

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.08.2018

CORAM

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

W.P.Nos.33894 & 33895 of 2015

and

M.P.Nos.1,1 of 2015

G.Srinivasan ..Petitioner in W.P.No.33894 of 2015
K.Manickam ..Petitioner in W.P.No.33895 of 2015

vs

1. The District Collector,
Villupuram,
Villupuram District.
2. The Executive Engineer,
Vellaru Irrigation Division,
Public Works Department,
Virudachalam Post & Taluk,
Cuddalore Taluk.
3. The Tahsildar,
Kallakurichi Post & Taluk,
Villupuram District. .. Respondents in both W.Ps.

Prayer in W.P.No.33894 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the Respondents and their subordinates or any other officials tracing power through them from in any manner interfering or disturbing or remove my peaceful usage and enjoyment of access to my agricultural land getting water from open well in Survey No.238/7 to Survey No.273 water throughout 4 inches P.V.C.pipeline under the bond of Thenkeeranur lake in depth five feet earth for agricultural purpose already permission granted by the 2nd Respondent in Letter No.162 M/Va2/Ko.46/2003 dated 12.06.2003 and consequently, directing the Respondents without due process of law not to remove my peaceful usage and enjoyment of 4 inches P.V.C.pipeline in Survey No.238/7 for getting water from open well to Survey No.273 throughout under the bond of Thenkeeranur lake in depth five feet earth for agricultural purpose land situated at Thenkeeranur Village, Kallakurichi Taluk, Villupuram District.

Prayer in W.P.No.33895 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the Respondents and their subordinates or any other officials tracing power through them from in any manner interfering or disturbing or remove my peaceful usage and enjoyment of access to my agricultural land getting water from open well in Survey No.256/6 to Survey No.273/13 water throughout 4 inches P.V.C.pipeline under the bond of Thenkeeranur lake in depth five feet earth for agricultural purpose already permission granted by the 2nd Respondent in Letter No.282 M/Va2/Ko.46/2010 dated 15.06.2010 and consequently, directing the Respondents without due process of law not to remove my peaceful usage and enjoyment of 4 inches P.V.C.pipeline in Survey No.256/6 for getting water from open well to Survey No.273\3 throughout under the bond of Thenkeeranur lake in depth five feet earth for agricultural purpose land situated at Thenkeeranur Village, Kallakurichi Taluk, Villupuram District.

For Petitioners : Mr.R.Neelakandan
for M/s.P.Rajavel
(in both W.Ps)

For Respondents : Mr.M.Elumalai, GA (in both W.Ps)

C O M M O N O R D E R

The relief sought for in these writ petitions are for a direction to forbear the respondents and their subordinates or any other officials tracing power through them from in any manner interfering or disturbing or remove my peaceful usage and enjoyment of access to the agricultural lands belongs to the Government from getting water from open well in Survey No.238/7 to Survey No.273 and in Survey No.256/6 to Survey No.273/13 water throughout 4 inches P.V.C.pipeline under the bond of Thenkeeranur lake in depth five feet earth for agricultural purpose already permission granted by the 2nd Respondent in Letter No.162 M/Va2/Ko.46/2003 dated 12.06.2003 and in Letter No.282 M/Va2/Ko.46/2010 dated 15.06.2010 and consequently, direct the Respondents without due process of law not to remove the peaceful usage and enjoyment of the writ petitioners in respect of 4 inches P.V.C.pipeline in the above said Survey Numbers.

2.The learned counsel appearing on behalf of the writ petitioners strenuously contended that the writ petitioners had laid 4 inches P.V.C.pipeline beneath the banks of the Thenkeeranur lake. The P.V.C. pipe is laid five feet below the earth level. The learned counsel for the petitioners state that the then Executive Engineer in his proceedings dated 12.06.2003

and 15.06.2010, has granted permission to lay Pipeline on certain conditions. So far, the petitioners are maintaining the Pipelines intact and using the same for agricultural purposes.

3.The learned Government Advocate appearing on behalf of the respondents made a submission that granting permission to lay Pipelines beneath the banks of the lake is dangerous and the respondents have already taken steps to remove all such unauthorized laying of Pipelines and other aspects. Actions were initiated even to remove the encroachments in the banks of the lake. Even in the permission granted in favour of the writ petitioners in proceedings dated 12.06.2003 and 15.06.2010, a condition has been stipulated that the permission can be withdrawn by the Public Works Department at any point of time as per the schemes and the rules. Further, it is stated in the condition that, whenever the Public Works Department needs to use the area, then the Pipelines should be removed by the writ petitioners. The license was granted on such a condition and therefore, now the writ petitioners cannot go back and say that they cannot remove the Pipelines, now running under the banks of the lake.

4.The learned Counsel for the petitioners made a submission that as per the Tamil Nadu Public Works Department Code also, the Executive Engineers are empowered to grant permission to lay such Pipelines. Thus, the writ petitioners may be permitted to use the Pipelines for the purpose of irrigation in respect of their own lands situated on the other side of the lake.

5.This Court is of an opinion that laying of Pipelines or granting permission in respect of one person to lay Pipelines under the banks of the lake will lead and set out a wrong precedent and many other similarly placed persons will also claim such benefit and in such an event, the strength of the banks of the lake will be weakened. Even in unforeseen circumstances, if there is a water leakage in the pipelines, then also, the same will weaken the banks of the lake.

6.Applying the common sense that if many such water pipelines are laid under the banks of the lake, certainly, it will create a dangerous situation and the very protection of the lake water will be in peril. The Executive Engineer, who granted such a permission in favour of the writ petitioners itself is irregular and now, the present Executive Engineer has initiated action to remove all such Pipelines and encroachments from the banks of the lake.

7.Mr.S.Kannan, Executive Engineer, Public Works Department, Virudhachalam is present before this Court to assist the learned Government Advocate. The learned Government Advocate informed this Court that the Executive Engineer, who granted such a license had already retired from service. Therefore, no action

can be initiated against him at this point of time. However, actions are initiated to strengthen the lake/Pond by removing all such encroachments and pipelines.

8. In every water body, whether it is a Dam or lake or Pond, the banks are to be strengthened and it can never be weakened. If water Pipelines are laid beneath the banks of the lake or Pond, then, certainly, the same will weaken the strength of the banks and there is a possibility of untoward incident at any point of time. Therefore, the authorities must be cautious before issuing any such license to private persons to lay pipe lines in the banks of the lake or any other water body.

9. The Honorable Apex Court of India, time and again emphasized that the water bodies are to be protected. Our Hon'ble High Court also passed several orders, directing the State to protect the water bodies to preserve water for agricultural purposes and for drinking purposes. If the authorities are indulged in granting such permission to lay Pipelines to such private persons under the banks of the lake or Pond, then they are committing an illegality and acting against the public interest. Undoubtedly, the writ petitioners may need of a water for agricultural purposes. It is for the petitioners to identify a proper location for the purpose of carrying out their agricultural operations. Contrarily, no permission can be granted for laying such Pipelines under the banks of the lake, which is a public property.

10. In this view of the matter, the respondents are directed to act swiftly and remove all such Pipelines from the banks of the lake and remove all encroachments in and around the lake area and protect the water bodies as per the guidelines issued by the Hon'ble High Court as well as the Hon'ble Supreme of India.

11. With this direction, both the writ petitions stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

kak

To

1.The District Collector,
Villupuram,
Villupuram District.

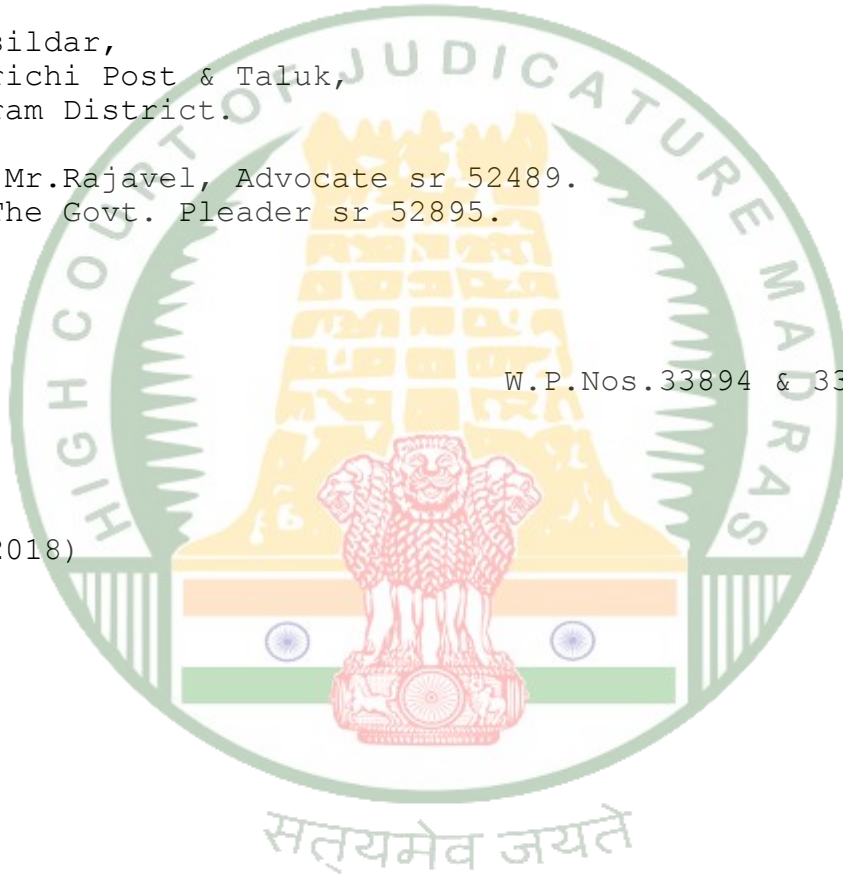
2.The Executive Engineer,
Vellaru Irrigation Division,
Public Works Department,
Virudachalam Post & Taluk,
Cuddalore Taluk.

3.The Tahsildar,
Kallakurichi Post & Taluk,
Villupuram District.

+2 Ccs to Mr.Rajavel, Advocate sr 52489.
+1 CC to The Govt. Pleader sr 52895.

W.P.Nos.33894 & 33895 of 2015

MG(CO)
SP(13/08/2018)



WEB COPY