

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 22.08.2019

Pronounced on: 28.08.2019

Coram::

The Honourable Dr. Justice G. Jayachandran

Writ Petition No. 3490 of 2019
& W.M.P. Nos. 3792 & 3793 of 2019

M. Sekar,
S/o. Muthappa Reddy,
No. 159-A, Bajanaikoil Street,
Sholingar, Mootur - 631 102.

... Petitioner

/versus/

1. The Secretary,
Municipality Administration & Water Supply,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Chief Engineer (General) PWD,
Chepauk, Chennai - 600 005.
3. The District Collector,
Vellore District.
4. The Executive Officer,
Selection Grade Town Panchayat,
Sholingar, Vellore.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of certiorarified Mandamus, to call for the records of the respondents herein pertaining to tender notice of the 4th respondent herein in Na.Ka.No.243 of 2018, dated 18.01.2019 proposing to be construct a open well in the middle of Sholingar natural lake admeasuring 990 acres by opening the seal tender on 06.02.2019 by 3.30 p.m and awarding the contract to the contractors and quash the same and consequently forebear the respondents from proceeding with the tender notice of the 4th respondent herein in Na.Ka.No.243 of 2018 dated 18.01.2019 and dug the proposed well and pass orders.

For Petitioner : Mr.M.K.Hidayatullah

For R1 to R3 : Mr.S.R.Rajagopal,
Additional Advocate General
Assisted by Mr.R.Govindasamy,
Special Government Pleader

For R4 : E.Balamurugan

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The petitioner herein is the resident of Sholingar town. He has agricultural land to an extent of 1.75 acres of land in Sholingar Town. Nearly 200 ayacutdars cultivating 990 acres of Agricultural land depend upon the water supply from the Sholingar lake. He is aggrieved by the proposal of the 3rd respondent/District Collector, Vellore, to construct a open to sky well in the middle of the Sholingar lake which will deprive the water source for irrigating nearly 990 acres of land, which has been the source of water for them, for more than 600 years. According the petitioner, the 3rd respondent/District Collector, Vellore has invited tender on 18.01.2019 from the eligible contractors to construct well at the cost of Rs.99.00 lakhs. Apprehending by put up a massive open to sky well in the middle of the lake and drawing water through motor pumps from the proposed well will dry the lake and deprive the Agriculturist who are relying upon the lake water as their only source. To cater potable water for the villagers, the Government has already dug borewells on the bund of the lake and taking water to the residences in Sholingar town through giant size water pipelines. There is no shortage of water of drinking water in Sholingar town since water is supplied from two massive size over head tanks filled by water drawn from Ponnai Anaikattu.

3. Listing out number of borewells dug by the private individuals in their property and the Government including local bodies at various places. The petitioner herein would contend that there is copious water available from other sources to cater the need of Sholingar people and therefore, there is no necessity to dig open well in the middle of the lake and install pipelines for supply of water, which is unnecessary and unwarranted.

4. The petitioner express apprehension that, if the proposal is allowed to happen, the lake will get dry and real estate dealers will fill up the lake with debris and later sell it as a housing plot. Serious allegation is also made against the respondents regarding the motive behind the said project. The tender notification, dated 18.01.2019 issued by the 4th respondent/Executive Officer, Selection Grade Town Panchayat, Vellore, for the proposed project was challenged before this Court. This Court, after hearing the learned Counsel for the petitioner and Additional Advocate General, directed the respondents not to confirm the tender. After the interim order passed on 06.02.2019, the 4th respondent, has again issued a notification dated 12.12.2019 inviting tender for the said project, which was stayed by this Court on 19.07.2019. The respondents are bend upon to construct well floating all norms.

5. The counter filed of the 2nd respondent, dated 28.06.2019, indicates that the Sholingar lake receives water from its free catchment in addition from Ponnai Anicut of east main canal. Having length about 15 kms and surplus from Erumbi Tank, the Sholingar lake is under the maintenance of P.W.D. No permission or Concurrence or objection has been obtained from P.W.D for the construction of open to sky well. It is specifically stated in this counter that the tank is under the control of P.W.D. No permission for construction activities has been given by P.W.D and there is no possibility of filling up the lake with debris as alleged by the petitioner.

6. Whereas, the counter of the 4th respondent/Executive Officer, Selection Grade Town Panchayat Sholingar, indicates that the Sholingar Town Panchayat passed a resolution on 01.08.2018 for construction of open well in the Sholingar lake area to mitigate the drinking water scarcity faced by the Sholingar town. Based on the resolution, the Panchayat Engineer submitted an estimation report for excavation of open well and providing pumping main line arrangements at Sholingar lake and providing sump at Annathana Chathiram road in Sholingar Panchayat Town. On receipt of the report submitted by the Panchayat Engineer, the 4th respondent forwarded the proposal to the Assistant Director of Town Panchayat, Vellore Zone, accepting the proposal, fund was sanctioned for construction of the open well. The proposal to construct well at Sholingar lake and draw water through pipeline was due to acute water scarcity in the local area of Sholingar. The said decision was taken after due deliberation, discussion and following due course of law. The construction of open well will not affect the livelihood of the ayacutdars. The apprehension of the petitioner that construction of open well in the middle of the

lake will ultimately lead to grabbing of the lake by real estate and plotting it out is totally unfound. The administration policy decision with a view to mitigate the water supply shortage of the local public cannot be attributed with malafide.

7. On behalf of the 2nd respondent, the additional counter affidavit was filed on 22.08.2019, wherein, it is stated that the proposal of the Director of Town Panchayat, Chennai, dated 11.01.2018 for administrative sanction providing new open well, pumping main and sump at Sholingar was considered and taking note of the prevailing situation to provide water to the public i.e., Sholingar Town, the Chief Engineer, Water Resource Department has given permission for the proposal on 19.08.2019, to excavate open well in the tank to augment the drinking water supply to the public. The permission is granted on condition. The authorities while implementing the project has to give an undertaking that they will strictly follow the conditions imposed in the NOC. The order passed by the Chief Engineer, Water Resource Development, P.W.D, dated 19.08.2019 is furnished as typed set of papers along with the additional counter affidavit. In the permission letter issued by the Chief Engineer, Water Resources department, P.W.D, eight conditions are imposed.

8. From the counter of the 2nd and 4th respondents as well as the additional counter filed by the 2nd respondent, it is obvious that, before notification of the tender or even before accepting the proposal, the Local body has not taken the clearness from the P.W.D. Admittedly the tank is under the maintenance of P.W.D. Only after filing of the Writ Petition and the Learned Counsel for the petitioner, pointing out the stand taken by the P.W.D in the 2nd respondent main counter, the P.W.D has come forward to give consent for the proposal. Though some conditions are imposed while granting permission, the apprehension of the petitioner that the construction of the open well in the middle of the lake will pollute the lake and lead to deprivation of water source to the villagers is neither addressed by the 4th respondent/Executive Engineer, Selection Grade Town Panchayat nor the 2nd respondent/Chief Engineer, Chennai. There is no indication in the counter that the environmental impact assessment been carried out, before proceeded with the project. When the construction is proposed to be put up in a water body, the Authorities ought to have been conducted impact assessment.

9. The Learned Additional Advocate General would submit that there is a water scarcity in and around Sholingar Town and public are agitated over that. To meat out their demand, the Local Authorities has proposed to dig well in the middle of the water body. It will not destroy the existing water source.

10. The sustainable exploitation of the resource has to be done. A mere undertaking from the Local body that they will abide by the conditions imposed, may not be sufficient. The P.W.D should ensure the proposal noway violates those guidelines. The attempt of the 4th respondent to invite tender and to proceed with the proposal of construction of well in the middle of the water body, without prior consent of P.W.D who is the custodian of the lake on the face of it is illegal and improper. Hence, the tender notification of the 4th respondent in Na.Ka.No.243 of 2018 dated 18.01.2019 is hereby quashed. The respondents before venturing into the tender are directed to assess the environmental impact on the body water and then, if satisfied to proceed.

11. With this direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To,

1. The Secretary,
Municipality Administration & Water Supply,
Secretariat, Fort St.George, Chennai - 600 009.
2. The Chief Engineer (General) PWD,
Chepauk, Chennai - 600 005.
3. The District Collector, Vellore District.
4. The Executive Officer,
Selection Grade Town Panchayat,
Sholingar, Vellore.

+1cc to Mr.M.K.Hidayatullah, Advocate sr.73831

order in
Writ Petition No.3490 of 2019

spd(co)
nr 30/09/2019