



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.16778 of 2019

S.S.Ramalingam

... Petitioner

vs.

1. The Public Information Officer,  
Lt. Governor's Secretariat,  
Raj Nivas, Pondicherry.

2. V.S.Natarajan

3. The Appellate Authority,  
Underground Water Authority,  
Secretariat, Puducherry.

... Respondents

(R3 suo motu impleaded as per order dated 28.10.2020 made in W.P.No.16778 of 2019)

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, calling for the records of the 1<sup>st</sup> Respondent ending with No.LGS/RP/SGW/2018, dated 17.11.2018 and quash the same.

For Petitioner : Mr.Nassir Hussain,  
for Mr.N.A.Nissar Ahmed

For 1<sup>st</sup> Respondent : Mr.G.Djearany,  
Government Advocate (Pondy)

For 2<sup>nd</sup> Respondent : Mr.Mohanraj

O R D E R

Petitioner has come up with this Writ Petition seeking to quash the order dated 17.11.2018 passed by the Lieutenant Governor, Pondicherry.

2. According to the Petitioner, the property comprised in S.No.55/21 Kadasthar No.669/4, Soriyankuppam Village, Bagur Commune, Puducherry, belongs to the 2<sup>nd</sup> Respondent herein, who is his brother, by virtue of a registered Sale Deed bearing Document No.435/95, dated 25.04.1994. It is further stated by the Petitioner that, originally, the abovesaid property and other properties belonged to his father viz. V.Samikannu @ Pavadai Padayachi by virtue of a registered Sale Deed dated 07.05.1974 bearing Document No.445/74. It is the case of the Petitioner that, the 2<sup>nd</sup> Respondent purchased the abovesaid



property from his father under a Sale Deed dated 25.04.1974 with wrong description of the property, with an ulterior motive.

3. While so, the 2<sup>nd</sup> Respondent was granted permission to sink a new tubewell for agricultural purpose, vide proceedings dated 03.03.2016, for which the Petitioner objected to the Puducherry Ground Water Authority. The Ground Water Authority issued a Show Cause Notice dated 24.05.2016 and on finding certain discrepancies in the description of the property, by an order dated 24.06.2016, cancelled the permission granted to the 2<sup>nd</sup> Respondent. Challenging the same, the 2<sup>nd</sup> Respondent filed an Appeal before the Lt. Governor, Pondicherry.

4. Pursuant thereto, the Lieutenant Governor of Pondicherry Government, without any notice or enquiry to the Petitioner, visited the site on 17.11.2018 and by an order dated 17.11.2018, set aside the cancellation of the permit, thereby restoring the permit in favour of the 2<sup>nd</sup> Respondent and directed the 2<sup>nd</sup> Respondent to rectify the errors and submit it to the Authorities concerned. Hence, the Petitioner has come up with the present Writ Petition.

5. Learned counsel for the Petitioner contended that, the 1<sup>st</sup> Respondent has no authority or jurisdiction to pass the impugned order and that, only the Government can pass the impugned order. He submitted that, as per G.O.Ms.30/AG, dated 02.02.2005, no Well shall be sunk within a distance of 30 meters from any main irrigation canal or tank bunds. While so, the 2<sup>nd</sup> Respondent has described the Petitioner's property in the document and put up a Well in his land which is 30 meters from the canal and the Lt. Governor, Pondicherry, has miserably failed to consider the same.

6. Learned Government Advocate appearing for the 1<sup>st</sup> Respondent submitted that, only after conducting spot inspection, the Lt. Governor of Pondicherry has passed the impugned order, which is perfectly in order and the same does not require any interference.

7. Admittedly, the Petitioner and the 2<sup>nd</sup> Respondent are brothers and there are discrepancies in the description of the property belonging to the Petitioner and errors in the boundary requires rectification. It is also an admitted fact that, the Petitioner received a copy of the order impugned in this Writ Petition, only through RTI from the Public Information Officer, Lt. Governor's Secretariat, Raj Nivas, Pondicherry, the 1<sup>st</sup> Respondent herein.

8. When G.O.Ms.30/AG, dated 02.02.2005 is clear to the effect that, no Well shall be sunk within a distance of 30 metres from any main irrigation canal or tank bund, it is the case of the Petitioner that, the 2<sup>nd</sup> Respondent has described the property of the Petitioner in the document and put up a Well in



his land which is 30 metres from the canal. When the Petitioner is a party to the proceedings, he ought to have been served with a Notice before restoration of the permit granted to the 2<sup>nd</sup> Respondent herein. Hence, on this ground, the impugned order passed by the Lt. Governor, Pondicherry is liable to be set aside. Accordingly, the impugned order dated 17.11.2018 is set aside and the matter is remanded to the appropriate Authority for fresh consideration. The issue is expected to be resolved after giving an opportunity of personal hearing to the Petitioner and the 2<sup>nd</sup> Respondent herein, and appropriate orders shall be passed in accordance with law within a period of eight weeks from the date of receipt of a copy of this order.

In fine, the Writ Petition is allowed with the above direction. No costs. Consequently, connected W.M.P.Nos.16382 and 16384 of 2019 are closed.

Sd/-  
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Public Information Officer,  
Lt. Governor's Secretariat,  
Raj Nivas, Pondicherry.
2. The Appellate Authority,  
Underground Water Authority,  
Secretariat, Puducherry.

+1 cc to Mr.N.A.Nissar Ahmed, Advocate Sr.NO. 57514  
+2 ccs to Mr.D.Senthil Kumar, Advocate Sr.NO. 57840  
+1 cc to Government Pleader Pudhucherry Sr.NO.57719

W.P.No.16778 of 2019

SJ(CO)  
A.SK(17.12.2021)