

(2011) 01 MAD CK 0443

In the Madras High Court

Case No : Writ Petition No. 11248 of 2003

P. Anbunathan

APPELLANT

Vs

The District Collector, The Special Commissioner and
Commissioner of land Administration, S.M. Ramasamy and S.
Senguttuvan

RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Citation : (2011) 01 MAD CK 0443

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

**Advocate : D. Ravichandar, for the Appellant; N. Senthilkumar Addl. Govt.
Pleader for R1 and R2, T.L. Thirumalaisami, for Sarvabhauman Associates for R3,
for the Respondent**

Final Decision : Dismissed

Judgement

1. In this Writ Petition, Petitioner seeks to quash the impugned order passed by the 2nd Respondent-Special Commissioner and Commissioner of Land Administration in R. Dis.C2/28752/02 dated 10.02.2003 whereby the 2nd Respondent set aside the NOC granted by the 1st Respondent-District Collector, Karur to lay pipeline.

2. 1st Respondent-District Collector, Karur has issued NOC in his Letter No. 17639/2002 (A1) dated 27.08.2002 permitting the Writ Petitioner to lay pipeline in S.F. Nos. 209, 210, 212, 231 and 277 to a length of 1035 Meter to take water from the sump Well situated in S.F. No. 594/7. Observing that Writ Petitioner has no right to take water from the well in S.F. No. 594/7 which is connected to Pugalur Channel and that any agreement entered into between the private parties to share the water from the Government source is against the law and general policy of Government, 2nd Respondent set aside the NOC. 2nd Respondent has further proceeded to observe that as per G.O. Ms. No. 3339 PWD dated 12.12.1962, Collectors are not authorised to issue fresh NOC and the

said order of 2nd Respondent is the subject matter of challenge in this Writ Petition.

3. Briefly stated case of Writ Petitioner is that he is the owner in respect of a Well in S.F. No. 594/7 in Punjai Thottakurichi village and that the said Well is his ancestral property. According to him, his father Periasamy and his two brothers M. Palaniappan and M. Kuppusamy have two-third share and 3rd Respondent-S.M. Ramasamy and his brother S.M. Subramaniam have one-third share. The said Well was serving as a common Well for the purpose of drawing water from Pugalur Channel and that they are cultivating the lands from bailing water from S.F. No. 594/7. Rights of parties was confirmed by an agreement dated 29.06.1959 executed between Petitioner's father and his brothers as second party and S.M. Ramasamy and his brother as first party. According to Petitioner, rights of his father and his brothers to take water from the Well to their lands was acknowledged in the said agreement.

4. Further case of Petitioner is that co-owners of the common Well in S.F. No. 594 are bailing out the water from the common Well in S.F. No. 594 to their agricultural lands through the underground pipeline laid. One Marappa Gounder and Kuppusamy Gounder have filed suit in O.S. No. 889/1966 on the file of District Munsif Court, Karur for an injunction restraining Petitioner's father and his brothers and S.M. Ramasamy and his brother from taking water from Pugalur Channel to the common Well in S.F. No. 594. Parties agreed for a compromise enabling the Plaintiffs in the suit to take water from the Well to their field also. According to Writ Petitioner, rights of his father and brothers as joint owners of the Well was not restricted by the said compromise. Due to difference of opinion, dispute arose between the 3rd Respondent and the Writ Petitioner's father and therefore, Writ Petitioner's father sought for permission to lay separate underground pipeline at their cost to take water from the common Well in S.F. No. 594 and separately applied NOC through Government poramboke lands in S.F. Nos. 209, 210, 212, 231, 277 before the Tahsildar, Karur. According to Petitioner, considering the rights in the common Well, Tahsildar Karur had issued NOC and similar orders was passed by the District Collector, Karur by granting NOC to lay underground pipeline through the poramboke fields [S.F. Nos. 209, 210, 212, 231 and 277] by the Proceedings in Na. Ka. No. 7639/2002 dated 27.08.2002. Such an NOC was also granted to 4th Respondent-Senguttuvan by the Proceedings in K. Dis.13915/2002/A dated 12.06.2002.

5. Being aggrieved by NOC granted in Letter No. K. Dis.13915/2002/A dated 12.06.2002 to lay a new pipeline through S.F. Nos. 209, 210, 212, 231, 277, 3rd Respondent has filed appeal before the 2nd Respondent. In the said appeal, it was alleged that Writ Petitioner was also taking water from the Well situated in S.F. No. 594 and irrigating his lands and has further alleged that no permit was obtained from the Collector. NOC granted by the 1st Respondent to both 4th Respondent as well as the Writ Petitioner was taken up for consideration by the 2nd Respondent. In the appeal Proceedings before the 2nd Respondent, both

Writ Petitioner as well as 4th Respondent appeared and participated. Observing that Writ Petitioner has no right to take water from the well in S.F. No. 594/7 which is connected to Pugalur Channel and that any agreement entered into between the private parties to share the water from the Government source is against the law and general policy of Government, 2nd Respondent set aside the NOC granted by the 1st Respondent. 2nd Respondent has further observed that Collectors are not authorised to issue fresh NOC as per G.O. Ms. No. 3339 PWD dated 12.12.1962.

6. Challenging the impugned order Mr. D. Ravichandar, learned Counsel for Petitioner contended that 2nd Respondent failed to see that Petitioner is one of the co-owner of common Well in S.F. No. 594 and that there is no dispute with regard to the right of the Petitioner in the common Well and bail out the water from the common Well to the agricultural lands. It was further contended that rights of Writ Petitioner to bail out water from the Government source viz., Pugalur Channel is entirely different from taking water from the common Well in S.F. No. 594 which is an established right vested in the family of Petitioner several decades ago and 2nd Respondent was not a competent authority to go into those factual details. Learned Counsel would also contend that 2nd Respondent has no jurisdiction or authority to cancel the order passed by the 1st Respondent infavour of Writ Petitioner granting NOC as the same was not the subject matter of Revision filed by the 3rd Respondent before the 2nd Respondent.

7. Heard Mr. N. Senthilkumar, learned Additional Government Pleader for Respondents 1 and 2 and Mr. T.L. Thirumalaisami, learned Counsel appearing for 3rd Respondent.

8. Main contention of Writ Petitioner is that even though by the Proceedings in Na. Ka.17639/2002(A1) dated 27.08.2002, NOC was granted to the Writ Petitioner to lay underground pipeline, the said Proceedings was not the subject matter of challenge in the appeal filed before the 2nd Respondent and while so, 2nd Respondent was not right in setting aside the NOC granted infavour of the Writ Petitioner. According to Petitioner without keeping in view the legal right of the Petitioner and his father to bail out water from the common Well, 2nd Respondent has passed the impugned order.

9. By perusal of the impugned order and from the materials available on record, it is seen that S.M. Ramasamy and his brother S.M. Subramaniam have applied to the then Collector of Trichy stating that they were irrigating the lands by bailing water from the Pugalur Channel before 1962. By the Proceedings in R. Dis. No. 106149/75 dated 18.2.1976, a standing permit was issued to them with retrospective effect by the Collector of Composite Trichy District. In the impugned order of 2nd Respondent, it is pointed out that the sump Well in S.F. No. 594/7 connected with Pugalur Channel stands in the name of S.M. Ramasamy and S.M. Subramaniam in joint Patta No. 2515. As per the records, water stored in the sump Well belongs to the 3rd Respondent and three sons of

his brother.

10. Case of Writ Petitioner is that Periasamy and his two brothers viz., Palaniappan and Kuppusamy have two-third share and that the agreement entered into between the parties also acknowledges the right of his father to bail water from the Well in S.F. No. 594/7. Petitioner claims right to bail water from the Well by virtue of the said agreement. Petitioner does not appear to have standing permit to bail water from the Well in S.F. No. 594/7. In the impugned order, 2nd Respondent referred G.O. Ms. No. 3339 PWD dated 12.12.1962 and as per which the District Collectors are not authorised to issue fresh NOC.

11. Learned Counsel for Writ Petitioner has contended that NOC issued by the District Collector, Karur was only to lay pipeline through S.F. Nos. 209,210, 212, 231 and 277 and that the said NOC has nothing to do with the Well water in S.F. No. 594/7 in which the Petitioner has got right to bail out water from the Well. Ofcourse by the Proceedings, the District Collector, Karur has issued NOC for laying underground pipeline through S.F. Nos. 209,210, 212, 231 and 277. But in the said Proceedings, it is clearly stated that the underground pipeline is to be laid for taking water from the Well in S.F. No. 594/7. Permitting the Petitioner to lay pipeline impliedly amount to permitting the Petitioner to take water from the Well in S.F. No. 594/7 which is connected to Pugalur Channel and it cannot be contended that NOC issued by the District Collector, Karur is only in respect of the pipeline.

12. Learned Counsel for Petitioner contended that by virtue of the compromise/agreement between the parties, Petitioner has got right to bail water and that 2nd Respondent cannot go into such factual aspects. Though Well in S.F. No. 594/7 is situated in the patta land, the fact remains that water is collected from Pugalur Channel which means it is a water from the Government source. In the impugned order, 2nd Respondent has pointed out that the agreement entered into between the private parties to share the water from Government source is against the law and general policy of the Government. Moreover, as per G.O. Ms. No. 3339/PWD dated 12.12.1962, the Collectors are not authorised to issue fresh NOC. Since the 2nd Respondent-District Collector had no jurisdiction to issue NOC, the same is rightly cancelled by the 2nd Respondent.

13. Main contention of Petitioner is that NOC granted as per Letter No. K. Dis.13915/2002/A dated 12.06.2002 infavour of 4th Respondent alone was the subject matter of challenge before the 2nd Respondent and while so, 2nd Respondent was not right in setting aside the NOC granted to the Petitioner in Letter No. Na. Ka.17639/2002 (A1) dated 27.08.2002. Learned Counsel would further contend that even though notice was sent to the Petitioner, the said notice does not refer to the NOC granted to the Petitioner in Proceedings Na. Ka.17639/2002 (A1) dated 27.08.2002. Ofcourse, appeal hearing notice sent to the Petitioner does not refer to the NOC granted infavour of Petitioner in Na. Ka.17639/2002 (A1) dated 27.08.2002, but the fact remains that Petitioner had participated in the appeal proceedings and had also filed Petition/Submissions

before the 2nd Respondent. Submissions of Petitioner has been considered which is evident from the references cited in the impugned order. Therefore, the contention of Petitioner that he was not afforded opportunity cannot be countenanced. Petitioner has not made out any valid ground to interfere with the order of the 2nd Respondent and the Writ Petition is liable to be dismissed.

14. In the result, the Writ Petition is dismissed. It is made clear that this Court has not expressed any opinion on the rights of the Petitioner in the Well. However, this order may not be an impediment to the Petitioner to apply to the competent authority to get his right if any protected in the Well by getting permit. No costs.