
(2013) 02 MAD CK 0144

In the Madras High Court

Case No : Writ Petition No. 19090 of 2007 and M.P. No. 1 of 2007

D. Shanmugasundaram

APPELLANT

Vs

Irumburai Panchayat and Others

RESPONDENT

Date of Decision : 27-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 3 MLJ 324

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : P.T. Asha for Sarvabhauman Associates, for the Appellant; V.M. Velumani, Spl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—Heard both sides. The petitioner is an agriculturist having a bore well in his land comprised in S. No. 988/1A2 in Irumburai Village, which is situated at a distance of 700 meters from his agricultural lands comprised in S.F. Nos. 350/1, 328/1, 334, 336/1B, 340/1, 233, 234, 222, 235, 236, 237, 238, 469, 470 and 471 in the neighbouring village viz., Illuppanatham Village. For taking water to the above said agricultural lands from the bore well in S.F. Nos. 988/1A2 of Irumburai Village, the petitioner uses the underground pipe line laid in the poramboke lands with the permission granted by the respondents 1 and 2. The said facility was in his enjoyment from the year 2002. The land in which bore well has been sunk is near the river Bhavani. But according to the petitioner, there are third party lands in between the land comprised in S. No. 988/1A2 Irumburai Village and the Bhavani River bed. Of course, the said permission to take water to the agricultural lands of the petitioner in Illuppanatham Village through underground pipe line laid in the poramboke lands had been granted on condition that the petitioner should take water only from the bore well situated in S.F. No. 988/1A2 of Irumburai Village and that the petitioner should not take water directly from the water spread area or the river Bhavani.

2. Subsequently, the petitioner was served with the impugned order dated 10.05.2007 passed by the fourth respondent informing him that since the petitioner was found to be taking water directly from the Bhavani River, the third respondent had cancelled the track rent permit by his order dated 20.08.2003; that the no objection certificate issued through the Executive Engineer, Bhavanisagar Dam Division was also cancelled by an order dated 10.02.2005; that despite the cancellation of the permission and the no objection certificate, the petitioner failed to remove the underground pipe line passing through S. No. 949/1A of Irumbarai Village and S. Nos. 449/2 and 449/4 of Illuppanatham Village and that the petitioner should remove those pipe lines within ten days from the date of receipt of the impugned order of the fourth respondent dated 10.05.2007, failing which steps would be taken for removal of the same with the help of police at the cost of the petitioner. Hence, the petitioner has approached this Court invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus to call for the records relating to the above said impugned order of the fourth respondent and quash the same and to forbear the respondents from removing the pipe line laid by the petitioner through the above said poramboke lands. In support of his prayer, the petitioner has contended that the earlier orders cancelling the no objection certificate and the track rent permit referred to in the impugned order were not at all served on the petitioner and that the impugned order came to be passed in total violation of the principles of natural justice without even affording an opportunity to the petitioner to put forth his case.

3. The fourth respondent has filed a counter affidavit, which contains the following averments:

On the basis of the inspection made by the subordinates of the third respondent and also the personal inspection made by the third respondent, the third respondent issued a letter No. Pa.Mu/3509/2003/1, dated 20.8.2003 stating that the petitioner and three others were found taking water directly from the river Bhavani also through the underground pipe line, apart from taking water from the bore well. The Executive Engineer, PWD/WRO, Bhavanisagar Dam, on the basis of the inspection report of the third respondent, cancelled the no objection certificate issued to the petitioner by his letter No. DB/JD01/F19C/70m/04 dated 10.2.2005 and intimated the third respondent regarding the cancellation of the no objection certificate. The third respondent also made due inspection of the sites and found the petitioner taking water directly from the river Bhavani. Even thereafter, the petitioner continued to take water from river Bhavani without the permission of the Public Works Department and under the said circumstances alone the impugned order came to be passed directing the petitioner to remove the pipe line passing through the above said poramboke lands. For the notice issued by the Assistant Engineer, PWD, Water Spread Section, Bhavanisagar, who is subordinate to the fourth respondent, the petitioner sent a reply on 4.5.2007 admitting that he is taking water from river Bhavani. Hence, writ petition should be dismissed.

4. As it had been contended by the fourth respondent in the counter affidavit that the orders cancelling the no objection certificate and the track rent permit had been issued prior to the impugned order and that the petitioner has also admitted that he is taking water from river Bhavani in his reply submitted to the letter of the officer who is subordinate to the fourth respondent, the petitioner has chosen to file a reply affidavit denying and disputing the above said averments found in the counter affidavit. In the reply affidavit, the petitioner has stated in unambiguous terms that prior to the impugned order, no order or letter was served on the petitioner and that the reply letter dated 4.5.2007 referred to in the counter affidavit was not given by the petitioner.

5. In view of the said contention of the petitioner, the respondents were directed by this Court to produce the entire file relating to the passing of the impugned order and also the reply dated 4.5.2007 given by the petitioner, which allegedly contains the admission. Even after taking sufficient time, the respondents did not produce the said documents. On last occasion, this Court passed an order to the following effect:

Despite a direction having been issued long back on 18.12.2012 itself, the third respondent has not produced the documents directed to be produced. The learned Govt. Pleader expresses his inability to make his submissions as he has not been provided with the file, the matter is adjourned finally by a week. In case of non-production of the documents or repetition of the very same representation, the matter will be viewed seriously and necessary orders will be passed.

6. Today, Ms. V.M. Velumani, learned Special Government Pleader has produced a file containing xerox copies of the letter of Assistant Engineer, PWD, Water Spread Section dated 23.4.2007, the letter of the Executive Engineer, PWD, Bhavanisagar Sub Division addressed to the Tahsildar, Mettupalayam dated 10.2.2005 and the proceedings of the Tahsildar, Mettupalayam in O.Mu. No. 3509/2003(A1) dated 20.08.2003.

7. On a perusal of the same, this Court is able to find that only the letter of the Assistant Engineer, PWD, Water Spread Section, Bhavanisagar Sub Division dated 23.4.2007 is said to have been addressed to the petitioner besides other persons. Even regarding the said letter there is no acknowledgment in proof of service of the same on the petitioner. With regard to the other two letters dated 10.2.2005 and 20.8.2003, which are also referred to in the impugned order, there is nothing to show that the same were addressed to the petitioner or copies were marked to the petitioner. There is also no acknowledgment card found in the file to show the service of those letters on the petitioner. In view of the same, we have to accept the contention of the petitioner that the earlier orders of the Tahsildar, Mettupalayam dated 20.8.2003 and the Executive Engineer, dated 10.2.2005 were not served on the petitioner. In addition, the averment made by the fourth respondent that the petitioner had admitted his act of taking water directly from the river Bhavani in his letter dated 4.5.2007 sent

as a reply to the letter of the fourth respondent dated 23.4.2007 referred to above, has been disputed by the petitioner in the reply affidavit. Despite opportunity having been given to the respondents and despite the fact that the production of the same was directed, the respondents have not produced even a copy of the letter allegedly containing the admission. Hence, the contention of the learned counsel for the petitioner that only as an after thought the letter dated 23.4.2007 came to be referred to in the counter, cannot be discountenanced.

8. The learned counsel for the petitioner contended further that though the impugned order and the counter affidavit referred to an inspection conducted by the Subordinates of the third respondent and a personal inspection by the third respondent, the copies were neither furnished to the petitioner nor they have produced in this writ petition and that even, the date of inspection by the Subordinates of the third respondent and the date of personal inspection by the third respondent have not been furnished. The said contention of the learned counsel for the petitioner remains unassailed. In view of the same, this Court has to accept the contention of the petitioner that without affording a reasonable opportunity of being heard, an adverse order came to be passed by the fourth respondent in violation of the principles of natural justice. The order shall not stand the scrutiny of Court and the same is liable to be quashed. Accordingly, the writ petition is allowed and the impugned order dated 10.5.2007 is quashed. No costs. However, by way of clarification, it is observed further that this order shall not come in the way of the officials conducting fresh inspection and taking necessary action, if necessary, following due process of law. Consequently, the connected miscellaneous petition is closed.