



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2020

CORAM:

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P(MD)No. 8477 of 2020
and
W.M.P. (MD).No.8613 of 2020

C.Pandi

... Petitioner

Vs.

- 1.The District Collector,
Sivagangai District,
Sivagangai.
- 2.The Block Development Officer,
Kalayarkovil Panchayat Union,
Sivagangai District.
- 3.The Tahsildar,
Kalayarkovil Taluk,
Sivagangai District.
- 4.The President,
Marandhal Village Panchayat,
Kalayarkovil Panchayat Union,
Sivagangai District.

5.V.Swaminathan

... Respondents

(R-5 is impleaded vide Court order dated 04.09.2020
in W.M.P. (MD).No.8613/2020 in W.P. (MD).No.8477/2020)

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus forbearing the respondents from taking water from the existing borewell situated at Melasethur, Kolanathi Village Limit, Kalayarkoil Taluk, Sivagangai District for the purpose of the aqua plant and direct the respondent No.4 to dig the new borewell at least 200 metres away from the existing borewell which was allotted to the two villages of Keelasethur and Moolakarai for drinking water purposes as per the decision taken, during the peace committee meeting held on 14.07.2020.



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For Petitioner : Mr.V.Kannan
For Respondents : Mr.B.Bagavathi
Govt. Advocate for RR-1 to 3
Mr.RM.Arun Swaminathan for R-4
Mr.M.Thirunavukkarasu for
newly impleaded party

ORDER

(Order of the Court was made by **M.SATHYANARAYANAN, J.**)

The writ petitioner is a resident of Keelasethur Village, Melasethur Post, Kalaiyar Kovil Taluk, Sivagangai District and according to him, he is a graduate and doing agricultural operation.

2. It is the case of the petitioner that there is no source of drinking water in Keelasethur Village and in the year 2010, the second respondent has put up an overhead water tank of 10,000 litres capacity under the "Thayamangalam Drinking Water Scheme". However, it was only meagre to support the water needs of the Keelasethur Village. As a result, the residents of Keelasethur Village approached the second respondent with a request to make available drinking water facilities to their residents. It was followed by a representation, dated 09.01.2019, suggesting to dig a borewell to facilitate in providing drinking water in Keelasethur Village. The fourth respondent has also passed a resolution on 26.01.2019 in this regard and an estimate was also prepared by the jurisdictional Assistant Engineer.

3. The petitioner further averred that in pursuance of the order of the second respondent, dated 20.02.2019, drinking water was supplied to both the villages of Keelasethur and Moolakari. But, in the later half of the year 2019, the fourth respondent, who came to be elected as the President of the Marandhal Village Panchayat belonging to the Kalayarkovil Village Panchayat Union, with *malafide* intention, decided to establish an Aqua Plant and to direct water from the said bore well to the said aqua plant. The grievance expressed by the petitioner is that if the said action is fructified, it will result in depletion of water as well as non-availability of drinking water supply and other needs. In this regard, the petitioner also submitted a series of representations from 02.05.2018 to 07.07.2020 and despite of the receipt and acknowledgment, nothing has been fructified and on account of the law and order problem, a Peace committee Meeting was held on 14.07.2020, in which, a decision has been taken that the fourth respondent will dig a new bore well for his aqua plant.



4. The learned counsel appearing for the petitioner would submit that with an oblique motive, the fourth respondent has taken a *malafide* decision and in the light of the facts and circumstances, he prays for appropriate orders, forbearing the respondents from taking water from the existing bore well situated at Melasethur, Kolanthi Village Limit, Kalayarkoil Taluk, Sivagangai District to the aqua plant of the fourth respondent and other consequential reliefs.

5. The writ petition was entertained on 03.08.2020. The fourth respondent has filed a counter affidavit opposing the allegations and also took a stand and contended that the aim of the petitioner is to prevent the supply of water to the people belonging to the Melasethur Village and pointed out that bore well itself is situate only in the said village. It is further pointed out in the said counter affidavit that on account of the fact that the ground water supply is a very meagre and it is also not potable and a decision has been taken to install a Reverse Osmosis Plant under the Tamil Nadu State Finance Commission Devolution Grant and the fourth respondent Panchayat has been recommended by the 1st respondent for installing Reverse Osmosis (RO) Plant and resolution No.25 was also passed by the Local Body, dated 26.01.2020. It is not open to the petitioner to raise an opposition to the contents of the same. It is also explained by the fourth respondent that the proposed Reverse Osmosis Plant is beneficial to the following hamlets:- 1.Melasathur, 2.Keelasathur, and 3.Moolakarai and he also denied the allegations that he is running the aqua plant with *malafide* intention and there is a likelihood of diversion of water to his commercial purpose.

6. The learned counsel appearing for the newly impleaded fifth respondent also supported the case of the fourth respondent.

7. It is a primordial submission of the learned counsel appearing for the petitioner that the proposed aqua plant is only going to benefit the fourth respondent for his commercial purpose. But the said fact has been denied.

8. A perusal of the counter affidavit of the fourth respondent coupled with the typed set of documents would disclose among other things that in Melasethur Village, as per the funds available to Melasethur Village, a new bore well has been dug in the year 2018-2019 and there from, a pipeline has been taken to Keelasethur Village also and on account of the requirement of Melasethur Village, pipe lines were also put up and it was opposed by the residents of the Keelasethur Village and therefore, the second respondent sought a direction from the Sub Inspector of Police, Kalaiyarkovil. Though the pipe lines were put, subsequently, it has been unauthorisedly removed, on necessary police complaints. The counter affidavit of the fourth respondent also reads, especially paragraph No.10 would disclose that the proposed RO plant is going



to benefit the following hamlets:- 1.Melasathur, 2.Keelasathur, and 3.Moolakarai.

9. The learned counsel appearing for the petitioner is unable to specify any rule preventing or banning the establishment of R.O Plant and that the water extracted from it has to be used only for the benefit of the particular village or hamlet. Insofar as the allegation as to the establishment of proposed R.O plant and exploitation of water for commercial purpose except making the allegations, no material whatsoever has been placed in the typed set of documents.

10. It is well-settled position of law that when there is an allegation of *malafide*, it has to be proved. However, the petitioner failed to probablize or substantiate the said allegations.

11. This Court, taking into consideration the above facts and circumstances, is of the considered view that the present writ petition lacks merits. The second respondent viz., the Block Development Officer, Kalaiyarkovil Panchayat Union, Sivagangai is also directed to put in monitoring mechanism as to the utilization of the purified water, in the event of R.O plant, being operational and see to that the water extracted from the bore well is utilised purely for public purpose and not for commercial exploitation.

12.The writ petition is dismissed, subject to the above observations No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

VS

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.



To

1. The District Collector,
Sivagangai District,
Sivagangai.
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3. The Tahsildar,
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W. P (MD) No. 8477 of 2020
04.09.2020

MA (CO)
CS (28.09.2020) 5P 4C