

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.29999 of 2018
and
W.M.P.No.35010 of 2018

D.Khirubhaa Nathan Petitioner
Vs.

1.The District Collector,
Vellore District,
Sathuvacheri,
Vellore - 9.

2.The Chairman,
Tamilnadu Electricity Board
Anna Salai, Chennai.

3.The Junior Engineer
Tamilnadu Electricity Board
Senji Village
Katpadi Taluk
Vellore District.

4.The Assistant Executive Engineer
Agriculture Engineering Department
Vellore District.

5.The Thasildhar
Katpadi
Katpadi Taluk
Vellore District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents 4 and 5 to restore the percolation pond in survey No.482/1 at Mel Achukattu Village, Kalampattu, Katpadi Taluk, Vellore District to its original form and extent based on the representation dated 10.10.2018 of the petitioner.

For Petitioner : Mr.C.D.Sugumar
For R1, R4 and R5 : Mr.E.Manoharan
Additional Government Pleader.
For R2 and R3 : Mr.M.Varunkumar

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Petitioner, a practicing Advocate, has filed the instant writ petition, for a Writ of Mandamus, directing the Assistant Executive Engineer, Agriculture Engineering Department, Vellore District and Thasildhar, Katpadi Taluk, Vellore District/the respondents 4 and 5 respectively, to restore the percolation pond in Survey No.482/1 at Mel Achukattu Village, Kalampattu, Katpadi Taluk, Vellore District, to its original form and extent, based on his representation, dated 10.10.2018.

2. In the supporting affidavit, petitioner has contended that in the year 2009, the Assistant Executive Engineer, Agriculture Engineering Department, Vellore District/the fourth respondent herein, has created an artificial percolation pond in Survey No.482/1 at Mel Achukattu Village, Katpadi Taluk, Vellore District under the scheme of State Government, for strengthening ground water level and for storing the water coming from the nearby hills. The said percolation pond was commissioned in the year 2009 -2010. The extent of the said artificial percolation pond approximately would be around 4 acres. The said artificial percolation pond created adjacent to the land belonging to the Forest Department, Vellore District. According to the petitioner, from the date of the creation of the said percolation pond in the year 2009, it is functional for recharging of ground water in the said region. The said percolation pond is also used by the farm animals of the villagers and wild animals from the nearby forest for quenching its thirst.

3. Petitioner has further contended that in the first week of August 2018, some persons with the use of JCB started smashing the bund of the said percolation pond and tried to close the same, with the remains. Startled by the developments, the villagers questioned the action of the said persons in wiping out and closing of the said

percolation pond. The villagers came to know that the action of closing the percolation pond was initiated at the behest of the Junior Engineer, Tamilnadu Electricity Board, Katpadi Taluk, Vellore District/the third respondent herein. By the time villagers interfered, the damage has already been done and one third of the percolation pond was closed by the miscreants engaged by the third respondent. On further enquiry, the villagers came to know that the Tamilnadu Electricity Board, is going to construct a substation in the said area and therefore, the third respondent has taken the initiative of identifying the site for the proposed construction. On further enquiry, petitioner came to know that TNEB has not having any such proposal, for constructing of any substation in the said region and the act of closing of the artificial percolation pond, has been done by the third respondent on his own, without any authority and without informing the revenue authorities.

4. Petitioner has contended that as per the information available, the abovesaid artificial percolation pond was constructed by the fourth respondent at the cost of the state exchequer for the purpose of recharging ground water and for the other benefits stated above. The action of the Junior Engineer, Tamilnadu Electricity Board, Senji Village, Katpadi Taluk, Vellore District in destroying and closing the said percolation pond is highly highhanded and illegal.

5. On 06.08.2018, petitioner, alongwith his villagers submitted a representation to the Collector, Vellore District about the illegal activity of the third respondent and to stop his activity in further damaging of the above said pond. However, no action has been taken till date. Thereafter, petitioner has made a comprehensive representation, dated 10.10.2018 to all the authorities concerned, who are the respondents herein, and made a request to protect the abovesaid percolation pond and to restore the artificial percolation pond, created in the abovesaid address, to its original form and extent. No action has been taken on the petitioner's representation, dated 10.10.2018. For the reasons stated supra, petitioner has filed the instant writ petition for the abovesaid prayer sought for.

6. Denying the abovesaid averments, the Junior Engineer/O & M/TNEB, Senji, Katpadi, Vellore District, has filed a counter affidavit, which reads thus:-

"(i) Junior Engineer/O & M/TNEB, Senji, Katpadi, Vellore District has submitted that the petitioner put to strict proof of the allegations made in Paragraph No.2 of the affidavit, more so, as to the allegations that in the year 2009, the percolation pond was constructed by the Assistant Executive Engineer, Agriculture Engineering Department, Vellore District and it was commissioned in the year 2009-2010 and it has been constructed in 4 acres and it is functioning since then, ground water is recharged in the said region and it is also used by the farm animals, wild animals.

(ii) He has denied the allegation that the bund of the said percolation pond was smashed at the behest of the 3rd respondent. He has denied the allegations that the said percolation pond was closed and wiped out by them.

(iii) He further submitted that there is an imminent necessity for the villagers to constrict and install a (EB) sub-station to ease the difficulties faced by the villagers to pump out water from the borewells for the purposes of getting drinking water, to use the electric pumpset motors without any interruption of power supply.

(iv) The villagers have given their representations to the District Collector, Vellore Collector, on various dates, to construct and install the power sub-station. Sensing the necessity of installing the sub-station, and at the advice and orders from the Revenue officials and EB higher officials, this respondent had commenced the preliminary work of identifying the place for the construction of the sub-station, by leveling the land.

(v) Bund of the aboveaid percolation pond was strengthened by adding mud to the already existing bund so as to stop the flow of water from the pond to the proposed site where the sub-station is

proposed to be constructed and the site selected for the construction of substation in approximately 3 acres in S.F.No.482/1, Kalampattu Village and the entire extent available in the above said S.F.No., is 4.45 Hectares. The extent to be used for construction of sub-station is very small.

(vi) He further submitted that there is no percolation pond in existence as per the revenue records in S.No.482/1 of Kalampattu Village. The said land has been classified only as "Kallanguthu" (heap of stones). The place selected for the construction of the sub-station is surrounded by Kallanguthu on north, south and east and on the west of forest of Bomminaickkanpalayam. Hence, the construction of the sub-station selected place will not in any manner obstruct the usage of the percolation pond.

(vii) There is no other alternative place available for the proposed construction of sub-station in the said village. The necessity of the construction of sub-station is felt by the local MLA and it was also placed before the Assembly in the time of question hour. The petition has been filed by the petitioner only to stall the construction on the apprehension that the electricity line will be passing over the land of his brother namely, D.Sudha Sekar, who is having lands in the same village, comprised in S.Nc.257/1. The respondent board has no personal animosity with the petitioner. Only on the advice and direction of the higher officials, he was done his official duty and not on any personal interest. He has no idea of closing the percolation pond. The execution of the work done by him is not high handed and not personal.

(viii) Representation dated 06.08.2018, sent to the Collector, Vellore, is only a sham attempt of the petitioner with his men who are following him and not by the interested villagers. The representation dated 10.10.2018 is also a make belief attempt of the petitioner with false signatures terming them as villagers.

(ix) He assured that the alleged percolation pond will not be disturbed, destroyed or closed by the 2nd and 3rd respondents now and in future.

7. Heard the learned counsel for the parties and perused the materials available on record.

8. In view of the counter affidavit filed, prayer sought for in the instant writ petition, is answered and there is no need to issue any mandamus. Accordingly, writ petition is dismissed. No Costs. Consequently, the connected writ miscellaneous petition, is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The District Collector,
Vellore District,
Sathuvacheri,Vellore - 9.
- 2.The Chairman,
Tamilnadu Electricity Board
Anna Salai, Chennai.
- 3.The Junior Engineer
Tamilnadu Electricity Board
Senji Village
Katpadi Taluk,Vellore District.
- 4.The Assistant Executive Engineer
Agriculture Engineering Department
Vellore District.
- 5.The Thasildhar
Katpadi
Katpadi Taluk, Vellore District.

+1cc to Mr.Varun kumar , Advocate SR.No. 75947

W.P.No.29999 of 2018

and

W.M.P.No.35010 of 2018

rsi A.SK(09/10/2019)