
(2015) 12 MAD CK 0064

In the Madras High Court

Case No : Writ Petition (MD) No. 21307 of 2015

M. Nagarajan

APPELLANT

Vs

The District Collector, Virudhungar and Others

RESPONDENT

Date of Decision : 01-12-2015

Acts Referred:

Citation : (2015) 12 MAD CK 0064

Hon'ble Judges : K. Ravichandra Babu, J.

Bench : Single Bench

Advocate : P. Kalaiyarasi Bharathi, for the Appellant; S. Kumar, Additional Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

K. Ravichandra Babu, J.—The grievance of the petitioner is that the fourth respondent has not taken any steps or action against the mixing of sewage water with Oorani situated at N. Muthusampuram Panchayat, even though the second respondent through his communication dated 11.03.2015 directed action against such mixing of sewage water.

2. It is the case of the petitioner that due to the above said mixing of sewage water, the Oorani is heavily contaminated, apart from the fact that such sewage water is also getting stagnated behind a school compound, due to which the students studying in the said school are affected with some health problems. Therefore, it is contended that the petitioner preferred a representation before the 3rd respondent on 22.08.2013 and consequently, the 3rd respondent has directed the 4th respondent to take necessary action and submit a report, through his proceedings dated 01.10.2013. It is further stated that though similar communications were made periodically, the 4th respondent has not taken any action so far, even though the last complaint made by the petitioner before the first respondent was forwarded to the 4th respondent through the 2nd respondent for necessary action on 11.03.2015.

3. When this matter was taken up for admission on 30.11.2015, this Court directed the learned Additional Government Pleader to take notice for the respondents also by specifically directing the 4th respondent to personally appear before this Court on 01.12.2015. Accordingly, the 4th respondent is personally present today before this Court.

4. The learned Additional Government Pleader appearing for the respondents, on instruction, submitted that the said Oorani referred to in the writ petition is not used for any drinking water purpose by the villagers and on the other hand, it is meant only for storage of sewage water.

5. I am unable to accept the said contention of the learned Additional Government Pleader that the Oorani is meant only for collecting sewage waters. Needless to say that Oorani is nothing but a water-body. Our forefather have created such Oorani in a foresighted manner either for drinking or for agricultural purposes or for both and not for collecting the sewage water, as contended by the learned Additional Government Pleader. Therefore, it is bounden duty of the official respondents to preserve such water bodies for the benefit of the public and not to allow the same to be misused in any manner, much less as it has been done in this case. No person has any right to let in sewage water into a water body as such action tantamount in causing pollution of such water body thereby defeating the very purpose for which such water body exists. At this juncture, it is useful to refer to the latest decision of the Honourable Full Bench of this Court Principal Seat, reported in 2015(6) CTC 369 (T.K. Shanmugam v. State of Tamil Nadu) wherein at paragraph 31, the Honourable Full Bench has categorically observed that the State as trustee of essential resources of water is charged with duty of preserving with the resources. The relevant portion of observation made at paragraph 31 is extracted as under.

"31. We may at this stage examine the origin, scope and object of the Public Trust Doctrine. Most scholars identify the Justinian code of sixth century Rome as the genesis of the Public Trust Doctrine - the doctrine of "res communes" which claims that some things are "common to mankind - the air, running water, the sea, and consequently the shores of the sea [and] the right of fishing in a port, or in rivers, is common to all men. It has been further observed that the title to these essential resources was vested in the State, as the sovereign, in Trust for the people. Res communes were excluded from private control and the Trustee was charged with the duty of preserving the resources in a manner that made them available for certain public purposes. It has been further explained that the legal or moral concept of common ownership later emerged as more of a reservation of "a series of particular rights to the public" to engage in certain activities, thus limiting "the prerogatives of private ownership". There is, therefore, now a nearly universal notion that resources such as Water Courses should be protected from complete private acquisition in order to preserve the lifelines of communal existence. The common property resources are those resources not controlled by a single entity and access to which is limited to an

identifiable community of individuals or States. No one user has the right to abuse or dispose of the property. Any dealing with the property has to take into account the entitlements of others."

Therefore, this Court has no other option except to direct the fourth respondent to consider the request of the petitioner and take appropriate action against mixing of sewage water with the said Oorani also by taking note of the fact that the second respondent has already sent a communication to that effect as early as 11.03.2015.

6. Accordingly, this writ petition is disposed of, by directing the fourth respondent to act upon the request of the petitioner as stated supra, within a period of two weeks from the date of receipt of a copy of this order.

7. With the above direction, this writ petition is disposed of, accordingly. No costs.