



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.07.2019

CORAM:

WEB COPY

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P. (MD)No.10624 of 2017

and

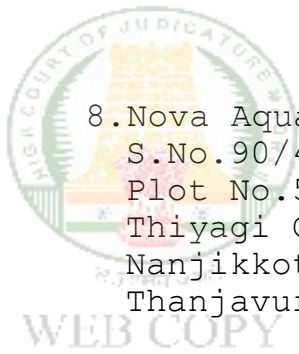
W.M.P. (MD)Nos.8110 and 8111 of 2017

Tamilthai Residents Welfare Association,
Rep.by its President,
M.Jayakumar.

... Petitioner

Vs.

- 1.The District Collector,
Thanjavur District,
Thanjavur.
- 2.The Revenue Divisional Officer,
Thanjavur District.
- 3.The Chairman,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai,
Guindy,
Chennai 600 032.
- 4.The Chief Engineer,
Sate Ground and Surface Water Resources Data Centre,
Tharamani,
Chennai 600 113.
- 5.The Superintending Engineer,
TANGEDCO,
Thanjavur,
Thanjavur District.
- 6.The Joint Chief Environmental Engineer,
Tamil Nadu Pollution Control Board,
Trichy.
- 7.The President and Special Officer,
Nanjikottai Panchayat,
Thanjavur Taluk,
Thanjavur District.



8.Nova Aqua Tech,
S.No.90/4,
Plot No.58 to 61,
Thiyagi Chelladurai Nagar,
Nanjikkottai Panchayat,
Thanjavur Taluk and District.

... Respondents

Prayer: The petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 and 2 to close the borewell of the 8th respondent situated in Survey No.90/4, Plot Nos.58 to 61, Thiyagi Chelladurai Nagar, Nanjikkottai Panchayat, Thanjavur Taluk and District.

For Petitioner : Mr.K.Baalasundharam

For Respondents : Mr.Murugan, G.A. for R1 to R4

Mr.S.Sades Kumar, for R7

Mr.R.Devaraj for R8

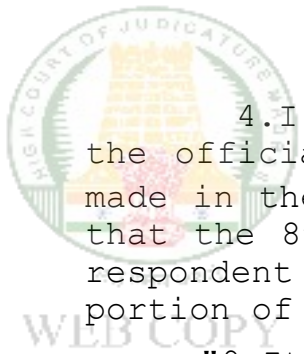
No appearance for R5 and R6

O R D E R

The prayer in the Writ petition is for a Writ of Mandamus, directing the respondents 1 and 2 to close the bore-well of the eight respondent situated in Survey No.90/4, Plot Nos.58 to 61 at Thiyagi Chelladurai Nagar, Nanjikkottai Panchayat, Thanjavur Taluk and District.

2.Heard Mr.K.Baalasundharam, learned counsel for the petitioner, Mr.Murugan, learned Government Advocate for the respondents 1 to 4, Mr.S.Sades Kumar, learned standing counsel for the 7th respondent and Mr.R.Devaraj, learned counsel for the 8th respondent.

3.The eight respondent, in the name of Nova Aqua Tech, is running drinking water business by drawing or tapping ground water, within the Panchayat limit of the seventh respondent, of course, from his own land by digging bore-well. The said drawal of water, according to the petitioner, is illegal or unlawful or without any licence or NOC from the authorities concerned under the law, which is governing this tapping of ground water. Hence, the business of drawal of water by the eight respondent shall be directed to be closed for the time being and shall be regulated by the official respondents by giving NOC or licence, if the eight respondent deserves to get the same.



4.I have heard the learned Government Advocate appearing for the official respondents 1 to 4, who by relying upon the averment made in the counter affidavit filed by the 4th respondent submitted that the 8th respondent has already made an application to the 4th respondent to get NOC and the same has been rejected, the relevant portion of the counter is at paragraph No.9, which reads thus -

"9.It is submitted to state that as per the Government Order No.52 dated 02.03.2012 the application of the 8th respondent for grant of NOC could not be considered since the referred bore well of 8th respondent falls within the stipulated spacing norms. Hence, the application is rejected by the 4th respondent and the same intimated to 1st respondent."

5.Therefore, if at all the eight respondent has to continue his business of drinking water by drawing the ground water, the same should not be permitted, without the licence or NOC. Therefore, the current action of drawing water by the eight respondent, without NOC or licence can very well be curtailed.

6.However, the learned counsel appearing for the eight respondent would submit that, no doubt the eight respondent is drawing water through bore-well and the same is being utilized for commercial purpose. However, he has already approached the 7th respondent / Village Panchayat, who driven the 8th respondent to approach the Public Works Department and accordingly, the 8th respondent approached the Public Works Department, who in turn rejected the application on some flimsy reasons. As against which, a Writ petition has been filed, where initially, interim stay of such rejection order has been granted by this Court.

7.Therefore, according to the learned counsel for the 8th respondent, the current position of the issue is that, the 8th respondent, having failed in his attempt to get NOC even though he made an attempt to that effect is making efforts to get the NOC.

8.Mr.S.Sadas Kumar, learned standing counsel appearing for the seventh respondent / Panchayat submits on instructions that, the 8th respondent did not get any permission or licence from any authority and without licence or permission or NOC he is drawing the water within the Panchayat limit of the 7th respondent.

9.I have considered the said submission made by the learned counsel appearing for the parties and perused the materials placed



before this Court.

10. Admittedly, the 8th respondent is drawing water from bore-well and he is using the same for commercial purposes. But, as on date, there is no licence or NOC obtained by the 8th respondent even though the 8th respondent has made some attempt in this regard.

11. It is further to be noted that, as has been rightly pointed by the learned Government Advocate by quoting averment at paragraph No.9 of the counter affidavit filed by the 4th respondent, the said application or attempt made by the 8th respondent to get NOC has been rejected by the concerned authorities ie., Public Works Department for the reason that, the place of the 8th respondent to draw water does not fall within the stipulated norms as per G.O.Ms.No.52 Public Works Department, dated 02.03.2012.

12. Whatever be the reason, it is a fact remains that, the application of the petitioner to get NOC from the authority since has been rejected, unless such NOC or licence is granted, under the relevant G.O., especially, under G.O.Ms.No.52 Public Works (R2) Department and G.O.Ms.No.142 Public Works (R2) Department, dated 23.07.2014, the 8th respondent is not entitled to draw water unauthorisedly, that too for commercial purpose. Therefore, the official respondents are duty bound to curtail such activity on the part of the 8th respondent.

13. In such view of the matter, this Court is inclined to pass the following order:

That the official respondents herein are directed to take immediate measure to restrain or curtail the drawal of water by the 8th respondent from bore-well located within the Panchayat limit of the 7th respondent and such prohibition or curtailment shall continue till the 8th respondent gets NOC / licence under the relevant regulations, which is in vogue in this regard as has been provided under the Government Orders, referred to above.

14. The aforesaid exercise shall be undertaken by the official respondents, within a period of two weeks from the date of receipt of a copy of this order.

15. It is made clear that once the 8th respondent succeeds in his attempt to get NOC or licence from the authority concerned, this order will not stand in the way against the 8th respondent for the



continuance of the business in accordance with the licence or NOC to be granted in this regard.

16. With these observations, this Writ petition is ordered accordingly. No costs. Consequently, connected W.M.Ps. are closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)

To

1. The District Collector,
Thanjavur District, Thanjavur.
2. The Revenue Divisional Officer,
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7. The President and Special Officer,
Nanjikottai Panchayat,
Thanjavur Taluk, Thanjavur District.

+2 CC to M/s.R.DEVARAJ, Advocate (SR-73454[F] dated 04/07/2019)

+1 CC to M/s.K.BAALASUNDHARAM, Advocate (SR-73516[F] dt.04/07/2019)

+1 CC to M/s.SPL GP (SR-73709[F] dated 05/07/2019)

W.P. (MD) No.10624 of 2017
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