondents must ensure equal distribution of water for irrigation purposes to all the farmers, who all are doing agricultural activities in that locality.

9.The relief as such sought for in the present writ petition is to notify the existence Sluice No.2 situated at S.No.1143 of Kasilingampalayam Azhiar Tank. The issuance of notification is to be done in accordance with the procedures as contemplated under the scheme or rules. However, the authorities competent must ensure equal distribution of water supply to all the agricultural lands in that locality.

10.This Court is of an opinion that the writ petitioner cannot take any undue advantage of the judgment and decree passed in O.S.No.83/1992. The Civil suits had been filed between the parties and the Civil Court also passed a judgment, stating that the writ petitioner is entitled to use the water for irrigation purposes. Such a right declared by the Civil Court will not confer any absolute right on the writ petitioner to utilize the water for himself and obstruct the flow of water to other agricultural lands. Thus, the Civil Court decree has got a restricted meaning and it is to be utilized for the purpose of providing equal distribution of water both to the petitioner as

well as to the other farmers, who all are cultivating their respective lands in that locality. Thus, the petitioner at no circumstances, can take undue advantage of the Civil Court decree passed by the District Munsiff Court, Dharapuram. The authorities, by relying on the Civil Court decree cannot restrict the water to Ayacutdars, who all are using the water for irrigation purposes in that locality.

11.This being the scope of the judgment and decree passed by the Civil Court in respect of the usage of water for irrigation purposes, this Court is of an opinion that the relief as such sought for in the present writ petition deserves no merit consideration. However, it is made clear the respondents are bound to provide equal distribution of water to all the Ayacutdars in that locality for the purpose of cultivating their respective lands without causing any discrimination and implement the scheme in its terms and conditions and without any violation.

12.With these observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

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To

Sub Assistant Registrar

1. The Secretary, Public Works Department,
[Irrigation Department]
Fort St.George, Chennai - 600 009.
2. The District Collector, Erode District, Erode.
3. The Superintending Engineer,
Parambikulam Aliar Project
Pollachi, Coimbatore District.
4. The Junior Engineer
Parambikulam Aliar Project
Palladam Camp, Coimbatore District.
5. The District Collector
Thiruppur District, Thiruppur.

+1 cc to Mr.T.S.Baskaran, Advocate, S.R.No.89134

+1 cc to the Government Pleader, S.R.No.89892

RK(CO)

SSM(21/01/2019)

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