



W.P(MD).No.18234 of 2013

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2022

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P(MD)No.18234 of 2013

and

M.P(MD) No.1 of 2013

Arulmighu Vitoba Bajanai Madam
Family Private Trust,
Represented by its Secretary N.Selvaraj Naidu,
T.S.No.5694, Santhanathapuram
2nd Street, Pudukkottai.

... Petitioner

Vs.

1. The Commissioner,
Pudukkottai Municipality,
Pudukkottai.

2. Ethiraj
S/o. Krishnasamy

3. Selvaraj
S/o.Ethiraj

4. Janarthanan
S/o.Ethiraj

5. Narasimhan
S/o.Ethiraj



W.P(MD).No.18234 of 2013

6. Hari

S/o. Ethiraj

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records pertaining to the impugned order passed by the first respondent in his proceedings in Na.Ka.No.9049/2012/E3, dated 01.10.2013 and quash the same as illegal.

For Petitioner : Mr.D.Sakthivel Murugan

For Respondents : Mr.P.Mahendran (For - R1)

ORDER

The present Writ Petition has been filed challenging the order passed by the first respondent, dated 01.10.2013 in Na.Ka.No.9049/2012/E3.

2. Heard Mr.D.Sakthivel Murugan, learned Counsel appearing for the petitioner and Mr.P.Mahendran, learned Counsel appearing for the first respondent.

3. Though notice has been served to the respondents 2 to 6 and their names were also printed in the cause list, none appeared either in person or through counsel.



W.P(MD).No.18234 of 2013

WEB COPY

4. The case of the petitioner is that the property in T.S.No.5694 at Santhanathapuram, 2nd Street, Pudukkottai Municipality belongs to the petitioner Trust.

5. The respondents 2 to 6 herein were trying to encroach upon the property and therefore, had instituted the suit in O.S.No.322 of 2008, on the file of the District Munsif Court, Pudukkottai District and the same was pending trial. In the meantime, the respondents 2 to 6 seem to have made an application before the first respondent for grant of water connection in the disputed property. The first respondent, on 01.10.2013, passed an order directing the water connection in the name of the writ petitioner. The reason assigned by the first respondent to grant water connection in the name of the writ petitioner is that there is a civil dispute between the petitioner Trust and the applicants and since the civil suit is pending, the water connection will be given in the name of the petitioner Mutt.

6. According to the learned Counsel for the petitioner, this conduct of giving the water connection in the name of the petitioner without any



W.P(MD).No.18234 of 2013

application on its behalf or without even calling upon the petitioner for enquiry, before passing the impugned order is vitiated and the colourable exercise of power. He would further submit that it is within the knowledge of the first respondent that there is a dispute between the petitioner and the applicants before the first respondent. Further, under the impugned order, the water connection has been given in the name of the petitioner mutt for being used by third party. If such third party commits default in payment of water charges, the liability would be mulcted on the petitioner not only for the water charges but also for the payment of the water taxes. Hence, the learned Counsel for the petitioner seeks this Court to interfere with the impugned order.

7. Countering the same, the learned Counsel for the first respondent would submit that the order impugned is only for grant of water connection which is a necessity, for the third parties, which is traceable to the fundamental rights under Article 21 of the Constitution. The dispute between the parties cannot take away such fundamental rights in respect of third parties who require water connection. He would further submit that the petitioner cannot be said to be aggrieved person as water connection has



W.P(MD).No.18234 of 2013

WEB COPY

been given only in the name of the petitioner. Therefore, he would plead that there is no necessity for any interference in the impugned order passed by the first respondent.

8. I have considered the rival submissions. At the outset, the first respondent had no authority to grant water connection in the name of the persons who had not made an application before him for grant of water connection. On this ground, the impugned order is liable to be set aside. Further, having know the dispute between the parties viz., the petitioner and the respondents 2 to 6, passing of the impugned order without notice to the petitioner, is a colourable action in violation of principles of natural justice. On that ground also, the impugned order is liable to be set aside. That apart, as rightly pointed out by the learned Counsel for the petitioner, if the private respondents, on whose application, the water connection has been given in the name of the petitioner fails to discharge their liability on payment of water charges, the first respondent Municipality will hold the petitioner liable for payment of such water charges. That apart, when the water connection has been effected, the petitioner will be responsible for the payment of water tax. This payment is also additional responsibility of the



W.P(MD).No.18234 of 2013

petitioner. When there is no application made by the petitioner in respect of the land, the first respondent had given the water connection which would directly make the petitioner liable for payment of water charges and water taxes. In the opinion of this Court, it is unsustainable. Hence, in my opinion, the impugned order is unsustainable.

9. For the above reasons, the impugned order passed by the first respondent, dated 01.10.2013 in Na.Ka.No.9049/2012/E3 is set aside and the first respondent is directed to effect disconnection of the water supply granted in the name of the petitioner at T.S.No.5694 at Santhanathapuram, 2nd Street, Pudukkottai Municipality within a period of one week from today. After passing the order, the learned Counsel for the petitioner would submit that after the outcome of the suit, the petitioner may be permitted to make necessary application for grant of water connection. If such an application is filed, the first respondent shall consider the same and proceed further in accordance with law.



W.P(MD).No.18234 of 2013

WEB COPY

10. Accordingly, this Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

15.12.2022

Index : Yes / No
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Note: Issue order copy on 16.12.2022

To

1.The Commissioner,
Pudukkottai Municipality,
Pudukkottai.



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W.P(MD).No.18234 of 2013

K.KUMARESH BABU, J.

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Order made in
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