

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.03.2016

Coram:

The Honourable Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
The Honourable Mr.Justice M.M.SUNDRESH

W.P.No.40385 of 2015

Dr.K.R.Ramaswamy alias Traffic Ramaswamy
... Petitioner

Versus

1.State rep by
The Chief Secretary
Government of Tamil Nadu
Fort St.George, Chennai 600 009.

2.The Home Secretary,
Government of Tamil nadu
Fort St.George, Chennai 600 009.

3.The Secretary,
Health and Family Welfare Department,
Fort St.George, Chennai 600 009

4.The Director of Medical Education
No.162, P.H.Road, Chetpet,
Chennai 600 031.

5.The Member Secretary,
Chennai Metro Development Authority
Egmore, Chennai 600 008.

6.The Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai 600 003.

7.The Chief Engineer,
Public Works Department
Ezhilagam, Chennai 600 005.

8.The District Collector,
Kancheepuram District,
Kancheepuram

9.The Commissioner of Police
Greater Chennai, Chennai City,
Vepery, Chennai 600 007.

10.The Inspector of Police
S-4, Nandambakkam Police Station,
Nandambakkam, Chennai 600 089.

11.M/s.MIOT International Hospital,
represented by its Chairman Mr.Mohan Dass
4/112, Mount Poonamallee Road,
Chennai 600 089.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus, directing the respondents 1 to 8 to take immediate steps to demolish the unauthorised encroachment upon Adyar River by constructing a Car park and all other violations in the construction of 11th respondent MIOT International Hospital and to further direct the respondent/authorities 3 to 7 to cancel all the permissions granted to the 11th respondent.

For Petitioner :::Mr.Dr.K.R.Ramasamy
Party-in-Person

For Respondents:::Mr.S.T.S.Murthi
Government Pleader
assisted by
Mr.V.R.Kamalanathan AGP
Mr.V.Shanmugasundar for R.1 to R.4
and R.7 to R.10.
Mr.K.Srinivas for R.5
Mr.K.Soundararajan for R.6
Mr.R.Shunmugasundaram
Senior Counsel
for Mr.L.Baskaran for R.11.

O R D E R

(The Order of the Court was made by The Hon'ble The Chief Justice)

The petitioner has filed the present Public Interest Litigation alleging that respondent No.11, M/s.MIOT International Hospital constructed buildings of 10 floors from close to the Adyar river without proper sanctions. In the recent floods of 1st Week of December, 2015, the alleged encroachment by MIOT Hospital was breached, power failure occurred and there were various complications causing death of

18 patients. It is further alleged that no proper action has been taken by the police as improper case has been registered under Section 174 Cr.P.C.

2. The petitioner claims that the deaths were actually in the range of 75 persons and there has been suppression of facts by the Management of MIOT Hospital and the respondents' officials have colluded with the same. No action has been taken, despite encroachment of water bodies in Adyar river.

3. The relief prayed for is as under:

'It is prayed that this Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate Writ or Direction directing the respondents 1 to 8 to take immediate steps to demolish the unauthorised encroachment upon Adyar River by the constructing a car park and all other violations in the construction of 11th respondent MIOT International Hospital and to further direct the respondent authorities 3 to 7 to cancel all the permissions granted to the 11th respondent and thus render justice.'

4. Counter affidavits have been filed by the respondents. The Corporation of Chennai/6th respondent has stated that it has not granted any permission to the 11th respondent, but that the planning permission was granted by CMDA/5th respondent which also issued the completion certificate. The area is merged with the Greater Chennai Corporation only on 20.05.2011, while the planning permission was granted earlier. The allegation about the encroachment through construction of a car park is stated to be under the jurisdiction of the Public Works Department/7th respondent.

5. The 8th respondent/District Collector has filed a separate affidavit to the effect that on the basis of the report of the Tahsildar, Sriperumbudur dated 08.02.2016, it is found that the construction of the hospital within the land comprised in S.Nos.2/2, 3/1A, 1B and 1C of Manapakkam Village, Sriperumbudur Taluk, was in the land measuring 2.47.5 hec classified as Ryotwari lands registered in the name of MIOT International Hospitals and these are patta lands, for which patta has been issued. The lands are not water course poramboke lands as alleged, nor was there any encroachment in the survey numbers as alleged by the petitioner. We may note in this behalf, the petitioner relied upon a communication of the Tahsildar dated 11.04.2008, eight year old letter sent to the Executive Engineer, which only talks about some encroachment of 0.01 cents in the process of construction of a bridge, which appears to have no connection with the present proceedings.

6. The most crucial affidavit is of the CMDA/5th respondent. The affidavit shows that the first planning permission was granted on 14.09.1995, the second planning permission was granted on 16.04.2009 and the third planning permission was granted on 05.04.2010. Completion certificates have been issued from time to time dependant on the buildings constructed. These completion certificates were issued on 15.07.2004, 13.10.2011 and 28.05.2012. It is also averred that the Public Works Department had on 01.07.2009 granted permission to construct a culvert with covered top across Ramapuram Drain, crossing at S.No.81, Ramapuram Village of Ambattur Taluk, on payment of annual track rent of Rs.1,18,680/- subject to certain conditions.

7. There is stated to be no Rule in Development Regulation prohibiting construction within 100 meters of a river, but what is applicable is the Coastal Regulation Zone (CRZ) Notification. In Chennai, the tidal influence in Cooum river is stated to be up to Chetpet Railway Bridge and in Adyar River upto Saidapet bridge. The areas upto that point are classified as CRZ-II having regulation to a width of 100 meters on either side of the rivers. The site under reference lies outside the CRZ regulated area, but since the site was close to the river, its inundability was checked and the construction of the culvert has been permitted in order to be provided access to the buildings on either side of the channel, with with the further completion certificate therefor having been issued on 28.05.2012.

8. What is most material is the averment in paragraph-13 that the site was inspected on 06.01.2016 and ascertained that there are no additional structures constructed with reference to earlier approved plan and the completion certificate issued on 28.05.2012.

9. We may note that there has been no encroachment found even qua the car park.

10. The aforesaid makes it abundantly clear that all requisite permission for constructions have been taken by the 11th respondent and the building is in conformity with no violations, and thus the allegations of the petitioner are based on surmises and conjectures.

11. The aforesaid would put an end to the matter, but for the fact that the petitioner has made interim prayer quite different from the main petition. We may notice that an interim prayer cannot go beyond the scope of the main petition. The scope of the main writ petition is unauthorised construction. Whereas, the interim prayer is to direct the police authorities

to initiate criminal action against the 11th respondent/hospital and also against respondents 4 to 8/officials for abetting the wilfully negligent action of the hospital, which resulted in deaths of certain patients. In the given facts of the case, we may also note the stand of the respondents in respect of the aforesaid.

12. Once again, the allegation that the petitioner is not correct in that he mentions that there are 75 persons who may have died. It may be stated that affidavit filed on behalf of the 9th and 10th respondents/police authorities in this behalf states that a case has been registered under Sections 279, 338 and 304-A of IPC in Crime No.555 of 2015, at St.Thomas Mount Traffic Investigation Police Station. Another case has also been registered under Sections 279 and 338 IPC in P.S. Crime No.287 of 2015, which was altered to one including 304 -A IPC. Post mortems have been conducted in the Government Hospitals on 14 dead bodies of patients who were stated to be under treatment at critical care unit of MIOT hospital. Five more persons died during the same period and those dead bodies were handed over to the respective relatives and thus, the allegation that 75 persons died is stated to be purely imaginary. The investigation process is stated to be still on to find out if any criminal negligence tantamounting to culpable homicide is made out. Thus, it has been averred that once the investigation is complete, the final report will be filed before the Judicial Magistrate.

13. We are informed by the learned Government Pleader on instructions that the investigation process may take about six weeks more. We may notice that one case has been investigated by the Assistant Commissioner of Police, Mount Range, St.Thomas Mount District, while the other is under investigation of the Inspector of Police, Pallikonda Police Station. We feel it would be appropriate, if both the cases are investigated under the supervision of Assistant Commissioner of Police.

14. The writ petition accordingly stands disposed of, leaving the parties to bear their own costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Chief Secretary, Government of Tamil Nadu,
Fort St.George, Chennai 600 009.
- 2.The Home Secretary, Government of Tamil nadu
Fort St.George, Chennai 600 009.
- 3.The Secretary, Health and Family Welfare Department,
Fort St.George, Chennai 600 009
- 4.The Director of Medical Education
No.162, P.H.Road, Chetpet, Chennai 600 031.
- 5.The Member Secretary, Chennai Metro Development Authority
Egmore, Chennai 600 008.
- 6.The Commissioner, Corporation of Chennai,
Rippon Buildings, Chennai 600 003.
- 7.The Chief Engineer, Public Works Department
Ezhilagam, Chennai 600 005.
- 8.The District Collector, Kancheepuram District,
Kancheepuram
- 9.The Commissioner of Police,
Greater Chennai, Chennai City,
Vepery, Chennai 600 007.
- 10.The Inspector of Police
S-4, Nandambakkam Police Station,
Nandambakkam, Chennai 600 089.

+lcc to Mr.K.Rajasrinivas, Advocate, S.R.No.20375
+lcc to Mr.K.Soundararajan, Advocate, S.R.No.20334
+lcc to the Government Pleader, S.R.No.20557

W.P.No.40385 of 2015

scd(CO)
srg(20/04/2016)