



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P. (MD)No.13726 of 2020

and

W.P. (MD)No.1870 of 2020

&

W.M.P. (MD)No.1574 of 2020

W.P. (MD)No.13726 of 2020:-

- 1.Ravikumar, S/o.Ramasamy Thevar
- 2.Palaninathan, S/o.Chandran
- 3.Shanmugam, S/o.Subramanian
- 4.Pitchaimuthu, S/o.Arumugam
- 5.Sankaralingam, S/o.Vellaichamy
- 6.Kaleeswaran, S/o.Bose
- 7.P.Ravi, S/o.Pandi
- 8.Ramamoorthy, S/o.Muthaiah

... Petitioners

Vs.

- 1.The Chief Executive Engineer,
P.W.D., [Water Resources Organization]
Secretariat,
Chennai - 9.
- 2.The District Collector,
Sivagangai District.
- 3.The District Revenue Officer,
Sivagangai.
- 4.The Revenue Divisional Officer,
Sivagangai.
- 5.The Executive Engineer,
PWD [Water Resources Organization],
Manamadurai, Sivagangai District.
- 6.The Executive Engineer,
PWD [Water Resources Organization],
Saruganiar Basin Division,
Sivagangai District.

7. P. Gandhi

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

... Respondents



Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Mandamus, directing the second respondent to consider the petitioners' representation dated 28.08.2020, requesting the second respondent to construct dividing dam shutters near Theerthanpettai and till such time, not to open the channel to take the surplus water from Annavasal tank to Kilankattur tank, which is situated lower down, within a time limit to be fixed by this Court.

For Petitioners : Mr.PT.S.Narendravasan
For R1 to R6 : Mr.K.P.Krishnadoss
Special Government Pleader
For R7 : Mr.N.Dilipkumar

W.P. (MD)No.1870 of 2020:-

P.Gandhi ... Petitioner

Vs.

- 1.The Chief Executive Engineer,
Public Works Department [Water Resources Organization],
Secretariat,
Chennai - 9.
 - 2.The District Collector,
Manamadurai,
Sivagangai District.
 - 3.The District Revenue Officer,
Manamadurai,
Sivagangai District.
 - 4.The Tahsildar,
Manamadurai Taluk,
Sivagangai District.
 - 5.The Executive Engineer,
Public Works Department [Water Resources Organization],
Manamadurai, Sivagangai District.
 - 6.The Executive Engineer,
Public Works Department [Water Resources Organization],
Saruganiar Basin Division,
Sivagangai District.
 - 7.Gandhi, S/o.Mahamuni
 - 8.Saravanan, S/o.Chellam
- ... Respondents



Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Mandamus, directing the respondents 1 to 6 to ensure free flow of Vaigai floodwater through the Kilangattur water channel to Kilangattur water tank and prohibit any obstruction on the said water channel by the respondents 7 and 8 or by any person, based on the petitioner's representation, dated 23.11.2019.

For Petitioner : Mr.N.Dilipkumar
For R1 to R6 : Mr.K.P.Krishnadoss
Special Government Pleader
For R7 & R8 : Mr.PT.S.Narendravasan

* * * * *

COMMON ORDER

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

As both the Writ Petitions involve sharing of water between two channels as used by two different Villages viz., Annavasal Village and Kilankattur Village, they are heard together and disposed of by this common order.

2.W.P.(MD)No.1870 of 2020 has been filed by one P.Gandhi on behalf of the people belonging to Kilankattur Village with the allegation that the water going to the said Village has been blocked by the petitioner in W.P.(MD)No.13726 of 2020 and the Villagers belonging to Annavasal Village and therefore, obstruction will have to be removed ensuring free flow of water.

3.W.P.(MD)No.13726 of 2020 has been filed on behalf of the people belonging to Annavasal Village seeking a Writ of Mandamus, directing the official respondents to take appropriate action on the representation made with respect to construction of dividing dam shutters near Theerthanpettai and till such time, not to open the Channel to take the surplus water from Annavasal Tank to Kilankattur Tank, which obviously to the benefit of the said Village.

4.Mr.N.Dilipkumar, learned counsel appearing for the petitioner in W.P.(MD)No.1870 of 2020 submitted that there is no right vested with the other Villagers and in any case, they cannot block the flow of water.

5.Mr.PT.S.Narendravasan, learned counsel appearing for the petitioner in W.P.(MD)No.13726 of 2020 submitted that preference will have to be given to Annavasal Village and unless and until the official respondents complete the process of putting up dividing dam shutters, no water will have to be released to the Kilankattur Village.



6.Placing reliance upon the counter affidavit filed, the learned Special Government Pleader appearing for the official respondents submitted that excess water will have to be let out in both the sub-channels emanating from the Rajakambeeram Tank main Channel at Theerthanpettai Village. The proposal is pending consideration and the obstruction made has been removed.

7.The right to get water is no longer vested, rather it has to be shared as per the relevant Rules governing. It is also a policy matter of the Government. In the counter affidavit filed by the official respondents, the following are the statements made:-

''7. It is submitted that from Rajakambeeram tank the combined water channel has travelled approximately 1 ½ kilometers and then the main channel got divided as two sub channels at Theerthanpettai Village. One divided sub channel is running from Theerthanpettai Village to Annavasal Tank and another divided sub-channel is running from Theerthanpettai Village to Kilankattur Tank. In dividing the water, both the Village people have been fighting each other for the past several years which always maintain tension in both the Villages. Further, there has been so many law and order issues between both the Villages.

8. It is submitted that it is the version of the Annavasal Village people that the number of Annavasal tank ayacuts are more than that of Kilankattur tank ayacuts. So, Annavasal tank shall be released more water than Kilankattur tank so as to enable the more Ayacuts in Annavasal Village get benefitted. On verification of the records, it may not be denied that Kilankattur tank has less Ayacuts than Annavasal tank ayacuts. In that connection, representations have been made on either side.

9. It is submitted that the Theerthanpettai Village the place where main combined channel got divided into two sub-channels, group of people belonging to Annavasal tank blocked the divided sub-channel leading to Kilankattur tank with sand and shrubs. Subsequently, one P.Gandhi preferred a Writ Petition on the file of this Hon'ble Court in W.P.(MD)No.1870 of 2019 for removal of blocks made by Annavasal Village people in the sub-channel leading to Kilankattur tank. The writ petition is still pending for adjudication.

10. It is submitted that as mentioned earlier, it is not at all disputed by the official respondents that the total number of Ayacuts in Kilankattur tank is less comparing to Annavasal tank. It is specific to state here that in order to set right the issue of supply of water to both tanks, the Public Works Department decided to construct a dividing wall with screw gearing shutters with locking arrangements in the main channel at the joining point of divided sub-channels at



Theerthanpettai Village for the purpose of regulating the supply of water for both the tanks.

11. It is submitted that in that connection, the sixth respondent herein sent a new proposal by way of an official communication to the second respondent herein through his Letter No.Va.Pa/Va1/Ko-70 (New Proposal)/2020/dated 08.10.2020, which is pending consideration. So, the prayer in the writ petition had already been considered by the competent authorities and hence, in the interest of justice, the present writ petition deserves to be dismissed on devoid of merits.''

8.From the above, it is clear that what is sought to be shared is the excess water from the river Vaigai. To get the excess water is rare phenomenon. The main channel coming from Rajakambeeram Tank gets divided into two Sub-Channels. One goes to the Annavasal Tank and the other to Kilankattur Tank. There is also a proposal to construct a dividing wall with screw gearing shutters to divide the said Channels at Theerthanpettai Village, so as to regulate the supply of water for both the Tanks.

9.As stated, we are not here to adjudicate upon the rights of both the Villagers in asking the official respondents to regulate the water, which would be available for them. However, the flow of water to Kilankattur Tank can never be obstructed by unilateral action on behalf of the Villagers of Annavasal. The statement made by the learned Special Government Pleader that the said obstruction has been removed stands recorded. Similarly, they cannot contend that till the screw gearing shutters are put in place, no water will have to be released to Kilankattur Village. We already indicated that there is no vested right involved. Everybody knows about the scarcity of water and therefore, it has to be shared. No one should suffer at the cost of others though there may be a case of preference, which perhaps may be in favour of Annavasal Tank. We do not wish to say anything on that. It is the duty of the official respondents to see to it the entire water is shared.

10.Resultantly, the encroachments made, if any, will have to be removed by the official respondents. We already recorded the fact that the obstruction has been removed. They shall make sure that there will not be any obstruction in future as well. The Secretary to Government, Public Works Department, Fort St. George, Chennai, is directed to make sure that the proposal sent as recorded in Paragraphs 10 and 11 of the counter affidavit filed by the Executive Engineer, P.W.D. (Water Resources Organization), Saruganiar Basin Division, Sivagangai District, is given effect to preferably within a period of four months from the date of receipt of a copy of this order. Till such time, the official respondents shall ensure that the available water be shared between the two Villages.



11. These Writ Petitions are disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

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// True Copy //

/ /2021

Sub Assistant Registrar(CS)

smn2

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 Chief Executive Engineer,
Public Works Department [Water Resources Organization],
Secretariat,
Chennai - 9.
2. The District Collector,
Manamadurai,
Sivagangai District.
3. The District Revenue Officer,
Manamadurai,
Sivagangai District.
4. The Tahsildar,
Manamadurai Taluk,
Sivagangai District.
5. The Executive Engineer,
Public Works Department [Water Resources Organization],
Manamadurai, Sivagangai District.
6. The Executive Engineer,
Public Works Department [Water Resources Organization],
Saruganiar Basin Division,
Sivagangai District.



7. The Revenue Divisional Officer,
Sivagangai

8. The District Revenue Officer, Sivagangai.

Copy to:-

The Secretary to Government,
Public Works Department,
Fort St. George,
Chennai - 600 009

+1 CC to M/s.PT.S.NARENDRAVASAN, Advocate (SR-11244[F]
dated 15/03/2021)

+2 CC to M/s.N.DILIP KUMAR, Advocate (SR-11420 & 11421
[F] dated 16/03/2021)

+1 CC to M/s.SPL GP (SR-11607[F] dated 16/03/2021)

Common order made in
W.P. (MD) Nos.13726 & 1870 of 2020

15.03.2021

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CN(20.05.2021) 7P 13C