



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No. 19511 of 2021

and

W.M.P.Nos.20798 and 20799 of 2021

R.Selvaraj

... Petitioner

/Vs/

1. The District Collector,
Kallakirichi,
Kallakirichi District.
2. The District Revenue Officer,
Kallakirichi,
Kallakirichi District.
3. The Sub Collector/ Revenue Divisional Officer,
Office of the Sub Collector,
Kallakirichi Pin 606 202,
Kallakirichi District.
4. The Asst.Divisional Engineer, (H),
Nabard and Rural Roads,
Kallakirichi,
Kallakirichi District.
5. The Tahsildar,
Office of the Tahsildar,
Chinna Salem,
Kallakurichi District.

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying Writ of Certiorari, to call for the records related to the impugned proceedings bearing No.Ka.No.341/2021/U.Ko.Po/ dated 16.08.2021 passed by the Assistant Divisional Engineer, (H), Nabard and Rural Roads, Kallakurichi, the fourth respondent herein and set aside the same as illegal, against natural justice and well established law.

For Petitioner : Mr.V.R.Appaswamee

For Respondents : Mr.M.R.Gokul Krishnan
Government Advocate

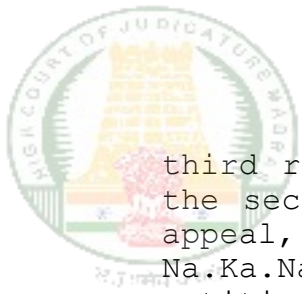


ORDER

This writ petition has been filed challenging the impugned proceedings bearing No.Ka.No.341/2021/U.Ko.Po/ dated 16.08.2021 passed by the fourth respondent/ the Assistant Divisional Engineer and set aside the same.

2. The case of the petitioner is that he is an agriculturist, doing agricultural works in his own land. He has agricultural lands in the village measuring a total extent of 4.54 Acres and 60 Cents of land in S.Nos.186/1A, 186/2A and 186/3A with a well in the Southern side of the Koogaiyur - Govindampalayam Road. He also owns agricultural land measuring to an extent of 3.5 Acres in Survey Nos.156/7B and 142/4 in Northern side of the above said road. The distance between the two lands is nearly 1 K.M. While so, the Well existing in the petitioner's land became dry without water.

3. Thereby, the petitioner decided to take water from the Well situated in Survey Nos.186/1A, 186/2A and 186/3A to the S.Nos.156/7B and 142/4. Earlier, there was no provision for taking water from one land to another land through Government Poramboke land. In the meanwhile, the State Government passed G.O (Ms).No.558 Revenue (Nee.Mu.2)(1) Department dated 11.06.1997, granted powers to the Taluk Tahsildars to grant permission to implant pipelines in the Government Porambokku lands. As per the said G.O (MS).No.558 (Revenue), the petitioner made an application dated 27.04.2006 to the fifth respondent/ Tahsildar. Since no order has been passed, the petitioner filed a writ petition in W.P.No.12100 of 2006 before his Court and the same was ordered on 27.04.2006, directing the Tahsildar, Kallkurichi to consider and pass orders on the petitioner's representation dated 27.04.2006. Pursuant to the above said order, the fifth respondent granted permission to the petitioner vide his proceedings, dated 20.07.2006 granted permission to implant pipelines in Government Poramboke lands between the petitioner's two patta lands for drawing water from the Well in the above said survey numbers for a period of five years from 20.07.2006 to 20.07.2011. After expiry of the permission, based on the petitioner's renewal application, the Tahsildar, Kallakurichi vide his order dated 25.04.2012 extended the same for a period of five years from 20.07.2011 to 19.07.2016. Subsequently, the same was extended for a further period of five years from 28.11.2016 to 27.11.2021 by the Tahsildar, Kallakurichi vide his order dated 28.11.2016. In the meanwhile, some of the local residents who have got enmity between them, made an objection before the third respondent. Thereafter, the third respondent conducted an enquiry and passed the impugned order dated 12.02.2021, directing the petitioner to remove the pipelines which was laid. Aggrieved by the impugned order of the



third respondent, the petitioner has preferred an appeal before the second respondent on 09.03.2021. During the pendency of the appeal, the fourth respondent vide his letter in Na.Ka.Na.341/2021/U.Ko.Po/ dated 16.08.2021, directing the petitioner to remove the pipelines within a period of seven days when the permission was still in force upto 27.11.2021. Hence, the petitioner has come forward with the present writ petition.

3. The learned counsel appearing for the petitioner submitted that though the petitioner's permission period is going to expire on 27.11.2021, without referring to the fourth respondent's order, this Court may issue direction to the 2nd respondent to pass appropriate orders and further permit the petitioner to file a renewal application before the fifth respondent/ Tahsildar, Chinna Salem. The learned counsel further submitted that during the pendency of the writ petition, this Court appointed Mr.R.Vigneshwaran as an Advocate Commissioner to inspect the above said properties of the petitioner to find out whether any objectionable encroachment was made in the public road and submit a report before this Court. In pursuant to the order of this Court, the Advocate Commissioner inspected the above said property and filed a report before this Court, that the petitioner has not made any encroachment in the public road except laying the pipeline as per the order of the fifth respondent/ Tahsildar, Chinna Salem.

4. The respondents have not filed any counter affidavit. However, it is the submission of the learned Government Advocate that the period of permission granted by the fifth respondent is going to expire on 27.11.2021. In view of the above, the period itself is going to expire and therefore, there is no need for adjudication in respect of the impugned order passed by the fourth respondent.

5. This Court has considered the rival submissions and the materials available on the record. Admittedly the petitioner was granted permission by the fifth respondent for laying pipelines in the Government Porambokku land for drawing water from the Survey Nos.186/1A, 186/2A and 186/3A to the S.Nos.156/7B and 142/4 and the said permission is still-in-force upto 27.11.2021. However, the impugned order was passed on 16.08.2021 by the proceedings in Na.Ka.Na.341/2021/U.Ko.Po/ three months prior to the date of expiry and further it appears that as against the order of the third respondent, the appeal is also pending.

6. In view of the above submissions made on either side, since the period is going to expire on 27.11.2021, this Court is inclined to direct the second respondent/District Revenue Officer to dispose of the appeal dated 09.03.2021 filed by the



petitioner, on merits and in accordance with law and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order and shall decide whether the petitioner is entitled to renew his permission to lay the pipeline in the Government Porambokku land No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

gba

To

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Kallakirichi District.
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+1cc to the Government Pleader, S.R.No.61497, 61539

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and
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VSN-II (CO)
SB(08/12/2021)