

## **K. Sivam Vs The Chief Engineer, Water Resource Organisation, P.W. D. Tiruchirapalli Region, Tiruchirapalli and Others**

**Court:** Madras High Court

**Date of Decision:** April 29, 2009

**Hon'ble Judges:** B. Rajendran, J

**Bench:** Single Bench

**Advocate:** R. Saseetharan, for the Appellant; L.S.M. Hasan Fizal, Govt. Advocate-RR1 to 4, Mr. S. Palaniswamy -R5 and Ms. G. Thilagavathy -RR6 to 11, for the Respondent

### **Judgement**

@JUDGMENTTAG-ORDER

B. Rajendran, J.

This petition is filed by the petitioner seeking for the issue of writ of ceriorarified mandamus, calling for the records of the

first respondent issued in Proceedings No. 8352/2008/86, dated 6.8.2008 and to quash the same and to issue a consequential direction to the

respondents to restore an extent of 42.17 acres in Unit No. 5 of Kurumbala Maha Devi Lift Irrigation Cooperative Society for irrigation by lifting

the water from river Cauvery and to provide distribution of water in Unit No. 5 on the northern and southern side on acre wise. The petitioner in

her affidavit would contend that the petitioner owned agricultural lands in S. No. 57/2, 58/2 and 59 of Kurumbala Maha Devi Village, Namakkal

District for an extent of 10.16 acres by way of settlement deed executed by her father in the year 1978 and 7.5 acres of land through the partition

in S. Nos. 227/2, 220/2C2/224/5, 225/2, 226 and 223/1B and the Government has issued G.O.Ms. No. 767 dated 20.4.1982 permitted the

Registrar of Cooperative Society to organise and form a Cooperative Society for the purpose of irrigation of lands by lifting the water from river

Cauvery and the as per G.O.Ms. No. 767 dated 20.4.1982, the Government has also permitted a formation of four Cooperative Societies for the

purpose of lifting the water from river Cauvery to irrigate the agricultural lands in the villages viz., Zamin Elampalli, Solasiramani,

Kurumbalamagadevi and Kothamangalam Villages. Accordingly, Kurumbalamagadevi Lift Irrigation Society has been formed on 26.4.1982 for

lifting the water from River Cauvery for irrigation of a total extent of 392.48 acres of the land in the said Kurumbalamagadevi Village. The Board

of Committee of the Kurumbalamagadevi Lift Irrigation Cooperative Society has formed 24 Units and the petitioner's land comes under Unit No.

5. The Government has also provided one water distribution tank with 30 H.P. for providing water and the said Tank has to supply water for

irrigation of entire extent of 42.17 acres by lifting water from river Cauvery through the electric pumpset installed. The petitioner would further

contend that the distribution tank contains two water outlets for supply of water on northern and southern sides. The size of two water outlets on

both sides are one and the same. The respondents have provided equal size of two water outlets on both sides on the impression that 42.17 acres

is equally divided by the distribution tank on the southern and northern sides. The land available for irrigation on the northern side is only 15.78

acres but water outlet provides supply of water for 21.08 acres and thus excess water being supplied for the northern side which comes to 5.03

acres. The land available for irrigation on the southern side is 26.39 acres and the water outlet on the northern side has to be modified to provide

water only for 15.78 acres for equal distribution of supply of water in unit No. 5 as per the G.O.Ms. No. 767 dated 20.4.1982.

2. Hence, the petitioner and her family members has filed W.P. No. 13642 of 1996 before this Court. By order dated 23.7.2003, this Court has

permitted the petitioners including the petitioner in this petition to forward a comprehensive representation with reference to the state of affairs as

on today to the third respondent at the earliest and the third respondent is directed to consider the said representation after due enquiry with the

petitioner and the thereon testing parties, if any, and pass order within a period of 12 weeks. As per direction given by this Court, the petitioner

has forwarded a representation to the Engineer in Chief, Water Resource Organisation and Chief Engineer (PWD) Chepauk, Chennai-5 and the

same was sent to Chief Engineer, Public Works Department, VRO, Trichy Region, Trichy for taking appropriate action on the ground that a new

post of Chief Engineer is created regionwise and as such the Chief Engineer, Tiruchirapalli region has to pass order as per direction of this Court.

Since no order has been passed either by the Engineer in Chief or by the Chief Engineer, Tiruchirapalli Region as per the direction of this Court,

the petitioner issued a legal notice dated 7.1.2006 but no order has been issued.

3. Therefore, the petitioner has preferred a contempt petition No. 481 of 2008 and after filing of the contempt petition, the respondents have

conducted an enquiry and the first respondent has passed an order on 6.8.2008 not only rejecting the representation of the petitioner for providing

water out let for equal distribution of water in Unit No. 5 but also reduced the extent of land by 12.37 acres in Unit No. 5 and the contempt

petition also was closed with a liberty to challenge the order dated 6.8.2008. Hence the present writ petition challenging the order dt. 6.8.08 and

to quash the same.

4. The first respondent has filed a counter wherein it has been stated that Kurumbalamagadevi Lift Irrigation Cooperative Society consisting 24

Units for an extent of 392.48 acres with ayacut and ayacutdhars particulars of survey numbers and extent. The extent of ayacuts and survey Field

numbers with all particulars for Unit No. 5 of Kurumbalamagadevi Lift Irrigation Society was also submitted to Government by the Registrar of

Cooperative Society as 30.63 acres in Survey Numbers of No. 227/2, 225/2, 226, 220/2C, 221/2, 223/1 and 228 in Kurumbalamagadevi

Village. Accordingly the Government has approved the ayacuts. The Respondents' land and other parties consists of eight numbers come under

Unit No. 4 which is having total ayacut area of 30.63 acres as approved in the G.O.Ms. No. 767 dated 20.4.1982. The General Body of

Kurumbalamagadevi Lift Irrigation Cooperative Society held a meeting on July 1982 and passed a resolution by deleting certain lands to an extent

of about 24.89 acres in various units of that society, they fixed 42.17 acres instead of 30.63 acres as originally approved by the Government for

Unit No. 4.

5. As per order of this Court in W.P. No. 13642 of 1996 dated 23.7.2003, the petitioner has submitted representation to the Chief Engineer,

P.W. D Chepauk, Chennai WRO which was forwarded to the Regional Chief Engineer, Tiruchy Region, Trichy and the Chief Engineer, Water

Resource Organisation. Trichy Region, Trichy has conducted a meeting and has passed an order after considering the records, the petition of the

contesting parties, the report of Special Officer, Kurumbalamagadevi Lift Irrigation Society and based on the original ayacut approved by the

Government in the G.O.Ms. No. 767 dated 20.4.1982 as proposed by the Joint Registrar of Cooperative Society to an extent of 30.63 acres

only. Hence the unauthorised area in S.F. No. 57/2.58/2, 59 and 60 AC of Kurumbalamagadevi Village to an extent of 12.37 acres has been

deleted in the Unit No. 5 of Kurumbalamagadevi Lift Irrigation Cooperative Society. Hence the petitioner's land was never included in the said

G.O., hence she is not entitled to claim irrigation right and her lands were rightly deleted through the impugned order, which is sustainable.

Therefore, this petition is devoid of merit and the same is liable to be dismissed.

6. The counter affidavit filed by the 5th respondent wherein it has been stated that the area of land was increased from the original grant of 30.63

acres to 42.17 acres by resolution passed by the General Body of the society is denied. The inclusion made by the erstwhile President of 5th

respondent society was not approved by the Deputy Registrar of Cooperative Societies. Tiruchengode Circle. According to the resolution, the

petitioner and others now newly added are entitled to draw water from river cauvery by lift irrigation. The resolution passed by the General Body

has no sanctity and it is in fact illegal. The petitioner has no easementary right to irrigate the lands from river cauvery. The members of the society

are entitled for distribution of water as per G.O.Ms. No. 767 Public Works Department dated 20.4.1982.

7. I have heard the Learned Counsel appearing for the petitioner and the Learned Counsel appearing for the respondents.

8. The Learned Counsel for the respondents has brought to the notice of this Court that as per the Government Order in G.O.Ms. No. 767 dated

20.4.1982, Kurumabala Mahadevi Village an extent of land under cultivation is 392.48 acres and 24 number of pumpsets already installed for

drawing water and as per General Body resolution, 5th respondent have included 12.37 acres in addition to 30.63 acres in Unit 5 and they had

been irrigating 42.17 acres which was against the above said Government Order. Therefore, the petitioner was never enjoying the water irrigation

and hence this writ petition itself is not maintainable and the order of stay is hampering from enjoyment of the property including the water

distribution.

9. Though today, only the writ miscellaneous petition is posted, all the parties concerned agree to make orders in the main writ petition itself. The

main writ petition itself is taken up for final disposal by consent of parties.

10. The short point for consideration in this case is that the petitioner who claims that he has been irrigating the land from out of the water irrigation

system states that he had the benefit of resolution passed by the S.N. 263, Kurubala Maha Devi Water irrigation Cooperative Society, Salem

District wherein Sl. No. 5 Unit No. V, number of member is 9, extent shown as 42.17 acres and horse power is available 40 HP. His only

contention is that Resolution No. 1, though the name of the petitioner is not there, serial number is not there and extent of 42.17 acres is also

included in the list apart from 30.63 acres. A reading of the resolution would go to show that this resolution is only in respect of seeking service

connection for 40 HP motor pumpset. The second resolution which is seen at typed set of papers at page No. 22, no date is mentioned as

resolution No. 263. There is different extension shows as inclusion and exclusion, the petitioner's lands were included in the inclusion column and

therefore he is entitled to continue as per the resolution to enjoy the benefits of the irrigation system. Apart from this, no other record is produced

by the petitioner to show that he has been enjoying the irrigation facility in accordance with the earlier government order. Therefore he is still relying

only on the alleged resolution passed by the society. A cursory reading of the resolution produced by the petitioner would clearly indicate that the

resolution does not contain any signature of the officer concerned and it does not contain the names of the persons for inclusion and exclusion and

above all this, as rightly pointed out both by the Learned Counsel for the respondent as well as the Government Advocate that the Cooperative

Society has no power to extend the area of cultivation for distribution of water without the approval accorded by the Deputy Registrar of

Cooperative Societies. Admittedly in this case it was not done.

11. The proceedings of the Joint Registrar of Cooperative Societies in RC. No. 9402/85 C5 dated 24.3.1982 which has been produced in the

typed set of papers by the impleading parties, a reading of the proceedings dated 24.3.1982 would categorically indicate that the matter may be

taken with the Government for granting permission for the organisation of a Lift Irrigation Cooperative Society at Kurumbalamahadevi to enable

the beneficiaries to lift water from the river Cauvery, by energising the existing diesel engine pumpsets by providing electricity. In the schedule, the

Deputy Registrar of Cooperative Society, Tiruchengode has signed giving the names of the persons, survey number of land, extent and number of

persons who are enjoying the benefit in the village. It is clearly stated that V.S. Chenniappa Gounder in Survey No. 261, 40 H.P. Irrigated land

30.63 acres and number of member is only 8 whereas the resolution relied on by the petitioner the number of member is 9 which is stoutly denied

by the third respondent as well as the Government and the order produced by the petitioner would clearly indicate that the number of persons is

only 8. The writ petitioner is not able to produce any authenticated document for inclusion of his name excepting the alleged resolution, no one

even has signed. In the impugned order as per the direction of this Court only representation was directed to be given to the authority concerned

wherein the petitioner has taken stand that he has been enjoying the water facility from 1982 onwards but he has not chosen to produce any

document for proving that he has been enjoying the water facility under the said scheme.

12. This matter was taken up for consideration by the authority concerned in the main impugned order, on verification, the authorities have

extracted as follows:

The Special Officer of Kurumbalamahadevi Lift Irrigation Society after verification of the records from the office of the Joint Registrar of

Cooperative Societies reported in the reference 5th cited that the Ayacut approved in the G.O.Ms. No. 767 P.W. D. Dated 20.4.1982 for the

Unit No. 5, of Kurumbalamagadevi Lift Irrigation Cooperative Society was only 30.63 acres and the areas in S.G. Nos. Of 57/2, 58/2, 59 and 60

AC for an ayacut of 1.20, 1.21, 7.75, 2.21 acres (Total 12.37 acres) respectively have not been included anywhere in the Government Order and

the additions and deletions made by the President of the society in the General Body Meeting on July 1982 has no binding unless and otherwise

administrative approval is accorded by the Deputy Registrar of Cooperative Societies. The Special Officer has also stated that the newly added

ayacut areas in SF. No. 57/2, 58/2, 59 and 60 AC having 1.20, 1.21, 7.75, 2.21 acres (total 12.37 AC) have no eligibility for providing irrigation

facilities.

The fixing of capacity of the pumpset required for Unit No. 5 of Kurumbalamagadevi Cooperative Lift Irrigation Society consisting of 8 members

but nowhere the name of the petitioner finds place. Hence the authority concerned has come to a definite conclusion that out of 30.63 acres the

petitioner's land were never included and the chart given in the impugned order the details of ayacut holders and SFMS and extent of area ordered

have been correctly given. This clearly explains exact area of 30.63 acres. It is also the finding of the authority that both the parties have

approximately equal ayacuts areas. Therefore, the writ petitioner has never enjoyed the water as claimed. Hence the intention of the petitioner is

malafide one and the petitioner has not made out any case for consideration and the authority concerned has rightly rejected the application,

applying his mind and has given a proper finding and this Court does not find any reason to interfere with the impugned order.

In fine, this writ petition is dismissed. No costs. Consequently, connected M.P. is also dismissed.