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W.P.No. 1795 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

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THE HON'BLE MRS. JUSTICE J.NISHA BANU

**Writ Petition No. 1795 of 2020
and
W.MP. Nos. 2075 & 2077 of 2020
& 7780 of 2021**

P. Velumani

... Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by its Secretary
Public Works Department
Fort Station George, Chennai-9.

2. The Chief Engineer (Irrigation)
Public Works Department
Bhavani Sagar Circle
Bhavani Sagar, Coimbatore.

3. The Junior Engineer (Irrigation)
Public Works Department
Bhavani Sagar Circle
Bhavani Sagar
Coimbatore District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in issuance of the proceedings in G.O.(Ms).No. 503 public works (Q1) department dated 03.09.2004 and



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quash the same and consequently forbear the respondents from obstructing the petitioner from drawing water from the Bhavani River by means of 5HP pump set for irrigation of mulberry plants by sprinkler method.

For Petitioner : Mr. M. Vijayamehanath
for AAV Partners
For Respondents : Mr. P. Anandakumar
Government Advocate

ORDER

This Writ Petition has been filed, seeking to quash the proceedings of the 1st respondent vide G.O.(MS)No.503, Public Works (Q1) Department, dated 03.09.2004, and consequently forbear the respondents from obstructing the petitioner from drawing water from Bhavani River, by means of 5HP pump set for irrigation of mulberry plants by sprinkler method.

2.It is the case of the petitioner that his father is a small farmer in Sirumugai Village and his major cultivation is Mulberry plants. Originally cultivation was done by his father and thus, his father along with 12 other farmers represented to the 1st respondent on 29.11.1982 for permission, to draw water from Bhavani river, by means of 5HP pump



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set to irrigate Mulberry plants raised in their lands, by adopting Sprinkler method of irrigation and the 1st respondent, vide G.O.Ms.No.1879, dated 29.10.1985 granted such permission to the petitioner's father and 12 others. Since then, the petitioner's father and 12 others have been carrying on cultivation of Mulberry plants, by adopting Sprinkler irrigation method.

3. In such circumstances, the 3rd respondent, in the year 1990, withdrew the facility extended to the petitioner's father and 12 others, by virtue of the aforesaid Government Order and the petitioner's father along with 12 others approached this Court by way of a Writ Petition in W.P.No.16245 of 1990 and this Court, after granting an interim order, finally allowed the said Writ Petition on 13.10.1998. Pursuant thereto, the petitioner's father and 12 others were carrying on cultivation of Mulberry plants by adopting Sprinkler Irrigation method by drawing water from Bhavani river through 5 HP pump set. While so, to their shock and surprise, the petitioner's father and 12 others received a notice dated 18.07.2003 from the 1st respondent, contemplating that they were not cultivating Mulberry plants and not adopting Sprinkler irrigation



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method and hence, required them to show cause within 15 days as to why the facility granted under the aforesaid Government Order should not be withdrawn. Petitioner's father submitted his explanation to the 1st respondent on 18.12.2003 by way of Registered Post and when the petitioner's father approached this Court in W.P.No.39271 of 2003, this Court directed the 1st respondent to consider and pass orders on the petitioner's father's representation within a period of six weeks from the date of receipt of a copy of the order.

4. In pursuance thereof, the 1st respondent, without giving any opportunity of hearing to the petitioner's father and without even conducting an inspection, *suo motu* withdrew the facility extended to him, by way of the aforesaid Government Order and issued a Government Order on 03.09.2004 vide G.O.No.503, Public Works (Q1) Department and is taking steps to restrain the petitioner's father from drawing water from Bhavani River. Challenging the said Government Order, the petitioner, having no other alternative, has come up with the present Writ Petition.



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5. Learned counsel for the petitioner contended that the 1st respondent ought to have conducted an inspection, as to whether the petitioner is carrying on cultivation of Mulberry plants and the action of the 1st respondent in issuing the impugned Government Order, without carrying on any inspection is in violation of the principles of natural justice.

6. In reply, learned Government Advocate appearing for the respondents submitted that the petitioner along with other 12 farmers have raised cash crops in their respective lands, instead of raising mulberry plants and the extracts adangal for the Faslie 1410 to 1413 & 1427 obtained from Revenue Department would reveal that the petitioner along with 12 other farmers have not raised mulberry plants as claimed by them. As the act of planting plants other than mulberry plants had violated, the conditions No.5 laid down in the G.O.Ms.No.1879, PWD dated 29.10.1985, the departmental officers had initiated action against the defaulted petitioner along with 12 other farmers, to cancel the said Government Order.



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7. Heard the learned counsel on either side and perused the material documents available on record.

8. The fact remains that the petitioner has been initially permitted to draw water from Bhavani River by means of 5HP pump set for irrigation of mulberry plants by sprinkler method. The grievance of the petitioner is that no inspection was conducted to ascertain whether he was cultivating Mulberry plants or not.

9. Though according to the respondents, they have carried out inspection, there is no proof to that effect. In such view of the matter, this Court feels it appropriate to interfere with the impugned order passed by the 1st respondent only on the ground that no opportunity of hearing was given to the petitioner.

10. In view of the above, the impugned order dated 03.09.2004 passed by the 1st respondent vide proceedings in G.O.(MS) No.503 Public Works (Q1) Department, is quashed. However, it is open to the respondents to go and inspect the petitioner's agricultural land and



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ascertain as to whether cultivation of any other crops is being done by the petitioner apart from irrigation of mulberry plants. It is also open to the respondents to take photographs/video of the agricultural land in question, to substantiate their case and if it is found that irrigation of other crops is being carried out by the petitioner in his land, the respondents shall pass appropriate orders in accordance with law.

11. This Writ Petition is allowed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

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19.06.2023

Index : Yes / No
Internet : Yes / No
Neutral citation : Yes / No
Speaking order/Non-speaking order

To

1. The Secretary
State of Tamil Nadu
Public Works Department
Fort Station George, Chennai-9.

2. The Chief Engineer (Irrigation)
Public Works Department
Bhavani Sagar Circle
Bhavani Sagar, Coimbatore.



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J. NISHA BANU, J.,

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3. The Junior Engineer (Irrigation)
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