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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MRS.JUSTICE R.THARANI**

W.P. (MD) No.20049 of 2017

and

W.M.P (MD) No.16308 of 2017

G.Prabhu : Petitioner

.vs.

1.The Secretary to Government,
Municipal Administration and Water Supply Department,
Government of Tamil Nadu,
Fort St.George,
Chennai- 600 009.

2.The District Collector,
Theni District.

3.The Commissioner,
Theni Allinagaram Municipality,
Theni District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Mandamus directing the Respondents 1 and 2 to remove the construction made by the Third Respondent by way of constructing the septic tank and the toilet ninety decree 8''(eight inch) cement pipe line formed under the ''Theni Allinagaram Municipality Veerappa Ayyanar Temple Water Development Scheme in the year 2005-2006 on the basis of the Petitioner's representation, dated 17.08.2017.

For Petitioner : M/s.R.Rajaraman

For Respondents : Mr.M.Govindan,
1 and 2 Special Govt. Pleader

For Respondent-3 : M/s.K.Hemakarthiskeyan



O R D E R

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[Order of the Court was made by M.VENUGOPAL, J.]

This Writ Petition has been filed seeking issuance of a Writ of Mandamus directing Respondents 1 and 2 to remove the construction made by the Third Respondent by way of constructing the septic tank and the toilet ninety degree 8'' (eight inch) cement pipe line formed under the 'Theni Allinagaram Municipality Veerappa Ayyanar Temple Water Development Scheme in the year 2005-2006 on the basis of the Petitioner's representation, dated 17.08.2017.

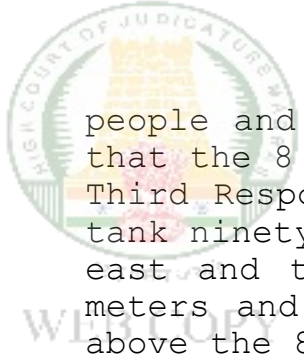
2. Heard the Learned Counsel for the Petitioner and the Learned Special Government Pleader appearing for the Respondents 1 and 2 and M/s.K.Hemakarthyayan, Learned Counsel appearing for the Third Respondent.

3. According to the Petitioner, he is a resident of the Third Respondent/Municipality and he along with his family own a house and residing within the Theni Allinagaram Municipality. The population is around 1,60,000 consisting of 33 wards, the Theni Allinagaram Municipality is the main town for the surrounding villages in the Theni District. In the Western Mountain area, there is a small mountain namely Veerappa Ayyanar Mountain Temple, which is 3 Kms distance from the Third Respondent/Municipality.

4. The stand of the Petitioner is that a small river namely Veerappa Ayyanar River in the Veerappa Ayyanar Mountain is the main water source for the agricultural activity. Because of the drought situation and the scarcity of portable water source to the Petitioner's area, the Theni Allinagaram Municipality for the welfare of the Petitioner's area people implemented the project namely 'Theni Allinagaram Municipality Veerappa Ayyanar Temple Water development Scheme' in the year 2005-2006. As a matter of fact, the estimate for the said project in the year 2005 is Rs.42,00,000/- and from the year 2006 onwards, the main portable water source is from the Veerappa Ayyanar Temple. The Allinagaram and the Pommaiyangoundanpatty area people were benefitted under the Scheme.

5. At this juncture, the Learned Counsel for the Petitioner points out that under the Scheme, a Well is formed in the Veerappa Ayyanar Temple in the year 2005 and through 8 inch cement pipe line, the water is flowed for 3 Kms and reached Allinagaram and then the water is supplied to the Petitioner's area people.

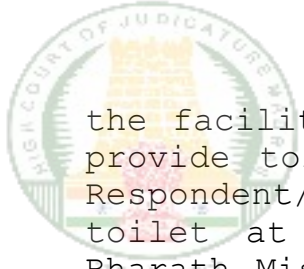
6. The grievance of the Petitioner is that the Third Respondent/Municipality is fully aware that the water flowed in the 8 inch cement pipe line, without considering the welfare of the



people and residence of the Petitioner's area, without considering that the 8 inch cement pipe line is the main water source etc., the Third Respondent/Municipality had constructed the toilet and septic tank ninety degree above the 8 inch cement pipe line through west to east and the septic tank length is 12 meters and the width is 8 meters and the construction had been commenced above ninety degree above the 8 inch cement pipe line through west to east.

7.Indeed, the Learned Counsel for the Petitioner projects an argument that the Respondents had failed to consider the construction of the toilet and the septic tank will affect their own project for the main water source. Furthermore, because of the initiation of the project of the construction of toilet and septic tank above the pipe line, the Petitioner's area people had made oral and written representations before the Third Respondent. Added further, he had made written representation on 17.8.2017. However, the Respondents without considering the welfare of the people and without considering the representation, is continuing the construction of toilet and septic tank in ninety degree above the 8 inch cement pipeline through west to east. If the Third Respondent/Municipality is allowed to construct the cement pipeline in the direction of west to east, certainly the same will affect the water pipeline and one will not be in a position to carry repair works in the pipeline and the main water source will be contaminated and polluted, which caused so many water born disease to the Petitioner's area people. Therefore, the Petitioner has filed the present Writ Petition under the Caption 'Public Interest Litigation'.

8.Conversely, it is the submission of the Learned Counsel for the Third Respondent/Municipality that the Petitioner has filed the present Writ Petition at the instigation of the District Secretary of his political party, who is running a water plant opposite to the toilet in question and therefore there is no element of 'Public Interest Litigation' involved in the present Writ Petition. Apart from that, it is the case of the Third Respondent/Municipality that 95% of the works had been completed and that the Petitioner has filed the present Writ Petition only thereafter, with his personal interest. Because of the oblique motive in preferring the present Writ Petition, the present Writ Petition on that score alone is liable to be dismissed by this Court in furtherance of substantial cause of justice. According to the Learned Counsel for the Third Respondent/Municipality, there are 1154 houses in Ward No.4, 400 houses in Ward No.8 and 245 houses are not having the toilet facility and 93 houses are not having the toilet facility in Ward No.4 and 8. In this connection, the Learned Counsel for the Third Respondent/Municipality brings it to the notice of this Court that the Government of India had announced a scheme called 'Swachh Bharath Mission (Clean India)' and for this Scheme, the Government had provided funds for construction of toilets, who are not having the house-hold toilets and in that scheme, 112 and 38 toilets were constructed in Ward No.4 and 8 respectively and the remaining 130 houses and 55 houses in Ward No.4 and 8 respectively, does not have



the facility to construct a toilet in their houses and in order to provide toilet facilities to the aforesaid area people, the Third Respondent/Municipality had decided to construct a community toilet at the estimate cost of Rs.11,70 lakhs under ''Swatch Bharath Mission'' Scheme and called for tenders and allotted the work to one K.A.R.Construction, Theni. Thereafter, the work had commenced and the construction of toilet was almost over. In fact, five feet distance is there between the septic tank and the water pipe line and the water pipeline was laid five feet below from the ground level. Therefore the Third Respondent/Municipality had denied the Petitioner's averments that the toilet and septic tank were constructed above 90 degree of the pipeline and the same is an incorrect one. The Pith and substance of the submission of the Learned Counsel for the Third Respondent is that the Third Respondent/Municipality has taken much care and caution before constructing the toilet and it will not affect the water pipe line, which was laid four feet below from the ground level and the same is far away from the septic tank and there is no question of leakage in the septic tank as alleged by the Petitioner. It is the plea of the Third Respondent/Municipality that the Petitioner has filed the present Writ Petition based on assumptions and presumptions. Therefore, the present Writ Petition filed by the Petitioner is devoid of merits and that too, the same is projected before this Court with an oblique motive. While winding up, the learned Counsel for the Third Respondent contends that the Third Respondent/Municipality had constructed the toilet only for the welfare of the people, who does not have the facility of toilet in their houses and in order to maintain hygienic conditions in the aforesaid locality, the Third Respondent/Municipality had constructed the toilet.

9.By way of reply, the Learned Counsel for the Petitioner disputes the stand of the Third Respondent/Municipality to the effect that the Municipality itself had mentioned in para 5 of the Counter that five feet distance between the septic tank and the water pipe line and also that the said pipe line was laid five feet below the ground level. In this connection, it is not out of place for this Court to make a pertinent mention that the disputed factual questions/controversies cannot be gone into in a Writ jurisdiction, because of the simple reason that the proceedings of a Writ Petition are of summary in nature.

10.As far as the present case is concerned, this Court pertinently points out that even though the Petitioner in his affidavit in W.P(MD)No.20049 of 2017 had averred that he has filed the present Writ Petition in the interest of general public namely, the residence of Theni Allinagaram Municipality, this Court, is of the considered view that the present Writ Petition filed by the Petitioner cannot be labelled as one coming under the caption ''Public Interest Litigation''. Furthermore, the Third Respondent/Municipality has taken a plea before this Court that the present Writ petition was filed at the instigation of the District Secretary of the Petitioner's political party, who is running a water plant opposite to the toilet in question and therefore, the



Petitioner has a hidden agenda. Apart from that, the Petitioner has filed the present Writ Petition after completion of 95% of the works in regard to the construction of toilet. Moreover, the Petitioner has filed the present Writ Petition based on assumptions and presumptions to the effect that in the event of septic tank getting damaged, it will affect the pipeline etc.

11. In fact, it is the plea of the Third Respondent/Municipality that they had constructed the septic tank with cement concrete mix 1:1:5:3 and it is emphatically presented on behalf of the Third Respondent/Municipality before this Court that there is no seepage or leakage as averred by the Petitioner and further, the Municipality had taken all precautionary measures.

12. Considering the fact that the Third Respondent/ Municipality had constructed the toilet in question only for the welfare of the general public, who do not have the requisite facilities of toilet in their houses etc, this Court is of the considered opinion that the present Writ petition filed by the Petitioner, is per se not maintainable, when the Third Respondent/Municipality had constructed the toilet in question, after taking due care and added further the water pipe line which was laid four feet below the ground level is far away from the septic tank and there is no question of leakage in the septic tank as averred by the Petitioner.

13. Looking at from any angle, this Court comes to an irresistible and inevitable conclusion that the present Writ Petition is devoid of merits. Apart from that, the Writ Petition filed by the Petitioner does not reflect a public cause being averred in the present Writ Petition and in this regard, the version of the Third Respondent/Municipality that the Writ Petition filed by the Writ Petitioner is at the instigation of the District Secretary of the Petitioner's political party cannot be thrown away in a lighter vain. Consequently, the Writ Petition fails.

14. In fine, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CSII)

/True Copy/

Sub-Assistant Registrar

To

1. The Secretary to Government,
Municipal Administration and Water Supply Department,
Government of Tamil Nadu, Fort St. George, Chennai- 600 009.

2. The District Collector, Theni District.

+One cc to Mr. R. Rajaraman, Advocate, SR.No.92274

+One cc to M/s. K. Hemakarthiskeyan, Advocate, SR.No.92408

vsn

RL/5C/5P/SKN/RSK/SAR1/21/12/2017

ORDER MADE IN

W.P. (MD) No.20049 of 2017

and

W.M.P (MD) No.16308 of 2017

12.12.2017