

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2018

C O R A M

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

Writ Petition Nos.10819, 10820 & 11298 of 2018
& WMP.Nos.12760, 12761, 13197 & 19635 to 19637 of 2018

Writ Petition Nos.19126 to 19133 of 2018
& WMP.Nos.22501 to 22508 of 2018

Writ Petition Nos.19144 to 19151 of 2018
& WMP.Nos.22522 to 22536 of 2018

Writ Petition Nos.19152 to 19160 of 2018
& WMP.Nos.22537 to 22545 of 2018

Writ Petition Nos.19161 to 19168 of 2018
& WMP.Nos.22546 to 22553 of 2018

1. R.Somasundaram ... Petitioner in W.P.No.10819 of 2018
2. A.Karpagavalli ... Petitioner in W.P.No.10820 of 2018
3. R.S.R.Palanisamy ... Petitioner in W.P.No.11298 of 2018
4. D.V.Ravi@Ramalingam ... Petitioner in W.P.No.19126 of 2018
5. Shanmuga Sundaram ... Petitioner in W.P.No.19127 of 2018
6. D.Narayanasamy ... Petitioner in W.P.No.19128 of 2018
7. V.Gunasekaran ... Petitioner in W.P.No.19129 of 2018
8. Thilagar ... Petitioner in W.P.No.19130 of 2018
9. G.Lalitha ... Petitioner in W.P.No.19131 of 2018
10. R.Thirumoorthy ... Petitioner in W.P.No.19132 of 2018
11. Amirthavalli ... Petitioner in W.P.No.19133 of 2018
12. M.Singaravelu ... Petitioner in W.P.No.19144 of 2018
13. N.Krishnaveni ... Petitioner in W.P.No.19145 of 2018

14. G.Sivasubramaniam ... Petitioner in W.P.No.19146 of 2018
15. S.P.Chinnasami ... Petitioner in W.P.No.19147 of 2018
16. S.Narendra Agilan ... Petitioner in W.P.No.19148 of 2018
17. A.Shanmugavel ... Petitioner in W.P.No.19149 of 2018
18. S.Nataraj Gounder ... Petitioner in W.P.No.19150 of 2018
19. N.Muruganantham ... Petitioner in W.P.No.19151 of 2018
20. S.Rajendran ... Petitioner in W.P.No.19152 of 2018
21. N.Myilsamy Gounder ... Petitioner in W.P.No.19153 of 2018
22. P.Balamurugan ... Petitioner in W.P.No.19154 of 2018
23. K.Thirumoothi Gounder ... Petitioner in W.P.No.19155 of 2018
24. K.Dhandapani @ Palani Gounder ... Petitioner in W.P.No.19156 of 2018
25. L.Loganathan ... Petitioner in W.P.No.19157 of 2018
26. T.S.Rajendran ... Petitioner in W.P.No.19158 of 2018
27. K.Ramya Devi ... Petitioner in W.P.No.19159 of 2018
28. A.Angammal ... Petitioner in W.P.No.19160 of 2018
29. Kanagaraj ... Petitioner in W.P.No.19161 of 2018
30. T.Mohanasundaram ... Petitioner in W.P.No.19162 of 2018
31. Ramalingam ... Petitioner in W.P.No.19163 of 2018
32. P.Singara Gounder ... Petitioner in W.P.No.19164 of 2018
33. Gnanasekaran ... Petitioner in W.P.No.19165 of 2018
34. Marimuthu Gounder ... Petitioner in W.P.No.19166 of 2018
35. Balamuruganantham ... Petitioner in W.P.No.19167 of 2018
36. Sivasubramanian ... Petitioner in W.P.No.19168 of 2018

Vs.

1. The State of Tamil Nadu,
Rep. by the Principal Secretary to the Government,
Public Works Department,
Water Resource Management,
Fort St.George, Chennai-600 009.

2. The Assistant Engineer,
Public Works Department,
Water Resource Management,
Dhali Cannal Department,
Udumalpettai - 642 126.
3. The Block Development Officer,
Dhali Town Panchayat,
Udumalpet Taluk,
Tiruppur District.
4. The Executive Officer,
Dhali Town Panchayat,
Udumalpet Taluk,
Tiruppur District.
5. Dhali Vaikal Vadaboodhinatham,
Grama Neerinai Payanpaduthuvor Sangam,
Rep. by its President,
R.Venkat Ramani ... Respondents in W.P.Nos.10819,
10820 & 11298 of 2018

(The 5th Respondent is impleaded as per order, dated 30.10.2018, by VBDJ in W.M.P.Nos.24390 to 24392 of 2018 in W.P.Nos.10819, 10820 & 11298 of 2018)

1. The State of Tamil Nadu,
Rep. by the Principal Secretary to the Government,
Public Works Department,
Water Resource Management,
Fort St.George, Chennai-600 009.
2. The Assistant Engineer,
Public Works Department,
Water Resource Management,
Dhali Cannal Department,
Udumalpettai - 642 126.
3. The Block Development Officer,
Dhali Town Panchayat,
Udumalpet Taluk,
Tiruppur District.
4. The Executive Officer,
Dhali Town Panchayat,
Udumalpet Taluk,
Tiruppur District ... Respondents in Writ Petition Nos.
19126 to 19133, 19144 to 19168 of 2018

Prayer in W.P.Nos.10819, 10820 of 2018: Writ Petitionare filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records in Ref: Letter No: Ko.6/Oou.PeeThe/Dhali/2018 dated 14.02.2018 of the 2nd respondent and quash the same.

Prayer in W.P.No.11298 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records in Ref: Letter No: 2/Ko.6/Oou.Poo/Dhali/2018 dated 10.02.2018 of the 2nd respondent and quash the same.

Prayer in W.P.Nos.19126, 19127, 19133, 19145 to 19150, 19164, 19166 & 19168 of 2018: Writ Petitions are is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the 2nd Respondent in Letter No:Nil/Ko.06/U.Po/Dhali/2018 dated 10.02.2018 and quash the same.

Prayer in W.P.No.19128 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the 2nd Respondent in Letter No:05/Ko.06/U.Po/Dhali/2018 dated 14.02.2018 and quash the same.

Prayer in W.P.Nos.19129, 19131 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the 2nd Respondent in Letter No:Nil/Ko.06/U.Po.Tha/Dhali/2018 dated 14.02.2018 and quash the same.

Prayer in W.P.No.19151 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the 2nd Respondent in Letter No:Nil/Ko.06/U.Po/Dhali/2018 dated 14.02.2018 and quash the same.

Prayer in W.P.No.19130 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the 2nd Respondent in Letter No:11/Ko.06/U.Po/Dhali/2018 dated 14.02.2018 and quash the same.

Prayer in W.P.No.19132 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the 2nd Respondent in Letter No:07/Ko.06/U.Po/Dhali/2018 dated 14.02.2018 and quash the same.

Prayer in W.P.No.19144 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing Respondents, their men, agents and subordinates from taking coercive action against the pipes in the well of the Petitioner at Survey No.426/1C2 of Dhali Village, Udumalpet Taluk, Tiruppur District without following the due process of law.

Prayer in W.P.No.19152 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing Respondents, their men, agents and subordinates from taking coercive action against the pipes in the well of the Petitioner at Survey No.442/1B of Dhali Village, Udumalpet Taluk, Tiruppur District without following the due process of law.

Prayer in W.P.No.19153 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing Respondents, their men, agents and subordinates from taking coercive action against the pipes in the well of the Petitioner at Survey No.798/2B of Dhali Village, Udumalpet Taluk, Tiruppur District without following the due process of law.

Prayer in W.P.No.19154 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing Respondents, their men, agents and subordinates from taking coercive action against the pipes in the well of the Petitioner at Survey No.426/1C2 of Dhali Village, Udumalpet Taluk, Tiruppur District without following the due process of law.

Prayer in W.P.No.19155 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing Respondents, their men, agents and subordinates from taking coercive action against the pipes in the well of the Petitioner at Survey No.544 of Dhali Village, Udumalpet Taluk, Tiruppur District without following the due process of law.

Prayer in W.P.No.19156 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing Respondents, their men, agents and subordinates from taking coercive action against the pipes in the well of the Petitioner at Survey No.427/1B of Dhali Village, Udumalpet Taluk, Tiruppur District without following the due process of law.

Prayer in W.P.No.19157 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing Respondents, their men, agents and subordinates from taking coercive action against the pipes in

the well of the Petitioner at Survey No.567/4 of South Boothinatham Village, Udumalpet Taluk, Tiruppur District without following the due process of law.

Prayer in W.P.No.19158 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing Respondents, their men, agents and subordinates from taking coercive action against the pipes in the well of the Petitioner at Survey No.444/1 of Dhali Village, Udumalpet Taluk, Tiruppur District without following the due process of law.

Prayer in W.P.No.19159 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing Respondents, their men, agents and subordinates from taking coercive action against the pipes in the well of the Petitioner at Survey No.544 of Dhali Village, Udumalpet Taluk, Tiruppur District without following the due process of law.

Prayer in W.P.No.19160 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing Respondents, their men, agents and subordinates from taking coercive action against the pipes in the well of the Petitioner at Survey No.275/B1A of Dhali Village, Udumalpet Taluk, Tiruppur District without following the due process of law.

Prayer in W.P.No.19161 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the 2nd Respondent in Letter No:Nil/Ko.06/U.Po/Dhali/2018 dated 27.02.2018 and quash the same.

Prayer in W.P.No.19162 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the 2nd Respondent in Letter No:Nil/Ko.06/U.Po/Dhali/2018 dated 14.02.2018 and quash the same.

Prayer in W.P.No.19163 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the 2nd Respondent in Letter No:14/Ko.06/U.Po/Dhali/2018 dated 14.02.2018 and quash the same.

Prayer in W.P.No.19165 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the 2nd Respondent in

Letter No:13/Ko.06/U.Po/Dhali/2018 dated 14.02.2018 and quash the same.

Prayer in W.P.No.19167 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the 2nd Respondent in Letter No:10/Ko.06/U.Po/Dhali/2018 dated 14.02.2018 and quash the same.

For Petitioners :Mr.A.L.Somayaji, for
(in W.P.Nos.10819, Mr.R.Jayaprakash
10820 & 11298 of 2018)

For Respondents 1 & 2 : Mr.S.R.Rajagopal,
(in W.P.Nos.10819 Additional Advocate General IX,
10820 of 2018) Assisted by Mr.A.N.Thambidurai,
Special Government Pleader.

For Respondents 1 & 2 : Mr.S.R.Rajagopal,
(in W.P.No.11298 Additional Advocate General IV,
of 2018) Assisted by Mrs.K.Bhuvaneswari,
Additional Government Pleader.

For Respondents 3 & 4 : Mr.G.B.Rajesh,
(in W.P.Nos.10819,
10820 & 11298 of 2018)

For Respondent 5 : Mr.S.Gunalan
(in W.P.Nos.10819, for Impleaded party.
10820 & 11298 of 2018)

For Petitioners : Mr.T.Gowthaman,
(in W.P.Nos.19126,
to 19133, 19144 to
19151 of 2018, 19152
to 19160 of 2018 and
19161 to 19168 of 2018)

For Respondents 1 to 4 : Mrs.K.Bhuvaneswari,
(in W.P.Nos.19126, Additional Government Pleader
to 19133 of 2018)

For Respondents 1 & 2 : Mr.Jothikumar,
(in W.P.Nos.19144, Additional Government Pleader
to 19151 of 2018)

For Respondents 3 & 4 : Mr.D.Suryanarayanan,
(in W.P.Nos.19144,
to 19151 of 2018)

For Respondents 1 & 2 : Mr.A.N.Thambidurai,
(in W.P.Nos.19152, Special Government Pleader
to 19160 of 2018)

For Respondents 3 & 4 : Mr.K.T.Devendran,
(in W.P.Nos.19152, Additional Government Pleader
to 19160 of 2018)

For Respondents 1 to 4 : Mr.M.Elumalai,
(in W.P.Nos.19161, Government Advocate
to 19168 of 2018)

C O M M O N O R D E R

Since, the issues involved in all the writ petitions are one and the same they are all disposed of by this common order.

2. All the writ petitions have been filed challenging the order passed by the 2nd respondent, directing the petitioners to remove their pipe lines which were laid by the petitioners in the 'Dhali main channel.'

3. According to the petitioners, they are all agriculturists, having non ayacut agricultural lands in the Parambikulam Aliyar Project scheme, in Dhali village, and they were all fed through Dhali anaicut, which has the water source from Palar river. Before the construction of Thirumoorthi dam that the Dhali Anaicut was the only source of water and the water let in into a Canal, known as kalivu vaikkal, which was utilized by the Petitioner by digging a well adjacent to the Canal and tapping the water. The above process was recognized by the Government, and permissions were also given, as early as in the year 1915. The petitioners were laid pipe lines between the above Canal and the well, for the purpose of draining the excess water in the rainy season. After construction of the Thirumoorthi reservoir, some infrastructural developments were made in the above said Canal, at that time also the pipelines laid by the petitioners were not removed by the Authorities. Now all of a sudden the 2nd respondent passed an impugned order asking the petitioners to remove the pipe lines which is the only source of the irrigation, hence the above writ petitions have been filed.

4. The 2nd respondent filed a counter affidavit, stating that there is no water channel, called as "Kalivu Vaickal", as mentioned by the petitioners and the channel which is in existence is called as "Dhali Main Channel", and the above channel is feeding 7 tanks to the south of Dhali Village, and 1 tank to the west of Dhali Village. As per the records available, the channel is in existence from the year 1886. The above

channel is lying 10 feet below the adjoining lands and the petitioners illegally laid pipe lines from Dhali channel, to their wells and illegally taking water from the above channel. After construction of Thirumoorthi reservoir, the Parambikulam Aliyar Project scheme has been partly finalized, and as far as the Dhali channel is concerned, it irrigates 2946 acres of lands through 8 tanks and 145 acres of land directly. The petitioners lands do not come under the ayacut, and after construction of Thirumoorthi dam, for the ayacutdars main sources of irrigation is only through Dhali channel. Around the year 1980, persons having lands on either side of Dhali channel had illegally tapped water, hence, the PWD also levied fine for illegally tapping of water in the year 2000.

5. Thereafter, a pucca concrete structure has been built up mainly to prevent the theft of water and for proper supply of water to the ayacutdars. Wherein the lands used by the petitioners on either side of Dhali channel have illegally laid pipelines on the bottom of the channel to connect their wells directly. They were illegally tapping water from Dhali channel and using it for commercial purposes, selling water to third parties, and also taking water to their lands which is situated around 10 kilometres away from the channel. In the above circumstances the respondents are not able to supply water to the lawful ayacutdars, in such circumstances the notice have been issued to the petitioners to remove their pipelines.

6. Mr.A.L.Somayaji, the learned Senior Counsel appearing for the petitioners submitted that, already all these petitioners have submitted their representation before the 1st respondent, the Principal Secretary, Public Works Department, to permit them to take water and regularise their activities. Based on then representation, the 1st respondent by a proceeding dated 12.06.2018 directed the Chief Engineer, to consider their representation and send suitable reply. Based on the same now the Superintending Engineer, Public Works Department, Thirumoorthi Division, also sent a communication stating that since the writ petitions filed by the petitioners are pending, suitable action would be taken only after disposal of the writ petitions.

7. The learned Senior Counsel further submitted that, now the as representations are pending before the 1st respondent, it would suffice if the 1st respondent is directed to consider the petitioners' representation and pass suitable orders. The above request, was stoutly opposed by the learned Counsel appearing for the impleaded respondents and submitted that all the petitioners are taking water illegally from the Dhali channel, because of that the lawful ayacutdars are not getting water for their agricultural lands, and the petitioners are not entitled for any relief.

8. Mr.S.R.Rajagopal, learned Additional Advocate General IV, appearing for the respondents submitted that as the petitioners were non ayacutdars and illegally drawing water, in such circumstances the impugned order has been passed.

9. I have considered rival submissions. Considering the limited prayer sought for by the petitioners, and without going into the merits of the case, this Court is inclined to direct the 1st respondent, the Principal Secretary, Public Works Department, to consider the petitioners' representation dated 12.06.2018, and pass suitable orders on merits and in accordance with law, by giving an opportunity to the petitioners as well as the impleaded respondents namely Dhali Vaikal Vadaboodhinatham, Grama Neerinai Payanpaduthuvor Sangam Rep. by its President, Mr.R.Venkat Ramani.

10. The above exercise should be completed within a period of eight weeks. It is submitted by the petitioners' that most of the petitioners are now taking water through the pipelines, till the order passed by the 1st respondent, the 2nd respondent may be directed not to disturb the petitioners, which is opposed by the respondents on the ground that most of the pipelines are already have been removed and some of the petitioners are also taking water for agricultural purposes.

11. Considering the fact that the petitioners are taking water only for the agricultural purpose and it is also submitted that they are also taking water for a long period. Till the order passed by the 1st respondent, the respondents are directed to maintain Status quo as on today, and it is also made clear that the petitioners should not indulge in taking water for commercial purpose, they can use water for agricultural purpose only.

12. The writ petitions are disposed of with the above directions. No costs. Consequently, the connected Miscellaneous Petitions are closed.

सत्यमेव जयते

Sd/-

Assistant Registrar

//True Copy//

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Sub Assistant Registrar

msvm/bsm

To

1. The Principal Secretary to the Government,
The State of Tamil Nadu,
Public Works Department,
Fort St.George, Chennai-600 009.
2. The Assistant Engineer,
Public Works Department,
Water Resource Management,
Dhali Canal Department,
Udumalpettai - 642 126.
3. The Block Development Officer,
Dhali Town Panchayat,
Udumalpet Taluk,
Tiruppur District.
4. The Executive Officer,
Dhali Town Panchayat,
Udumalpet Taluk,
Tiruppur District.

+1cc to Mr.T.Gowthaman, Advocate, S.R.No.75389
+1cc to Mr.K.Selvakumarasamy, Advocate, S.R.No.74588
+1cc to Mr.R.Babu, Advocate, S.R.No. 74590
+3cc to Mr.R.Jayaprakash, Advocate, S.R.No. 74628 to 74630
+5cc to Mr.D.Suriyanarayanan, Advocate, S.R.No. 74921 to 74925
+1cc to the Government Pleader, S.R.No. 75329

Writ Petition Nos. 10819, 10820, 11298,
19126 to 19133 and 19144 to 19168 of 2018 etc batch

RV(CO)
GN(05/03/2019)

सत्यमेव जयते

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