IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.08.2020

PRONOUNCED ON :18.08.2020

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.9815 of 2016 and
W.M.P. Nos.8790 & 8791 of 2016
(heard through VC)

P.Vengudusamy .. Petitioner

Vs

1. The Sub Collector,
   Pollachi, Coimbatore District.

2. The Tahsildar
   Taluk Office, Pollachi
   Coimbatore District

3. The Executive Engineer
   Public Works Department,
   Water Resources Organisation
   Parambikulam Aliyar Project
   Makkinampatti Post
   Pollachi Taluk, Coimbatore District

4.Arunachala Gounder

5.Manivannan .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the 1st respondent in her proceedings Pa.Mu.38/2016/A2, dated 03.03.2016, quash the same and consequently direct the respondents 1 to 3 to take appropriate action against the respondents 4 and 5 herein for ensuring the petitioner to get water from Parambikulam Main Canal, Thondamuthur Branch Canal, Veeralpatti Distributary Sluice No.9 in Parambikulam - Aliyar Project through said sluice and pipelines for the petitioner's land situated in S. No.10, Veeralpatti Village, Pollachi Taluk, Coimbatore District.

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For Petitioner : Mr.C.Prakasam

For RR1 to 3 : Mr.V.Shanmugasundar,
Spl. GP

For RR4 & 5 : Mr.N.Umapathi

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O R D E R

The petitioner has sought for a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the 1st respondent in her proceedings in Pa.Mu.38/2016/A2, dated 03.03.2016, quash the same and consequently for a direction to the respondents 1 to 3 to take appropriate action against the respondents 4 and 5 herein for ensuring the petitioner to get water from Parambikulam Main Canal, Thondamuthur Branch Canal, Veeralpatti Distributary Sluice No.9 in Parambikulam - Aliyar Project through said sluice and pipelines for the petitioner's land situated in S. No.10, Veeralpatti Village, Pollachi Taluk, Coimbatore District.

2. The writ petitioner claims that, himself and his brothers by name Sivasamy and Late Kumarasamy own lands situate in S. No.10, Veeralpatti Village to an extent of 6.00 Acres which come under the Ayacut in Parambikulam - Aliyar Project. Petitioner's lands are irrigated by the water from Parambikulam Main Canal, Thondamuthur Branch Canal, Veeralpatti Distrubutary Sluice No.9 in Parambikulam - Aliyar Project through the said sluice. The said water is received through pipeline that has been laid down by the Central and State Government under the scheme of Command Area Development Programme of about 25 years back.

3. It is the case of the petitioner that the respondents 4 and 5, whose lands are before petitioner's lands, had allegedly damaged the pipelines in order to stop water flowing to petitioner's lands. As the respondents 4 and 5 were disturbing the smooth flow of water through Sluice No.9 to petitioner's land, the petitioner was constrained to file O.S. No.207 of 2006 on the file of District Munsif Court, Pollachi, which was decreed on 25.09.2014. As the respondents 4 and 5 have been frequently preventing the flow of water into the lands of the petitioner through pipeline, he had also made a representation to the second respondent. The second respondent, passed orders in Proceedings No.Na.Ka.17218/2015/Aa2 dated 28.10.2016 taking note of the fact that a suit has been filed by the petitioner and the same was decreed, which is under challenge before Subordinate Court and directed the petitioner to work out his remedy only before the civil court.

4. Aggrieved by the same, the petitioner herein preferred an

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appeal before the first respondent, but the first respondent also rejected the appeal and passed orders in Pa.Mu.38/2016/A2 dated 03.03.2016, confirming the order of the second respondent and advised the petitioner to work out his remedy before the civil court.

5. Respondents 4 and 5, who are represented by a counsel, had filed a counter affidavit wherein also, it had been admitted that the petitioner is getting his lands irrigated only through the water distributed through Sluice No.9. It is contended by respondents 4 and 5 that since the pipeline is going through their lands, the petitioner cannot have any right over the same, besides the pipelines are already damaged and not in use for more than a decade. Hence the petitioner is not entitled to any relief.

6. Heard both sides and perused the materials available on record.

7. It is the admitted case of the respondents 1 to 3 as well as the private respondents 4 and 5 that the petitioner's lands in S. No.10, Veeralpatti Village has been irrigated only through the water flowing through Sluice No.9. This petitioner had earlier moved this court in W.P. No.37863/2007 challenging the proceedings of the second respondent dated November 2007 and directing the respondents therein to maintain the channel P.M.C.4, Veeralpatti Branch, Channel 18 (Right) Canal No.9, for free flow of water to Survey No.10 at Veeralpatti Village. As the civil suit was pending at that point of time, this court had directed the petitioners therein, to work out their remedy before the civil court. Despite obtaining a decree, the petitioner has been made to run from pillar to post for getting his lands irrigated through the water flowing from Sluice No.9. A reading of the order dated 03.03.2016 passed by the first respondent also confirms the same. The relevant portion in the vernacular, is extracted hereunder:

> "கடந்த 10 ஆண்டுகளாகவும் மேற்படி காடா ஸ்கீம் வருவதற்கு முன்பும் பல எண்.9 வழியாகவே மனுதாரர்கள் வெங்கிடுசாமி, சிவசாமிக் கவுண்டர் மற்றும் குமாரசாமிக் கவுண்டர் மற்றும் எதிர் மனுதாரர் அருணாசலக் கவுண்டர் ஆகியோர் பரம்பிக் குளம் ஆழியாறு பாசன நீரை பாய்ச்சி வந்ததும் விசாரணை மற்றும் தள ஆய்வில் தெரிய வந்துள்ளது எனவும் குறிப்பிடப்பட்டுள்ளது."

8. Though a decree has been obtained by the petitioner as early as on 25.09.2014, the appeal preferred by the respondents 4 and 5 with delay, was numbered only in the year 2019. Till such time the appeal is heard and disposed of, the petitioner cannot be deprived of his share of water for irrigating his lands. The supply of water is under the scheme of Command Area

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Development Programme. The petitioner, in fact, admittedly gets water once in two years that too for 21 to 28 days, but the respondents 4 and 5 are preventing his right to get water. It is the duty of the Revenue officials to ensure that the agriculturists get equal distribution of water. However, in this case, despite several representations made by the petitioner and also having obtained a decree in the civil court against the respondents 4 and 5, had not looked into the issue of water supply to petitioner's lands. It is now the responsibility of the Revenue officials to see that till such time the civil disputes are resolved, the petitioner's land would not dry.

9. The observation made in the impugned orders that the petitioner has not been irrigating his lands for the last 10 years, is not due to any other reason, but for the fact that the civil suit was pending before the court. Even though the respondents 4 and 5 have preferred an appeal before the civil court, admittedly there are no interim orders. Hence there is no impediment for the Revenue officials, namely, respondents 1 to 3, to consider the case of the petitioner and ensure that he is given his quota of water from Parambikulam - Aliyar Project. In the field enquiry having found that the petitioner and his father had been irrigating the lands only through the Command Area Development Scheme, there is no reason as to why the petitioner should be deprived or denied of the water supply. The civil suit is also only for a permanent injunction restraining the respondents 4 and 5 from interfering with the free flow of water into petitioner's field. Therefore, the petitioner is entitled to his share of water for irrigating his lands.

10. Learned counsel for the petitioner also produced a copy of the order passed in W.P. No.14788 of 2019 dated 22.05.2019, wherein, in a similar circumstances, having found that the respondents were interfering with the flow of water to the land belonging to the petitioners therein, it was found to be an offence under Section 7(2) of Tamil Nadu Irrigation Works (Construction of Field Bothies) Act, 1959. The said observation would not be applicable to the instant case, as the Schedule to Section 2(e) of the Act does not include Parambikulam - Aliyar Project (Arani Vaikkal).

11. In the light of the above discussions, the orders passed by the respondents 1 and 2, are set aside. The respondents 1 to 3 are directed to conduct a field inspection and ensure that the petitioner is getting his share of supply of water for 28 days, without any interruption. If either the pipeline or a sump or the channel going to petitioner's lands are damaged, the officials are to restore it to the original position. If it is found that the respondents 4 and 5 are damaging the free flow of water to petitioner's land, the respondents 1 to 3 are also

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directed to take appropriate action against the erring persons. The above direction has to be complied with by the respondents within a period of three months from the date of receipt of a copy of this order.

12. With the above direction, the writ petition is disposed of. However, there shall be no order as to cost. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To

1. The Sub Collector,
   Pollachi, Coimbatore District.

2. The Tahsildar
   Taluk Office, Pollachi
   Coimbatore District

3. The Executive Engineer
   Public Works Department,
   Water Resources Organisation
   Parambikulam Aliyar Project
   Makkinampatti Post
   Pollachi Taluk, Coimbatore District.

+1cc to Mr.N.Umapathi, Advocate Sr.No.27188

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