



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2022

CORAM:

THE HONOURABLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HONOURABLE MRS.JUSTICE N.MALA

W.P.NO.9430 OF 2022

AND

W.M.P.NOS.9174, 9177 AND 15874 OF 2022

K.M.Thangavel

... Petitioner

.Vs.

1. The Principal Secretary to Government,
Water Resources Department,
Secretariat, Chennai - 600 009.
2. The Engineer-in-Chief and
Chief Engineer (General),
Water Resources Department,
Chepauk, Chennai - 600 005.
3. The District Collector,
Erode, Erode District.
4. The Executive Engineer,
Public Works Department,
Water Resources Department,
Lowyer Bhavani Project Scheme,
Konavaikal, Erode District.
5. The Executive Engineer,
Public Works Department,
Planning & Plan Drawn Division,
O/o.Collector Office,
Erode - 11.
6. The Tahsildar,
Kadumudi Taluk,
Erode District.

... Respondents

PRAYER:- Writ Petition is filed Under Article 226 of the
Constitution of India to issue a Writ of Certiorafied Mandamus,



to call for the records on the file of the 1st respondent in G.O.(2D).No.10, Water Resources (S-1) Department, dated 23.02.2022 and quash the same in respect of Sl.No.14 alone and direct the respondents, to shift the proposed construction of check dam to Re-survey No.129 at Kolathupalayam Village, Kodumudi Taluk, Erode District.

For petitioner : Mr.T.N.Rajagopalan
For Mr.K.Karthikeyan

For respondents : Mr.P.Muthukumar
State Government Pleader
Assisted by
Mr.K.M.P.Muhilan
Government Advocate

ORDER

(The Order of the Court was made by
The Honourable Chief Justice)

The Writ Petition has been filed to challenge the G.O., dated 23.02.2022 and direct the respondents to shift the proposed construction of check-dam in Re.Survey No.129.

2. It is submitted that despite the project earlier having been dropped in the year 1997 on technical grounds, the proposal has been made to construct the check-dam at the same place, even without taking the no-objection from the Railways, as the Railway line is passing through in between and also from the Village Administrative Officer (VAO), as no information was given by the Public Works Department (PWD) with regard to the construction of check-dam. Thus, in view of the above, the direction sought by the petitioner may be granted.

3. The learned State Government Pleader appearing for the respondents submitted that a proper decision has been taken to construct the check-dam, which would be borne out from the order dated 23.02.2022. The Writ Petition has been filed as if the petitioner is an expert to suggest the location of the check-dam, rather, the decision by the Government was under the advise of a team of technical persons and for the betterment of the people of the area. The construction of the check-dam would not allow the encroachers to continue at the present place. Thus, the present petition is a motivated petition filed by the petitioner to save those encroachments, otherwise, the decision to construct the check-dam has been taken after compliance of the provisions of law and for that, they are not required to seek no-objection from the Railways or from others. Further, no



provision has been referred to by the learned counsel for the petitioner to substantiate his argument that before construction of the check-dam, no objection has to be taken from the Railways or others.

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4. This Court considered the submissions made on either side and perused the materials available on record.

5. By this Writ Petition, challenge is made to the order dated 23.02.2022, where a decision was taken to construct the check-dam across the River Kumittipathi in S.F.No.402.

6. The details of the construction and the reason for it have been given. The challenge to it has been made precisely on the ground that earlier, proposal for construction of the check-dam was dropped in the year 1997. We are of the opinion that the decision taken at that time due to technical reason, may be appropriate, but it cannot govern for ever, if there is requirement to construct the check-dam.

7. Thus, we are not convinced that earlier, when the proposal was dropped, it cannot be brought again.

8. We are further of the opinion that the no-objection from the Railways or others, is not required, unless provided under law and no provision of law has been referred to show that no-objection is to be sought from the Railways or others.

9. It is apart from the fact that the Policy Decision of the Government cannot be interfered with by this Court, as otherwise, the proposal to construct the check-dam at the location under challenge, has been taken under the opinion of the expert, which cannot be interfered with at the instance of the petitioner, who is not otherwise an expert.

10. For all the reasons given above, the Writ Petition fails and the same is dismissed. There shall be no order as to costs. Consequently, the miscellaneous petitions are closed.

11. Before parting with this order, it is necessary to observe that if any encroachment exists, it should be removed forthwith by due process of law.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar



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Erode District.

+1cc to Mr.K.Karthikeyan, Advocate, S.R.No.40622

W.P.NO.9430 OF 2022

AD(CO)
PBS/07/07/2022