



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.8384 of 2016

K.Ramanathan

... Petitioner

Vs.

1.The Executive Engineer,
Public Works Department (WRD),
Periyar Main Canal Division,
Melur, Madurai.

2.The Assistant Executive Engineer,
Public Works Department (WRD),
Periyar Main Canal Division,
Chittampatti, East Taluk, Madurai.

3.The Revenue Divisional Officer,
Melur, Madurai.

4.The Tahsildhar,
East Taluk Office,
Madurai.

5.Dhanasekaran

6.The Special Officer,
Nelliyenthan Panchayat,
Madurai East Panchayat Union,
Madurai East.

7.The Block Development Officer,
Madurai East Panchayat Union,
Madurai East.

8.The Inspector of Police,
Othakadai Police Station, Madurai.
(R6 to 8 Suo motu impleaded vide Court
order dated 11.08.2017
and 28.08.2017 in W.P.(MD)No.8384 of 2016)

... Respondents



1 to 4 to remove the encroachment in the Nelliyyenthan Kanmai bund in S.No.15/1A1 Kodikulam Village II bit East Taluk Madurai based on the representation of petitioner dated 09.04.2006.

For Petitioner : Mr.V.Karuna
For Respondents 1 to 4 : Mr.M.Govindan
Special Government Pleader
For 5th Respondent : Mr.R.Murali

O R D E R

[Order of the Court was made by G.R.SWAMINATHAN, J.]

This Writ Petition is really an eye opener as to how the menace of illegal and unauthorized construction, structures and layouts in different parts of the State of Tamil Nadu has acquired monstrous proportion. Though the Courts have, time and again, emphasized the importance of planned development of the cities, the fact remains that the builders, like the fifth respondent has no regard to the law of the land.

2. The petitioner filed this Writ Petition in pro bono publico, directing the respondents 1 to 4 to remove the encroachment on the Nelliyyenthan Kanmoi bund in Survey No.15/1A1 Kodikulam Village II bit, East Taluk, Madurai.

3. According to the petitioner, the agriculturists in and around Kodikulam Village at Nelliyyenthan Patti are solely depending on the waters stored in Nelliyyenthan Kanmoi situated in Survey No.15/1A1. The extent of Kanmoi is about 21 Hectares and 96.0 Ares. The water which is stored in the Kanmoi is sent through the canal for agricultural purposes and the agriculturists in and around the said Kanmoi have no other water source. The Kanmoi is under the control of the Public Works Department.

4. The bund of the said tank is not maintained properly. The fifth respondent purchased the land abutting the tank bund and converted it as a layout. The layout is named "Manikandan Nagar". The fifth respondent published brochures indicating that the layout is connected to the National Highway and it is situate near the Madurai Bench of Madras High Court and the Agricultural University. The fifth respondent, without obtaining layout approval from the Nelliyyenthan Panchayat, sold individual plots to the public. It is the contention of the petitioner that the fifth respondent formed a road through the bund of the Kanmoi and the said road is shown as the main access to the unauthorized layout. The petitioner, therefore, seeks appropriate action against the fifth respondent and to restore the bund in its original position.

5. The inspection conducted by the Public Works Department revealed that road through the bund of the Kanmoi was formed and the said road is known as the access to the unauthorized layout. The



Executive Engineer, Public Works Department, Periyar Main Canal Division, informed this Court that the fifth respondent is having an access through the other side of his land and the same was closed with a view to use the bund as the main access.

6. This Court, taking into account the submission made by the Public Works Department, directed the Executive Engineer to close the unauthorized road formed by the fifth respondent.

7. This Court, by order dated 11.08.2017 and 28.08.2017, impleaded the Special Officer, Nelliyanthan Panchayat, Madurai East Panchayat Union, Madurai East, the Block Development Officer, Madurai East Panchayat Union, Madurai East and the Inspector of Police, Othakadai Police Station, Madurai, as respondents 6 to 8.

8. When the Writ Petition was taken up for hearing on 28.08.2017, it was represented by the Public Works Department that the concrete pillars erected to block the entry to the unauthorized layout through the bund of the Kanmoi were removed. We, therefore, directed the Inspector of Police, Othakadai Police Station, Madurai to register a case and conduct investigation. When it was pointed out, the fifth respondent submitted that he was under the impression that the bund could be used as a road and without awaiting the layout approval, the plots were sold. In view of the said submission, this Court made the position clear that the fifth respondent cheated the innocent public by selling plots without obtaining layout approval from the Local Body and converted the bund of the Kanmoi as a road and it is a fit case to register a case against him under various provisions of the Indian Penal Code and more particularly, under Section 420 of the Indian Penal Code. It was submitted on behalf of the fifth respondent that he would not repeat such thing in future and he is prepared to pay fine.

9. We have considered the entire materials available on record. It is found that the fifth respondent formed a layout and without even submitting application before the Local Body, sold the individual plots. In the brochures issued by the fifth respondent, the layout is named as "Manikandan Nagar". The fifth respondent has given certain features, so as to attract the public for purchase of plots. Efforts were not taken by those who have purchased plots from the fifth respondent to verify as to whether the layout was approved by the Government. We are informed that the residential houses were also constructed without planning permission. The officials of the Panchayat and all other concerned also colluded with the fifth respondent.

10. The fifth respondent realizing the violation committed by him and to avoid criminal prosecution, submitted that he is prepared to pay a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) as cost for sale of plots in an unapproved layout and using the bund as a road. In view of the said submission, direction was given to the fifth respondent to file an affidavit.



11. The fifth respondent in his affidavit dated 05 September, 2017 undertook to pay a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) as cost. The fifth respondent agreed to pay Rs.5,00,000/- (Rupees Five Lakhs only) forthwith and the remaining amount within a period of six weeks. The voluntary affidavit filed by the fifth respondent is taken on record.

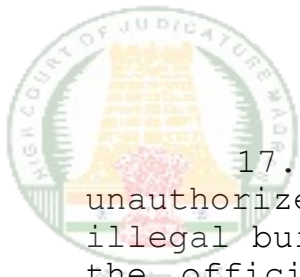
12. The fifth respondent, pursuant to his affidavit dated 05 September, 2017, issued a cheque for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) in the name of the Additional Registrar General (cheque bearing No.708034, dated 06.09.2017, drawn on Indian Bank, Avaniapuram, Madurai).

13. The amount realized from the fifth respondent as compensatory cost must be spent for developing the Kanmoi. This Kanmoi is a water catchment area and the same has to be protected in larger public interest.

14. The fifth respondent and the Local Body appear to be under the impression that the illegal construction of a building or promoting an unauthorized layout is not an issue of public importance. Construction of buildings without planning approval would materially affect the right to or enjoyment of the property by persons residing in the area. The Panchayat authorities owe a duty and obligation under the Statute to see that the unauthorized layouts are not developed by builders. The rights of the other residents in the area are invaded by the mushroom growth of unauthorized layouts and illegal constructions. The layouts are planned in residential areas for ensuring orderliness in the matter of construction. As observed by the Hon'ble Supreme Court in Friends Colony Development Committee v. State of Orissa [2004(8) SCC 733], builders violate with impunity the sanctioned building plans and indulge in deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment. Unwary purchasers in search of roof over their heads find themselves having fallen prey and become victims to the designs of unscrupulous builders.

15. The builders, like the fifth respondent conveniently would walk away by pocketing the money collected from the public by selling the unauthorized plots leaving behind the unfortunate owners of the plots to face the music in the event of taking action by the Local Body either for closing the layout or for demolishing the superstructure.

16. The zoning and planning do result in hardship to individual property owners inasmuch as their freedom to use their property in the way they like, would be subjected to regulation and control. However, that is not a ground to flout the Regulations.

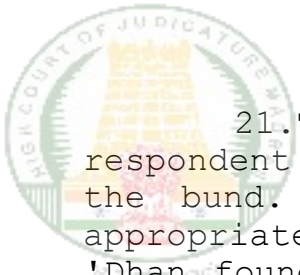


17. While dealing with Writ Petitions relating to unauthorized construction, we have found the mushroom growth of illegal buildings in the city of Madurai. The failure on the part of the officials of the Corporation and the Municipalities and the patronage given by those who are in power protected the wrong doers. The State has issued several ordinances to stop the demolition of illegal buildings by collecting premium. As observed by the Hon'ble Supreme Court in Shanti Sports Club v. Union of India [2009(15) SCC 705], it is high time that the executive and political apparatus of the State take serious view of the menace of of illegal and unauthorized constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions.

18. The learned counsel appearing for the fifth respondent submitted that since a substantial portion of the profit generated by him by selling the unauthorized plots has been parted with, a direction may be given to the Public Works Department to open the road formed on the bund. He also made it clear that the authorities can consider his request for opening the road after the entire amount of Rs.25,00,000/- is remitted by the fifth respondent. He also brought to the notice of this Court that on 15.06.2012, the Executive Engineer, P.W.D., W.R.O., Periyar Main Canal Division, Melur had issued a letter bearing No. ௮௮/௮௩/௧௭.37 (௭௮௮)/85 M/2012 permitting the applicants to level the bund portion for the purpose of using it as a road.

19. It is seen that the said request for using the bund portion as a road was made by a few persons belonging to the Malayalathanpatti Village. The Executive Engineer had granted permission sought for, but, subject to certain conditions. It was made clear that the bund portion belongs to Public Works Department and that private authorities cannot lay any claim thereon. It is also stipulated that no damage should be caused to the outlets. Though the said proceedings were issued in order to enable the public to use the bund as a road for their agricultural purposes, the fact remains that for the last five years and more, the said bund has been used as a road. The authorities has closed the said road pursuant to the direction of this Court.

20. In view of the penalty levied on the fifth respondent, by applying the principle who causes damage to the environment must be made to pay for the same, a direction can be issued to the respondents 1 and 2 to open the road for use by the public. This is only to restore the rights of access. Such a direction is given, since the local panchayat has also written to the first respondent on 18.10.2015, seeking permission to use the said road. The said pathways on the bund shall not be developed. The authorities must however ensure that there is no further widening of the road portion. The tank area must not suffer any adverse impact.



21.The amount of Rs.25,00,000/- remitted by the fifth respondent shall be utilised for the sole purpose of maintenance of the bund. It is open to the first respondent to draw up an appropriate plan to effectuate this object. The representative of 'Dhan foundation' appeared before this Court and made a submission that any project that may be conceived by the Public Works Department authorities can be implemented by them in an appropriate manner.

22.The first respondent is directed to prepare an appropriate estimate within four weeks from the date of receipt of a copy of this order and submit the same to the Registrar (Administration) of Madurai Bench of Madras High Court. The first respondent shall indicate in whose favour, the cheques have to be issued. It is reiterated that the entire amount of Rs.25,00,000/- shall be spent only for the maintenance and proper upkeep of the said tank and thus, the Public Works Department shall work in association with Dhan Foundation in carrying out the work mentioned in this order.

23.The writ petition is accordingly disposed of. No costs.

Sd/-

Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar.

To

1.The Executive Engineer, Public Works Department (WRD),
Periyar Main Canal Division, Melur, Madurai.

2.The Assistant Executive Engineer, Public Works Department (WRD),
Periyar Main Canal Division, Chittampatti, East Taluk, Madurai.

3.The Revenue Divisional Officer, Melur, Madurai.

4.The Tahsildhar, East Taluk Office, Madurai.

Copy to:

The Registrar (Administration),
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.V.Karuna, Advocate, SR.No. 80806

ORDER MADE IN
W.P. (MD) No.8384 of 2016
21.09.2017

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<https://hcservices.ecourts.gov.in/hcservices/>
AM/SKN RSK/SAR 3/23.11.2017/6P/7C