

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.4129 of 2018 and W.M.P.No.5056 of 2018

V.Arul Srinivasan ... Petitioner

Vs.

1. The State of Tamil Nadu
Rep.by its Secretary to Government
Department of Environment and Forest
Fort St.George, Chennai 600 005.
 2. The Chief Conservator of Forest
Forest Department, Panagal Buildings
Jenis Road, Chennai - 600015.
 3. The Conservator of Forest, Forest Department
Rangapuram,
Sattuvachary,
Vellore.
 4. The District Forest Officer,
Vellore Region,
Vellore-9.
 5. The District Collector, Collectorate Office,
Sathuvachari, Vellore.
 6. The District Forest Officer,
Thirupattur Division
Thirupattur.
 7. The Forest Ranger,
Forest Department,
Ambur.
 8. Vellukuttai Panchat, rep.by its President
Representing Naneri Village,
Vellore District.
- ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents 1 to 7 to remove the obstruction to the natural water channel (Vellakal Kanar) and artificial channel made by the Nanneri Village People to the length of 3 KM by diverting the water from its original way and restore of same to its original status of Kappu Kadu Forest Area, Vellakkal Village, Ambur Taluk, Vellore District within a stipulated time.

For Petitioner : Mr.S.Mohan for Mr.R.Anbazhagan

For Respondents : Mr.J.Pothiraj, Special Govt.Pleader
- for RR 1 & 5

Mr.S.Prabhu, Addl.Govt.Pleader (Forests)
- for RR 2, 3, 4, 6 and 7

O R D E R

(Order of the Court was made by DR.VINEET KOTHARI, J.)

The petitioner V.Arul Srinivasan, S/o P.Vadivelu, a resident of Vinamangalam Village, Ambur has filed this Public Interest Litigation on 16.02.2018, praying for the issuance of a Writ of Mandamus directing the respondents 1 to 7 to remove the obstruction to the natural water channel (Vellakal Kanar) and artificial channel made by the Nanneri Village People to the length of 3 KM by diverting the water from original way and restore of same to its original status of Kappu Kadu Forest Area, Vellakkal Village, Ambur Taluk, Vellore District within a stipulated time framed by this Court.

2. Upon issuance of notices, the respondents have put in appearance and the learned counsel for the Forest Department Mr.S.Prabhu has filed a Status Report in this Court today, a copy of which is given to the learned counsel for the petitioner. In the said Status Report, the respondent Forest Department had contended in Paragraph No.17 that the area in question comes under the Reserve Forest and it is mandatory on the part of the respondents to protect the forest area from any kind of threats. Learned counsel submitted that the area in question was inspected by the District Forest Officer and again by the Forest Range Officer on 12.12.2019 and it was learnt that an attempt to divert the channel was stopped by the Department in 2014 itself and afterwards till date, no man-made obstructions happened to the natural flow of water as claimed by the petitioner. The Forest Department also disputed the right of the Professor and Head of the Department, Department of

Animal Science, School of Biological Sciences, Central University, Kerala to visit the forest area without the prior permission of the Forest Department and make a survey report about the water stream course in question.

3. Learned counsel for the petitioner Mr.Mohan however submitted with the help of the site photographs produced by him that the respondent Forest Department has failed to remove the man-made obstructions on the said stream in order to allow it to have its natural course, and the eighth respondent viz., Vellukuttai Panchayat representing Nanneri Village people had deliberately put up boulders in the natural course of the said stream thereby depriving the residents of the Vellakkal village, a nearby village of the said water flowing through the natural channel.

4. He has also relied upon the report dated 28.08.2018 given by Dr.M.Arunachalam, Professor, Department of Zoology, School of Biological Sciences, Central University of Kerala in this regard and submits that the said report finds that the natural course of water has been obstructed by certain persons.

5. Having heard the learned counsel for the parties and upon perusal of the material placed on record and the site photographs, we are of the opinion that the present Public Interest Litigation seems to be more in the nature of a private dispute between a set of people belonging to two villages namely Vellukkuttai Panchayat representing Nanneri Village and Vellakkal village. Whether the obstruction in question in the natural water stream was caused deliberately and is man-made or not are all questions of fact.

6. The Forest Department has taken a stand before this Court that an attempt in this regard was made by some people in the year 2014, which attempt was foiled by the authorities of the Forest Department and the area in question is a Reserve Forest and therefore the Forest Department is under the obligation to protect the reserve forest area and any entry into this area is prohibited. He further submitted that according to the Forest Officials who have inspected the site in question, no man-made obstruction has been caused to the natural flow of water.

7. In these circumstances, we feel that this Court cannot give any direction to remove the boulders in question. The case also involves determination of disputed questions of fact which cannot be done at this stage under Article 226 of the Constitution of India. If the petitioners have any right in the said natural flow of water from the said stream, they can establish their civil rights and seek the removal of man made obstruction caused in that stream. This exercise can be

undertaken only in a properly instituted civil suit in the competent civil Court and not in writ jurisdiction.

8. Therefore, we are of the opinion that the petitioners can be given liberty to file a civil suit in the matter and in view of this, we resist from expressing any opinion of this Court in this regard. With the aforesaid liberty to the petitioner, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy//

Sub Assistant Registrar

KST

To

1. The Secretary to Government,
State of Tamilnadu,
Department of Environment and Forest
Fort St.George, Chennai 600 005.
2. The Chief Conservator of Forest
Forest Department, Panagal Buildings
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6. The District Forest Officer,
Thirupattur Division
Thirupattur.
7. The Forest Ranger,
Forest Department,
Ambur.

8. The President,
Vellukuttai Panchayat,
Naneri Village,
Vellore District.'

+lcc to Government Pleader, SR.No.10001.

W.P.No.4129 of 2018

PM(CO)
CSR: 10.03.2020



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