

In the High Court of Judicature at Madras

Dated: 08.06.2015

Coram:

The Honourable Mr. SANJAY KISHAN KAUL, Chief Justice
and
The Honourable Mr. Justice T.S.SIVAGNANAM

Writ Petition No. 26606 of 2012

S. Ramasamy

.. Petitioner

vs.

1. Union of India, rep. by Chief Secretary
Government of Puducherry, Puducherry - 605 001.
2. The Secretary to the Government
Government of Puducherry
Public Works Department, Puducherry - 605001.
3. The Commissioner
Oulgaret Municipality, Puducherry.
4. The Executive Engineer
Irrigation Division, PWD
Puducherry.
5. The Member Secretary
Puducherry Pollution Control Committee
Department of Science, Technology and
Environment, PHB Building, Anna Nagar
Puducherry - 605005.

6. G.R. Rajendran

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus to forbear the respondents, their men, agents and servants or any person claiming under them carrying out the Krishna Nagar Drainage Scheme in deviation of the original plan furnished by the 4th respondent along with his reply dated 11.10.2011 along the main drainage canal in Survey No.290/1 on the eastern side of the Survey No.290 and Survey No.304/2.

For Petitioner : Mr. R. Subramanian

For Respondents : Mrs. N. Mala

Addl. Govt. Pleader (Puducherry).

O R D E R

(Made by The Hon'ble The Chief Justice)

The petitioner has come forward with this public interest litigation attributing malafides in the decision of the respondents in constructing a storm water drain canal in contravention of the original plan and seeking to take the drain canal in front of the house of the petitioner and other residents of the colony.

2. The factual matrix is not in dispute. In order to appreciate the controversy, we extract the plan as under:

3. The admitted position is that the storm water drain comes from the red portion which is completed and as per the original plan, it has to come along the yellow portion and merge into the Rainbow Nagar Drain, being the orange portion. The alteration which is now sought to be made is by taking the drain through the green portion and then bringing it down to the blue portion to merge with the Rainbow Nagar Drain.

4. It is not disputed by the learned counsel for the respondents that there is no problem of accumulation of rain water in the area occupied by the petitioner, which is adjacent to the green portion. The problem is on the other side. The only reason for this deviation is stated to be the fact that a part of the Government land has been encroached upon where originally the drain was supposed to pass, being the yellow portion.

5. We fail to appreciate the stand of the respondents, as there is no valid reason for change from the original plan. The fact that some people have taken law into their hands and encroached on a government land through which the drain marked in yellow portion had to pass, cannot be a reason to reward the encroachers. Not only that, we have been informed that proceedings for eviction were instituted and one of the encroachers in the yellow portion instituted legal proceedings, but lost before the High Court - the matter was thus put to rest. Merely because of an anticipated litigation, there is no purpose in taking the storm water drain through a portion where there is no water logging problem.

6. We are of the view that there is no valid reason to alter the original course of the storm water drain, as set out in the plan and the same should be made as originally planned. In fact, in paragraph 6 of the counter-affidavit dated 05.11.2012, it has been stated by the fourth respondent that after demarcating the encroachment, the same will be removed after following the usual procedure and norms.

7. The writ petition accordingly stands allowed, leaving the parties to bear their own costs. Consequently, M.P. No.1 of 2012 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ATR
Copies to;

1. The Chief Secretary
Union of India
Government of Puducherry
Puducherry - 605 001.
2. The Secretary to the Government
Government of Puducherry
Public Works Department
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Puducherry Pollution Control Committee
Department of Science, Technology and
Environment, PHB Building, Anna Nagar
Puducherry - 605005.

+1cc to Mr.R. Subramanian, Advocate, S.R.No.27629

+1cc to the Government Pleader, S.R.No.27358

SR(CO)
EU(19/06/2015)

W.P. No. 26606 of 2012