



W.P(MD)No.8259 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.8259 of 2022

and

W.M.P(MD)Nos.6150 & 6209 of 2022

AL.Kanagambal

...Petitioner

Vs

1.The District Collector,
Sivagangai,
Sivagangai District.

2.The Chief Engineer,
Madurai Region,
Water Resource Office,
Thallakulam,
Madurai-625 002.

3.The Superintending Engineer,
Water Resource Department,
Lower Vaigai Basin Circle,
Sivagangai Collectorate,
Sivagangai District.

4.The Executive Engineer,
Water Resource Department,
Manimutharu Basin Division,
Devakottai-630 303.

..Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned letter issued by the fourth respondent in his letter No.45/M/2022/கோ.64/(பொது)/வ.1, dated 13.04.2022 and quash the same as illegal and arbitrary and consequently directing the respondents 2 and 3 to allow the petitioner to use of water flow from Poyyalur Kanmai (Periyangundu Sluice) for irrigation of the petitioner's land in Survey No.315/1, to an extent of 5 acres 88 cent situated at Koothalur Revenue Group, Poyyalur Village Panchayat, Karaikudi Taluk, Sivagangai District based on the representation of the petitioner, dated 20.04.2022 within a time frame fixed by this Court.

For Petitioner :Mr.S.M.Mohammed Saleem

For Respondents :Mr.A.Kannan

Additional Government Pleader

ORDER

This Writ Petition has been preferred to call for the records relating to the impugned letter issued by the fourth respondent in his letter No. 45/M/2022/கோ.64/(பொது)/வ.1, dated 13.04.2022 and quash the same as illegal and arbitrary and consequently directing the respondents 2 and 3 to allow the petitioner to use of water flow from Poyyalur Kanmai (Periyangundu Sluice) for irrigation of the petitioner's land in Survey No.315/1, to an extent of 5 acres 88 cent situated at Koothalur Revenue Group, Poyyalur Village Panchayat, Karaikudi Taluk, Sivagangai District based on the representation of the petitioner, dated 20.04.2022 within a time frame fixed by this Court.



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2. The learned counsel appearing for the petitioner would submit that the petitioner's husband owned and cultivated the Nanja land to an extent of 5 acres 88 cents situated at Koothalur Revenue Group, Poyyalur Village Panchayat, Karaikudi Taluk, Sivagangai District till his life time. The revenue records of the above said properties are stands in the petitioner's husband's name. After the demise of the petitioner's husband on 18.12.2000, the petitioner is become a absolute owner and she is in continuous possession and enjoyment of the above said properties without any hindrance. The petitioner cultivating the said land along with her son namely, P.A.Pancharatchara Prabu, who is an Engineering Graduate and farming a modern type of crops after getting interest over the agriculture.

3. He would further submit that the above said properties are rained land and the petitioner have no sufficient means to erect borewell to cultivate her land. Since well rainfall in the last year, she had cultivated the rained crops and due to heavy raining, the Poyyalur Kanmai situated in Poyyalur Village was completely filled with water which is the only source of irrigation to the petitioner and adjacent farmers. Therefore, the petitioner decided to cultivate from the source of water flows from the Poyyalur Kanmai of Periyangundu 1st



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Sluice. The excess water flows from the Periyangundu sluice reaches the Mangudi Kanmai through the landed properties in SF.Nos.303, 310, 387, 388, 389, 316/1A, 316/2, 316/5 and the petitioner's land in SF.No.315/1 as per the revenue records like FMB and village Map etc.,

4. The petitioner irrigated from the Poyyalur Kanmai water from the right side weir of Periyangundu sluice and began farming of crops in the month of April, 2022. Due to animosity and jealous, somebody made a false complaint against the petitioner before the fourth respondent's office as if the petitioner had blocked the flow of water and thereby their irrigation rights are affected. In turn, the fourth respondent without conducting proper enquiry and referring relevant documents in support of the petitioner's right over the irrigation of water from Poyyalur Kanmai dis-allowed her from irrigation of water from the Poyyalur Kanmai (Periyangundi 1st Sluice) and thereby caused the petitioner's crops in ruin without water and loss. Therefore, the petitioner made a representation to the first respondent on 21.03.2022 narrating the above said facts with the request to deal the issue involved in the matter. The petitioner's representation had not been considered in time hence, the petitioner filed a Writ petition before this Hon'ble Court in W.P(MD) No.6737 of 2022 seeking for writ of Mandamus to direct the second respondent therein to open the Poyyalur



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Kanmai Periyangundu Madai for the purpose of irrigation of the petitioner's land and the same is withdrawn before this Court on 21.04.2022.

5. In the mean time, the fourth respondent issued a impugned letter in his letter No.45/M/2022/கோ.64/(பொது)/வ.1 dated 13.04.2022 and thereby, the fourth respondent informed to the petitioner on her representation, dated 21.03.2022 made to the first respondent that the petitioner had no right to use of water from Poyyalur Kanmai and requested to stop the flow of water from the Periyangundu sluice. Pursuant to the same the petitioner made a representation to the respondents 2 and 3 requesting them to allow the petitioner to use of water from the above said Kanmai as interim measure on receipt of the same, the respondents 2 and 3 did not take any action and the impugned letter issued by the fourth respondent in his letter dated 13.04.2022 is also illegal and arbitrary and hence, the petitioner has filed the present writ petition.

6. The fourth respondent filed counter affidavit and states that a part of agricultural fields in the district of Sivagangai is getting proportionate water from River Vaigai on the basis of tail-end “Sivagangai Credit” through Main Canal and that proportionate supply of water from Vaigai Credit by way of filling up of system tanks are being ensured to the ryots of Sivagnagai. But in



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most of the agricultural lands only manavari entirely depending on rain water are being raised and that water stored in various tanks are also used to irrigate the ayacut lands. The contention of the petitioner that she desired to use the water available in Poyyalur Kanmai situated in Poyyalur village is false since the lands held by her was not covered under the registered ayacut of the above said Poyyalur tank. In-fact, the Poyyalur Kanmai is the vested property and under the control of the fourth respondent Manimuthar Division. The said Poyyalur Kanmai is located in S.No.198 of Poyalur Village and the surplus water from the above tank flows into the nearby Mangudi Kanmai through the surplus channel in S.Nos.303, 310 and 313.

7. The petitioner without obtaining any permission from the authority opened the first sluice (Periyankundu Madai) in Poyyalur tank took water through the surplus channel located on the left side of the Kanmai and by placing cement and sand bags in the channel in S.No.314, prevented the water from entering into Mangudi tank, diverted the water irregularly by fixing two cement pipes and transferred water to her land in S.No.315/1 fraudulently. The ryots of Poyyalur Tank took strong exception to the above illegal act of the petitioner and they closed the 1st surplus channel and informed the fourth respondent about the illegal act perpetrated by the petitioner herein. On



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receiving the complaint from the ryots of Poyyalur tank, the Assistant Engineer visited the spot conducted field inspection and strictly advised the petitioner herein not to engage in such illegal activities. The petitioner submitted a representation to the District Collector, Sivagangai on 21.03.2022 during 'Agricultural Grievance Day'. Hence, a joint inspection was made by the Assistant Executive Engineer, Manimuthar Sub Division, Water Resources Department, PWD and Assistant Engineer of the said Sub-Division along with the Revenue Officials. From the revenue records available with the Tahsildar, Karaikudi it was seen that the petitioner's lands are covered under the 313. Mandayapatti Kanmai Irrigation system from time immemorial and as the ryot attached with the above scheme, there is no possibility of diverting water from Poyyalur tank for her exclusive use to the detriment of the ryots attached with the above tank and she was advised not to put sand bags to prevent the flow of surplus water from Poyyalur tank to 314 Mangudi Tank into Mandayapatti tank (S.No.313). Therefore, the petitioner filed a writ petition in W.P(MD)No.6737 of 2022 for a direction to allow the petitioner herein to use the water from Poyyalur Kanmoi and when the matter came up before this Court on 12.04.2022, the factual matrix and the illegal act perpetrated by the petitioner was duly submitted and copies of the report of the Water Resources Department and the Village Administrative Officer was submitted and this Court after



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hearing the matter, directed the fourth respondent to pursue necessary action to inform the petitioner about the facts involved on her representation presented to the District Collector, Sivagangai during 'Agricultural Grievance Day' before 21.04.2022 and to file a copy of the same before this Court. As per the order of this Court, the representation dated 21.03.2022 was considered and found that during the field inspection, the petitioner was informed that the petitioner was a ryotdar only with 315/1 Mandayampati Kanmai Irrigation scheme and that she could not stalk her claim over the water in Poyyalur Kanmai and that water from Poyyalur tank could not be diverted to her much to the detriment of the ryots of the sand Poyyalar tank. Thereafter, when the matter came up before this Court on 21.04.2022, a copy of the communication sent to the petitioner was placed before this Court and the petitioner expressed her desire to withdraw the writ petition and accordingly, the petition in W.P(MD)No.6737 of 2022 was dismissed as withdrawn. Once again the petitioner come before this Court by challenging the above communication sent to her and that petition is liable to be dismissed at the threshold.

8. Heard Mr.M.Mohamed Saleem, learned counsel appearing for the petitioner and Mr.A.Kannan, learned Additional Government Pleader appearing for the respondents.



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9. The system of water sharing is nothing new and that it is a marvel that the system with stood ravages of modern day ills of greed and personal gratification. Over the years, specific demarcation of lands with regard to the irrigation sources were established and even water cess was collected on the usage of water for raising crops viz., single double with regard to the availability of water in the water source. The above facts were clearly made out even in the resettlement A Register, showing the water source and share among the ryots attached with such system. The ryots attached with a particular tank is also entitled for fishery rights over the tank as well on payment of specific sum of rupees. The source of water supply to the land belonging to the petitioner viz., S.No.315/1 is only from Mandayapatti Tank. In fact, the Mandayapatti tank is connected with Poyyalur tank and the surplus water flows only to Mandayapatti Tank in addition to the rain water. Hence, the petitioner herein is not entitled for the water from Poyyalur Tank and that she had taken an illegal action to prevent water from reaching the Mandayapatti tank by placing sand bags with a view to diver the water to her land in 315/1 of Alavanthanpatti Village.

10. As per the revenue records as well as on the basis of the report of the Village Administrative Officer filed before this Court, it has been clearly



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established that the petitioner has no right over the water of Poyyalur Tank and that there is no possibility of diverting water from Poyyalur tank to her field to the detriment of other ryots attached with Poyyalur Tank. The decree mentioned by the petitioner in O.S.No.115/1996 on the file of the District Munsif, Karaikudi and O.S.No.78/1996 and A.S.No.16/1999 on the file of the Sub-Court, Devakottai are only due to private disputes and do not relate to distribution of water. More-over as per the dictum of the Principal Bench of this Court in W.A.No.4136 of 2004, dated 29.12.2004 as reported in AIR 2005 MDS 192.

11. In that case, this Court has held that admittedly the property in dispute belongs to the Government and the appellant did not implead the Collector as party to the Civil suit and therefore, the decree obtained by him in the civil suit is not binding and cannot be executed against the Government. Hence, the above decrees have no relevant to the present case.

12. The petitioner before diverting water or for placing sand bags did not obtain necessary permission as per Government Letter No.29794/PW2/2012-1 dated 05.12.2012 reiterated in letter No.8833/W2/2013-1 dated 02.05.2013.



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13. On going through averments made by the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents, it is found that the petitioner's lands are covered under the 313, Mandayapatti Kanmai irrigation system from time immemorial and as the ryot attached with the above scheme, there is no possibility of diverting water from Poyyalur Tank for her exclusive use to the detriment of the ryots attached with the above tank and she has got right over the Mandayampati Kanmai Irrigation Scheme only. The said Mandayapatti tank is connected with Poyyalur tank and the surplus water flows only to Mandayapatti Tank in addition to the rain water.

14. It is seen from the photograph produced by the learned Additional Government Pleader that the petitioner has diverted the water from Poyyalur Tank Kanmai and damaged the said Kanmai and she has no right to claim over the water in Poyyalur Kanmai as per 'A' register and her lands fall under the Mandayampati Kanmai. In this regard, a case was registered against the petitioner in Cr.141 of 2022, on 05.10.2022 for the offences under Sections 294(b), 353 and 506(i) of IPC and Section 3 of Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992. Hence, this Court finds no merits in the claim made by the petitioner and the same is rejected.



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15. Accordingly, the writ petition stands dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.

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V.BHAVANI SUBBAROYAN,J.

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