

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.8411 of 2018

and WP Nos.25276 to 25281 of 2018

and Connected Miscellaneous Petitions

S. Subramaniam ... Petitioner in WP 8411/18
P. Vijayan ... Petitioner in WP 25276/18
S. Jagannathan ... Petitioner in WP 25277/18
R. Thangavel ... Petitioner in WP 25278/18
R. Boopathi ... Petitioner in WP 25279/18
K. Palaniappan ... Petitioner in WP 25280/18
A.Duraisamy ... Petitioner in WP 25281/18

Vs.

1. The District Collector,
Namakkal District,
Namakkal.
2. The Assistant Executive Engineer
PWD & WRO
Sarabanga Basin Division,
Rasipuram, Namakkal District.
3. The Assistant Engineer,
PWD & WRO
Irrigation Section -I, Tiruchengode,
Sarabanga Basin Division,
Rasipuram, Namakkal District.

4. Annapoorani

... Respondents 1 to 4 in WP 8411/18

1. The District Collector,
Namakkal District,
Namakkal.
2. The Assistant Engineer,
PWD & WRO,
Irrigation Section -1, Trichengode,
Sarabanga Basin Division,
Rasipuram Town and Taluk,
Namakkal District.
3. Maruthamuthu ... Respondents 1 to 3 in WP
25276, 25277, 25278, 25279,
25280 and 25281/18

Writ Petition Prayers:- Petitions filed under Article 226 of the Constitution of India praying for

(i) issuance of a Writ of Mandamus, for bearing the 3rd respondent from initiating proceedings and thereby preventing the petitioner to draw water from Paruthipalli Amithasaharam Lake to the petitioner agricultural land in S.No.114/2A situated at Kottapalayam Village on the basis of 3rd respondent letter No. /D-19/2018/AE (TK-1)/dated 26.2.2018, by considering the petitioner's representation dated 03.02.2018. (in WP 8411/2018)

(ii) Writ of Certiorari calling for the records pertaining to the 2nd respondent's letter No.....F-9/2018.A.E.(T.Code-1)/dated 24.08.2018 and quash the same. (in WP 25276 to 25281/18)

For Petitioner : Mr.R.Marudhachalamurthy

For Respondents: Mr.J.Pothiraj,
Special Govt. Pleader
for RR 1 to 3 in WP 8411/18
for RR 1 & 2 in WP 25276 to 25281/18

COMMON ORDER

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The prayer in the Writ Petitions are as follows:

(i) issuance of a Writ of Mandamus, forbearing the 3rd respondent from initiating proceedings and thereby preventing the petitioner to draw water from Paruthipalli Amithasaharam Lake

to the petitioners' agricultural land in S.No.114/2A situated at Kottapalayam Village on the basis of the 3rd respondent's letter No. /D-19/2018/AE (TK-1)/dated 26.2.2018, by considering the petitioner's representation dated 03.02.2008. (in WP 8411/2018)

(ii) Writ of Certiorari calling for the records pertaining to the 2nd respondent's letter No.....F-9/2018.A.E.(T.Code-1)/dated 24.08.2018 and quash the same. (in WP 25276 to 25281/18)

2. The challenge in these Writ Petitions is to the notice dated 24.08.2018, issued by the 2nd respondent requiring the petitioners in all these writ petitions to remove the pipe lines laid by them, in the lake called Paruthipalli Amirthasaharam Lake, to take water to the private wells situate in their lands for the purposes of irrigation. The petitioners who claim to be the Ayacutdars of the Paruthipalli Amirthasaharam Lake, were irrigating their lands by using manual lift irrigation system. However, they discontinued the same and laid pipelines on the bed of the lake, to draw water to the wells situate in their private lands and started irrigating their lands using Electric Motor Pump Sets. On a complaint to the Authority that the petitioners are selling water, the Authority had issued the impugned notices directing the petitioners to remove the pipe lines.

3. Aggrieved, the petitioners have come before this Court seeking a Writ of Certiorari to quash the impugned notice.

4. A counter affidavit has also been filed by the 2nd respondent.

5. We have heard Mr.R.Marudhachalamurthy, learned counsel appearing for the petitioners in all these writ petitions and Mr.J.Pothiraj, learned Special Government Pleader, appearing for the respondents.

6. Mr.R.Marudhachalamurthy, learned counsel appearing for the petitioners would contend that their lands are Ayacut lands coming within the Ayacut area of said Paruthipalli Amirthasaharam Lake and therefore they are entitled to draw water from the said lake for irrigation purposes. The Claim made in the impugned order that the petitioners are commercially exploiting the said water source and they are selling water is stoutly denied by the petitioners.

7. Contending contra, Mr.J.Pothiraj, learned Special Government Pleader would submit that the petitioners are not Ayacutdars of Paruthipalli Amirthasaharam Lake, according to him, the petitioners are Ayacutdars of another Lake called Kottapalayam Lake, which is situate in the village called Kottapalayam.

8. In the counter affidavit filed by the 2nd respondent, it is stated that the Paruthipalli Amirthasaharam Lake is maintained by the Irrigation Section of the Public Works Department and the Water Resources Organisation, Tiruchengodde and the same receives surplus water of Kottapalayam Lake and the Palamedu lake through Canals. The said lake has seven sluices and two surplus weirs. The registered Ayacut on this lake is about 224.70 hectares situate downstream side of the said Lake. According to the Assistant Engineer, Public Works Department, the petitioners are not registered Ayacutdars of the Paruthipalli Amirthasaharam Lake and as such, they do not have right of irrigation, leave alone the right to lay pipelines on the bed of the Lake to take water to the private Wells situate in their lands.

9. Mr.J.Pothiraj, learned Special Government Pleader would further submit that even assuming that the petitioners are Ayacutdars of the Paruthipalli Amirthasagaram Lake, they are not entitled to lay a pipeline on the bed of the lake in order to take water to their private wells.

10. In view of the controversy, we had required the Special Government Pleader to produce the A-Registers of both Kottapalayam as well as the Paruthipalli Village. Accordingly, the learned Special Government Pleader has produced the A-Registers of both the villages. The petitioners' lands are situate in Kottapalayam Village and except Survey Nos.119, 120/2 and 126/3 all the other lands are classified as dry lands which would indicate that these lands are not registered as Ayacut lands of any recognized source of irrigation.

11. A perusal of the A-Register shows that the lands in Kottapalayam Village have two registered sources of irrigation namely, Konnyatru Goundan Lake and Paruthipalli Amirthasaharam Lake. The Ayacut area of the Konnyatru Goundan Lake is 92.25.0 hectares and the Ayacut area of Paruthipalli Amirthasaharam Lake

in Kottapalayam Village is only 10.36.0 hectares. As regards Paruthipalli Village, it has four recognized sources of irrigation, namely, they are Amirthasaharam Village, lift irrigation from Thirumanimutharu, Thirumanimutharu Dam Channel and Lakshmana Gounder Lake. The total area of the Ayacut is 249.43.0 hectares. The available Revenue records create a considerable doubt as to whether the petitioners are in fact Ayacutdars of Paruthipalli Amirthasaharam Lake as claimed by them. We however, do not pronounce on that question as the dispute in this Writ Petition does not depend on the resolution of the said controversy.

12. The only question that is to be decided is as to whether a person has a right, as Ayacutdar or otherwise, to lay pipelines in the registered source of irrigation to draw water to the Well situate in their lands. The only possible answer, in our considered opinion, is a simple "no". Even an Ayacutdar cannot claim a right to lay a pipeline from the source of irrigation and draw water. Fundamentally, an Ayacut is an area of land to which the water flows downstream in the natural flow of the River or Channel. In the case of a lake, Ayacutdars have right to the free flow of water through recognized source of irrigation. They cannot create an artificial method to irrigate their lands. It is an admitted case of the petitioners that they have laid pipelines on the bed of the lake to draw water to their private Wells and use Electric Motor Pump sets to irrigate their lands. This action of the petitioners cannot amount to a legal means of irrigation.

13. Ayacutdars have, no doubt, a right to have undiminished supply of water, subject to availability. He/she cannot use artificial means to pump water illegally and store it in the private wells.

14. The Village Administrative Officer of Kottapalayam Village has also certified that some of the Writ Petitioners are registered Ayacutdars of Kannaiyattru Goundan Lake and not the Paruthipalli Amirthasaharam Lake. We therefore see no reason to interfere with the action taken by the respondents in requiring the petitioners to remove the pipelines fixed by them on the bed of the said lakes.

15. For the foregoing reasons the Writ Petitions fail and they are dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

16. It is open to the petitioners to approach the respondents seeking permission to irrigate their lands in any other natural mode of irrigation and if the petitioners so apply seeking permission, the respondents shall consider the same without being influenced by any of our observation made supra.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

jv

To

1. The District Collector,
Namakkal District,
Namakkal.
2. The Assistant Executive Engineer
PWD & WRO
Sarabanga Basin Division,
Rasipuram, Namakkal District.
3. The Assistant Engineer,
PWD & WRO
Irrigation Section -I, Tiruchengode,
Sarabanga Basin Division,
Rasipuram, Namakkal District.

+7cc to Mr.R.Marudhachalamurthy, Advocate Sr.74930
+1cc to the Government Pleader Sr.75303

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and WP Nos.25276 to 25281 of 2018
and Connected Miscellaneous Petitions

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srg 21/12/2018