



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: 17.04.2018
DELIVERED ON : 10.07.2018
CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.394 of 2017

and

Crl.M.P.(MD)No.3947 of 2017

P.Thangaraj Nadar

.. Petitioner

Vs.

The Sub Divisional Magistrate and Sub Collector,
Koilpatti Taluk,
Thoothukudi District.

.. Respondent

Prayer : This criminal revision case is filed under Sections 397 r/w. 401 of Cr.P.C., to call for the records and set aside the order in Na.Ka.A1/2437/2017 dated 21.04.2017 (served on 27.04.2017) on the file of the Sub Divisional Magistrate and Sub Collector, Koilpatti.

For Petitioner

: Mr.Robert Chandra Kumar

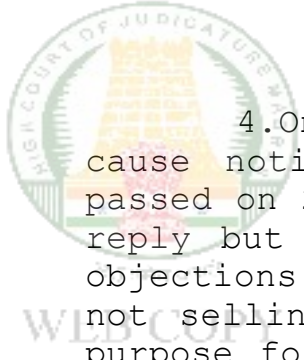
For Respondent

: Mr.K.Suyambulinga Bharathi
Government Advocate (Crl. Side)**ORDER**

Heard Mr.Robert Chandra Kumar, learned counsel appearing for the petitioner and Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl. Side) appearing for the respondent.

2.This petition has been filed to set aside the order in Na.Ka.A1/2437/2017 dated 21.04.2017 (served on 27.04.2017) on the file of the Sub Divisional Magistrate and Sub Collector, Kovilpatti.

3.The petitioner is the owner of the land in Survey No.2/94/A1. The petitioner is having a bore well in his land against G.O.Ms.No.52, Public Works Department dated 02.03.2012. The petitioner is using the water for commercial purpose and thereby, damaging the drinking water source and spoiling the agricultural activities. Due to agitation of the public, the Revenue Divisional Officer has passed an order to show cause under Section 133(1)(b) of Cr.P.C. As there was no explanation from the petitioner, the impugned order was passed by the Revenue Divisional Officer.



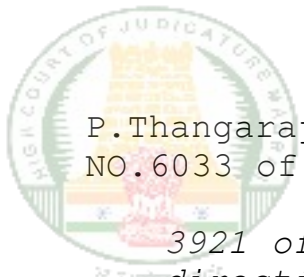
4. On the side of the petitioner, it is stated that the show cause notice was issued on 27.03.2017 and the final order was passed on 21.04.2017. It is stated that the petitioner has given a reply but the Revenue Divisional Officer has failed to hear the objections of the petitioner. It is stated that the petitioner is not selling the water. He is only using the water for drinking purpose for the persons who were working in his industry which is situated in Thoothookudi. It is stated that though the petitioner has sent his objections, the impugned order was passed as if no reply was received from the petitioner. In the impugned order, three documents are referred but those documents were not furnished to the petitioner. No opportunity was given to the petitioner to cross examine the witness and no evidence was recorded.

5. On the side of the respondent, it is stated that the petitioner is having a bore well and he is selling the water to the nearby industries. It is further stated that as per G.O.Ms.No.52 Public Works (R2) Department dated 02.03.2012, the water sources and nearby areas are ascertained as critical. The water cannot be used for commercial purpose without prior permission from the Government. The petitioner has admitted using the water in Survey No.2/94/A1 in Puthiyapathur Village, Ottapidaram Taluk for the use of his industry. Though show cause notice was issued on 27.03.2017, the petitioner did not file any objection.

6. On the side of the petitioner, the learned counsel relied on the judgment passed by this Court in the case of **Ind Barath Powergencom Ltd., (Registered Company) v. Revenue Divisional Officer-cum-Sub Divisional magistrate, Kovilpatti Sub Division, Kovilpatti, Tuticorin District and Others** reported in (2011) 4 MLJ (Cr1) 933, which reads as follows:

"(e) The Executive Magistrate shall take evidence as in a summons case in terms of Section 138, after the persons appear to show cause against the order passed under Section 133 Cr.P.C., and on considering the materials available, the Executive Magistrate shall be make the conditional order absolute. In the present case, there is no such recording of evidence of the parties concerned and even at the inception, a final order has been passed without taking evidence and without any enquiry."

7. On the side of the petitioner, it is further stated that the Executive Magistrate has to pass a temporary order. After the present show cause notice under Section 133(1) of Cr.P.C., and on considering the materials available on record, the Executive Magistrate may pass a conditional order. The learned counsel placed reliance on the order passed by this Court in the case of



P.Thangaraj Nadar v. The Block Development Officer in W.M.P.(MD) NO.6033 of 2017, which reads as follows:

"Following the order passed in W.M.P.(MD) Nos.3920, 3921 of 2011 in W.P.(MD) No.4881 of 2017, there shall be a direction to the respondent to remove the seal from the petitioner's land in Survey NO.2/94A1 and permit the petitioner to use the bore well water only for the bonafide agricultural purpose."

8. On the side of the respondent, it is stated that the land in Survey No.2/94/A1 is in the name of the petitioner and 26 others in joint patta number 1749. The Government of Tamil Nadu in G.O.Ms.NO.52 Public Works (R2) Department dated 02.03.2012 has issued orders estimating the ground water resources of Tamil Nadu as on March 2009, categorizing of Blocks of area as over Exploited, Critical, Semi-Critical and Safe. According to the categorization Ottapidaram Block comes under the category Over Exploited Zone. The Government directed that no schemes should be formulated over Exploited and Critical Blocks. The Government also directed to exclude the ground water drawal for domestic (Housing); Government's Drinking Water Supply schemes and; non water based industries, (ie. The industries which do not require and use water, either as raw material or for other processing).

9. The ground water was extracted through the bore well in Survey No. 2/94/A1 of Puthiyampathur Village by the petitioner and selling it for commercial purposes in and around Thoothookudi City. The industrialists, who purchase the water, transport it through heavy trucks from the bore to their industries. The public in and around Puthiyampathur Village objected the abnormal extraction and transportation of ground water from this bore and indulged in agitation before the Revenue Offices. It is further stated that the petitioner was transporting ground water through tanker lorries up to 50 loads per day. Due to extraction of ground water in large scale from the bores in Puthiyampathur, the people of Ottapidaram Taluk has suffered a lot without even getting drinking water. Only on inspection and confirmation the extraction of ground water and selling it for commercial purpose, Form-20 order dated 27.03.2017 was issued to the petitioner under Section 133(1) Cr.P.C. directing him to stop the extraction of ground water and selling it for commercial purposes and to offer his objections if any against the order for stoppage of extraction of water in writing or in person before 11 a.m., on 03.04.2017. He failed to avail the opportunity. The petitioner did not choose to offer his objections. The impugned order was passed on 21.04.2017 preventing him from extraction of ground water and transporting it for commercial purpose under Section 133 Cr.P.C.

<https://hcservices.ecourts.gov.in/Reserve> 10. Records perused. The petitioner is having a land in Survey No. 2/94/A1 measuring 1.20.79 Hec of Puthiyampathur Village in Ottapidaram Taluk which stands registered in the name of the



petitioner and 26 others in joint patta number 1749. The allegation against the petitioner is that the petitioner is extracting the ground water through the bore well in his land and selling it for commercial purposes in and around Tuticorin City. On the side of the respondent, it is stated that the petitioner is extracting 50 loads of water per day and distributing the water to various industries. The impugned order is preventing the petitioner from selling the water for commercial purpose. As per G.O.Ms.No.52 Public Works Department, dated 02.03.2012, this survey areas was declared as non permissible categories.

11.It is stated that the impugned order was passed without giving opportunity to the petitioner. It is further stated that the petitioner has submitted a reply to the notice but the order was passed as if the petitioner has not availed the opportunity. The petitioner has himself admitted that he is transporting water to his industries and it is denied that the petitioner is selling the water for commercial purpose. In this situation, the impugned order is to be set aside. The respondent is at liberty to issue a showcause notice to the petitioner and after giving sufficient opportunity for the petitioner to make his explanation to consider the matter afresh and to pass suitable orders in accordance with law. With the above observation, the Criminal Revision Case is allowed. Consequently, Crl. M.P.(MD)No.3947 of 2017 is closed.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

1. The Sub Divisional Magistrate and Sub Collector,
Koilpatti Taluk,
Thoothukudi District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.I.Robert Chandra Kumar, Advocate Sr.No.72180

MRN

VB/RP/SAR3/19.07.2018/4P/4C

Crl. R.C.(MD)No.394 of 2017
10.07.2018