



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

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W.P. (MD) No.706 of 2019
and W.M.P. (MD) No.606 of 2019

S.Palsamy

... Petitioner

Vs.

1.The District Collector,
Tuticorin District.2.The Revenue Divisional Officer,
Kovilpatti,
Tuticorin District.3.The Tahsildar,
Ottapidaram Taluk
Tuticorin District.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to remove the seal put up on the petitioner's Bore Well wire removed from Electric Switch Gears and consequently direct them to permit the petitioner to carry on his business of extraction of Ground Water in Petitioner's Patta Land in Survey No.452 at Veppalodai Village, Vilathikulam Taluk, Tuticorin District.

For Petitioner

:Mr.N.Sankar Ganesh

For Respondents

:Mr.K.Chellapandian
Additional Advocate General
assisted by
Mr.A.K.Baskarapandian
Special Government Pleader**ORDER**

The prayer in the writ petition is for a Writ of Mandamus to direct the respondents to remove the seal put up on the petitioner's Bore Well wire removed from Electric Switch Gears and consequently direct them to permit the petitioner to carry on his business of extraction of Ground Water in Petitioner's Patta Land in Survey No.452 at Veppalodai Village, Vilathikulam Taluk, Tuticorin District.



Government Pleader appearing for the respondents.

3. The very short facts, which are required to be noticed for the disposal of the writ petition, are as follows:

That the petitioner in his patta land in S.No.452 at Veppalodai Village, Tuticorin District, dig four Bore Wells. Each Bore Well is fitted with electric motors for drawal of water and according to the petitioner, admittedly, the drawal of water, atleast from three borewells, is for commercial purpose. The commercial purpose, according to the petitioner, is, to supply water to the habitations and also for some industries, which are mainly using the water, as without the water, those industries cannot survive. When that being so, all of a sudden, according to the learned counsel for the petitioner, the respondents Revenue department visited his place on the alleged complaint given by some public and after having verified that, the petitioner was drawing water from all the four Bore Wells, they sealed three out of four Bore Wells and they left one for the purpose of personal/domestic use. In order to remove the seal put up by the revenue authorities on the three out of four Bore Wells, the petitioner has moved this writ petition with the aforesaid prayer.

4. I have heard the learned counsel for the petitioner, who would submit that, insofar as the drawal of water is concerned, if it is used for commercial purposes, that too, for making water manufacturing or recycling, those industries alone are prohibited from tapping water under the Government orders, which are in vogue. So far as the supply of water for domestic purpose industrial/commercial purpose for not as a raw material, but only as a necessary ingredient, those kind of industries can be supplied the water drawn from the Bore Wells and this kind of water supply can only be regulated not be prohibited.

5. By making this submission, the learned counsel for the petitioner would submit that, before put up the seal in the three out of four Bore Wells of the petitioner, the respondents have not issued any notice, nor conducted any enquiry, all of a sudden, the activities of drawal of water by the petitioner from three out of the four Bore Wells have been stopped abruptly by putting up the seal. Therefore, the learned counsel seek indulgence of this Court.

6. Per contra, the learned Additional Advocate General assisted by the learned Special Government Pleader submitted that, the law governing the drawal of ground water and regulating the same has been well established by issuance of series of statutory orders under Article 162 of the Constitution of India. The learned Additional Advocate General, in this context, brought to the notice of this Court the following Government Orders:

(1) G.O.Ms.No.52 Public Works (R2) Department - Estimate of Ground water Resource dated 02.03.2012

<https://hcservices.ecourts.gov.in/hcservices/>
(2) G.O.Ms.No.142, Public Works (R2) Department - Effective Management of Ground Water dated 23.07.2014



(3) G.O.Ms.No.113 Public Works (R2) Department - Categorization of Firkas as Over-exploited, semir & critical, dated 09.06.2016 and
 (4) G.O.Ms.No.257 Public Works (R2) Department - Critical, semi critical etc. dated 01.10.2018

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7. By relying upon these G.Os., the learned Additional Advocate General, has taken this Court to the contents of G.O.Ms.No.52 Public Works Department dated 02.03.2012.

8. By relying upon the said G.O., the learned Additional Advocate General submitted that, after conducting thorough technical survey, the State ground and surface water resource Data Centre has given a detailed report to the Government identifying entire panchayat Union Blocks in Tamil Nadu except, Chennai City into four categories, which are,

- (a) the blocks come under the over-exploited category;
- (b) the blocks come under critical category;
- (c) the blocks come under semi critical category; and
- (d) the blocks come under safe category.

9. According to the said report, the entire 385 Panchayat Unions/ Blocks as well as Chennai Metropolitan Area has been categorised as follows:

"6.The Chief Engineer, State Ground and Surface Water Resources Data Centre has also furnished abstract of the categorization blocks as on March 2009 as below:

Sl.No	Categorization of Blocks	As on March 2009
1	Over Exploited Blocks	138+1
2	Critical Blocks	33
3	Semi Critical Blocks	67
4	Safe Blocks	136
5	Saline/Poor quality Blocks	11
6	Total Blocks	385+1

He has also stated that in the above total, 385 denotes, 385 blocks of Tamil Nadu and plus 1 denotes the Chennai District which was taken up as one "assessment unit" since Chennai District is not bifurcated into blocks."

10. Accordingly, the Government has issued the following directions in the said G.O.,

<https://hcservices.ecourts.gov.in/hcservices/> 10.The Government further direct to exclude the Ground Water drawal for domestic purpose by individual household; domestic infrastructure project



(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). The Chief Engineer, State Ground and Surface Water Resources Data Centre will permit for domestic in use of water by this non water based industries by issuing "No objection Certificate" based on the hydro geological conditions. The list of non water based industries will be issued by the Industries Department of Government of Tamil Nadu separately.

11.The Government further direct that appropriate rain water harvesting and Artificial schemes shall be carried out in the categories, viz., Over exploited, Critical, Semi Critical and Safe blocks of Tamil Nadu, While carrying out the above schemes, priority shall be given to marginal equality and bad quality areas so as to avoid further deterioration.

12.The Government further direct that all the schemes and proposals based on Ground Water will have to be adhered the Government orders and conditions as detailed in the Annexure - II of this order."

11. Along with the said G.O., annexure has been given categorising the various Panchayat Unions under the aforesaid four categories. The learned Additional Advocate General also submitted that, the said G.O., was challenged in a batch of Writ Petitions filed before this Court. Though initially the learned Judge allowed the writ petitions by setting aside or quashing the Government Order, as against the said order, intra Court appeals were filed by the Government in Writ Appeal Nos.923 of 2009 etc., batch, where, this Court, by order, dated 18.09.2013, upheld the validity of the G.O.Ms.No.52, which has subsequently been issued during the pendency of the writ petition and the relevant portion of the order of the Division Bench referred to above in the batch of writ appeals reads thus:

"Thus, in the background of the Government order, in exercise of executive power and which has nothing to do with the passing of the repealing of the Act, we feel, the proper course herein would be to set aside any order of the learned single Judge in the Writ Petitions as well as the order rejecting the impleading Petitions and direct the parties to approach the authorities of the Public Works Department for necessary approval based on the category to which they fall. Accordingly, the order dated 12.01.2009 made in W.P.Nos.25352 and 25353 of 2008 and M.P.Nos.2 and 2 of 2008 stands set aside. We make it clear that even within the repealing of the Act, G.O.Ms.No.52 Public Works (B2) Department dated 02.03.2012 will govern the interests of the



parties and the State in the matter of regulating the business of the Writ Appellant herein.

10. In view of the order passed setting aside the orders of the learned single Judge passed in the Miscellaneous Petitions as well as in the writ petitions, all the Writ Appeals and the Writ Petitions are disposed of in terms of what we have stated in the preceding paragraphs. No costs. Consequently, connected Miscellaneous Petitions are closed."

12. The learned Additional Advocate General also submitted that, subsequently G.O.Ms.No.142 Public Works Department dated 23.07.2014 was issued, where, the Government has given a detailed regulations for management of ground water and issuance of No Objection Certificate/License for extraction of ground water in Tamil Nadu State. Accordingly, certain categories have been exempted from getting No Objection Certificate, which reads thus:

"(1) The following Categories are exempted from applying for No Objection Certificate for drawal and transportation of ground water:

(a) Drawal and transportation of ground water for domestic and drinking purposes for individual houses and housing infrastructure projects limited upto the projects with six dwelling units in any area.

(b) Drawal and transportation of ground water for drinking purposes to educational institutions while issuing No Objection Certificate, the Competent Authority may ensure that water from surface source is not available from Chennai Metropolitan Water Supply and Sewerage Board. Tamil Nadu Water Supply and Drainage Board, Local Body or New Tiruppur Area Development Corporation Limited.

(c) Drawal and transportation of ground water for agricultural and horticultural purposes in the State of Tamil Nadu. However, the existing spacing norms of 50 metres from unlined canal and 200 metres from river bed and water bodies will continue.

(d) Drawal and transportation of ground water by Local Bodies, Government institutions, Government undertakings for drinking water purposes, subject to the clearance by the Water Utilisation Committee as per rules inforce."

13. Certain categories are required no objection certificate, which reads thus:

"(II) No Objection Certificate is required for drawal and transportation of Ground Water for the following categories:

(1) For drawal and transportation of ground water for Housing Infrastructure Project with more



than six dwelling units.

(2) For drawal and transportation of ground water for all other infrastructure Projects buildings.

(3) Drawal and transportation of ground water for industries (However, this will not apply to the existing Industries)

(4) Water based Industries (ie., those industries which use water as raw material like water bottling units, etc.,) are eligible for No Objection Certificate in safe and semi-critical Blocks only and not in any other category of Blocks.

(5) In case of industries, which have already been established and functioning in Critical and Over-exploited Blocks, keeping in view the investment already made in plant and machinery, renewal of No Objection Certificate will be done after the concerned District Collector/Chief Engineer, State Ground and Surface Water Resources Data Centre, satisfies himself about the provisions of the Artificial Recharge Scheme Structures to recharge the ground water. While issuing No Objection Certificate, the Competent Authority may ensure that water from surface source is not available from Chennai Metropolitan Water Supply and Sewerage Board, Tamil Nadu Water Supply and Drainage Board, Local Body or New Tiruppur Area Development Corporation Limited."

and some categories, no No Objection Certificate would be permitted, which reads thus:

"(III) Non-permissible Categories

(1) Drawal and transportation of ground water for Water based industries (ie., those industries which use water as raw material) is not permitted from Critical and Over-exploited Blocks. Hence, water based Industries are not eligible to get No Objection Certificate in Over-exploited and Critical Blocks.

(2) Highly Polluting Industries (14 types - as categorised by the Tamil Nadu Pollution Control Board) are not eligible to extract ground water within 5 km radius from Cauvery, Pennaiyar, Palar, Vaigai, Thamiraparani and all the major rivers and tributaries as specified vide G.O.(Ms) No.213 Environment & Forest (EC-1) Department, dated 30.03.1989.

(3) In coastal areas, proposal for extraction of ground water within 10 km from the coast (However the distance criteria may be relaxed based on the geological formation which ensures that the geological formation is not susceptible for sea



water intrusion due to extraction of ground water in that area)

(4) The areas falling under the Palar Basin Rules, where the spacing prescribed is not available vide G.O.(Ms) No.1766, Public Works Department, dated 31.10.1988.

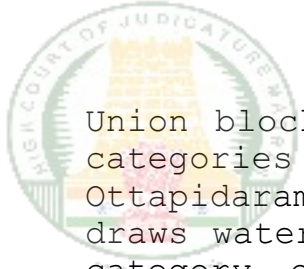
5) The extraction point falling within 50 meters from the canal are not eligible for extraction of ground water."

14. By relying upon these Government orders, the learned Additional Advocate General would also submit that, subsequently, a batch of writ petitions came to be decided by a learned Judge of this Court in W.P.Nos.28535 to 28539 of 2014 etc. batch in the matter of M/s.Shanthi Aqua Farms v. Secretary to Government, Public Works Department and others etc., dated 03.10.2018, where, the learned Judge directed to constitute a monitoring committee to oversee the illegal or illicit tapping or drawal of ground water without getting license or no objection certificate from the concerned authorities.

15. Relying upon these Government orders as well as the judgments referred to above, the learned Additional Advocate General would submit that, insofar as the petitioner is concerned, admittedly, he has been drawing water from four Bore Wells set up by him at his place and on complaint, when the revenue officials visited the spot, it was found that, from all the four Bore Wells, the petitioner was drawing water and since it is for commercial use for which, no license/no objection certificate was obtained as per law, which is governing this area, as set out above, the revenue officials sealed three out of four and one Bore Well was permitted for the personal use of the petitioner. Therefore, the learned Additional Advocate General would submit that, the action in placing the seal on the three Bore Wells of the petitioner is strictly in consonance with the regulations made in this area, as has been stated above. Therefore, without having the valid no objection certificate or license, to be obtained from the competent authority, by the petitioner, he is not entitled to have the relief sought for in this writ petition. Therefore, the writ petition is liable to be rejected, the learned Additional Advocate General contended.

16. I have considered the said submissions made by the learned counsel for the petitioner and the learned Additional Advocate General appearing for the respondents.

17. After having gone through all these proceedings, it become clear that, the issue has been settled, as number of Government Orders time and again were issued by the Government, as stated supra. The validity of almost all the Government orders referred to above, has also been upheld by various decisions of this Court. The governing law, as of now, is, these Government orders referred to above and under the Government order, the Panchayat



Union blocks except Chennai City, have been categorised under four categories referred to above. The Panchayat Union, namely, Ottapidaram, where the petitioner's land is located, from where he draws water from the Bore Wells in that land, which comes under the category of semi critical and from that area, if at all the petitioner wants to draw water, he has to apply for necessary no objection certificate to the authorities and once he makes an application to the satisfaction of the authorities within the meaning of the categorisation made, as has been stated in the said G.Os., the application would be decided on merits and a decision would be taken thereon either to grant no-objection certificate or reject it.

18. Without even resorting to such method of applying to the authorities to get no objection certificate/license, the petitioner cannot independently run the Bore Wells and draw water continuously for commercial purposes. Such kind of continuous drawal of ground water without any no objection certificate/license definitely can be prohibited and therefore, the respondents cannot be directed to remove the seal put up by the authority, as has been sought for by the petitioner. Therefore, the prayer sought for by the petitioner deserves to be rejected. Accordingly, it is rejected. However, it is open to the petitioner to make an application to the respondents under the relevant Government orders for getting no-objection certificate or permission, as the case may be and once such application is made, the same shall be considered by the respondents, who is empowered to decide such application, on merits and in accordance with law, ie., within four corners of the governing law, that has been made in the above referred G.Os.

19. With these observations and directions, this writ petition, since deserves to be dismissed, accordingly, is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

To

1. The District Collector,
Tuticorin District.

2. The Revenue Divisional Officer,
Kovilpatti,
Tuticorin District.



3.The Tahsildar,
Ottapidaram Taluk
Tuticorin District.

+1 CC to M/s.N.SHANKAR GANESH, Advocate (SR-73301[F] dated
04/07/2019)

+1 CC to M/s.SPL GP (SR-73386[F] dated 04/07/2019)

W.P.(MD) No.706 of 2019
and W.M.P.(MD) No.606 of 2019
03.07.2019

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