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W.P.No.38255 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2022

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.38255 of 2005

and WPMP No.40906 of 2005

R.Vikram

....Petitioner

Vs.

1. The District Collector,
State Bank Road,
Coimbatore

2. Latha Subramaniam
{R2 Impleaded vide order dated 08.06.2022
in WMP No.38476 of 2018 by NAVJ]

..Respondent

Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Cetiorari to call for the records on the file of the respondent in proceedings NK No. 72756/2004 A2 dated 28.8.2005 and quash the same so far as relating to the cancellation of the track rent permission granted by Tahsildar Pollachi in his proceedings PM 6058/2004P2 dated 8.4.2004.



W.P.No.38255 of 2005

For Petitioner : Mr.Rana Prithvi
for M/s.A.K.Mylsamy Associates
For Respondents : Mr.S.Arumugam
Government Advocate
Mr.M.Rajasekhar
For R2

ORDER

This writ petition has been filed challenging the impugned order dated 28.08.2005 passed by the 1st respondent rejecting the application filed by the petitioner seeking for no objection certificate for power connection for the well situated in Survey No.792/9 and also canceling the track rent permission granted to the petitioner to take water from the Well situated in Survey No.1137/A2.

2. The case of the petitioner is that he owns agricultural lands and he wanted to utilize the water from the well situated in Survey No.1137/A2. He therefore sought for a permission from the Tahsildar, Pollachi to lay a pipeline in the Government Poramboke land. Permission was granted on 08.04.2004 to take the water through the pipeline by laying it in the Government Poramboke land and a



W.P.No.38255 of 2005

track rent was also collected from the petitioner. Certain conditions were also imposed while granting the permission and according to the petitioner, he complied with those conditions without any default.

3. The further case of the petitioner is that he wanted to utilize the water from the another well situated in Survey No.792/9. He therefore made an application before the 1st respondent seeking for No objection certificate to get the power connection since the well is situated near the Parambikulam Aliyar river.

4. The 1st respondent through the impugned order rejected the application submitted by the petitioner seeking for No objection certificate on the ground that the well in Survey No.792/9 is within the prohibited distance from the River. While doing so, the 1st respondent also proceeded to cancel the track rent permission granted by the Tahsildhar, Pollahi. Aggrieved by the same, this writ petition has been filed before this Court.

5. Heard Mr.Rana Prithvi for M/s.A.K.Mylsamy Associates, learned counsel for the petitioner and Mr.S.Arumugam, learned



W.P.No.38255 of 2005

Government Advocate for the respondents.

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6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. This Court will now take up the reasons assigned for the rejection of the application pertaining to the grant of No objection certificate for getting power connection for the well situated in Survey No.792/9. The impugned order passed by the 1st respondent shows that the well must be situated 200 meters away from the banks of the river and whereas the Well in Survey No.792/9 is hardly 19 feet from the river. Hence, the 1st respondent has rejected the application seeking for No objection certificate. This Court does not find any ground to interfere with the rejection of the application since the well is situated within the prohibited distance.

8. The next issue to be gone into is with regard to the cancellation of the track rent permission granted by the Tahsildar. On carefully going through the order passed by the 1st respondent, it is seen that the 1st respondent has acted upon the report of the Sub



W.P.No.38255 of 2005

Collector, Pollachi and has come to a conclusion that the petitioner has misused the permission granted to take the pipeline from the well situated in Survey No.1137/A2 and accordingly, the 1st respondent has straight away proceeded to cancel the permission granted by the Tahsildhar. This order passed by the 1st respondent goes beyond the scope of the application submitted by the petitioner wherein the petitioner had merely sought for a no objection certificate for getting power connection for another well situated in Survey No.792/9. If the 1st respondent had received an adverse report against the petitioner for misusing the track rent permission, the petitioner should have been put on notice and he should have been heard before canceling the track rent permission. This has not been done in the present case and the order passed by the 1st respondent with respect to the cancellation of the track rent permission clearly suffers from violation of principles of natural justice. Accordingly, this portion of the order requires the interference of this Court.

9. The learned counsel for the impleaded 2nd respondent submitted that the 2nd respondent also has a share in the well that is situated in Survey No.1137/A2 and already a suit for partition has



W.P.No.38255 of 2005

been filed and it is pending. The learned counsel therefore submitted that the 2nd respondent also has a say over the water drawn from the well and hence, she must also be heard if the matter is going to be remanded to the file of the 1st respondent.

10. In the considered view of this Court, this Court is not dealing with the *interse* rights between the petitioner and the 2nd respondent even though it is brought to the notice of this Court that the petitioner while applying for the track rent permission had projected himself only as the co-parcener of the property. Ultimately, the share has to be determined and the property has to be allotted during the final decree proceedings. Till then, the 2nd respondent has to wait and depending upon the final result in the suit, the 2nd respondent can always claim a right over the well at the appropriate point of time.

11. In view of the above discussion, the impugned order passed by the 1st respondent dated 28.08.2005 is interfered insofar as the cancellation of the track rent permission is concerned pertaining to the water that is drawn from the well situated in Survey



W.P.No.38255 of 2005

no.1137/A2. Accordingly, the cancellation of the track rent permission by the 1st respondent through the impugned order is hereby set aside.

To that extent, the order passed by the 1st respondent is modified.

12. This writ petition is partly allowed to the extent indicated herein above. It is made clear that it is left open to the 1st respondent to issue a notice to the petitioner and provide him an opportunity before taking any decision with regard to the track rent permission granted to the petitioner for drawing water from the well situated in Survey No.1137/A2. Consequently, the connected miscellaneous petition is closed.

08.06.2022

Internet: Yes/No
Index: Yes/No
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To
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W.P.No.38255 of 2005

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W.P.No.38255 of 2005

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