

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.08.2019
Pronounced on : 15.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No. 21806 of 2015
and M.P.Nos.1 & 2 of 2015

Nallar - Palar Pasana Padugai Vivasayigal Sangam,
Rep. by its President,
S.Ravindran,
4/9, Devenur Pudur 642 207
Udumalpet Taluk, Tiruppur District.Petitioner

Vs

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Public Works Department,
Fort St. George,
Chennai 600 009.
- 2.The Commissioner of Land Administration,
Ezhilagam,
Chepauk,
Chennai 600 005.
- 3.The Chief Engineer (Irrigation),
Public Works Department,
Water Resources Organisation,
Chepauk,
Chennai 600 005.
- 4.The District Collector,
Coimbatore District,
Coimbatore 641 018.
- 5.The District Collector,
Tirupur District,
Tirupur 641 601.
- 6.The Chief Engineer,
Water Recourses Organisation,
Public Works Department,
Coimbatore 641 001,
Coimbatore District.

7.The Superintending Engineer,
Water Resources Organization,
Public Works Department,
Makinampatti,
Pollachi - 642 003,
Coimbatore District.

..Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the respondents to construct an Under Tunnel or Overhead Super Passage at the distance of 33.200 K.Ms., across Contour canal at the shutter point to enable the members of the petitioner's association to enjoy the riparian rights over Nallar River as prayed in the representation dated 24.12.2014 made by the petitioner.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.A.N.Thambidurai
Special Government Pleader

ORDER

A registered Association has filed this Writ Petition for issuance of a Writ of Mandamus, directing the respondents to construct an Under Tunnel or Overhead Super Passage at the distance of 33.200 Kms, across Contour canal on the basis of their representation dated 24.12.2014.

2. The case of the petitioner is that the petitioner Association has 470 members belonging to the agricultural sector and they are the residents of Ravanapuram, Devanurpudur, Pungamuthur, Sellappampalayam, S.Nallur and Arthanaripalayam. The source of income and livelihood for the members of the petitioner is purely from the agricultural operations.

3. The petitioner would state that the main source of water for agricultural operation is from Nallar river, Palar River and rain fed tanks. The River Palar originates from the Anamalai Hills and flows north-west to the Udumalpet and Pollachi Taluks and confluences with Alzhiyar River near Ambarampalayam. En route, a large number of streams join Palar River, major one being Nallar River. The said Nallar River originates from Kurumalai and Boochakkettamparai settlement of Anamalai Reserve Forest in Western Ghat and runs towards north and cross the Contour Canal near Puliampatti settlement and it is a tributary of the River Palar.

4. The petitioner would state that Thirumoorthi Dam was constructed at Palar River. After construction of the Dam, it completely blocked the natural flow of water in the River Palar. The Thirumoorthi Dam has got no separate water source except some minimal flow of water from Panjalinga falls and therefore, the Government constructed the Contour Canal to take water from Solaiyar and Parambikulam Catchment areas to Thirumoorthi Dam. Contour Canal was constructed at the length of 49 Kms and it cuts across the flow of Nallar River at the distance of 33.200 Kms, wherein a side channel weir was constructed by erecting a shutter, which has adversely affected the direct supply of water from Nallar River.

5. It is the case of the petitioner that Nallar River is diverted to Contour Canal and if no diversion is made at the shutter point, it will go its natural flow covering the distance of 7 Kms to join the Palar River at Koothathu Karupparayan Koil.

6. The grievance of the petitioner is that after the formation of Parambikulam Azhiyar Project (PAP Scheme) and diversion of Nallar River water to Contour Canal, water sources for drinking and agricultural purposes have been denied, in result, hundreds of villagers have suffered a lot for want of drinking water source and the villagers are not in a position to even feed their cattle, besides that, agricultural cultivation has been completely vanished. Hence, representations were given and on that basis, the Special Deputy Collector, PAP Scheme, Pollachi gave a report dated 26.08.1994 admitting the rights, which has been enjoyed by the members of the petitioner and thereafter, 60 MC of water was released from Contour Canal.

7. It is the case of the petitioner that water from Nallar had never been the source for Contour Canal and it is impermissible for anyone to divert the natural flow of Nallar River into Contour Canal. Since the riparian rights of the members of the petitioner was seriously affected and they were deprived of the livelihood, a representation was given to the Member of the Legislative Assembly, Madathukulam and by his letter dated 08.08.2011, admitted the agony of the members. After consistent representations, the first respondent addressed a letter dated 17.06.2013 to the sixth respondent to prepare an estimate for construction of super passage at four places in the course of Contour Canal. Though the Executive Engineer, PWD, WRO, Thirumoorthy Hills Division, by his communication dated 03.02.2015, informed the earlier proposal to sanction for the construction of super passage at four places, to drain the river water or rain or seepage water into its natural course, however, subsequently, a decision was taken to drop the said proposal at 33.200 Kms.

8. The petitioner would state that the Association is interested in the construction of under tunnel or super passage across the Contour Canal at the distance of 33.200 Kms. Subsequently, the seventh respondent prepared an estimate at the cost of Rs.15,00,000/- and submitted his report to the sixth respondent and thereafter, nothing useful happened. Hence, the present Writ Petition.

9. In the counter affidavit filed by the seventh respondent, it is stated that the Contour Canal started functioning from the year 1968. The Contour Canal is no way causing interruption to the natural flow of Nallar River to its downstream. The main object of the Contour Canal is to convey the water from Sarkarpathy Power House to Thirumoorthi Dam, from where it is stored and supplied for irrigation of about 3,77,152 Acres of dry lands spread in Coimbatore and Tiruppur Districts.

10. In paragraph 8 of the counter, it is stated that the Contour Canal was constructed during 1960-65 for a total length of 49.300 Kms and it was designed to a maximum discharge of 1165 cusecs. In the place of crossing Nallar and Palar River, there are 8 numbers of super passages and 3 numbers of Flush escape and 2 numbers of Aqueducts. All these cross masonry structures have been provided for free flow of jungle streams without interfering with the Contour Canal flow. Water flows in the Contour Canal nearly for 10 months in normal irrigation year. During the drought periods and non flow period in Contour Canal, the inflow from Nallar River is released through sand vent, which is kept open always and hence the flow through Nallar River has not been interrupted.

11. It is further stated that during the course of water flow in Contour Canal, any flood from Nallar River would be surplussed into the stream through weir. The members of the petitioner Association have been benefiting from the water since 1968 and hence the allegations are untrue. It is further stated that technically it is not possible to construct either under channel or overhead super passage at Contour Canal.

12. The petitioner Association filed a reply stating that in the counter, it has been admitted that the River Nallar is not a source for Contour Canal, however, the respondents have virtually diverted the entire Nallar River into Contour Canal, whenever there is flow of water through Nallar by monsoon showers. Hence, the respondents have been in the habit of adjusting the supply of water from Sarkarpathy to Contour Canal, depending upon the flow of water in the River Nallar. If the respondents have not obstructed the nature of flow of Nallar River to its downstream, there is no need or occasion for the petitioner to file this Writ Petition.

13. It is further stated that the respondents have not only closed the surplus escapes and the shutter installed at the sand vent, but also obstructed the over flow water by erecting temporary structures with the help of sand bags on the weir. Thereby, sealed and blocked completely the flow of River Nallar to its downstream. The members of the petitioner are not the Ayacuthars of PAP Scheme and in view of the obstruction and diversion of River Nallar, they are not getting any water flow for irrigation purpose in the land for several years.

14. It is further stated that the respondents have no legal right to divert the Nallar River into Contour Canal by sacrificing the life and property of the lower riparians, who are the members of the petitioner Association.

15. I have heard the rival submissions and perused the materials available on record.

16. In the instant case, it is not disputed that the members of the petitioner-Association are basically agriculturists and they depend on income from agricultural sources. It is an admitted fact that the natural flow of Nallar River would enhance the water resource of the members of the petitioner-Association and in view of diversion of Nallar River water at the shutter point (LS 33.200 Kms), no water is allowed to flow in its natural course and eventually the right of riparian right of 500 agriculturists is affected and lost their livelihood. Though the rights claimed by the petitioner is not disputed or denied by the respondents, it is stated that it is not technically feasible.

17. At this juncture, the only issue arises for consideration in this case, whether the petitioner-Association is entitled for the relief sought for in this Writ Petition.

18. A book-let has been filed by the petitioner, giving details of cross drainage works of Cantour Canal along with photographs, wherein, it is mentioned as follows:-

1) Super Passage

- | | | |
|----|------|-----------|
| 1) | L.S. | 32.000 KM |
| 2) | L.S. | 38.120 KM |
| 3) | L.S. | 40.670 KM |
| 4) | L.S. | 42.570 KM |
| 5) | L.S. | 42.800 KM |
| 6) | L.S. | 43.130 KM |
| 7) | L.S. | 43.810 KM |
| 8) | L.S. | 48.650 KM |

2) AQUEDUCT

- 1) L.S. 30.64 KM
- 2) L.S. 45.47 KM

2) UNDER TUNNEL

- 1) L.S. 44.37 KM
- 2) L.S. 44.56 KM
- 3) L.S. 44.87 KM
- 4) L.S. 45.65 KM
- 5) L.S. 45.88 KM
- 6) L.S. 46.06 KM
- 7) L.S. 46.20 KM
- 8) L.S. 46.52 KM
- 9) L.S. 46.78 KM
- 10) L.S. 47.01 KM
- 11) L.S. 47.18 KM
- 12) L.S. 47.59 KM
- 13) L.S. 47.82 KM
- 14) L.S. 48.10 KM
- 15) L.S. 48.75 KM
- 16) L.S. 49.17 KM

4) FLUSH ESCAPE

- 1) L.S. 38.67 KM
- 2) L.S. 35.22 KM
- 3) L.S. 33.10 KM

5) OUTLET REGULATOR

- 1) L.S. 33.54 KM
- 2) L.S. 37.50 KM
- 3) L.S. 37.97 KM
- 4) L.S. 39.70 KM
- 5) L.S. 43.42 KM

19. It is the case of the petitioner-Association that for livelihood of about 500 agriculturists and for drinking water to about 31,000 villagers and for 6,000 cattles, the natural flow of water is the main source. The Official respondents have also admitted the existence of Nallar river and the riparian rights of the members of the petitioner-Association. At the risk of repetition, it is further stated that the respondents are not disputing that the right claimed by the petitioner-Association for usage of water from the Nallar River.

20. A perusal of the documents enclosed in the typed-set of paper reveal that during drought / summer seasons, the general public have been suffering and on the basis of their representations, water was released as reprieve, but it is not a permanent solution. The Superintending Engineer, PWD, PAP Project, Pollachi, by his report dated 13.09.2013, estimated cost of construction of super passage at Rs.15,00,000/- and also

sent a rough sketch to the Higher Authorities for further action. When the right of the members of the petitioner is established, it is the duty of the Government to provide facilities to enjoy their right and it cannot be simply denied on technical issue.

21. It is apposite to note that in 20th Century, when there were absolutely no road and transport facilities, beautiful Dams had been constructed in the Western Ghat and still they are serving the purposes. In 21st Century, India has successfully launched Chandrayaan-1 on 22.10.2008 by a PSLV-XL rocket and Chandrayaan-2 on 22.07.2019 by a Geosynchronous Satellite Launch Vehicle Mark III (GSLV Mk III) and vehicles had to travel more than 3.84 lakhs kms in 48 days to land in Moon. We are proud to say that both the Teams were led by Tamilians, viz., Mr.Mylswamy Annadurai and Mr.K.Sivan. Now, it is proposed to launch Aditya-L1 prob, to study the Sun, and it shows that there is a large scale of development of Technology in India. In 1960s' when these technologies were not available, Contour canal was formed in the Western Ghat by piercing hard rock for a distance of about 50 kms and some places, water is taken through Tunnels also. Here the respondents were requested to make an arrangement for uninterrupted natural water course in Nallar River for about 50 to 100 meters.

22. It is appropriate to mention the observation of the Hon'ble Supreme Court in the case of Suresh Kumar & Ors. Dalmia Cement (Bharat) Ltd., & Anr Vs. Union of India & Ors [Indian Kanoon - <http://indiankanoon.org/doc/239122/>], where the importance of agriculture was dealt with, which reads as follows:-

"Interplay of the operational efficacy of the Act, the Rules and orders, on fundamental rights of the petitioners to carry on trade or business guaranteed by Articles 19(1),14 and 301 of the constitution would be better appreciated only if we have a grasp of their backdrop. India lives in villages. agricultural economy is the bed-rock for rural India. Property assures them social dignity and economic equality. Agriculture is the main source for economic sustenance and equality of status to the tillers of the soil who too have fundamental rights to equality of status and of opportunity and right to livelihood. Agricultural operations are their prime source of livelihood and sustained of the business and of urban population.

Professor Harold Laski, an inconoclastic humanist, expressing his belief in Indian Independence and its socialist destiny stated in his "Congress socialist" of April 11, 1936, thus:-

"Attainment of natural self- government to mean no more than the exchange of the control by British capitalism for that by Indian capitalism. Those who know the normal life of the poor ...will realise enough that without economic security, liberty is not worth living."

(emphasis supplied)

23. While dealing with the Cauvery Water Dispute, giving importance to agriculture and need of water, the Hon'ble Supreme Court in Tamil Nadu Cauvery Neerppasanavilaiporulgal Vivasayigal Nala Sangam Vs. Union of India reported in AIR 1990 SC 1316, for early implementation, observed as follows:-

"We are cognizant of the fact that the matter is a very sensitive one. Judicial notice can be taken of the fact that the Government at the Centre is by one political party while the respective Governments in the two States are run by different political parties. The dispute involved is, however, one which affects the southern States of Kerala, Karnataka and Tamil Nadu and the Union Territory of Pondicherry. The disputes of this nature have the potentiality of creating avoidable feelings of bitterness among the peoples of the States concerned. The longer the disputes linger, more the bitterness. The Central Government as the guardian of the interests of the people in all the States must, therefore, on all such occasions take prompt steps to set the Constitutional machinery in motion. Fortunately, the Parliament has by enacting the law vested the Central Government with the power to resolve such disputes effectively by referring the matter to an impartial Tribunal. There was no reason, therefore, for the dispute to protract for such a long time. Any further delay in taking the statutorily mandated action is bound to exasperate the feelings further and lead to more bitterness. It is, therefore, necessary that the legal machinery provided by the statute is set in motion before the dispute escalates. A stitch in time saves nine. What is true for an individual is perhaps more true for the nation."

24. It is pertinent to note that the agriculturists are not able to meet both the ends and they are suffering a lot for their survival. Therefore, if they do not have any genuine grievance, the petitioner-Association would not have filed this Writ Petition. The respondents, without understanding the

genuine grievance of the members of the petitioner-Association, has filed the counter in a casual manner, stating that the project of Under Tunnel or Overhead Super Passage across Contour canal is not technically feasible.

25. In the light of the above fact, the respondents are bound to protect the interest of the agriculturists and if they are not able to fulfill their commitments citing technical issue, in my considered opinion, committed skills be employed to fulfill the obligations of the Government.

26. For the foregoing reasons, the petitioner is entitled to succeed in the Writ Petition. The respondents are directed to construct an Under Tunnel or Overhead Super Passage at 33.200 K.Ms., marked area across Contour canal at the shutter point, within a period of three months from the date of receipt of a copy of this order.

27. With the above direction, this Writ Petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

pvs

To

- 1.The Secretary to Government,
The State of Tamil Nadu,
Public Works Department,
Fort St. George,
Chennai 600 009.
- 2.The Commissioner of Land Administration,
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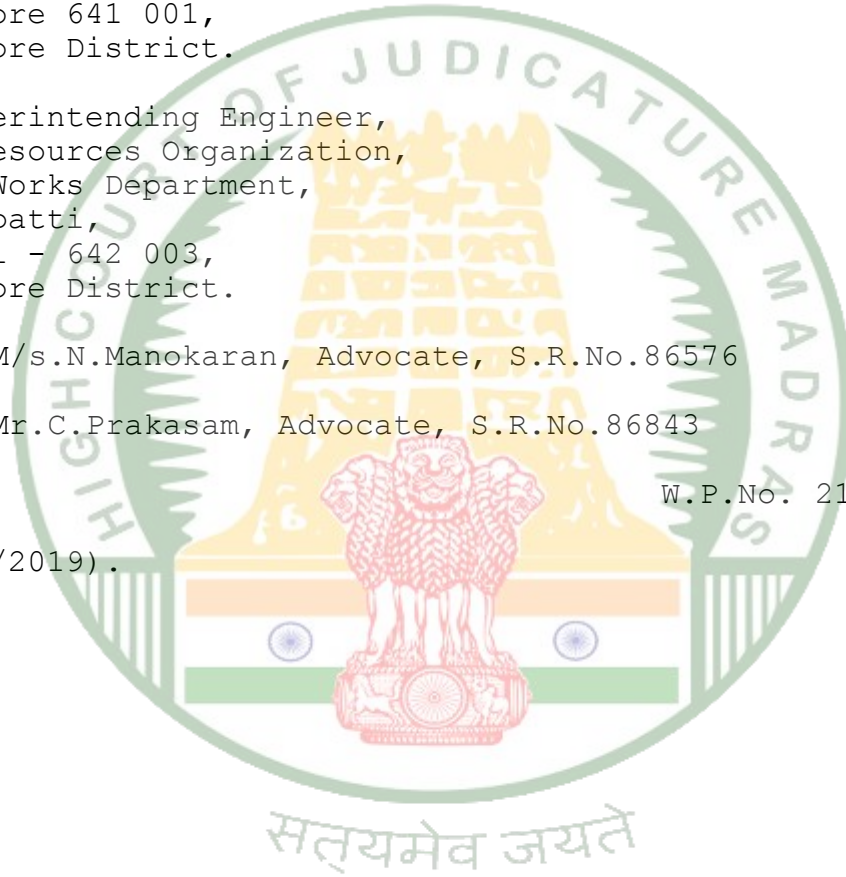
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Coimbatore District.

+1 cc to M/s.N.Manokaran, Advocate, S.R.No.86576

+1 cc to Mr.C.Prakasam, Advocate, S.R.No.86843

W.P.No. 21806 of 2015

RK(CO)
SSM(06/11/2019).



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