



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD)No.2064 of 2011

and

M.P. (MD)Nos.1 and 2 of 2011

K.P.Ponnusamy

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Public Works Department,
Fort St.George, Chennai.

2.The Superintending Engineer,
Public Works Department (WRO),
Mel Cauvery Basin Division,
Salem - 7.

3.K.Murugesan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the 2nd respondent in Ka.No.10 of 1984/2009/2 dated 18.01.2011 and quash the same.

For Petitioner : Mr.M.Subash Babu

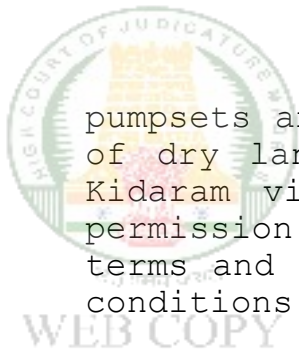
For Respondents : Mr.M.Rajarajan,
Additional Govt. Pleader for R1 & R2
Mr.M.Saravanan for R3

ORDER

Heard the learned counsel on either side.

2.The writ petitioner namely., Mr.K.P.Ponnusamy is president of the Soorampatti Small Farmers Lift Irrigation Society, Trichy District. It appears that the said society has been declared defunctional. The petitioner through his counsel gives an undertaking that he will take steps at the earliest to have the society revived by filing the returns and remitting the necessary condonation fee. If and when such a returns are filed and fee is remitted, the concerned authority will accept the same so as to revive the society.

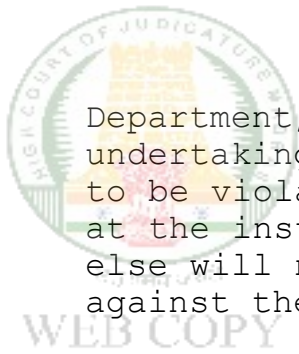
3.The Government issued G.O.(Ms) No.267 Public Works (H2) Department, dated 24.03.1994 permitting the said society to pump water from a well owned by it situated at the distance 50 metres from the River Cauvery in patta land in S.F.No.291 Oravandur village in Nammakal Taluk, Salem District by installing two electric motor



pumpsets and laying pipe lines for irrigating an extent of 81 acres of dry lands owned by 63 members of the society in Murungai and Kidaram villages of Musiri Taluk, Tiruchirappalli District. The permission given vide the said Government Order was subject to terms and conditions for drawal of water by pumping. The terms and conditions were also annexed in the said Government Order.

4.The private respondents herein alleged that the petitioner's society has committed breach of the terms and conditions. Since his complaint was not acted upon, he filed W.P.(MD)No.4220 of 2008 before this Court. This Court vide order dated 30.04.2008 directed the Superintending Engineer, Public Works Department (WRO), Mel Cauvery Basin Division, Salem-7, to take action on the said representation. Pursuant to the said direction, the second respondent herein passed the order dated 01.07.2008, cancelling the permission earlier granted. TANGEDCO authorities also vide communication dated 16.07.2008 effected disconnection of the electricity supply. Challenging the same, Thiru.Ponnusamy filed W.P.(MD)No.6319 of 2008. Vide order dated 20.09.2020, the order passed by the authorities were set aside and the writ petition was allowed. The ground on which, the writ petition was allowed was that even without affording an opportunity to the writ petitioner, the impugned order came to be passed. The matter was remitted to the file of the second respondent to pass orders afresh in accordance with law. Thereafter, the impugned order came to be passed once again cancelling the permission earlier granted. It is this, that is put to challenge in this writ petition.

5.While entertaining the writ petition, this Court had granted interim stay. When the matter was taken up for final hearing, the learned counsel appearing for the petitioner pointed out that the impugned order has been passed without enquiring either side. In fact, in paragraph 2 of the impugned order, it has been stated that on 03.12.2010 at 11.00 a.m., enquiry was conducted but on the said date, no information was forthcoming from either of the parties. Therefore, there is a considerable merit in the contention of the petitioner's counsel that the impugned order rests on thin ice. It is obvious that the impugned order is liable to be quashed. It is accordingly quashed. But then, I am not inclined to remit the matter to the file of the second respondent once again. No purpose will be served. The object of issuing the aforesaid Government Order was to benefit a group of farmers. The third respondent is not opposed to the permission granted by the Government as such. His only grievance is that the terms and conditions subject to which permission was granted must be honoured in letter and spirit. The stand of the third respondent cannot be faulted. At this stage, the petitioner came forward to file an affidavit. The said affidavit will form part of the Court record. In the said affidavit, the petitioner has given an undertaking that the petitioner as well as the members of the society will carry on with their agricultural operations strictly in terms of G.O.(Ms) No.267, Public Works (H2)



Department, dated 24.03.1994. I make it clear that if the undertaking given before this Court is breached, the persons found to be violating the same, would be seriously dealt with. This Court at the instance of the third respondent or the department or anybody else will not hesitate to initiate proceedings for contempt of Court against the violators.

6.Recording the undertaking given by the petitioner that he would revive and also ensure that G.O.(Ms) No.267, Public Works (H2) Department, dated 24.03.1994 will be strictly adhered to, the order impugned in the writ petition is quashed and the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Secretary,
Public Works Department,
Fort St.George, Chennai.
- 2.The Superintending Engineer,
Public Works Department (WRO),
Mel Cauvery Basin Division,
Salem - 7.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-3213[F] dated 04/02/2021)

+1 CC to M/s.SPL GP (SR-3545[F] dated 05/02/2021)

W.P(MD)No.2064 of 2011
03.02.2021

PM(CO)
KB(17.02.2021) 3P 5C