

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.28436, 28437, 28438, 28439, 28440,
28899, 28900, 28901, 28902, 28903 &
28904 of 2004 & connected miscellaneous petitions

Thangavel Udayar ..Petitioner in W.P.No.28436/2004
Eswara Gowder ..Petitioner in W.P.No.28437/2004
Kanniappan ..Petitioner in W.P.No.28438/2004
Govindasamy ..Petitioner in W.P.No.28439/2004
V.N.Muthusamy ..Petitioner in W.P.No.28440/2004
Thangavel Udayar ..Petitioner in W.P.No.28899/2004
B.N.Govindaraj ..Petitioner in W.P.No.28900/2004
P.Subramani ..Petitioner in W.P.No.28901/2004
Vettai Udayar ..Petitioner in W.P.No.28902/2004
T.Rangasamy ..Petitioner in W.P.No.28903/2004
A.Pushparaj ..Petitioner in W.P.No.28904/2004

-Vs-

1. The State of Tamil Nadu,
Rep. by the Secretary,
Public Works Department,
Fort St. George, Chennai - 9.

2. The Chief Engineer (Irrigation),
Public Works Department,
Bhavani Sagar Circle,
Bavani Sagar, Coimbatore District.

3. The Junior Engineer (Irrigation),
Public Works Department,
Bhavani Sagari Circle,
Bhavani Sagar,
Coimbatore District.

.. Respondents in all W.Ps.

Common Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India seeking for a Writ of Certiorarified Mandamus, calling for the records of the first respondent in his proceedings G.O.No.504, 495, 505, 497, 501, 498, 494, 500, 506, 502 and 496 respectively dated 03.09.2004, Public Works (Q1) Department and quash the same and consequently forbear the respondents from obstructing the petitioner from drawing the water from the Bhavani River by means of 5 HP pump set for irrigation of mulberry plants by sprinkler method.

For Petitioner
in all W.Ps.

: Mr.Abdul Saleem

For Respondents
in all W.Ps.

: Mr.A.N.Thambidurai
Special Government Pleader

C O M M O N O R D E R

Since the issue involved in all these Writ Petitions is similar, they are taken up together and disposed of by this common order.

2. These Writ Petitions have been filed for issuance of a Writ of Certiorarified Mandamus to quash the proceedings of the first respondent vide G.O.Nos.504, 495, 505, 497, 501, 498, 494, 500, 506, 502 and 496, Public Works (Q1) Department, dated 03.09.2004 and consequently forbear the respondents from obstructing the petitioners from drawing the water from the Bhavani River by means of 5 HP pump set for irrigation of mulberry plants by sprinkler method.

3. According to the petitioners, they are all small farmers in Sirumugai Village and their major cultivation is mulberry plants. They submitted a representation to the first respondent on 29.11.1982, seeking permission to draw water from Bhavani River by means of 5 HP motor to irrigate mulberry plants by adopting sprinkler system of irrigation. The Government by issuing a G.O.Ms.No.1879, dated 29.10.1985 permitted them to draw water from Bhavani River for irrigation of mulberry plants by using 5 HP motor.

4. The petitioners would claim that they have been carrying on cultivation of mulberry plants by drawing water from Bhavani River by using 5HP motor and adopting sprinkler method. However, the third respondent in the year 1990, withdrew the facility and hence, it was challenged in W.P.No.16245 of 1990 and that Writ Petition was allowed on 13.10.1998. While so, the first

respondent served a notice dated 18.07.2003 to show-cause as to why the facility granted under the said G.O. should not be withdrawn on the ground that the petitioners were not cultivating mulberry plants. In response to the show-cause notice, the petitioners submitted their explanations.

5. The grievance of the petitioners is that the official respondents without conducting spot inspection and without providing an opportunity of hearing, withdrew the facility by the impugned G.O.Nos.504, 495, 505, 497, 501, 498, 494, 500, 506, 502 and 496, Public Works (Q1) Department, dated 03.09.2004.

6. Heard Mr.Abdul Saleem, learned counsel for the petitioners; Mr.A.N.Thambidurai, Special Government Pleader for the respondents and perused the materials placed on record.

7. When the Writ Petition No.28195 of 2004 filed by another farmer, viz., Subbiah Gowder came up for hearing, this Court having found that no proof was submitted for conducting inspection and no opportunity of hearing was given to the petitioner in the above Writ Petition, quashed G.O.No.499, Public Works (Q1) Department, dated 03.09.2004 with a liberty.

8. In the instant case also, though the learned Special Government Pleader submitted that inspections were carried out and the petitioners were given opportunity, no material has been produced to substantiate the same. Hence, this Court is of the considered opinion that the petitioners are entitled to succeed in these Writ Petitions.

9. In such view of the matter, the Writ Petitions are allowed and the impugned orders passed by the first respondent vide proceedings in G.O.Nos.504, 495, 505, 497, 501, 498, 494, 500, 506, 502 and 496, Public Works (Q1) Department, dated 03.09.2004, are quashed. However, liberty is granted to the respondents to inspect the petitioners' lands to ascertain as to whether there is any violation of the conditions stipulated in G.O.Ms.No.1879, dated 29.10.1985, and if any violation is found, pass appropriate orders in accordance with law, after affording ample opportunity to the petitioners. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Government of Tamil Nadu,
Public Works Department,
Fort St. George, Chennai - 9.

2. The Chief Engineer (Irrigation),
Public Works Department,
Bhavani Sagar Circle,
Bhavani Sagar,
Coimbatore District.

3. The Junior Engineer (Irrigation),
Public Works Department,
Bhavani Sagar Circle,
Bhavani Sagar,
Coimbatore District.

+1 cc to the Government Pleader, vide S.R.No.58077 and 58079

+11 ccs to M/s.Anand, Abdul & Vinoth Associates, Advocate, vide
S.R.No.57448 to 57452, 57454 to 57459

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RJI (CO)
SSM(08/08/2019).

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