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W.P.(MD)NO.23278 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)Nos.23278 & 25040 of 2023 AND

W.M.P.(MD)Nos.19485 & 21250 of 2023,

1330 & 1376, 2846 & 2904 of 2024

W.P.(MD)NO.23278 OF 2023

K.Gajendran

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Public Works Department (Water Resources),
Fort St.George, Secretariat,
Chennai – 600 009.
2. The Chief Engineer,
Public Works Department (Water Resources),
River Safety Division,
Chepauk, Chennai – 5.
3. The Managing Director,
Tamil Nadu Water and Drainage Board,
Chennai-5.
4. The District Collector,
District Collector Office,
Trichy.
5. The Superintending Engineer,
Tamil Nadu Water and Drainage Board,
Trichy.



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6. The Executive Engineer,
Water Resources Department,
Trichy District.

7. The Revenue Divisional Officer,
Lalgudi, Trichy District.

8. The Tahsildar,
Lalgudi Taluk Office,
Trichy District.

9. Dharmaraj
10. Muruganandam

11. S.Albert Sahayaraj

12. K.Kaviarasan

13. A.Veeraraghavan
(Respondents 9 to 13 are impleaded vide order dated 20.02.2024 in
W.M.P.(MD)No.2844 of 2024) ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents, from continuing the work for new drinking water borewell project at Kollidam River bed, Anbil Village, Lalgudi, Trichy District.

For Petitioner : Mr.K.Gokul

For R-1 to R-8 : Mr.R.Baskaran,
Additional Advocate General,
assisted by,
Mr.K.Balasubramani,
Special Government Pleader and
Mr.B.Vijay Karthikeyan

For R-9 to R-13 : Mr.S.Srinivasa Raghavan

* * *



W.P.(MD)No.25040 of 2023

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R.Arumugham

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. By its Principal Secretary,
Public Works Department(Water Resources),
Fort St George, Secretariat,
Chennai – 600 009.
2. The Chief Engineer,
Public Works Department(Water Resources),
River Safety Division,
Chepauk, Chennai – 600 005.
3. The Additional Secretary,
Municipal Administration and
Water Supply Department,
Fort St. George,
Secretariat, Chennai – 600 009.
4. The Managing Director,
Tamil Nadu Water Drainage Board,
Chennai-5.
5. The Secretary(DWS),
Ministry of Drinking Water and Sanitation
(Jaal Shakth) Jal Jeevan Mission,
C Wing 4th Floor,
Pandit Deendayal Antyodaya Bhawan,
CGO Complex, Lodhi Road,
New Delhi – 110 003.
6. The District Collector,
District Collector Office, Trichy.



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7. The Superintendent Engineer,
Tamil Nadu Water and Drainage Board,
Trichy.

8. The Executive Engineer,
Water Resources Department,
Trichy District.

9. The Revenue Divisional Officer,
Lalgudi,
Trichy District.

10. The Tahsildar,
Lalgudi Taluk Office,
Trichy District.

11. Dharmaraj

12. Muruganandam

13. S.Albert Sahayaraj

14. K.Kaviarasan

15.A.Veeraraghavan

(Respondents 11 to 15 are impleaded vide order dated 20.02.2024 in
W.M.P.(MD)No.2903 of 2024) ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents, to consider the representation of the petitioner dated 27.09.2023 and the communication of the Block Development Officer bearing Na.Ka. No.Aa1/512/2022 dated 04.10.2023 and to refrain and stop the work for new drinking water borewell project at Kollidam River bed, Anbil Village, Lalgudi, Trichy District.



For Petitioner : Mr.Susanna Prabhu

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For R-1 to R-4, R-6

R-7, R-8toR-10 : Mr.R.Baskaran,
Additional Advocate General,
assisted by,
Mr.K.Balasubramani,
Special Government Pleader and
Mr.B.Vijay Karthikeyan

For R-11 to R-15 : Mr.S.Srinivasa Raghavan

* * *

COMMON ORDER

The writ petitioners are permanent residents of Keelanbil Village in Lalgudi Taluk. They want this Court to restrain the TWAD Board from implementing the combined water supply scheme in Kollidam river bed in the vicinity of their village. Notices were issued and on 12.12.2023, the following order was passed:-

“Heard the learned counsel for the petitioners and the learned Additional Advocate General assisted by the learned Special Government Pleader for the respondents.

2. The petitioner's counsel have pointed out that decision was taken to install the collector well near Seventhinathapuram (Edayathumangalam Village).



Since the Sevvanthinathapuram villagers lodged strong protest, the authorities are now proposing to locate the well near Keelanbil. The petitioner's counsel pointed out that while the protest lodged by Edayathumangalam villagers was taken note of, the villagers of Keelanbil have been met with registration of FIRs and arrest. We wanted to know from the learned Additional Advocate General if any technical study preceded the decision to shift the location from Sevvanthinathapuram to Keelanbil Village. Even though the learned Additional Advocate General submitted that the study was undertaken and only based on the suggestion that came out of the said study, the decision was taken. The report could not be made available before us.

3. Since *prima facie* case has been made out, there shall be an order of interim injunction as prayed for. Notice. Call this case on 14.12.2023. The learned Additional Advocate General shall produce the study report.”

2. To vacate the said interim order, TWAD Board filed vacate stay petitions. Certain interested villagers got themselves impleaded in the writ petitions. Following the request made by the learned Standing counsel for TWAD Board on 12.02.2024, the writ petitions were listed for final hearing today.

3. The learned counsel appearing for the writ petitioners raised the



following contentions;

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a) TWAD Board had arbitrarily and without any justification changed the location from Edayathumangalam to Keelanbil.

b) If the impugned decision is implemented, the ground water table of Keelanbil village will be drastically depleted.

c) No objection certificate was not obtained from Keelanbil village Panchayat.

The learned counsel for the petitioners took us at length through the respective pleadings and also the materials enclosed in the typed set of papers and submitted that the relief as sought for should be granted.

4. The learned Additional Advocate General submitted that the contentions advanced by the learned counsel for the petitioners are ill-founded and pressed for dismissal of the writ petitions. The learned counsel appearing for the impleaded respondents supported the stand taken by the learned Additional Advocate General.

5. We carefully considered the rival contentions and went through the materials on record.

6. The learned counsel for the petitioners contended that NOC must be obtained from the village Panchayat concerned by placing reliance on G.O.(Ms)No.142 Public Works (R2) Department dated



23.07.2014. This contention has no merit. As rightly pointed out by the

learned Additional Advocate General, clause (b) of the aforesaid GO.

makes it clear that in the case of drinking water supply schemes, such

NOC need not be obtained. The relevant portion is as under:-

“ (b) Drawal of Ground water for domestic purpose by individual household: domestic Infrastructure project(Housing), Government's Drinking Water Supply Schemes and non-water based industries, (I.e. The industries which do not require use of water, either as raw material or for other processing) are excluded.”

7. The primary contention advanced by the learned counsel for the petitioners is that after initially deciding to locate the water project in Edayathumangalam village, it was arbitrarily shifted. We wanted to know from the learned Additional Advocate General, if any technical study was conducted as regards the feasibility of the project at Edayathumangalam village. Our attention was drawn to the hydraulic study undertaken by the TWAD Board. Copy of the report dated 27.04.2023 has been enclosed in the typed set of papers. The following paragraph is relevant:

“ Before taking up execution of construction activities, confirmatory bore well works are to be done so as to ensure RSSFC observations and as per the norms of TWAD Board. Based on this, the Deputy Hydrogeologist,



Trichy-Pudukkottai Circle, Trichy and Assistant Hydrogeologist, RWS Division, Trichy has started the investigation activities and confirmatory bore well works are carried out for the period 24.04.2023 to 26.04.2023. From this investigations works, it is ascertained that the available sand thickness is about 13.50 m to 14 m as against 18.00m recommended in RSSFC for Collector well. From the Lithology of the confirmatory bore holes drilled for Radial arms, it is revealed that occurrence of clay lences in various locations (6 points out of 9 points) of Radial arms directions, there is clay mix sand presence at the depth ranging from 10.5 m to 12.5 m (Lithology is enclosed Annexure-III). The depletion of sand thickness was observed because of erosion of sand due to sand quarry at Koohur Village which is just downstream of Edayathumangalam and also sand quarry in Thalakkudi Village which is upstream of Edayathumangalam during the period 09/2020 to 05/2022(sand quarry order enclosed as Annexure-IV). Hence, the originally proposed site at Edayathumangalam is found not suitable to draw the



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designed quantity of water due to presence of clay lences and sand erosion.”

8. In the additional counter affidavit filed by the seventh respondent, the ground water level statistics taken in the region for the past five years during January and May have been set out. Locations for tapping water have been classified under four categories, namely, Safe, semi-critical, critical and over-exploited. Keelanbil falls under safe category.

9. When technical experts have arrived at certain conclusions, the writ Court cannot substitute its views in their place. The Hon'ble Supreme Court in the decision reported in **(2013) 6 SCC 620 (G.Sundarrajan V. Union of India)** held as follows:-

“ 209. A Constitution Bench of this Court in **University of Mysore V. C.D.Govinda Rao MANU/SC/0268/1963: AIR 1965 SC 491** normally, Court should be slow to interfere with the opinion expressed by the experts and it would normally be wise and safe for the Courts to leave the decisions to experts who are more familiar with the problems which they face than the Courts generally can be which has been the consistent view taken by this Court. ...

210. ... The Court, in our view, cannot sit in judgment on the views expressed by the technical and



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scientific bodies in setting up of KKNPP plant at Kudankulam and on its safety and security.”

It cannot be disputed that the TWAD Board is the competent authority in this case. The materials enclosed in the typed set of papers indicate that the comparative study was undertaken and only thereafter it was decided to shift the project to Keelanbil Village.

10. It is further submitted by the respondents that sub surface water alone is only proposed to be extracted and that it would not have any bearing on the ground water table of Keelanbil Village.

11. There is one another aspect of the matter. The consumers of water would fall under various categories. Drinking water needs would rank first and paramount. Then would come agriculture and industrial needs would follow thereafter. The present scheme is for meeting the drinking water requirements. The petitioners appear to plead for the cause of agriculturists. Of course, they are equally important. But their needs will have to give way to drinking water requirements.

12. For these reasons, we are of the view that continuance of the interim order is not warranted. We make it clear that if in future, the ground water table in Keelanbil Village is affected, it is always open to the concerned villagers to move this Court for appropriate relief. With



this liberty to the petitioners, these writ petitions stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.SWAMINATHAN, J.) & (B.PUGALENDHI, J.)
20th February 2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

To:

1. The Principal Secretary,
Public Works Department (Water Resources),
Fort St.George, Secretariat, Chennai – 600 009.
2. The Chief Engineer,
Public Works Department (Water Resources),
River Safety Division, Chepauk, Chennai – 5.
3. The Managing Director,
Tamil Nadu Water and Drainage Board, Chennai-5.
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W.P.(MD)NO.23278 OF 2023

G.R.SWAMINATHAN, J.

AND

B.PUGALENDHI, J.

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W.P.(MD)Nos.23278 & 25040 of 2023

20.02.2024