



WP (MD) Nos.3211 to 3218 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**RESERVED ON: 22.12.2023
PRONOUNCED ON: 27.03.2024**

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)Nos.3211 to 3218 of 2017
and
WMP(MD)Nos.2560 to 2567 of 2017 and
25925 of 2023**

WP(MD)No.3211 of 2017

I.Antonymsamy

... Petitioner

Vs

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Revenue Divisional Officer,
Vilathikulam Taluk,
Thoothukudi District.

3.The Tahsildar,
Vilathikulam Taluk,
Thoothukudi District.

4.The Secretary,
Water Resource Department,
Chennai.

[R-4 was suo motu impleaded vide order dated
27.03.2024]

... Respondents



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the 3rd respondent / Tahsildar to remove the seal in the motor set in the well of the petitioner in S.No.196/3 situated at Vembar Village, Vilathikulam Taluk, Thoothukudi District and further direct the respondents to regulate by considering the petitioner's representation dated 29.12.2016.

For petitioner : Mr.A.Robinson

For Respondents : Mr.M.Ramesh,

Government Advocate

ORDER

This batch of writ petitions is filed for a mandamus to the respondents to remove the seal of the motor pump sets installed in their wells situated in their properties by considering their respective representations.

2.The petitioners are extracting water from the bore-wells situated in their private lands using motors and are selling it in their locality since there is water scarcity. While so the Tahsildar concerned has sealed the motor pump sets. Therefore, the petitioners have submitted representations to remove the seal of the motor. Since no action has been taken on their representations, these writ petitions are filed with the above prayer.



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3.The learned Counsel for the petitioners submits that the petitioners are agriculturists and they are cultivating the lands by using motors in the bore-wells in their lands. The petitioners after using the water for agriculture, are selling the excess water to the villagers, since there is acute scarcity of drinking water. While so, the Tahsildar without providing any opportunity of hearing or without passing any order has straightaway sealed the pump sets. Despite several representations submitted to the respondents, they have not removed the seal of the pump sets. Due to the sealing of the pump sets, the petitioners are unable to carry out the agriculture operation and their livelihood is affected.

4.The learned Government Advocate appearing for the respondents submits that the petitioners without getting any permission or no objection from the authority concerned have been extracting water and selling it for commercial purposes. The petitioners themselves have admitted in their writ petitions that they have been drawing water and selling it for commercial purposes. The learned Government Advocate by referring to the Government Order in G.O.Ms.No.142 Public Works Department, dated 23.07.2014 submits that this government order came to be passed for effective management of ground water in the State, wherein exemptions were granted from getting no objection certificate from the authority



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concerned, when water is drawn for drinking water purpose for individual houses, for agricultural purpose, for usage of educational institutions,,etc. However, getting of no objection certificate is mandated for extracting of water for commercial purpose. The petitioners case that there is water shortage in their village is not correct. Water is supplied in those villages by the respective local bodies and the same is evident from the details furnished by the Block Development Officer, Vilathikulam Panchayat Union.

5.He further submits that insofar as Thoothukudi district is concerned as per the Ground Water Brochure issued by the Central Ground Water Board, Vilathikulam Block is indicated as 'over exploited' and as per government order in Go.Ms.No.257 Public Works Department (R2) dated 01.10.2018, the entire Vilathikulam Taluk is categorised as 'Semi Critical'. Further indiscriminate drawal of ground water leads to ecological imbalances. Therefore, it is necessary to ensure that ground water level is not affected due to indiscriminate drawal of ground water without any permission from the competent authority.

6.He also submits that several litigations were instituted in Thoothukudi district, since using of groundwater for commercial purpose was prohibited for



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causing public nuisance under Section 133 CrPC. This Court in

Crl.R.C(MD)No.135 of 2023 reported in (2015) 2 MLJ (Crl) observed that the law enforcing authorities have to act strictly in accordance with law, if they come across any violation regarding ground water exploitation. As per the orders passed by this Court in WP(MD)No.28535 to 28539 of 2016, dated 03.10.2018, WP.No.16299 of 20218 dated 09.01.2020 and 06.02.2020 and as ordered by the government, District Level Monitoring Committee headed by the District Collector as the Chairman, has been constituted in the District vide Pro.Roc.No.B4/4236/2020 date 19.02.2020 for inspecting and sealing of illegal extraction of ground water for commercial purposes in Thoothukudi District.

7.The learned Government Advocate referred to a similar writ petition filed by one K.Patchaiperalum seeking to remove the seal of the pump set for illegal extraction of water under the guise of supplying water to the villagers in the nearby Ottapidaram Taluk, wherein this Court dismissed the writ petition by its order dated 05.01.2017 with a cost of Rs.15,000/- ; In a writ petition in WP(MD)No.706 of 2019 filed seeking to remove the seal put up on the bore-well and to permit the petitioner therein to carry on the business in his patta land in S.No.452 of Veppalodai Village, Vilathikulam Taluk, this Court had elaborately



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discussed the issue and dismissed the writ petition by order dated 03.07.2019 .

Therefore, he submits that these writ petitions are liable to be dismissed.

8.This Court considered the rival submissions made and perused the materials placed on record.

9.The petitioners claim that they are agriculturists and they are using motor pumps for extracting water for agricultural activities and apart from agricultural purposes, they are selling water to the local residents since there is scarcity of water in their village. The respondents have sealed the motor pump sets that the petitioners are using the same for commercial purpose without obtaining no objection from the competent authority. The government order in G.O.Ms.No.142 Public Works Department, dated 23.07.2014 mandates no objection certificate for extracting water for commercial purposes. The groundwater level in Vilathikulam block is categorised as over exploited and the Vilathikulam Taluk as Semi Critical.

10. The world cannot exist without water. Water is not only essential for human beings, but also for all the living beings. Emphasizing the same, a Division



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Bench of this Court in a batch of writ petitions in WP.Nos.15304 of 2019, etc.

dated 01.10.2019, filed before this Court has held as under:

“20. Ground water is depleting in the State of Tamil Nadu at an alarming rate. Chennai Metropolitan Area Ground Water (Regulation) Act 1987, only regulates extraction of water in Chennai, Kancheepuram and Tiruvallur districts. Since Tamil Nadu Ground Water (Development and Management) Act, 2003 has been repealed, there is no legislation to regulate the extraction of water in the State of Tamil Nadu other than the three districts mentioned above. A perusal of G.O.Ms.No.51, Public Works Department, dated 11.2.2004 and G.O.Ms.No.52, Public Works (R2) Department, dated 02.03.2012, would show that the State Government is aware that there are pockets in the State where there is over exploitation of ground water. The Government has therefore resorted to invoke the powers under Article 162 of the Constitution of India to bring out the above mentioned G.O. There is no machinery to ensure that violators of the directions in the said G.O.s. can be proceeded with under criminal law. There are no effective provisions in the Indian Penal Code to combat illegal extraction of water. The State Government therefore has to bring out effect legislations to ensure that persons involved in illegal and indiscriminate extraction of ground water are dealt with firm and iron hands. This Court is aware that a Writ cannot be passed directing the State Government to bring out legislations. However,



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this Court requests the State Government to pass legislations to cover the entire State of Tamil Nadu to combat the issue of depletion of ground water.”

11.The Government has already enacted Act and Rules to regulate the extraction of ground water in this State vide, the Chennai Metropolitan Area Groundwater (Regulation) Act, 1987 and the Chennai Metropolitan Area Groundwater (Regulation) Rules, 1988 and the Tamil Nadu Ground Water (Development and Management) Act, 2003. The Act of 1987 is regulating the field in the Chennai City and several villages in the Districts of Chengalpet, Kancheepuram and Tiruvallur. The rest of the places in Tamil Nadu were governed by the Act of 2003. However the Government of Tamil Nadu by an Ordinance dated 14.09.2013 has repealed the Act of 2003. Therefore as on date extraction of groundwater is now governed by G.O.Ms.No.142 of the year 2014.

12. The Hon'ble Supreme Court in **M.C.Metha Vs Union of India** reported in **(1997) 11 SCC page 312** has issued a direction to the central government as under:

“8. We therefore, order and direct as under.



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9. *The Central Government in the Ministry of Environment and Forest shall constitute the Central Groundwater Board as an Authority under Section 3(3) of the Act. The Authority so constituted shall exercise all the powers under the Act necessary for the purpose of regulation and control of groundwater management and development. The Central Government shall confer on the Authority the power to give directions under Section 5 of the Act and also powers to take such measures or pass any orders in respect of all the matters referred to in sub-section (2) of Section 3 of the Act.*

10. *We make it clear that the Board having been constituted an Authority under Section 3(3) of the Act, it can resort to the penal provisions contained in Sections 15 to 21 of the Act.*

11. *It has been stated by Dr P.C. Chaturvedi and Mr Arun Kumar in their respective affidavits that enhanced and unregulated pumpage of the water is primarily responsible for the decline in the water levels of the country.*

12. *The main object for the constitution of the Board as an Authority is the urgent need for regulating the indiscriminate boring and withdrawal of underground water in the country. We have no doubt that the Authority so constituted shall apply its mind to this urgent aspect of the matter and shall issue necessary regulatory directions with a view to preserve and protect the underground water. This aspect may be taken up by the Authority on an urgent basis.*



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13. The Central Government in the Ministry of Environment and Forest shall issue the necessary notification under Section 3(3) of the Act as directed by us before 15-1-1997.”

13. On the above directions of the Hon'ble Supreme Court, the Central Government constituted the Central Ground Water Board as the authority vide notification number S.O. 38 (E) dated 14.01.1997 and the authority has been regulating the ground water development and management by way of issuing no objection certificates for ground water extraction to industries, infrastructure projects or mining projects, etc., and also framing guidelines in this connection from time to time applicable in all the States and Union Territories where ground water development is not being regulated by the State Governments and Union Territories Administration. The Government of India has also issued the “Guidelines to regulate and control groundwater extraction in India” vide notification S.O. 3289(E) dated 24th September, 2020, under Section 5 of the Environmental Protection Act, 1986. These guidelines will have Pan-India applicability and the States, which do not have any regulations, shall continue to be regulated by the Central Ground Water Authority [CGWA].



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14.The Tamil Nadu Ground Water (Development and Management) Act

2003 governed the usage of ground water for the entire State of Tamil Nadu and it was in the line with the Chennai Metropolitan Area Ground Water (Regulation) Act 1987. The 2003 Act has been repealed by the Tamil Nadu Ground Water (Development and Management) Repeal Act, 2013 whereas the Chennai Metropolitan Area Ground Water Regulation Act 1987 is still in force. The Act 2003 was repealed that the Government proposed to bring a comprehensive law. But for the past 10 years no legislation was brought in to regulate the extraction of ground water in the State of Tamil Nadu. As a substitute, the Government has issued G.O.Ms.No.51, Public Works Department, dated 11.2.2004, G.O.Ms.No.52, Public Works (R2) Department, dated 02.03.2012 and G.O.(Ms).No.142, Public Works (R2) Department dated 23.07.2014, for regulating the extraction of ground water.

15.It is a well-settled principle of law that an executive order under Article 162 must be passed in conformity with the rules and the power of the State Government to issue executive instructions is confined to filling up of the gaps or covering the area which otherwise has not been covered by the existing rules. Strangely in Tamil Nadu alone an existing Act was repealed in the year 2014 and



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the field of regulating the extraction of ground water is maintained by government orders.

16.The Tamil Nadu Ground Water (Development and Management) Act, 2003 was brought in with an objective to protect groundwater resources to provide safeguards against hazards of its over exploitation and to ensure its planned development and proper management in the State of Tamil Nadu. Whereas the by the G.O.Ms.No.52 and G.O.(Ms).No.142 of the Public Works Department, the areas were categorised and the No Objection Certificate/ License was introduced for extraction of ground water. The 2003 Act, for ensuring compliance with the provisions, has given the offences and penalties for the same under the Act. On the other hand, there is no machinery to ensure the compliances of the said G.O.s. or any criminal sanctions to combat illegal extraction of water. Therefore, the state cannot leave the vital subject of ground water which was governed earlier by extensive law, to inadequate executive orders.

17.The right to have potable water is guaranteed as a fundamental right in the Constitution of India as right to life under Article 21. In the absence of a proper mechanism to regulate the extraction of water, water in this State is extracted indiscriminately. People who are extracting the water for commercial



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purpose are indiscriminate in extracting the ground water. Ultimately other citizens who are living adjacent to these commercial exploitations have to suffer for a pot of water. Very rarely actions are taken like in these cases.

18. Admittedly these petitioners have used their bore well for commercial purpose other than their agricultural purpose. In the absence of a proper legislation the petitioners cannot be blamed. At the same time they cannot be permitted to exploit water further for commercial purposes. The respondents shall get an undertaking letter from the petitioners and shall reconsider the case of the petitioners for permitting their bore wells for the purpose of agriculture or domestic purpose. Enacting a proper legislation only can solve these issues and hence this Court *suo motu* impleads the Secretary, Water Resource Department as a party to these writ petitions and direct the newly impleaded respondent to bring the legislation on extraction of ground water as early as possible not later than three months.

19. These writ petitions are disposed of in the above terms. No costs. Consequently connected miscellaneous petitions are closed.

27.03.2024

Index: Yes / No
NCC: Yes/No



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To

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Thoothukudi District,
Thoothukudi.

2.The Revenue Divisional Officer,
Vilathikulam Taluk,
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3.The Tahsildar,
Vilathikulam Taluk,
Thoothukudi District.

Copy to

The Secretary,
Water Resource Department,
Chennai.



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B.PUGALENDHI, J.

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