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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.2792 of 2019

L.Mageshwari

... Petitioner

vs.

1. The Divisional Engineer,
State Highways Department
(Construction and Maintenance),
Erode, Erode District.
2. The Assistant Engineer,
State Highways Department
(Construction and Maintenance),
Perundurai, Erode District.
3. The Revenue Tahsildar,
Perundurai Taluk,
Perundurai, Erode District.
4. Kulandaisamy
5. K.Subramani

(R4 & R5 impleaded vide order dated 11.06.2019 made in W.M.P.No.13717 of 2019 in W.P.No.2792 of 2019)

6. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
CMP Plot, SIDCO Industrial Estate,
Chennimalai Road, Erode - 638 001.

...Respondents

(R6 impleaded as per order dated 04.11.2019 made in W.M.P.No.31316 of 2019 in W.P.No.2792 of 2019)

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the entire records in KA.No.31/2018/E.VA.A/dated 02.01.2019 on the file of the 2nd Respondent and quash the same and consequently direct the 3rd Respondent to give permission based on the Petitioner's Application dated 12.12.2018.



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For Petitioner : Mr.N.Chinnaraj
For Respondents 1 to 3 : Mr.U.Baranidharan,
Addl. Government Pleader
For Respondents 4 & 5 : Mr.C.Prakasam
For 6th Respondent : Mr.C.Kasirajan
No Appearance

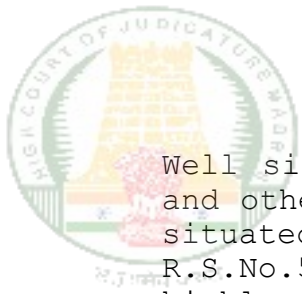
O R D E R

Petitioner has come up with this Writ Petition seeking to quash the impugned proceedings passed by the 2nd Respondent vide KA.No.31/2018/E.VA.A/dated 02.01.2019 and for a consequential direction to the 3rd Respondent to grant permission based on her Application, dated 12.12.2018.

2. According to the Petitioner, she owns agricultural lands in Oratthupalayam, Chennimalai Panchayath Union in S.F.Nos.58/1, 262 11/3A, 41 and a Well is situated in S.F.No.58/1. From the said Well, the Petitioner intends to draw water to irrigate coconut trees situated in S.F.Nos.262 11/3A, 41 from S.F.No.58/1, apart from watering the livestock. Hence, the Petitioner made a representation dated 12.12.2018 to the Respondents seeking permission to draw water from S.F.No.58/1, thereby using water from the said Well to irrigate the lands in S.F.Nos.262 11/3A, 41. Also, on 28.12.2018, the Senior Agriculture Officer, Mobile Soil Testing Laboratory, Thindal, Erode issued a Certificate that, water from the said Well can be used for irrigation purpose. While so, based on the legal notice issued by one C.Subramanian, Advocate, the 2nd Respondent passed the impugned order dated 02.01.2019 directing the Petitioner to remove the pipeline.

3. Learned counsel for the Petitioner contended that, when the Petitioner's Application dated 12.12.2018 seeking permission to draw water from S.F.No.58/1 is pending before the Respondents, passing of the impugned order by the 2nd Respondent is unsustainable.

4. Learned Additional Government Pleader, with reference to the counter Affidavit filed by the 3rd Respondent, submitted that, admittedly, the Petitioner is the owner of the lands situated in R.S.Nos.11/3A, 45/1 and 7/1 of Orathupalayam Village, Perundurai Taluk, Erode District and that, the open



Well situated in R.S.No.58/1 is jointly owned by the Petitioner and others. He further submitted that, a river viz. "Noyyal" is situated at a distance of 329.6 metres from the Well situated in R.S.No.58/1 of Orathupalayam Village and that, the said river is highly polluted and has caused much damages to the surrounding agricultural lands. However, the Petitioner, without obtaining permission from the Taluk Tahsildar, Perundurai and other allied line Officials, has laid pipelines in a casual and mechanical manner.

5. According to the learned Additional Government Pleader, if the Petitioner is granted permission for transportation of water from the Well situated in R.S.No.58/1, it would cause irreparable damage to the surrounding lands of agriculturists, as water in the said Well will not suit irrigation purpose on account of percolation from the nearby pollutant river. He went on to state that, Certificate from the Senior Agricultural Officer, Mobile Soil Testing Laboratory, Thindal, Erode, is not suffice and the concurrence of the Tamil Nadu Pollution Control Board is necessary. Hence, according to the learned Additional Government Pleader, the relief sought by the Petitioner cannot be granted, as there are chances of affecting public peace and tranquility in the area surrounding the Petitioner's lands.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. Admittedly, the Petitioner is the owner of the agricultural lands in Oratthupalayam, Chennimalai Panchayath Union in S.F.Nos.58/1, 262 11/3A, 41 and an open Well is situated in S.F.No.58/1. The Petitioner's representation dated 12.12.2018 to the Respondents seeking permission to draw water from the said Well to irrigate her lands, is still pending. From the pleadings, it is seen that, the Petitioner has laid pipelines in her land to draw water from the said Well without prior permission from the Authorities. Though the Senior Agricultural Officer, Mobile Soil Testing Laboratory, Thindal, Erode has issued a Certificate dated 28.12.2018 to the Petitioner to the effect that, water from the Well situated in S.F.No.58/1 can be used for irrigation purpose, according to Respondents 1 to 3 herein, by means of percolation of the polluted water of 'Noyyal River', water in the said Well cannot be used for irrigation, as it would cause irreparable damage to the surrounding lands of the agriculturists. Also, it is seen that, the Petitioner has not obtained concurrence from the Tamil Nadu Pollution Control Board. Hence, the relief sought for by the Petitioner cannot be granted.



8. In view of the foregoing, the Writ Petition stands dismissed with a direction to the official Respondents to remove the pipelines laid by the Petitioner in the Government poramboke lands lying in Orathupalayam Village, Perundurai Taluk, Erode District. No costs. Consequently, connected W.M.P.No.3061 of 2019 and W.M.P.No.8027 of 2020 are closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Divisional Engineer,
State Highways Department
(Construction and Maintenance),
Erode, Erode District.
2. The Assistant Engineer,
State Highways Department
(Construction and Maintenance),
Perundurai, Erode District.
3. The Revenue Tahsildar,
Perundurai Taluk,
Perundurai, Erode District.
4. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
CMP Plot, SIDCO Industrial Estate,
Chennimalai Road, Erode - 638 001.

+1cc to Government Pleader SR. No.60033

W.P.No.2792 of 2019

KSM (CO)
PR (10/02/2022)