

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P.No.11382 of 2017

K.Maniasaru

... Petitioner

vs.

1. The District Collector,
Office of the Collectorate,
Thiruppur District.
2. The District Revenue Officer,
Thiruppur District,
Thiruppur.
3. The Revenue Divisional Officer,
Udumalpet,
Thiruppur District.
4. The Tahsildar,
Udumalpet Taluk,
Udumalpet,
Thiruppur District.
5. The Superintendent of Police,
Thiruppur District,
Thiruppur.
6. The Inspector of Police,
Udumalpet Police Station,
Udumalpet,
Thiruppur District.
7. T.Pachaiyappan ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the entire records relating to the impugned order of the 2nd Respondent in Ni.Mu.11632/2015/A1, dated 27.08.2015 and quash the same.

For Petitioner : A.Saranraj
For Respondents 1 to 6 : Mr.S.N.Parthasarathi,
Government Advocate
For 7th Respondent : Mr.C.Prakasam

O R D E R

Petitioner has come up with this Writ Petition seeking to quash the impugned order dated 27.08.2015 passed by the 2nd Respondent.

2. It is stated by the Petitioner that he is an Agriculturist eking out his livelihood from the income derived from the agricultural lands in Kurincherry Village. According to him, there are no special irrigation facilities or PAP facilities in Kurincherry, Eripalayam, Chinnaveerampatty, Pookulam, Ponneri and Sundakkampalayam Villages till date and the rain water running through Raja Vaikkal (Upparu Canal) and the water of seven Ponds situated in the said Villages are the only water source for the Wells and water bodies situated in and around the locality and it is the only source of water for thousands of small farmers in their Village and in the neighboring Villages, for the past 100 years.

3. While so, some influential persons, with the connivance of Respondents 1 to 4 took steps to take the ground water in the said Villages through Pipeline to their lands situated far away. In this manner, the 7th Respondent herein, has applied to the 2nd Respondent on 23.01.2015, seeking permission to take water from the lands in Chinnaveerampatty, which were purchased by him in 2014 to his lands situated at Kottamangalam Village. It is the case of the Petitioner that the lands in Chinnaveerampatty were purchased by the 7th Respondent only for the purpose of extracting water from the said Village to his lands situated in Kottamangalam Village, which is situated far away from the Petitioner's Village.

4. It is the contention of the Petitioner that though there were objections from the general public in this regard, without even considering the same, the official Respondents have permitted the 7th Respondent to take water for irrigation to his own lands by laying underground pipelines through these Villages, vide the impugned order dated 27.08.2015. Subsequently, the Local Body of the Petitioner's Village Panchayat passed a Resolution dated 15.08.2015 resolving to cancel the 'No Objection Certificate' issued to the 7th Respondent and intimated the same to Respondents 1 to 4 herein.

According to the Petitioner, if the impugned order is given effect to, it may cause damage to the Wells and the Check Dams situated in the Village, thereby, the ground water in the above said Villages will come down, causing severe water shortage.

5. In the counter affidavit filed by Respondents 1 to 4, it is stated that the 7th Respondent herein purchased the lands in S.F.No.347/A2 of Chinnaveerampatti Village along with the Well during the year 2014 and he applied for permission to take water from the Well situated in the said Survey Number to the lands in S.F.No.350/1, 346/1 and 351/1 of Kottamangalam Village, for agricultural purpose. It is stated that there was no water scarcity for the purpose of irrigation in both the Villages and there was no objection to the 7th Respondent by the general public of Kurincheri, Chinnaveerampatti, Pukkulam, Ponneri, Kottamangalam and Vadugapalayam Villages. 'A' notices were published by the Revenue Inspectors of Udumalpet and Gudimangalam Firka and signatures were obtained from the General Public by mentioning that they have no objection for laying pipeline from S.F.No.347/A2 of Chinnaveerampatti Village to S.F.No.350/1, 346/1 and 351/1 of Kottamangalam Village through the poramboke lands of Kurincheri, Chinnaveerampatti, Pukkulam, Ponneri, Kottamangalam and Vadugapalayam of Udumalpet Taluk, for agricultural purpose.

6. It is further stated in the counter affidavit that the local body has not cancelled the Resolution passed by them on 26.05.2015 and the Village people have not made any representation to Respondents 1 to 4. The Village people are aware that the 2nd Respondent issued pipeline order to the 7th Respondent to lay pipeline from the Well of S.F.No.347/A2, Chinnaveerampatti Village to the lands in S.F.No.350/1, 346/1 and 351/1 of Kottamangalam Village, Udumalpet Taluk. It is also stated that the 7th Respondent has not damaged the 6 Check Dams situated in the Villages, as stated by the Petitioner in the affidavit and moreover, the 7th Respondent's Pipeline does not touch the 6 Check Dams. Further, the 7th Respondent has not violated any conditions mentioned in the impugned communication dated 27.08.2015 and that the 2nd Respondent has issued Pipeline orders only after getting the proposal from the 3rd and 4th Respondents. The 7th Respondent has not erected any temporary Wall in S.F.No.347/A2 of Chinnaveerampatti Village and he is taking water from the Well situated in S.F.No.347/A2, Chinnaveerampatti Village to the lands in S.F.No.350/1, 346/1 and 351/1 of Kottamangalam Village, which do not affect the water level in the Wells of the Villages. Furthermore, the people in the said Villages have sufficient water for drinking and agriculture purposes.

7. The 7th Respondent herein has filed counter affidavit, wherein, he has stated that there was no objection from the people of Chinnaveerampatti Village, when the Respondents 2 to 4 called for objections from the public for giving permission to the 7th Respondent for taking water from one patta land to another patta land, whereas, the Petitioner alone, with an ulterior motive, has approached this Court with unclean hands. He has further stated that in the Resolution dated 15.08.2015 passed by the Village Panchayat, his name and his land were not specifically mentioned and there was no objection to the 7th Respondent for drawing water from his land in S.No.347/A2 of Chinnaveerampatti Village. According to the 7th Respondent, laying of Pipeline will not affect any wells in the said Village and that he never damaged any Temple Compound Wall as alleged by the Petitioner. He has also stated that he never violated any conditions imposed by the 2nd Respondent and never erected any temporary Wall for the Housing Plots. Hence, he prayed for dismissal of the present Writ Petition.

8. After hearing both sides, this Court, by an order dated 06.11.2017 appointed an Advocate Commissioner, who inspected the disputed site and submitted a Report before this Court on 13.12.2017 as regards diversion of water and objections from the Public. For better appreciation, relevant portion of the said Report is extracted hereunder:

"4. Whether Water is being Diverted :

a) As already noted, the Odai, which is a Government Poramboke land runs across the private patta properties. This is a natural formation, unregulated and unmarked for private ownership. The water is far from fresh or potable, consisting of sewerage and industrial effluents. There was an inspection carried out at the Local Sewerage Treatment Plant, which clearly demonstrated that the water was of no direct use of the owners of the private patta lands.

b) It is also an observable fact that the region is non-uniform in relation to water resources and there is an inequitable distribution of water resources in the aforementioned Villages. The water flows across the lands in question, and is filtered through pipes for cultivation.

c) The water resources are being carried through the pipelines into the S.Nos. belonging to the Respondent and this is a

Government approved project for agricultural activities. On the nature of the water, it was ascertained that as on the date of inspection, the water being carried through the Odai was far from being potable for public consumption. The pipelines have only tapped the groundwater which is available across the lands. Further, structures have also been erected for commercial sale of water near the private patta lands irrespective and apart from the pipelines project.

5. Public Objections to the Pipelines Project:

a) There was a considerable public uproar raised against this pipeline project as on the date of inspection. Many individuals, representing themselves as Ayacutdars and Patta holders, were beside themselves in passionate criticism and attempted to overawe the Advocate Commissioner in relation to their criticism of the Pipeline Project. Many representations, oral and written were sought to be shown by the alleged stakeholders and their concerns may be summarised as follows:

- The entire Pipelines Project needs to be abandoned for it is of harm to the Villages.
- The Pipelines Project would completely drain the groundwater of the private lands.
- The Pipelines Project is wholly unauthorised and no Governmental sanction was given.
- The Petitioner is a small and marginal farmer, whose livelihood is under question.
- The region is itself not water rich and comparatively dry throughout the year.
- Many coconut trees in the private lands have succumbed to the loss of the water.
- The Project is a complete encroachment on the patta lands belonging to private parties.
- The Project does not augur well for the region as a whole

- The Project seeks to tap the resources of the Odai for itself.
- The numerous Check Dams in various patta lands have fallen into disuse without water.
- There is likelihood that in future, many more such Projects can divest the region of water resources once and for all.
- No formal consent was ever sought from the relevant stakeholders for this Project.
- The Project runs through a community burial site, which can enrage communal and casteist passions and sentiments.
- The Electricity connection secured was meant for commercial purposes.
- The structure of a pipeline or well was not part of the original Plan, and it was allocated for a shop floor.
- The Pipeline's structures are not even visible in most places, and the claims of the Respondents are in doubt.

(b) In this regard, it is relevant to note that the Villages of Kottamangalam, Vadugapalayam, Pookulam, Ponneri, Chinnaveerampatti, Kurunjari, have conveyed their consent through resolutions passed in their respective Gram Sabhas/Panchayats variously dated around 24th April 2015, 17th April 2015, April 10th 2015, 10th April 2015, 10th April 2015 and 26th April 2015, respectively. It is an observation that the above objections find no mention in these resolutions, since they were ostensibly not raised therein. And that there is no evidence that these claims were made when this subject was discussed at the Gram Sabha. On the question of the Electricity used, a bill certified by the Electricity Department (TANGEDCO) as KU:SS: II for S.No.347/A2, dated 03.09.2016 shows that only a mere 5 H.P. Was used that too for agricultural purposes only. In fact, the Respondents have deployed Drip Irrigation for the utilisation of water in their fields, which can arguably, consume minimal water.

(c) It needs to be observed that there is a brewing Law and Order situation, which is far and beyond the questions referred and is completely only about the Pipelines Project. On this front, the Hon'ble High Court of Judicature at Madras vide its order dated 10.01.2017 in W.P.No.43587 of 2016 observes in its Para 5 that all necessary permissions/approvals were obtained from the appropriate authorities and that adequate police protection was necessary and thus was accordingly ordered."

9. However, the Writ Petitioner has filed objections to the said Report of the Advocate Commissioner appointed by this Court, wherein, it is stated that the Advocate Commissioner did not visit all the Check Dams across the line and he was reluctant to visit the entire route of the proposed pipeline. He has inspected only two Villages, viz. Kuruncheri Village and Chinnaveerambatti Village, covering about less than 3 kms out of a total extent of 10 kms and did not visit remaining four Villages for reasons best known to him. According to the Petitioner, the Report of the Advocate Commissioner based on the incomplete inspection is unscientific and without any basis.

10. It is further stated in the Objections filed by the Petitioner that the Advocate Commissioner did not insist on production of sketch/map showing the route of the proposed pipeline, without which, it is highly improbable to find out the grievances of the Petitioner and the Village people. Further, the PWD Channel and the Roads through which the proposed pipeline crosses, were not inspected by the Advocate Commissioner for reasons best known to him. It is also stated by the Petitioner that the entire inspection of the Advocate Commissioner was videographed, which evidently discloses that the Advocate Commissioner has not properly inspected the site as directed by this Court.

11. Heard the learned counsel on either side and perused the material documents available on record and also viewed the CD containing the video of the Inspection carried out by the Advocate Commissioner.

12. It is not in dispute that the 7th Respondent is the owner of the property in S.No.347/A2 in Chinnaveerambatti Village. Though it has been stated that the 7th Respondent is trying to draw water from his lands in S.No.347/A2 in Chinnaveerambatti Village to his lands in Kottamangalam Village by laying Pipeline, there is no evidence to show that the water

being drawn through Pipeline is utilized for commercial purpose. Not only the Advocate Commissioner, even the official Respondents 1 to 4 have categorically stated in their counter that there is no encroachment by the 7th Respondent and that he is making attempts to draw water only as per the norms prescribed by the authorities in the impugned order and that no Check Dams are going to be damaged, as Pipelines are not going to run through any private lands. The 7th Respondent also reiterated that Pipelines are not going to be taken through the Burial Ground and it is 5 feet away from the Compound Wall of the Burial Ground.

13. Furthermore, the objections raised by the Petitioner are only for name sake and certainly, it has no valid reasons. However, it has been stated that the 7th Respondent is trying to dig a temporary Well in S.No.347/A2 and extract water from the said Well to his lands in Kottamangalam Village. On a reading of the Advocate Commissioner's Report and after watching the videograph of the Inspection carried out by the Advocate Commissioner, it is very clear that neither a borewell has been put up nor a separate Well is digged in Survey No.347/A2 for the purpose of taking water from the lands in Chinnaveerambatti Village to the lands in Kottamangalam Village, both belonging to the 7th Respondent.

14. Though, according to the Petitioner, there are objections from the general public in permitting the 7th Respondent to draw water from S.No.347/A2, a reading of the impugned order makes it clear that there was an enquiry, however, there were no objections from the general public in this regard. According to the 7th Respondent, 90% of the Pipeline laying work is over and he has spent more than Rs.90 lakhs for laying of Pipeline. It is his grievance that when the work is about to be completed, the Writ Petitioner has come forward with objections.

15. The Advocate Commissioner's Report, at no stretch of imagination, can be said that it is in violation of the Warrant given by this Court. It is not necessary that an Advocate Commissioner should visit the entire stretch of 10 kms of land. To the extent of land, he has inspected, the Advocate Commissioner has submitted a Report and opined that there is no mention in the Resolution passed by the Village Panchayat as to the objections raised by the general public of the Villages in question. The Official Respondents and the Advocate Commissioner have given a uniform opinion as regards the issues in question.

16. It is seen from the impugned order and in the counter filed by the official Respondents that there is no objection from the general public as regards the permission granted to the

7th Respondent to draw water from his lands in S.No.347/A2 to his lands at Kottamangalam Village. The only objection raised in this regard, is by the Writ Petitioner. According to the official Respondents, permission was issued to the 7th Respondent to draw water by laying pipeline only after getting 'No Objection' from the general public of the Villages in question.

17. In view of the above, I feel that there is no error in the order impugned in this Writ Petition and the 7th Respondent is entitled to complete the Pipe laying work, which is in progress, with necessary Police protection of the jurisdictional Police. At this juncture, it is worth referring to the order dated 24.04.2017 passed by this Court in Crl.O.P.No.5845 of 2015, wherein it was held that the Petitioner therein was entitled to police protection as prayed for, in order to prevent unauthorized persons from their illegal attempt of trespass.

The Writ Petition stands dismissed with the above observation. No costs. Consequently, connected W.M.P.Nos.12334 and 12335 of 2017 are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The District Collector,
Office of the Collectorate,
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6. The Inspector of Police,
Udumalpet Police Station,
Udumalpet,
Thiruppur District.

+2ccs to Mr.C.Prakasam, Advocate, S.R.No.5385

+1cc to A.Saranraj, Advocate, S.R.No.5389

W.P.No.11382 of 2017

CS/28/02/18



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