

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2017

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.SUNDAR

W.P. No.25595 of 2017

1.N.Koteswara Rao
2.N.Srinivasan
3.N.Varadarajan

.. Petitioners

-vs-

1. The Managing Director,
Chennai Metropolitan Water Supply
and Sewerage Board,
No.1, Pumping Station Road,
Chindadripet, Chennai 600 002.

2. The Superintending Engineer,
Construction V, Chennai Metropolitan
Water Supply and Sewerage Board,
No.1, Pumping Station Road,
Chindadripet, Chennai 600 002.

3. The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai 600 003.

4. The Zonal Officer,
Zone-Xi, Corporation of Chennai,
Arcot Road, Chennai 600 087.

5. The Deputy Commissioner of Police,
Anna Nagar, Chennai 600 040.

6. E.Jeevanandam
S/o.Mr.Ellappan, No.131-A,
Alapakkam Main Road,
Chennai 600 116.
(Petitioner in WP.18423/2015)
(RR5 and 6 suo motu impleaded as per
order below in WP)

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus to direct the respondents to complete the underground drainage work at Ward No.147, Alapakkam (Valasarawalkam Zone) in a time bound manner and give underground drainage connection to the residents.

For Petitioner : Ms.Abitha Banu
For Respondents : Mr.N.Ramesh for RR 1 and 2
: Mr.V.C.Selvasekaran for RR 3 & 4
: Mr.M.K.Subramanian,
Govt. Pleader for R-5

* * * * *

O R D E R

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

This writ petition in public interest has been filed seeking orders on the respondent authorities inter alia to complete the underground drainage work at Ward No.147, Alapakkam (Valasarawalkam Zone) and to give underground drainage connection to the residents of the locality.

2.It is the case of the petitioners that Ward No.147 at Valasarawalkam comprises of various Nagars such as Krishnamachari Nagar, Bhagyalakshmi Nagar, Ashtalakshmi Nagar, Sri Devi Nagar, Chakrapani Nagar, Bharati Nagar, Sri Krishna Nagar, Rukmani Nagar, Dasari Padma Nagar and Om Shakti Nagar and about 15000 families reside in these Nagars.

3.The first petitioner is the Chairman of an association known as United Forum of Ward Residents, Ward No.147, (hereinafter referred to as 'Forum') formed by the residents of different localities in Ward No.147. The second petitioner is a resident of the Ward and the third petitioner is one of the Committee members of the Forum.

4.Under the Jawaharlal Nehru National Urban Renewal Mission, a plan was conceived and administrative sanction was accorded for an underground drainage project. According to the petitioner, pipelines have been laid in all areas upto Rukmani Nagar. However, the work of laying pipes is yet to be completed. About 110 meters of pipelines are still to be laid in Rukmani Nagar in Ward No.147, which was added to the areas under Chennai Corporation in 2011.

5.The Forum, formed in 2015, has, according to the petitioner, been making representations requesting the Mayor of Corporation of Chennai to lay pipelines and complete the work. This has, however, not been done. Because of failure to lay 110

meters of pipelines to connect the underground drainage to the pumping station, 15,000 families are affected.

6.Mr.N.Ramesh, learned counsel appearing on behalf of first and second respondents submits that the Chennai Metropolitan Water Supply and Sewerage Board ('CMWSSB' in short) is unable to complete the work of laying pipelines by reason of resistance offered by some persons claiming to be the owners of the land where pipes are to be laid.

7.A writ petition was also filed by one E.Jeevanandam, claiming to be the owner of land which would be affected by reason of laying of the pipelines. The said writ petition, being W.P.No.18423 of 2015, was dismissed by this Court vide order dated 04.04.2017 with the following observations:

"16.With the above said back drop, if this Court sees the case of the petitioner, there is no arbitrariness involved in the decision made to lay the sewer. One thing is clear. If at all somebody who knows about the land project and the road, it is the petitioner being a party to the decision made in the year 2001. He has purchased the property in the year 2011. Under his chairmanship, the road was included as part of the project for the purpose of taking sewerage line. The fact that the road has been relaid by the the local authorities is not in dispute apart from the existence of link road between Ganga Nagar and Rukmani Nagar.

17.The power of judicial review in such matter is rather limited. This Court does not find any extraneous consideration involved in this scheme. There is neither any malice in law or fact involved. The rejection of alternative proposal given by the petitioner is also not faulted with. On facts it is not in dispute that the residents of three streets would be affected, if one accepts the alternative suggestions made by the petitioner. There is no material to hold that the entire residents of the three streets put up construction unauthorizedly.

18.Even otherwise the said issue may be germane to the issue involved as it may take substantial number of years to remove such alleged encroachers while considering the alternative suggestion made by the petitioner. Though the learned counsel for the petitioner disputed that project is not almost completed, the record produced by the learned Additional Advocate General lends credence to the said statement made.

19.Granting compensation is one thing and relaying sewerage line is another. Therefore, the decision relied upon by the learned counsel for the petitioner

does not apply to the case on hand. So long as the power is available to the respondents Board and in the absence of any malafide intention involved, this Court cannot declare the scheme in so far as taking sewerage line from the road as bad in law. As stated earlier, prima facie it appears through the documents, as recorded by this Court from the counter affidavit of the respondents in Para 10, there exists a road being used for the last few decades, which has been taken note of by the local authority and as well as CMDA. It is not as if the petitioner was unaware about the laying of the sewer since, he dealt with the said issue, though in a different capacity in the year 2001. Buying the property in the year 2011 will not change the situation.

20. Accordingly this Court does not find any merit in the writ petition. Hence, this writ petition is dismissed. However, it is made clear that any observation made by this Court qua the existence of the road is prima facie in nature, which will not have any bearing on any adjudication either pending or to be raised before the appropriate forum. No costs. Connected miscellaneous petitions are closed."

8. An appeal being W.A.No.435 of 2017 was filed before a Division Bench against the aforesaid order of the learned Single Bench. The appeal was disposed of by the Division Bench by a judgment and order dated 27.04.2017. The relevant part of the judgment of the Division Bench is set out hereinbelow for convenience:

"3. The issue involved in this appeal is with respect to the laying of sewer main and sewer pumping main at Rukmani Nagar. Therefore, when the matter came up for admission on 12.4.2017, this Court directed as follows:

"The petitioner as well as the respondent-authorities shall have a spot inspection on a specific date to be fixed by the respondent along with an Engineer of the Department to work out methodology to avoid any inconvenience to the appellant and a report shall be filed in this regard. List the matter on 26.4.2017."

4. Today, the learned Additional Advocate General appearing for the Chennai Metropolitan Water Supply and Sewerage board and the learned Additional Advocate General appearing for the Corporation of Chennai submitted that the Chief Engineer (Projects-III) of Chennai Metropolitan Water Supply and Sewerage board

has inspected the site on 24.4.2017 and submitted his report stating that the alternate alignments pointed out by the appellant is not feasible.

5. In the light of the above submission, we are of the considered view that it would suffice to direct the State Government to choose a better option so as to minimise the damage that could be caused to the appellant by laying sewer main and sewer pumping main in the land of the appellant. It is needless to say that it is open to the appellant to claim compensation for the damages that may be caused due to the laying of sewer main and sewer pumping main.

6. The writ appeal is disposed of, as above. There shall be no order as to costs. Consequently, CMP No.6501 of 2017 is closed."

9. The learned Division Bench observed that the alternate alignments pointed out by the appellant in the said appeal, viz., Mr.E.Jeevanandam, were not feasible. The Division Bench was of the view that it would be suffice to direct the State Government to choose a better option so as to minimise the damage that could be caused to Mr.Jeevanandam. Be it noted that the Division Bench did not restrain the CMWSSB from entering the land of Mr.Jeevanandam or from laying sewer pipeline or any other pipeline in his land. Rather, the Division Bench permitted CMWSSB to do so.

10. The Division Bench only directed "It is needless to say that it is open to the appellant to claim compensation for the damages that may be caused due to the laying of sewer main and sewer pumping main." Mr.Jeevanandam was only given the right to claim damages. There can be no doubt that a person may be entitled to compensation if any damage is caused to him. The question of damage can only arise after the pipeline is laid.

11. Learned counsel appearing on behalf of CMWSSB submits that the question of damages can only arise provided Mr.Jeevanandam is able to establish his title to the land with cogent documents. Anyway, it is not for this Court to go into that question at this stage, as observed by the learned Single Bench.

12. Section 67 (1)(c) of the Chennai Metropolitan Water Supply and Sewerage Act, 1978, empowers CMWSSB to enter upon any immovable property and to place and maintain inter alia pipes and sewers across and/or under such property.

13. Sub-clauses (a) to (c) of Section 67(1) are set out hereinbelow for convenience:

67. Power to enter upon land, etc., and to place and maintain mains, etc.

(1) For the purposes referred to in sub-section (2), it shall be lawful for the authorised authority with or without assistants and workmen

(a) to enter into or upon any land or building, or to take level of any land or to obtain access to or to execute any work ;

(b) to enter any land for depositing thereon any soil, gravel stone or other materials connected with any work authorised by or under this Act ;

(c) to enter into upon any immovable property and to place and maintain mains, pipes, sewers and other installations upon, along, across or under any such property;

....

It may also be pertinent to refer to Section 67 (2) (c), which is set out hereinbelow for convenience:

(2) The purposes relevant for any action under sub-section (1) are

(a) ..

(b) ..

(c) constructing or executing any work authorised by or under this Act ;

....

14. As rightly held by the Division Bench vide its order dated 27.04.2017, the respondents have the power to enter and to place pipelines, sewer, etc. There can be no doubt that the authorities have a duty to take reasonable care and there is no reason to suppose that such care will not be taken.

15. Notwithstanding the order of this Court, Mr. Jeevanandam has allegedly been offering stiff resistance. If he has been offering resistance as alleged, his act is contumacious and he renders himself liable to penal proceedings.

16. By a letter dated 20.07.2017, the Superintending Engineer-V, CMWSSB, requested the Deputy Commissioner of Police, Anna Nagar, Chennai, to provide police help to carry out the work. We are informed that police help has been declined. It is stated that the police authorities have refused to provide any help on their own interpretation of the order of the Division Bench. The direction enabling Mr. Jeevanandam to claim damages is wrongfully being construed by the police authorities as a direction not to lay pipes and sewers, until Mr. Jeevanandam is suitably compensated.

17. As observed above, the question of whether there has been any damage or not can only arise after the work is done and

further, whether at all damages have been suffered, the quantum of compensation to be paid are matters of judicial adjudication in future, once a claim is made. Needless to mention that any claim would have to be in accordance with law including Section 67. As rightly observed by the learned Single Bench, granting compensation is one thing and re-laying sewerage line is another. This finding has not been interfered with in the appeal.

18.As requested by the learned Government Pleader, we deem it appropriate to implead the Deputy Commissioner of Police, Anna Nagar, Chennai, as Respondent No.5 in this writ petition.

19.Accordingly, this writ petition is disposed of by directing the respondents to lay the pipelines and complete the underground drainage at Ward No.147 at the earliest, preferably within three (3) months from the date of communication of this order. We direct the police authorities to extend necessary help to enable the CMWSSB authorities to complete the work.

20.We also deem it appropriate to suo motu implead Mr.E.Jeevanandam, the writ petitioner in W.P.No.18423 of 2015 and appellant in W.A.No.435 of 2017, as respondent No.6 in this writ petition and to direct that a copy of the order be communicated to him.

There shall be no order as to costs. Consequently, W.M.P.No.26987 of 2017 is closed.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

sra

To

1. The Managing Director,
Chennai Metropolitan Water Supply
and Sewerage Board, No.1, Pumping
Station Road, Chindadripet, Chennai 600 002.
2. The Superintending Engineer,
Construction V, Chennai Metropolitan
Water Supply and Sewerage Board,
No.1, Pumping Station Road,
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3. The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai 600 003.

4. The Zonal Officer,
Zone-Xi, Corporation of Chennai,
Arcot Road, Chennai 600 087.

5. The Deputy Commissioner of Police,
Anna Nagar, Chennai 600 040.

+1 Cc to Ms.Abitha Banu, Advocate sr 71020.

+1 Cc to Mr.N.Ramesh, Advocate sr 71028.

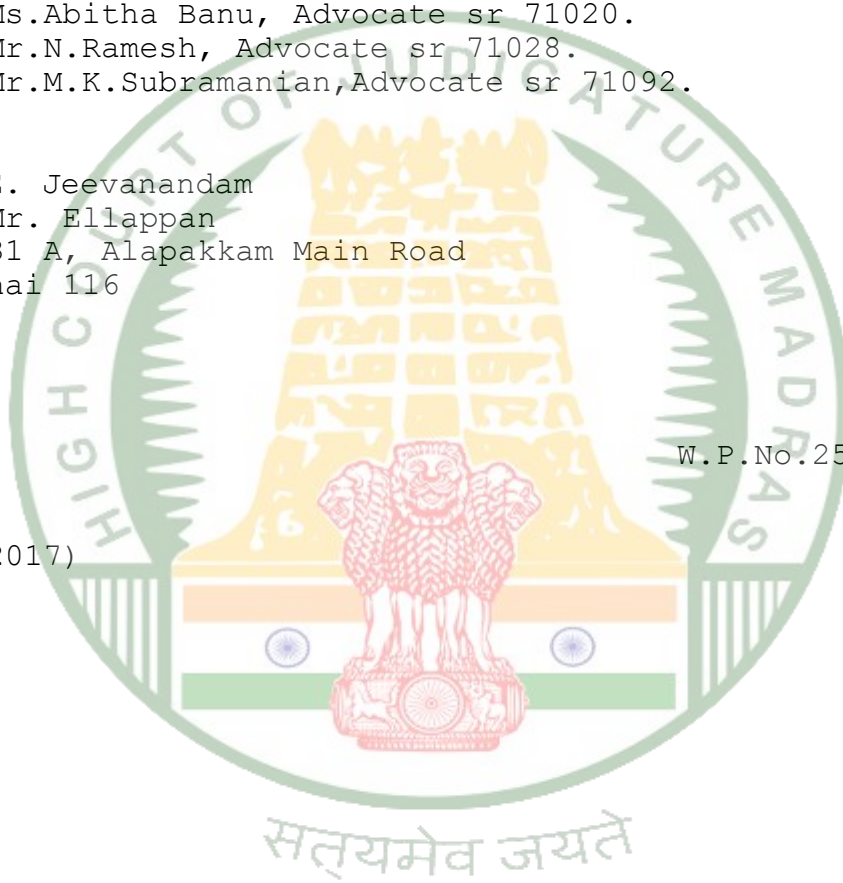
+1 Cc to Mr.M.K.Subramanian, Advocate sr 71092.

Copy to

Mr. E. Jeevanandam
S/o Mr. Ellappan
No 131 A, Alapakkam Main Road
Chennai 116

MR(CO)
sp(05/10/2017)

W.P.No.25595 of 2017



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