



2024:KER:7472

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

THURSDAY, THE 25TH DAY OF JANUARY 2024 / 5TH MAGHA, 1945

WP(C) NO. 28725 OF 2021

PETITIONER:

SREERANJ, AGED 46 YEARS, S/O. BALAKRISHNAN,
'SREEPADMAM' KUTTUR P.O., THRISSUR DISTRICT 680 013.

JACOB SEBASTIAN
K.V.WINSTON
ANU JACOB

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY SECRETARY
TO GOVERNMENT GROUNDWATER DEPARTMENT,
THIRUVANANTHAPURAM, 695 001.
- 2 THE DIRECTOR, GROUND WATER DEPARTMENT, STATE OF KERALA,
JALAVIJNANA BHAVAN, AMBALAMUKKU, KOWDIAR P.O.,
THIRUVANANTHAPURAM, 695 003.
- 3 SOUHRADHA RESIDENTS ASSOCIATION,
MUTHUVARA, THRISSUR DISTRICT REPRESENTED BY ITS
SECRETARY, K.N. PRASAD, KUNDANINGATU HOUSE, MUTHUVARA,
PUZHAKKAL P.O., THRISSUR DISTRICT 680 553.
- 4 THE DISTRICT OFFICER, GROUND WATER DEPARTMENT, STATE OF
KERALA, OFFICE OF THE DISTRICT OFFICER, SITARAM MILL
LANE, PUNKUNNAM P.O., THRISSUR DISTRICT 680 002.
- 5 THE CENTRAL GROUND WATER BOARD
(CGWB), KEDARAM SHOPPING COMPLEX, VIVEKANAND NAGAR,
KESAVADASAPURAM, THIRUVANANTHAPURAM KERALA 695 004,
REPRESENTED BY ITS REGIONAL DIRECTOR KERALA REGION.
- 6 THE REGIONAL DIRECTOR,
KERALA REGION, CENTRAL GROUND WATER BOARD (CGWB),
KEDARAM SHOPPING COMPLEX, VIVEKANAND NAGAR,
KESAVADASAPURM, THIRUVANANTHAPURAM, KERALA 695 004.



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- 7 SHAJAN JACOB, HYDROGEOLOGIST, NO. 13/2204-A,
HILL HAVEN, GOLF LIN ROAD, CHEVARAMBALAM P.O.,
KOZHIKODE DISTRICT 673 017.
- 8 DR. RATISH MENON., M.TECH PHD (IIT BOMBAY),
ASSOCIATE PROFESSOR, DEPARTMENT OF CIVIL
ENGINEERING SCMS, SCHOOL OF ENGINEERING AND
TECHNOLOGY, VIDYA NAGAR, KARUKUTTY, ERNAKULAM
DISTRICT 683 576.

C.D.DILEEP
SUNIL NAIR PALAKKAT
K.ABOOBACKER SIDHEEQUE
K.N.ABHILASH
SRI. P.S.APPU, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 25.01.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



' CR '

JUDGMENT

It is now being increasingly recognized universally that ground water is an essential component of global water resources and a special type of mineral wealth – with its impact on social infrastructure, economy and environmental balance being decisive and momentous.

2. Being so, ground water is vulnerable and limited, despite its replenishable nature and vast reserves, impelling unexpendable regulations in most parts of the world; especially since uncontrolled exploitation of aquifers by even small water users can affect the ecosystems.

3. The State of Kerala also has a well thought of statutory and regulatory scheme and frame work, within which the ground water resources are governed; but alas, in some instances – as the facts of this case would illustrate – they are dealt with casually and as a mere formality.

4. This preface is to remind the statutory Regulators that when enforcing the Regulations *qua* ground water use, their focus ought to be on rationality, control, safety, sustainability



and care for future generations.

5. The petitioner impugns Ext.P5 order issued by the 2nd respondent – Director, Ground Water Department, on the ground that the conditions imposed therein is contrary to law and impossible to perform.

6. Sri.Jacob Sebastian – learned counsel for the petitioner, explained that his client had earlier made an application to obtain a No Objection Certificate ('NOC') from the 4th respondent – District Officer to construct a bore well for extracting ground water, to be used for domestic purposes; and that this was allowed, after a survey was conducted, as is evident from Ext.P1. He says that, however, the 3rd respondent - which is stated to be a Residents' Association of the area in question - filed Ext.P2 Appeal against Ext.P1 before the 2nd respondent, who then convened several meetings and commissioned a hydrological study, thus to issue Ext.P5. The learned counsel submitted that, as is evident from Ext.P5, there are several conditions imposed therein, which are impossible to perform, including that the 'NOC' for extraction of water will be permitted only based on the future recommendations of the District Level Evaluation Committee



and after conducting a scientific assessment of the yield through pumping test. He submitted that the other conditions, coupled with the one mentioned above, would render it impossible for his client to dig any bore well. He, therefore, prayed that Ext.P5 be set aside, arguing that the conditions mentioned therein are, in fact, only applicable to “Infrastructure Projects”, as has been specifically mentioned therein; while, what the petitioner intends to do is only to construct an Apartment Complex which does not fall within any “infrastructural” activity.

7. Sri.C.D.Dileep - learned counsel for respondent No.3, submitted that his client was constrained to prefer Ext.P2 Appeal before the 2nd respondent - Director because, Ext.P1 - alleged ‘NOC’, did not mention the maximum water that could be extracted by the petitioner, particularly when his intention is to construct a large commercial or residential complex, the water consumption of which will be very large. He pointed out that, in Ext.P2, his client has specifically taken a contention that the purpose for the construction of the petitioner was not looked into before Ext.P1 had been issued; and that the availability of ground water, from the ambit of public interest, was also not adverted to, though it is statutorily mandatory to



have so done, under Section 7(4) of the Kerala Ground Water (Control and Regulation) Act, 2002 ('Act' for short).

8. Sri.P.S.Appu – learned Government Pleader, adopted the submissions of Sri.C.D.Dileep; adding that Ext.P5 covers most of the deficiencies that can be attributed to Ext.P1 because, it has reduced the width of bore well to be constructed by the petitioner and has confined its depth to 50 metres. He pointed out that, in Ext.P1, the depth was fixed as 150 metres, while the diameter of the proposed well was 6.5 inches; and then explained that the chances of over extraction of water have also been specifically dealt with in Ext.P5, because clauses 8 and 9 thereof render it indubitable that even an 'NOC' for extraction of water will be permitted only based on the recommendation of the District Level Evaluation Committee (DLEC) and after verifying water availability, through a proper pumping test. He submitted that these conditions cannot be challenged by the petitioner because, the submissions made by his learned counsel before this Court today would render it without any doubt that what he intends to construct is not a residential house, but a multi-storied building, containing several units. He, therefore, prayed that Ext.P5 be left uninterdicted.



9. Sri.Jacob Sebastian, in reply, alleged that the conditions in Ext.P5, contrary to what the learned Government Pleader has said, is not intended to support hydrological study, or to ascertain the water availability in the area, but that the Director was misdirected to believe that his client intended to engage in an “Infrastructure Project”; and therefore that the conditions attached to the same would also apply. He pointed out that this is factually incorrect, reiterating that his client intends to construct only a multi-storied Apartment Complex.

10. I must record upfront that, nowhere in the pleadings in this case has the petitioner disclosed what kind of construction he proposes to make. This is vitally pertinent because, his application – which he says was one for seeking 'NOC', for digging a bore well – has been produced on record as Ext.R2(a) by the official respondents, which discloses that it is, in fact, an application for a hydrological survey. It is based on this, that Ext.P1 was issued, which carries a footnote that the same can be construed to be an 'NOC', though it only contains the extract of the hydrological survey findings. The third respondent filed an appeal against this, as is evident from Ext.P2; and on the allegation that it was not being considered, they moved this Court, through W.P.(C)



No.9278/2018 and obtained Ext.P3 judgment. The Director appears to have then issued Ext.P4 notice for hearing; and the consequent Ext.P5 impugned order indicates that there was a hearing held in his Chambers on 27.08.2019, when he decided to constitute a team of Hydrogeologists to conduct a hydrological study of the area, which is available on record as Ext.R2(c) dated 07.09.2019. Ext.P5 further discloses that there was another hearing held in the Chamber of the Director on 07.09.2019; and that, it is based on the same and the report aforementioned, that the said order had been issued, containing the conditions which are now assailed.

11. At this juncture, this Court finds favour with the submissions of Sri.Jacob Sebastian that Ext.P5 appears to have been issued by the Director under the misimpression that what the petitioner intends to engage in the property is an "Infrastructure Project." One fails to gather how the Director has obtained this impression because, it is unequivocally conceded at the Bar that the petitioner has not obtained any building permit yet, though his intention, as disclosed by him before this Court through his learned counsel, is that he wants to construct a multi-storied Apartment Complex.



12. Obviously, therefore, Ext.P5 cannot find my favour, nor can Ext.P1 because, when the latter declares that it should be construed to be an 'NOC', it is inscrutable how the petitioner could have been allowed to construct a bore well, without him disclosing the purposes for which it will be used and what kind of construction it is expected to service. This is crucially germane and relevant because, it is not merely the availability of water in the area which is relevant, but also the manner in which the extracted groundwater will be put to use; and on such, will depend upon the nature and the tenor of the conditions to be imposed. No doubt, Ext.P5 makes it limpid that an 'NOC' for extraction of groundwater will depend upon the pumping test and the recommendations of the District Level Evaluation Committee; but it also goes on, without understanding the purpose for which the petitioner made the application.

13. To paraphrase, when the petitioner, in Ext.R2(a) application, merely said that he intends to use the bore well for drinking water purposes, one can never discern whether it was meant for one house, or for multiple houses or apartments. In any event, he now concedes that his intention is to construct a multi-storied Apartment Complex. Clearly,



the orders have been issued casually and without full and necessary thought.

14. Presumably being aware of the mind of this Court as afore, Sri.Jacob Sebastian submitted that if this Court is not inclined to set aside Ext.P5 for the afore reasons, then, instead of allowing the Director to reconsider the appeal of the third respondent, his client may be given opportunity of making a fresh application before the fourth respondent, disclosing all details, including the purposes for which the extracted groundwater will be used and the construction which it is expected to service.

15. Sri.C.D.Dileep – learned counsel for the third respondent, submitted that his client will not stand in the way of the afore request being allowed; but prayed that, even at the stage when any such fresh application is to be considered by the fourth respondent, his client may also be ordered to be given an opportunity of hearing, so that they can impress upon him the requirements and conditions that are necessary to be imposed, assuming that the bore well can be permitted.

16. Sri.P.S.Appu – learned Government Pleader, also submitted that if the petitioner only requires to start again, by



making a proper application under the 'Act' and the Rules thereunder, the official respondents will not stand in the way; but sought liberty for them to act as per law and in terms of the statutory prescriptions.

In the afore circumstances, with the consent of both sides, I allow this writ petition and set aside Ext.P5, as also Ext.P1; with a consequential liberty being reserved to the petitioner to make a fresh application before the fourth respondent, containing all relevant details and disclosing all germane inputs; and if this is done within a period of one month from the date of receipt of a copy of this judgment, the same shall be considered by the said Authority, after affording an opportunity of being heard to the petitioner, as also to the authorised members of the third respondent, following the statutory prescriptions and the provisions of the applicable Rules, thus to culminate in a fresh order, as expeditiously as is possible, but not later than four months thereafter.

Sd/- DEVAN RAMACHANDRAN

JUDGE

mc/stu

**APPENDIX OF WP(C) 28725/2021**

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF THE REPORT
/NOC/FEASIBILITY CERTIFICATE DATED
01.08.2017 ISSUED BY THE FOURTH
RESPONDENT.
- Exhibit P2 A TRUE COPY OF THE MEMORANDUM OF APPEAL
DATED 10.03.2018.
- Exhibit P3 A TRUE COPY OF THE JUDGMENT DATED
19.03.2018 IN WPC NO. 9278/2018 OF THIS
HONOURABLE COURT.
- Exhibit P4 A TRUE COPY OF THE ORDER DATED 17.8.2018
ISSUED BY THE SECOND RESPONDENT.
- Exhibit P5 A TRUE COPY OF THE ORDER DATED 20.09.2019
ISSUED BY THE SECOND RESPONDENT.
- Exhibit P5 (A) A TYPED COPY OF THE EXHIBIT P5.
- Exhibit P6 A TRUE COPY OF THE REPORT DATED
15.11.2021 PREPARED BY THE SEVENTH
RESPONDENT.
- Exhibit P7 A TRUE COPY OF THE REPORT DATED
04.12.2021 PREPARED BY THE EIGHTH
RESPONDENT.

RESPONDENT ANNEXURES

- Annexure R2(a) The application dated 05.07.2017
- Annexure R2(b) GO (Rt) no. 1211/2009/WRD dated
31.10.2009
- Annexure R2(c) The report dated 7.09.2019
- Annexure R2(d) True copy of letter no.DGT/4093/2017
dated 20.07.2019