



W.P(MD)No.21337 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reservation	07.08.2023
Date of Pronouncement	16.08.2023

CORAM

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P(MD)No.21337 of 2022

M.Sundararaj

Vs.

: Petitioner

1.The State of Tamil Nadu,
Secretary to Government,
Public Works Department,
(Water Resources),
Fort St. George,
Chennai-9.

2.The Chief Engineer (PWD),
Vaigai-Periyar Irrigation Division,
Office of the PWD,
Madurai Region,
Madurai.

: Respondents

Prayer:

Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to conduct surveys, designs and techno-economic feasibility studies so as to ensure the soundness of the Mullaperiyar Dam for the construction of a tunnel at 50 ft for the benefit of the people of southern Tamil Nadu as per the direction of the Hon'ble Supreme Court made in O.S.No.3 of 2006, dated 07.05.2014, by considering the petitioner's representation, dated 21.07.2022.



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For Petitioner : Mr.M.Thirunavukkarasu

For Respondents : Mr.P.Thilak Kumar
Government Pleader

ORDER

D.BHARATHA CHAKRAVARTHY, J.

The petitioner, Mr.M.Sundararaj, Practising Advocate, in Public Interest, has filed this writ petition for a Mandamus directing the respondents namely, the State of Tamil Nadu and its authorities to conduct surveys, designs and techno-economic feasibility studies so as to ensure the soundness of the Mullaperiyar Dam for the construction of a tunnel at 50 ft for the benefit of the people of southern Tamil Nadu as per the direction of the Hon'ble Supreme Court made in O.S.No.3 of 2006, dated 07.05.2014, by considering his representation, dated 21.07.2022.

2. As a matter of fact, the core dispute between the State of Tamil Nadu and State of Kerala in respect of the Mullai Periyar Dam is in respect of the storage of water whether it should be only upto 136 ft., or 142 ft., which was ultimately decided by the Constitution Bench of the Hon'ble Supreme Court of India in exercise of its powers under Article 131 of the Constitution of India by the Judgement in ***State of Tamil***



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Nadu Vs. State of Kerala and Another reported in ***(2014) 4 MLJ 177***

(SC). As a matter of fact, during the course of the proceedings, one of the alternative solutions which was suggested by the Expert Committee appointed by the Hon'ble Supreme Court of India is digging of a New Tunnel. The said report is extracted in paragraph 214 of the Judgment of the Hon'ble Supreme Court of India. However, the Hon'ble Supreme Court of India itself has answered the issue in paragraph 215 by holding that the said alternative can only be made on the agreement between the two States and that there seems to be no possibility of mutual agreement on that aspect. Therefore, the Hon'ble Supreme Court of India only granted liberty to the parties to apply to the Court if they are able to arrive at some amicable solution or such an alternative suggested by the Expert Committee. Therefore, the contention of the petitioner as if there is a direction by the Hon'ble Supreme Court of India in O.S.No.3 of 2006 by itself is misconceived.

3. Secondly, it is the consistent stand of the State of Tamil Nadu before the Hon'ble Supreme Court of India that it is not for the other alternatives and accordingly, the claim of the state being upheld by the Constitution Bench of the Hon'ble Supreme Court of India. Now this Court cannot entertain this Public Interest Litigation and issue a Mandamus to the authorities.



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4. This issue is squarely within the ambit of inter-state dispute and when the Hon'ble Supreme Court of India had considered the issue in exercise of its powers under Article 131 of the Constitution of India, this Court cannot entertain the prayer of the petitioner under Article 226 of the Constitution of India. Therefore, the Writ Petition stands dismissed. No costs.

[S.S.S.R., J.] [D.B.C., J.]

16.08.2023

NCC : Yes / No
Index:Yes/No
Internet:Yes/No
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To:

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- 2.The Chief Engineer (PWD),
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Pre-Delivery Order made in
W.P.(MD)No.21337 of 2022

16.08.2023