
(2009) 09 MAD CK 0266

In the Madras High Court

Case No : Writ Petition No. 165 of 2009 and M.P. (MD) No's. 1 to 3 of 2009

A. Nallusamy

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 30-09-2009

Acts Referred:

Citation : (2009) 5 CTC 700

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : K.M. Vijayakuma, Mr. K. Govindarajan in W.P. No. 165/2009, Mr. T.V. Sivakumar in W.P. No. 1981/2009 and Ms. D. Geetha in Cont. P. No. 381/2009, for the Appellant; K. Govindarajan, Advocate for Respondent No.4 in W.P. No. 1981 of 2009, Mr. K.M. Vijayakumar, Additional Government Pleader for Respondent Nos. 1 and 2 in all Petitions, Mr. T.V. Sivakumar for Mr. N. Shanmugaselvam, Advocate for Respondent No. 3 in W.P. No. 165/2009, Mr. M. Suresh Kumar, Advocate for Respondent No. 3 in W.P. No. 1981/2009 and Mr. S. Sivathilakar, Advocate for Respondent No. 5 in W.P. No. 1981/2009, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J.—Since the issue involved in these matters are common, they are taken up together and disposed of by a common order. W.P. No. 165 of 2009 has been filed to quash the order passed by the first respondent in proceedings dated 05.11.2008. By the said order, the first respondent has cancelled an order passed by the second respondent granting an order that the pipeline formed by the petitioner should not be disturbed.

2. W.P. No. 1981 of 2009 has been filed for a Writ of Mandamus, to direct the respondents 1 to 3 to take appropriate action against the fourth respondent (petitioner in W.P. No. 165 of 2009) pursuant to their legal notice dated 22.12.2008. In the said legal notice, the petitioner had called upon the respondents 1 to 3 to cancel all permissions for drawal of water from S. Nos. 1351 and 1173 issued in favour of Thiru. Nallusamy and Thiru. Kandasamy and

specifically called upon the third respondent to disconnect the power supply used to energise agriculture pump-sets in the said survey numbers.

3. Cont. No. 381 of 2009 has been filed for disobedience of the order in W.P. No. 11531 of 2008, dated 16.12.2008 by which there was a direction to implement an order passed by the District Collector, dated 17.11.2008. By which the District Collector has granted permission for the purpose of drawal of water.

4. The issue involved in all these cases is relating to a permission which was granted for drawal of water from a well which is situated in close proximity to the Amaravathy river. It is stated that a permission was granted by the Commissioner of the panchayat union on 18.03.1992 for drawal of water from S. No. 1351/2C Sanapiratti Village and to lay a pipe line through the road to a distance of 1000 meters for the purpose of drawing of water for agricultural operations. This permission granted on 18.03.1992 was sought to be interfered and an order was passed on 17.10.2008 granting an interim order to the effect that none should damage the pipeline which has been formed pursuant to the order dated 18.03.1992. This interim order dated 17.10.2008 has been cancelled by the order dated 05.11.2008 which is impugned in W.P. No. 165 of 2009.

5. The only issue which is to be considered in all these matters is whether the petitioner in W.P. No. 165 of 2009 is entitled to the benefit under the order dated 18.03.1992. The matter was hotly contested between the parties. The first objection raised by the learned counsel for the petitioner in W.P. No. 1981 of 2009 is that the petitioner in W.P. No. 165 of 2009 has played a fraud by fabricating the order dated 18.03.1992 by including two other survey numbers and after bringing such forged document has filed a Suit in O.S. No. 630 of 2008 on the file of the District Munsif Court, Karur and has also obtained order of status quo in I.A. No. 969 of 2008, dated 04.12.2008. A certified copy of the order dated 18.03.1992 filed in O.S. No. 630 of 2008 has been produced in Court which shows that Thiru. Nallusamy is entitled to draw water for the purpose of irrigating his lands in S. Nos. 1353 and 1356 which has to be noted that in the order dated 18.03.1992 which has also filed in page 1 of the typed set of papers in support of the Writ Petition in W.P. No. 165 of 2009. The two survey numbers mentioned does not find place and it states that Thiru Nallusamy and Thiru V. Kandasamy are entitled to draw water from the well in S. No. 1351/2C for the purpose of irrigating the lands and to lay pipe line to the distance of 1000 meters.

6. Therefore, it is to be noted that W.P. No. 165 of 2009 has been filed solely based upon a permission dated 18.03.1992, the genuinity of such document as to whether the petitioner in W.P. No. 165 of 2009 has filed a forged document in the Suit in O.S. No. 630 of 2008 has to be enquired by the first respondent and it is left open to the first respondent to initiate proper action as he deems fit and proper.

7. For the disposal of the present Writ Petitions what is required to be seen is whether there is any valid permission in favour of the petitioner in W.P. No. 165

of 2009. The first respondent after considering all the issues has passed an order dated 17.11.2008. In the said order it has been observed that there are encroachments in S. No. 1598 which has been classified as natham poramboke land and the removal of such encroachments has been temporarily stayed by the Revenue Divisional Officer, Karur and a representation has been received from the President of the Sanapiratti Panchayat on 29.10.2008 and based on such request the order dated 05.11.2008 was passed vacating the interim stay granted by the Revenue Divisional Officer. Further, the first respondent in the order dated 17.11.2008 has cancelled all permissions and directed the removal of the encroachments.

8. The grievance of the petitioner in the Contempt Petition is that despite the order dated 17.11.2008, the third respondent therein namely, the Tahsildar, Karur has not taken any steps and therefore, the Writ Petition was filed in W.P. No. 11531 of 2008 which came to be disposed of by an order dated 16.12.2008 to implement the order of the District Collector in its letter and spirit and the Contempt Petition has been filed stating that the order has not been obeyed.

9. Heard Mr. K. Govindarajan, learned counsel for the petitioner in W.P. No. 165 of 2009 and Mr. T.V. Sivakumar, learned counsel for the petitioner in W.P. No. 1981 of 2009, Mrs. D. Geetha, learned counsel for the petitioner in Cont. P. No. 381 of 2009 and Mr. K.M. Vijayakumar, learned Additional Government Pleader for the respondents 1 and 2 and perused the materials available on record.

10. Admittedly, none of the parties to the Writ Petitions have got any vested right for drawal of water that too from the wells situated adjacent to the Amaravathi river. The grant of permission is wholly discretionary and be made considering various factors since availability of water on the river bed is a nature resource and the same cannot be permitted for indiscriminate exploitation. Further, if any permission is granted by the revenue officials for drawal of water, the same is subject to restrictions and at any point of time, the authorities for valid reasons could cancel such permission. In such circumstances, there is no error in the order passed by the first respondent in cancelling the permission after it has come to his notice that the permission granted has been either misused or some illegality has been committed. In the instant case, it is projected that a forgery has been committed by including certain survey numbers which do not find place in the original permission granted. That apart, there has been representations from the public opposing to the grant of such permission and the first respondent has exercised his powers taking into consideration the purpose for which the said permission has been granted as well as in public interest could cancel the permission. Therefore, I am of the view that the petitioner in W.P. No. 165 of 2009 cannot bring in the theory that adequate notice was not issued and hence the order passed by the District collector is erroneous. As observed earlier, the right of drawal of water from the well in the river bed subject to regulations. Once it has been brought to the notice of the competent authority that such permission is being misused or that such permission would detrimental to the

interest of the public the authority is vested with sufficient jurisdiction to cancel or regulate or modify such permission. The first respondent cannot be expected to conduct a full fledged enquiry as if it is departmental proceedings or quasi judicial proceedings. The permission is in the nature of a licence. When conditions of licence are violated the authority are vested with full powers to cancel such licence. Therefore, there is no vested right with the petitioner in W.P. No. 165 of 2009.

11. The Hon''ble Supreme Court has held that the principles of natural justice cannot be put in a straitjacket formula. The said principle has to be applied on a case to case basis and depends upon the facts and circumstances of each case. The law has developed over the years and the Hon''ble Supreme Court in several decisions has propounded the "useless formality theory". By such interpretation, the Hon''ble Supreme Court has held that it has to be seen as to whether any purpose would be served by directing notice or opportunity to be given and if it is found that no such purpose would be served, the authority cannot be faulted for taking an action without affording of hearing or an opportunity. The case on hand is one such issue where the District Collector as the Head of the administration in the particular District has exercised his powers in cancelling such permission keeping in mind the public interest involved in the matter.

12. Therefore, the petitioner cannot be said to be aggrieved by such action. As observed earlier, there appears to be a misrepresentation as regards the actual nature of the permission granted.

13. In view of the above, I find that the petitioner in W.P. No. 165 of 2009 has not made out a case for issue of Writ of Certiorari as prayed for and accordingly, the Writ Petition is dismissed.

14. In view of the dismissal order passed in W.P. No. 165 of 2009, no further orders are required to be passed in W.P. No. 1981 of 2009. Therefore, W.P. No. 1981 of 2009 is closed. Since already a direction has been issued by this Court in W.P. No. 11531 of 2008, dated 16.12.2008 which is subject matter in Cont. P. No. 381 of 2009, there will be a direction to the District collector, Karur to take immediate steps to implement his directions dated 17.11.2008 within a period of three weeks from the date of receipt of a copy of this order. Accordingly, the Contempt Petition is closed. No costs. Consequently, connected Miscellaneous Petitions are closed.