



W.P.No.147 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.11.2022

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.147 of 2015 &
M.P.No.1 of 2015

M/s. South Arcot Diocese Sangam
M/s.San Jose Estate
Reb by its Manager,
Rev.Fr.P.Dominic Savio,
Manjakuttai Post,
Yercaud – 636 602.

...Petitioner

Vs.

1. The District Collector,
District Collectorate,
Fort, Salem.
2. The Tahsildar,
Yercaud Taluk,
Yercaud, Salem District.
3. The Secretary to Government
Agricultural Department.
4. The Secretary to Government,
Water Resources Department.
5. The District Environmental Engineer,
Pollution Control Board,
6. The District Forest Officer,
Salem.



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7. The Secretary to Government,
Revenue Department.

... Respondents

(R3 to R7 Suo Motu impleaded
vide order dated 08.08.2022
made in W.P.No.147 of 2015
by NAVJ)

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Ref.No.2298/2012(B) dated 11.12.2014 on the file of the 2nd respondent in respect of the petitioner's property and quash the same and consequently forbearing the respondents and their subordinate officials tracing power under them, from any way and any manner interfering with or disturbing the petitioner's peaceful possession and enjoyment over his property viz., 128 Acres comprised in S.No.82(2A) Manjakuttai village, Yercaud Taluk, Salem District, including his uninterrupted free usage of the water deriving from the stream, running through his above said property, in its present position, route and features, without due process of law.

For Petitioner : Mr.K.V.Dhanapalan for
M/s. T. Fenn Walter Associates

For Respondents : Mr.V.Arun, Additional Advocate General
Assisted by
Mr.R.Kumaravel,
Additional Government Pleader



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ORDER

The present Writ Petition is filed to call for the records pertaining to the impugned order in Ref.No.2298/2012(B) dated 11.12.2014 on the file of the 2nd respondent in respect of petitioner's property and quash the same and consequently forbearing the respondents and their subordinate officials tracing power under them, from any way and any manner interfering with or disturbing the petitioner's peaceful possession and enjoyment over his property mentioned in the prayer including his uninterrupted free usage of the water deriving from the stream, running through the said property, in its present position, route and features.

2. The case of the Writ Petitioner is that the petitioner is the absolute owner of the property and ever since from the date of purchase, the petitioner is in continuous enjoyment. Further, the water stream runs through the said land and the same brings water from the top of shevaroy hills and various estate holders have been utilising the water taken from the said stream for a long time, as they cannot dig any well. In fact, during the British period itself, there were arrangements made in all estates, to store



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water, within the premises of the respective estates. There was no obstruction in free-flow of water from the said stream towards its route and there was no deviation or blockage done by the petitioner in the natural route of the stream. Due to the existence of check dams, which are more than 100 years old, there is no diminishing of water flow to the down stream. While the matter stood thus, on 24.11.2014 summons was issued to the writ petitioner for the meeting to be held on 26.11.2014 to answer with regard to the allegations that the estate owners have blocked the water course in its natural route. Based on the above meeting, the orders were passed directing the writ petitioner to remove the encroachments.

3. Further, according to the petitioner, no notice have been separately served on the writ petitioner and the nature of the alleged encroachment was also not informed and the copy of the inspection report was also not served on them. Hence sought to quash the impugned order in the Writ Petition.

4. In the counter, a stand has been taken by the respondents that head waters of rivers namely, Thirumanimutharu, Vaniaru and Sarabanga river at Yearcaud hill are the perennial source of water for Salem and



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Namakkal District. The natural stream commenced from top of the hill passing through various private estate and government lands and reach the foot hill. The rain water run through the private patta land, which is owned by the estate owners. In this connection, the rain water falls in the government poramboke land also joined with the spring runs through the private estate. But the private estate owner cannot prevent the spring water, which comes from various sources. The private estate owners can dig up a well and utilize the well water. But they have no right to prevent the spring water, which run through their land and constructed a check dam so as to store all the spring water.

5. According to the respondents, the petitioner and other estate owners had created artificial block to the natural stream and developed an artificial pond well within the natural streamline, which resulted water scarcity. Due to the water scarcity villagers also protested. In pursuance to the direction of the District Collector, the Water Resource Department of Salem and Assistant Director of Pollution Control Board have visited the area headed by the Revenue Divisional Officer and submitted a report to the District Collector. Hence based on the report, summon was served and the petitioner had appeared and thereafter, impugned order has been passed. According to the respondents, they have not disturbed the private



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well beyond the survey and stated that the impugned order is valid.

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6. The learned counsel for the petitioner submitted that the action by the respondents have been initiated only on the basis of the letters said to have been sent by one Radhakrishnan to the Hon'ble Chief Justice of this Court. Thereafter, the same has been forwarded to the District Collector. In pursuant to the same, summons has been issued to the Writ Petitioner on 24.11.2014 for the meeting to be held on 26.11.2014, without serving any copy and nature of the alleged inspection report, now, the impugned order has been passed. Hence it is the contention of the learned counsel for the petitioner that cyclostyle order has been passed by the respondents on the allegation that there were encroachments of the natural stream of water. Without issuing the notice as to the nature of the encroachment, cyclostyle order cannot be passed and no opportunity has been given therefore, seeks to quash the entire proceedings.

7. Whereas, the learned counsel for the respondents submitted that notice has been served to all the estate owners on 24.11.2014 for the meeting to be convened on 26.11.2014, all the estate owners are present and in fact, the estate owners objected for inspection by the officials constituted in this regard by the District Collector. Hence the submission of



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the learned counsel for the respondents is that the natural course of water has been diverted by way of construction of culverts and free flow of water are stopped, which resulted in water scarcity to the people residing in foot hill, which leads to a serious obstruction, therefore, inspection has been carried out, according to the board standing orders, the Government can regulate diversion of water. Hence opposed the writ petition.

8. I have heard the learned counsel on either side and perused the entire materials placed on record.

9. The impugned order is passed pursuant to the summons issued on 24.11.2014 for the meeting to be held on 26.11.2014. On perusal of the summons it is seen that it is a cyclostyle summons, only name of all the writ petitioners have been mentioned in the bottom. Pursuant to the above summons, a meeting was scheduled on 26.11.2014. It appears that the Writ Petitioner and others also appeared in meeting in pursuant to the summons. Thereafter, the impugned order has been passed, as if there was huge encroachment and nature stream has been blocked by a culvert and check dam etc.,



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10. It is relevant to note that while passing such impugned order, there must have been proper opportunity to the petitioner to explain as to the nature of the alleged encroachment or construction put by them in their respective estates. The minimum requirement of fair hearing is to put on notice of the nature of allegation and particulars on which the decision is to be arrived. No such details have been furnished to the writ petitioner, whereas, the impugned order has been passed as if huge encroachment has been made by the writ petitioner stopping the nature flow of the water. Further, it is also relevant to note that “one of the essential ingredients of fair hearing is that a person should be served with a proper notice i.e., a person has a right to notice. Notice should be clear and precise so as to give the other party adequate information of the case he has to meet and make an effective defence. Denial of notice and opportunity to respond result in making administrative decision as vitiated” is held by the **Hon'ble Apex Court in Paragraph No.24 of the Judgment reported in (2009) 10 Supreme Court Cases [Biecco Lawrie Limited and Another Vs. State of West Bengal and Another]**.

11. It is to be noted that though signature of the petitioner also



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obtained in the so called meeting fixed on 26.11.2014, the impugned order has been passed only on 11.12.2014 by the Tahsildar, which is also nothing but a cyclostyle order, wherein the impugned order proceed as if despite opportunities given to the Writ petitioner and others to remove the encroachment, they have not removed the encroachment, therefore, the impugned order is passed. The impugned order is also silent as to the notice sent earlier and the particulars of the encroachment by each individuals. In such view of the matter, this Court is of the view that the impugned order passed without following any procedure, as contemplated under law and particularly, violating principles of natural justice, cannot be sustained in the eye of Law.

12. The issue lead to the passing of such order is with regard to the diversion of water from the nature source. In such a case, though the Government have some power and control over natural streams and rivers and regularise the diversion and use of water, before taking such action for removal of any construction and other obstructions in the private land, the respondents ought to have served individual notice pointing out the nature of the encroachment or construction put up by the writ petitioner and others in their respective private lands so that the explanation would have properly given by the petitioner. In such view of the matter, the impugned order



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cannot be sustained in law and the same is set aside

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In the result, Writ Petition is disposed of in the following manner.

Consequently, connected miscellaneous petition is closed. No costs.

(i) The 1st respondent is directed to issue fresh notice with regard to inspection to the writ petitioner as well as other similarly placed persons, who are holding lands and said to have diverted the natural course showing the respective lands.

(ii) After issuing notice for inspection, the respondents shall make a proper inspection in respect of the estates to find out whether any obstruction is made to the natural course of stream from the hills. According to the Additional Advocate General there are 123 private estates, where the natural stream is flowing from the hills.

(iii) During the course of inspection, the writ petitioner and other private owners shall not cause any obstruction to the official respondents and the officials shall also take into consideration of the genuine grievances of the estate owners about their use of water for drinking purposes, plantation etc., If a major violation is made by putting huge construction by blocking the stream, then, the respondents shall issue



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another notice to the writ petitioner and other estate owners. After issuing such notice, it is well open to the respondents to take action in accordance with law by adhering to the principles of natural justice and such exercise shall be concluded within a period of four months from the date of receipt of copy of this order.

(iv) The District Collector, Salem is also directed to file a compliance report as to the action taken in this regard after a period of four months.

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Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Judgment

ssd
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N.SATHISH KUMAR, J.,

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