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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.01.2021**

CORAM:

**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH**

**AND**

**THE HONOURABLE MRS. JUSTICE S.ANANTHI**

**W.P. (MD) Nos.13939, 11202 and 3332 of 2019  
and**

**W.M.P. (MD) Nos.10422, 12709, 2609, 8560 & 8561 OF 2019  
(Through Video Conferencing)**

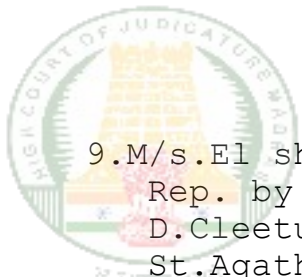
W.P. (MD) No.13939/2019

N.Thanga Nadar

: Petitioner

Vs.

- 1.The Principal Secretary to Government  
Department of Health and Family Welfare  
Secretariat, St. George Fort, Chennai - 600 009.
- 2.The Chief Engineer,  
State Ground and Surface Water Resources Department  
Tharamani, Chennai- 600 113.
- 3.The Principal Secretary/Chairman  
Tamil Nadu Pollution Control Board,  
No.70 Mount Salai Guindy, Chennai-32.
- 4.The District Collector  
Nagercoil  
Kanyakumari District.
- 5.The Deputy Director of Health Services,  
Department of Health and Family Welfare  
Nagercoil, Kanyakumari District.
- 6.The District Environmental Engineer  
Tamil Nadu Pollution Control Board,  
Nagercoil, Kanyakumari District.
- 7.The Revenue Divisional officer,  
RDO Office, Thuckalay  
Kanyakumari District.
- 8.The Block Development Officer/Commissioner,  
Munchirai Panchayat Union,  
Munchirai & Post,  
Vilavancode Taluk  
Kanyakumari District.



9.M/s.El Shadai Ice Plant  
Rep. by its Managing Partners,  
D.Cleetus and Judi Cleetus  
St.Agathammal Kurusadi,  
Opp.To Old Ice Plant,  
Thoothur Village, Vilavancode Taluk.,  
Kanyakumari District.

10.The Special Officer,  
Vavarai Village Panchayat,  
Munchirai Panchayat Union,  
Kanyakumari District.

: Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct the 5<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> respondents to cancel their respective permission/NOC granted to the 9<sup>th</sup> respondent to establish EL Shadai Ice Plant in Re-survey No.483/21A of Arudesom Village, Vilavancode Taluk, Kanyakumari District, without proper NOC from the 3<sup>rd</sup> respondent for the benefit of the people of Vavarai Village Panchayat.

|                 |                                                                                                                                                                             |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For Petitioner  | : Ms.L.Victoria Gowri                                                                                                                                                       |
| For Respondents | : Mr.K.P.Krishnadoss<br>for R1 to 5, 7, 8 & 10<br>Special Government Pleader<br>Mr.Isaac Mohanlal, Senior Counsel<br>for M/s.Isaac Chambers for R9<br>Mr.C.Kasirajan for R6 |

W.P. (MD) No.11202/2019

C.Jose

: Petitioner

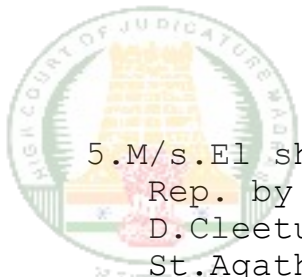
Vs.

1.The Superintendent of Police,  
Kanyakumari District,  
Nagercoil.

2.The Assistant Superintendent of police,  
Colachel Sub Division,  
Kanyakumari District.

3.The Inspector of Police,  
Nithiravilai Police Station,  
Nithiravilai  
Kanyakumari District.

4.The Sub Collector  
O/o. the Sub Collector  
Padmanabhapuram at Thuckalay  
Kanyakumari District.



5.M/s.El Shadai Ice Plant  
Rep. by its Managing Partners,  
D.Cleetus and Judi Cleetus  
St.Agathammal Kurusadi,  
Opp.To Old Ice Plant,  
Thoothur Village, Vilavancode Taluk.,  
Kanyakumari District -629 154.

: Respondents

**PRAYER:** Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records in pursuant to the impugned order passed by the 4<sup>th</sup> respondent in her proceedings Na.Ka.A2/930/2019 dated 02.03.2019 and quash the same.

|                 |                                                                                                                                        |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------|
| For Petitioner  | : Mr.M.Saravanakumar                                                                                                                   |
| For Respondents | :Mr.K.P.Krishnadoss<br>for R1 to 4<br>Special Government Pleader<br>Mr.Isaac Mohanlal, Senior Counsel<br>for M/s.Isaac Chambers for R5 |

W.P. (MD) No.3332/2019

C.Jose

: Petitioner

Vs.

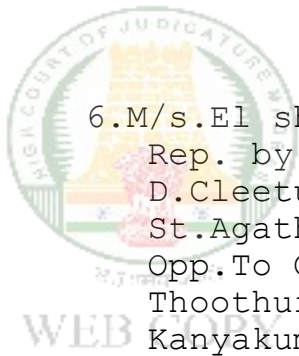
1.The Central Ground Water Board,  
Govt of India Ministry of Water Resources  
South Eastern Coastal Region  
Rep. by its Regional Director,  
E1, G-Block, Rajaji Bhavan, Chennai- 600 090.

2.The Chief Engineer,  
Public Works Department  
Water Research Organisation,  
State Ground and Surface Water Resources Data Centre,  
Tharamani, Chennai-113.

3.The District Collector  
Kanyakumari District, Collectrate, Nagercoil.

4.The District Environmental Engineer  
Pollution Control Board,  
No.49 Ambrose Street,  
Nagercoil, Kanyakumari District-629 001.

5.The Block Development Officer(Village Panchayat)  
Munchirai Panchayat Union, Pudukadai Post,  
Kanyakumari District.



6.M/s.El shadai Ice Plant  
Rep. by its Managing Partners,  
D.Cleetus and Judi Cleetus  
St.Agathammal Kurusadi,  
Opp.To Old Ice Plant,  
Thoothur Village, Vilavancode Taluk.,  
Kanyakumari District- 629 154.

: Respondents

**PRAYER:** Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct the respondents 1 to 5 not to grant license, No objection Certificate (NOC) or permission for the commercial establishments/person to extract ground water for commercial usage in the residential and coastal regulation zone, in pallikal, vavarai village panchayat, Munchirai Panchayat Union, Vilavancode Taluk, Kanyakumari District and consequently to direct the respondents 1 to 5 to take permanent necessary legal action against the unauthorised and unapproved indiscriminate sucking/withdrawal of ground water, for the benefit of people in the coastal areas of the Kanyakumari District.

|                 |                                   |
|-----------------|-----------------------------------|
| For Petitioner  | : Mr.M.Saravanakumar              |
| For Respondents | : Mr.K.P.Krishnadoss              |
|                 | for R2 to 5                       |
|                 | Special Government Pleader        |
|                 | Mr.Isaac Mohanlal, Senior Counsel |
|                 | for M/s.Isaac Chambers for R6     |
|                 | Mr.R.Rajaraman for R1             |

**COMMON ORDER**

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

**W.P. (MD) No.13939/2019**

The petitioner has come forward to file this writ petition seeking a writ of Mandamus directing the respondents 5,6 and 8 to cancel the permission/NOC granted to the 9<sup>th</sup> respondent for the establishment of Ice Plant without proper authorisation/consent from the respondent No.3.

2.The respondent No.9 has started construction of Ice Factory. The petitioner raised a serious objection for the aforesaid proposed Unit by approaching several authorities. The respondent No.9 got permission from the Local Body, namely, Vavarai Village Panchayat, apart from the other requisite permission from the other statutory authorities. Accordingly, no objection certificate has been obtained from the District Environmental Engineer, TNPCB and Assistant District Fire Officer, Fire and Rescue Department.



3. The petitioner approached the respondent No.3, inter-alia contending that the earlier no objection given cannot be sustainable in law, as the respondent No.9 proposed to use Ammonia for the manufacturing of Ice. In such view of the matter, it cannot be construed as green category.

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4. The learned Senior Counsel appearing for the respondent No.9 submitted that permissions have been obtained from all the authorities and the Unit itself yet to start. Permission has already been obtained from the respondent No.3. An application has been made to the appropriate authorities for seeking permission to extract underground water, after getting the aforesaid permission and consents alone the Unit will be put into operation. If it is further submitted that Ammonia is not likely to be used as of now and therefore, there is no basis for the apprehension of the petitioner.

5. The learned counsel for the petitioner submitted that even in the application made, the word 'Ammonia' was used and notwithstanding the said position, the NOC was given as if the industry comes within the green category. This is contrary to the list of categories of industries published by the Government of India, Ministry of Environment and Forest and Climate Change.

6. We have heard the learned counsel for the petitioner and the learned Senior counsel for the respondent No.9 and the other counsel for the parties.

7. We have perused the documents including the typed set of papers filed along with the counter affidavit.

8. The respondent No.9 is yet to start the unit as of now. In view of the submission made by the learned counsel for the respondent No.9 that the Unit would get started only after obtaining appropriate consent from the Tamil Nadu Pollution Control Board apart from permission from the competent authority for extracting the underground water namely, Chief Engineer, State Ground and Surface Water Resources Department, the second respondent herein.

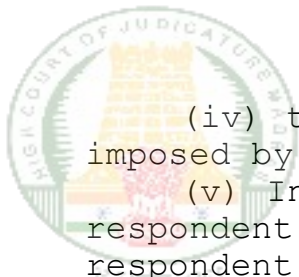
9. In view of the aforesaid submissions made, we are inclined to dispose of the writ petitions.

10. Accordingly, this writ petition stand disposed of on the following terms:

(i) The respondent No.9 shall not use Ammonia in the proposed Ice Plant.

(ii) The proposed industry shall not start without getting adequate consents from the Tamil Nadu Pollution Control Board, namely, respondent No.3, which would only mean a consent to operate as a consent to establish ought to be obtained.

(iii) without the permission from the respondent No.2, the respondent No.9 cannot start the project.



(iv) the respondent No.9 shall comply with the other conditions imposed by the respondent No.3.

(v) In the event of no such permission being obtained from the respondent No.2 for extracting the ground water, liberty is given to respondent NO.9 to get water from outside for its unit.

(vi) Respondent No.9 shall not use water directly from the river and there shall not be any discharge of untreated polluted water into the said river.

(vii) Respondent No.3 and his officials shall make periodical inspection and satisfy themselves on the compliance by the respondent No.9.

11. Accordingly, W.P.(MD) No. 13939 of 2019 stands disposed of. In view of the order passed in W.P.(MD) No.13939/2019, W.P.(MD) Nos.11202 and 3332 of 2019 stand closed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

RR

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 Principal Secretary to Government  
Department of Health and Family Welfare  
Secretariat, St. George Fort, Chennai-600 009.
- 2.The Chief Engineer,  
State Ground and Surface Water Resources Department  
Tharamani, Chennai-600 113.
- 3.The Principal Secretary/Chairman  
Tamil Nadu Pollution Control Board,  
No.70 Mount Salai, Guindy, Chennai-32.
- 4.The District Collector  
Nagercoil, Kanyakumari District.



- 5.The Deputy Director of Health Services,  
Department of Health and Family Welfare  
Nagercoil, Kanyakumari District.
- 6.The Revenue Divisional officer,  
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- 7.The Block Development Officer/Commissioner,  
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Kanyakumari District.
- 8.The Special Officer,  
Vavarai Village Panchayat,  
Munchirai Panchayat Union,  
Kanyakumari District.
- 9.The Superintendent of Police,  
Kanyakumari District, Nagercoil.
- 10.The Assistant Superintendent of police,  
Colachel Sub Division, Kanyakumari District.
- 11.The Inspector of Police,  
Nithiravilai Police Station,  
Nithiravilai, Kanyakumari District.
- 12.The Sub Collector  
O/o. the Sub Collector  
Padmanabhapuram  
at Thuckalay Kanyakumari District.
- 13.The Block Development Officer, (Village Panchayats),  
Munchirai Panchayat Union, Puthukadai Post,  
Kanyakumari District

+1 CC to SPL GP ( SR-2611[F] dated 01/02/2021 )  
+1 CC to M/s.L.VICTORIA GOWRI, Advocate ( SR-2544[F] dated  
01/02/2021 )  
+3 CC to M/s.ISSAC CHAMBERS, Advocate ( SR-2661,2662,2663[F] dated  
01/02/2021 )  
+1 CC to Mr.C.KASI RAJAN, Advocate ( SR-2567[F] dated 01/02/2021 )  
+1cc to M.Saravanakumar, Advocate Sr.No. 2898  
+1cc to M.Rajaraman, Advocate Sr.No. 2528

Order made in

**W.P. (MD) Nos.13939, 11202 & 3332 of 2019**

**and**

**W.M.P. (MD) Nos.10422, 12709, 2609, 8560 & 8561 OF 2019**

Dated: 29.01.2021

VB (11.02.2021) 7P 22C

<https://hcservices.ecourts.gov.in/hcservices/>