

JIN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED : 25.02.2020

ORDER PRONOUNCED : 10.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. No.18412 of 2019

and

W.M.P. Nos.17749, 17750 & 26433 of 2019 & 5446 of 2020

N.Palanisamy

... Petitioner

Vs.

1.The State of Tamilnadu,
represented by its Secretary,
Public Works Department,
Fort St.George,
Chennai 600 009.

2.The Chief Engineer,
Public Works Department,
Chepauk,
Chennai 600 005.

3.The District Collector,
Salem District,
Salem.

4.The Superintending Engineer,
Public Works Department,
(Water Resources Organization),
Mel Cauvery Vadinila Vattam,
Cherry Road,
Kumarasamipatti,
Salem – 636 007.

5.The Block Development Officer,
Veerapandi Panchayat Union,
Ariyanur,
Salem District.

6.The Tahsildar,
Salem (South),
Maniyanur,
Salem,
Salem District.

7.The Divisional Engineer (Salem South),
Tamilnadu Generation and Electricity Distribution
Corporation (TANGEDCO),
Annadhanapatti,
Salem,
Salem District.

8.The Assistant Engineer,
Tamilnadu Generation and Electricity Distribution
Corporation (TANGEDCO),
Veerapandi,
Salem District.

9.G.Shanugasundaram

10.P.Subramani

11.R.Rathinavel

... 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 1 to 6 to remove the pipe lines laid by the respondents 9 to 11 beneath the Panchayat Road from S.No.258/3 and S.Nos.165/1A1, 165/1A2, 165/2 and 178/4 [Patta No.599] at Veerapandi Village, Salem (South), Salem District and consequently, restrain the respondents 9 to 11 from illegally tapping water from the Main Canal (Raja Vaikal), leading to Koppam Lake at Veerapandi Village, Salem (South), Salem District.

For Petitioner : Mr.K.Selvaraj
For R1 to R6 : Mr.M.Karthikeyan
Additional Government Pleader
For R7 & R8 : Mr.Abdul Salam
For R9 to R11 : Mr.V.P.Sengottuvel

ORDER

This Writ Petition is filed in the nature of mandamus seeking a direction against the respondents 1 to 6 to remove the pipe lines laid by the respondents 9 to 11 beneath the Panchayat Road from S.No.258/3 and S.Nos.165/1A1, 165/1A2, 165/2 and 178/4 [Patta No.599] at Veerapandi Village, Salem and restraining the respondents 9 to 11 from illegally tapping water from the Main Canal (Raja

Vaikal), leading to Koppam Lake at Veerapandi Village, Salem.

2.In the affidavit filed in support of this petition, the writ petitioner, N.Palanisamy, had stated that he owns agricultural lands measuring 2 acres at Kasiyankadu (Kasiyanthottam) at Veerapandi Village, Salem. He further stated that Thirumani Mutharu is the river in the village in Veerapandi Village and there is an Anicuttu called Veerapandin Anicuttu close to Uthamasolapuram Village. There is a Raja Vaikal taking water from the Veerapandi Anicuttu and Thirumani Mutharu to the Koppam Lake. Raja Vaikal is the main source of irrigation. The Public Works Department has constructed Sluices in the main canal to let the water into the Nanja lands in Veerapandin Village. It is also stated in the affidavit that there are two water source channels from Kanjamalai Hills, one crossing the Raja Vaikal and another water channel from the Kanjamalai Hills going to the Koppam Lake.

3.It is stated that the River, Vaikal and the lake are under the control of Public Works Department. It is further stated that the 10th respondent, P.Subramani, owns Punja lands in Veerapandi Village. It is claimed that he had

dug a pit in the land adjacent to Raja Vaikal in connivance with the Founder of the S.R.K Trust and had laid a pipe line beneath the panchayat Road connecting the Raja Vaikal to the pit to a length of ½ kms. It is also stated that he got electricity connection and pumps water for irrigation purpose. It is stated that the 11th respondent, R.Rathinavel, is also doing the same work. It is stated that the respondents 9 and 10 had purchased 1 acre in S.No.258/3 at Veerapandi Village by a sale deed dated 03.06.2019. This land is situated between the Raja Vaikal and Veerapandi panchayat road. They have also dug a pit to a depth of 20 ft., within 20 meters of the Raja Vaikal. They have also put a pipe line connecting the pit with Raja Vaikal, They have given a application to the TANGEDCO to get electricity connection.

4.The petitioner has protested and has given representations finally on 18.06.2019, requested the respondents not to give permission for the pipe line and not to give electricity connection. It is under these circumstances, since no action has been taken on the representations, the writ petition has been filed.

5.The 4th respondent, the Superintending Engineer, Public Works

Department, Upper Cauvery Basin Circle, Selam, had filed a counter affidavit on his behalf and on behalf of the respondents 1 and 2.

6. In the counter affidavit, it had been stated that the 4th respondent along with officials inspected the canal and lake and determined that the respondents 9 to 11 have dug a pit measuring 4 meters diameter and 6 meters depth in their own lands in S.No.258/3 for the purpose of drawing water through the pipe line from Raja Vaikal canal. It had been stated that the 4th respondent had removed the pipe line under the provisions of Tamil Nadu Tank Protection Act and G.O.Ms. No. 540/2014. It is stated that there is no pipe line or pit in S.No.256.

7. The respondents 9 and 10 have filed a reply to the said counter affidavit of the 4th respondent. They claimed that they had purchased the land in S.No.258/3 [part] measuring 1 acre with an old dry unused well. The sale deed was registered on 03.06.2019. They have not connected the well with the channel by laying any pipe line. Therefore, the claim that the 4th respondent removed the pipe line was denied.

8.A rejoinder to this reply affidavit was filed by the petitioner.

9.In the rejoinder, it had been stated that on the objection of the petitioner, the 4th respondent advised the respondents 9 to 11 to disconnect the pipe line. This fact was stated in the rejoinder affidavit.

10.A counter affidavit has been filed on behalf of the 9th respondent to the writ petition.

11.In the counter affidavit, the claims of the petitioner that he is an agriculturist and owns agricultural lands have been denied. It has been stated that the writ petition has been filed with *mala fide* intentions. It was sated that the water flows to the Thirumanimutharu to veerapandi Koppam lake only during rainy season. It was stated that the respondents purchased 1 acre [part] in S.No.258/3. The revenue records also reflected the names of the respondents 9 and 10. It was stated that there was a unused well. It has been stated that the petitioner had given representation on 18.06.2019, when the date of purchase was on 03.06.2019. The petitioner filed a writ within three days from the date of

representation on 21.06.2019. It was stated that the respondents are not taking water directly from the channel. They are using the well water already available in the land. It was claimed that the writ petition should be dismissed.

12.The 10th respondent also reiterated the same averments made by the 9th respondent and further stated that an application seeking electricity connection had been given to the Electricity Department. It had been stated that no objection certificate is required from the Public Works Department. It had been stated that the application is pending, since the writ petition is pending. It is claimed that the writ petition should be dismissed.

13.The 11th respondent also filed counter affidavit stating that the water flows in the river only during the rainy season. It was stated that the 11th respondent was not taking water directly from the channel and was using the well water in the existing well in the land in S.No. 178/4. It was stated that the writ petitioner had approached the court with *mala fide* intentions and it was therefore, stated that the writ petition should be dismissed.

14.The petitioner has filed a common reply affidavit to the counter affidavit filed by the respondents 9 to 11. It was reiterated that the petitioner is an agriculturist. It was stated that there was no well in the land in S.NO. 256/3 purchased by the respondents 9 and 10. The averments in the affidavit filed in support of this petition was reiterated. Further reliance was placed on the Government Orders relating to exploitation of water resources. It was further stated that the respondents 9 to 11 cannot be permitted to draw the water and transfer the water from the well in S.NO. 256/3 to their lands. It was therefore stated that the writ petition should be allowed.

15.Pending the writ petition, this court had passed an order on 22.10.2019, directing the 4th respondent to inspect the property and file a report with sketch specifically stating whether the water connections obtained by the respondents 9 to 11 with electricity connection can be received and processed but electricity connection shall not be given without orders of this court.

16.Heard Arguments.

17.The learned counsel for the petitioner had placed strong reliance on the Government Orders, which he had mentioned in his reply affidavit.

18.In G.O.MS.No. 52, Public Works Department, dated 02.03.2012, it had been stated that no schemes should be formulated in Over exploited and Critical blocks and in Semi-Critical and Safe blocks all the schemes should be formulated in consultation with the State Ground and Surface Water Resources Data Centre of Water Resources Organization in Public Works Department.

19.In G.O.MS.No. 142, Public Works Department, dated 23.07.2014, it had been stated in the Regulations for Management of Ground Water and Issue of No Objection Certificate/ License for Extraction of Ground Water in Tamil Nadu State that the extraction point falling within 50 meters from the canal are not eligible for extraction of ground water.

20.In G.O.MS.No. 113, Public Works Department, dated 09.06.2016, it had been stated that the Government had further directed that all the schemes and proposals based on the ground water will have to adhere to the Government

Orders and Conditions.

21.In G.O.MS.No. 257, Public Works Department, dated 01.10.2018, it had been again reiterated that no schemes can be carried out without approval and without No Objection Certificate from the Departments.

22.In the annexure to the Government Orders, among the various villages, Veerapandi Village is also mentioned.

23.Placing reliance on the above Government Orders, the learned counsel for the petitioner therefore stated that the respondents 9 to 11 cannot be permitted to draw a pipe line from the well to their agricultural lands. The learned counsel therefore stated that though the petitioner had given representations, the respondents have not passed any order and therefore, he had filed the present writ petition.

24.The Government Orders mentioned above relate to the schemes of the Government. The present writ petition is concerned with an individual act of the

respondents 9 to 11 in drawing a pipe line from their well to their agricultural lands. The contention of the petitioner that there is a pipe lines across the Raja Vaikal have been denied by the respondents. As a matter of fact, a status report has been filed and in the status report filed by the The Tahsildar, Salem/6th respondent, it had been stated as follows:

“I humbly submit that the Block Development Officer, Veerapandy, Salem South Taluk, Salem District has granted permission to take water from the well in S.No.178/4 to S.Nos.195/2 to 195/1 and to S.Nos.194/3A, 180/1A and 8A through the road side of Pakkadu and Kathaladi through PVC pipe. Survey No.187/1 belongs to SRK Charities, Survey No.178/4 stands in the name of S.Rangasamy Gounder-1, S.Sengoda Gounder-2, The SRK Charities bought land in Survey No.178/4 of Veerapandy Village. One Shanmugasundaram bought an extent of 1 acre in Survey 258/8 in Veerapandy Village. There is a well in the above Survey Number. An extent of 1 acre in S.No.258/3 which is classified as Assessed Waste Dry in village accounts.”

25.It has also been stated that the passage mouth of the pipe line has been locked.

26. This Court cannot substitute itself for the officials namely, the Superintending Engineer, Public Works Department or the Block Development Officer or the Tahsildar. They are the officials, who are competent to examine whether the pipe line to be laid by the respondents 9 to 11 is in accordance with the rules and regulations or not. They are the authorities, who will have to decide whether no objection certificate can be given and electricity connection can be given or denied. This would require a survey of the lands independent of the representations made by the petitioner. The petitioner has no locus to question the acts of the official respondents. He can point out his objection, but, any decision taken by the official respondents namely, the Superintending Engineer, Public Works Department or the Block Development Officer or the Tahsildar, will have to be based only on the facts available on the land. They will have to come to an independent conclusion whether the respondents 9 to 11 can be permitted to lay a pipe line from their well in their patta agricultural lands. They will have to determine whether this would affect the irrigation of the agricultural lands of other agriculturists. This is an exercise, which has to be done unless any representation receives.

27.The Court can never impose its views or give directions in such matters. The petitioner seeks a mandamus to dispose of the representation given by him. The disposal of the representation has to be done only by examining the lay of the land. The petitioner may point out various Government Orders, but the respondents are also bound by those Government Orders. The scope of the Government Orders will have to be kept in mind by the respondents.

28.This Court is confident that the said respondents would act only in accordance with rules and regulations. There is no ground to presume that they would act otherwise.

29.Therefore, a direction is given to the respondents to, on the basis of the application seeking electricity connection given by the respondents 9 to 11, make an inspection of the land, determine whether laying of pipe lines would affect other agriculturists or the flow of water to other agricultural lands and thereafter, by examining necessary conditions, decide either to grant or to deny the service connection. If No Objection Certificate is to be granted by the Public Works

Department, once again, the said officials may take an independent decision and thereafter, decide either to grant or to deny the No Objection Certificate. The decisions will have to be taken by the officials. They can take note of the objections of the petitioner, but merely because the petitioner objects, they cannot decide to reject the application. Any rejection order should be based on sound reasons relating to laying the pipe line and the consequential results of such laying the pipe line by the respondents 9 to 11.

30. In view of all these observations, the Writ Petition is disposed of with a direction to the respondents, to whom, the representation dated 18.06.2019 had been given, to independently examine the application of the respondents 9 to 11, inspect the lands, examine whether the laying of pipe line would affect other agricultural lands and then based on the relevant Government Orders, Rules and Regulations, take a decision whether to grant or to deny the No Objection Certificate and the electricity connection and whether to permit or remove the pipe line laid by the respondents 9 to 11 from S.No.258/3 in the patta lands of the respondents 9 to 11. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
mm

10.03.2020

To

1.The Secretary,
Public Works Department,
Fort St.George,
Chennai 600 009.

2.The Chief Engineer,
Public Works Department,
Chepauk,
Chennai 600 005.

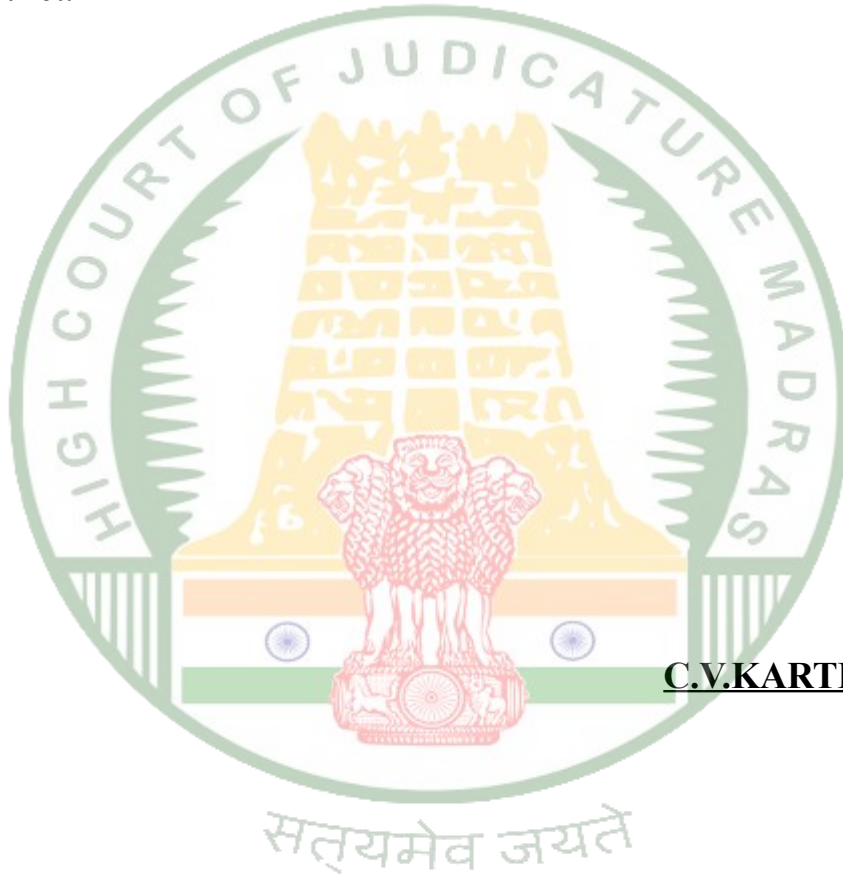
3.The District Collector,
Salem District,
Salem.

4.The Superintending Engineer,
Public Works Department,
(Water Resources Organization),
Mel Cauvery Vadinila Vattam,
Cherry Road,
Kumarasamipatti,
Salem – 636 007.

5.The Block Development Officer,
Veerapandi Panchayat Union,
Ariyanur,
Salem District.

16/18

6.The Tahsildar,
Salem (South),
Maniyanur,
Salem,
Salem District.



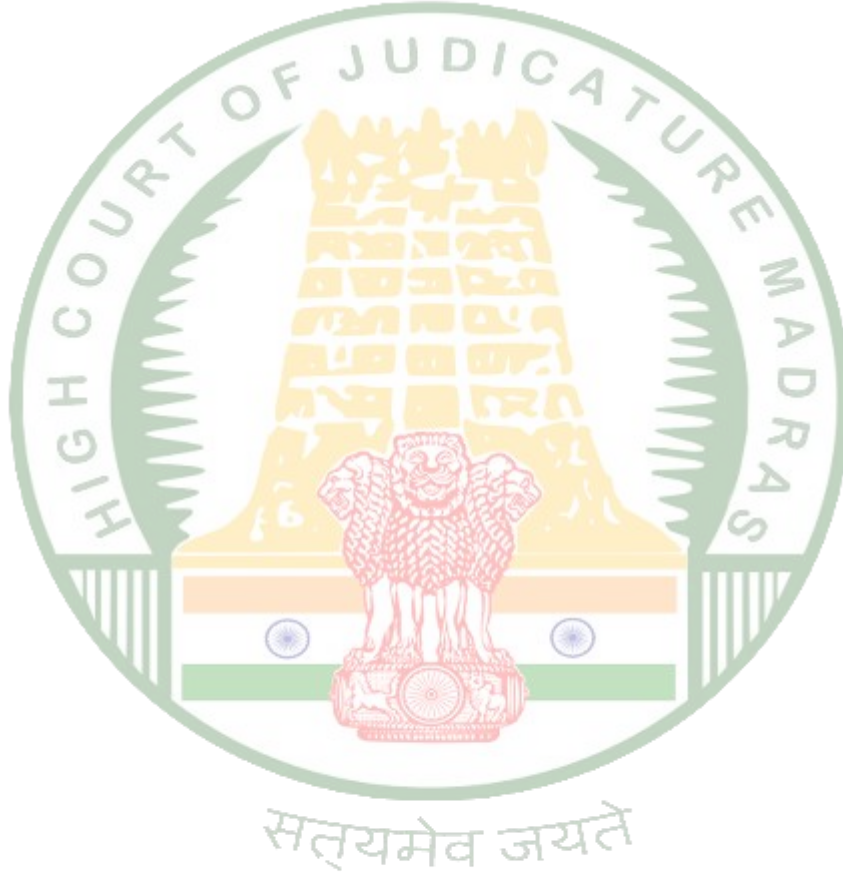
C.V.KARTHIKEYAN, J.

mm

WEB COPY

W.P. No.18412 of 2019

Pre-delivery order made in
W.P.No.18412 of 2019



10.03.2020

WEB COPY