

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 9.8.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH, ACJ
AND
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.A.No.1569 of 2018
and
C.M.P.No.12643 of 2018

Bakthavatsalu Naidu

Appellant

Versus

- 1 The Project Director
National Highways Authority of India
Villupuram.
- 2 M/s.Pondicherry Tindivanam
Tollway Limited
NH-66-Km. 6+572 Morattandi Toll Plaza
Morattandi Village Auroville Post
Vanur Taluk Villupuram District.

Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 21.6.2018 passed in W.P.No.31940 of 2017 on the file of this court.

W.P.Np.31940 of 2017:

Writ Petition filed under article 226 of the constitution of India for issuance of a writ of certiorarified mandamus to call for the records of the 1st respondent in relation to the order made in NHAI/PD/ VPM/ LA/Court case/ NH 66/ 2017/1475 dated 25th November 2017 and quash the same and consequently direct the respondents to desist from commissioning / constructing of a "Public Lavatory" in front of the petitioners property comprised in New Survey No.179/3 presently sub-divided as S.No.179/11 Tiruchitrambalam Village Vanur Taluk Villupuram District.

For appellant : Mr.M.R.Thangavel
For R1 : Ms.S.R.Sumathy

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, ACJ.)

Heard the learned counsel appearing for the parties.

2. The writ appeal has been filed by the writ petitioner challenging the order passed by the learned Single Judge in dismissing the writ petition.

3. The grievance of the appellant/writ petitioner is the second respondent is proposing to construct a Public Lavatory in front of his property comprised in New Survey No.179/3 presently sub-divided as S.No.179/11 Tiruchitrambalam Village, Vanur Taluk, Villupuram District and thereby the ground water of the petitioner would get contaminated and therefore, he seeks to desist from commissioning/constructing of a public lavatory in front of his property.

4. It is relevant to note that in Para 10 and 11 of the order the learned Single Judge observed thus:-

"10. In the counter affidavit, the respondents have stated that shifting of the proposed toilet blocks is impossible for the reason that within 100 metres from Toll Plaza, static weigh bridge and control room are existing; secondly, in between 100 metres and 200 metres from the Toll Plaza, a Box Culvert has been laid for smooth crossing of drainage of water and therefore, if the said culvert is disturbed, then the drainage of water will be affected and this would ultimately pave the way for flooding during monsoon season; thirdly, it is stated that in between 200 metres and 300 metres from the Toll Plaza, intersection is existed at Thruchitrambalam. Therefore, in view of these well sounded reasons, in my considered view, shifting of Toilet Blocks near to the Toll Plaza are not possible, hence, I do not find any reason to interfere with the decision taken by the first respondent to install the public Lavatory at 400 metres away from the Toll Plaza, where the petitioner's property is situated.

11. One of the objections of the petitioner is that since the proposed construction of septic tank is to be located 30 feet away from the petitioner's property, the same would cause contamination of his

ground water. The said contention, in my considered view, is wholly unacceptable, for, the septic tank will be constructed with water tight construction, besides, the bore-well sunk by the petitioner is 30 metres away from the proposed septic tank, therefore, the bore-well also will not be affected."

5. Be that as it may, in our view, the grievance of the petitioner that because of the proximity of the site located for the proposed construction, the ground water of his use would get contaminated, cannot be slightly brushed aside. Therefore, on re-consideration of the issue, we direct that the site for the proposed construction of public lavatory/septic tank be chosen at 50 metres away from the construction of the petitioner instead of 30 metres. The order passed by the learned Single Judge is modified to the above extent and the writ appeal is allowed in part. No costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (XS-IX)

// True Copy //

Sub Assistant Registrar

ssk.

To:

- 1 The Project Director
National Highways Authority of India
Villupuram.
- 2 M/s. Pondicherry Tindivanam
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AD (CO)
RMP (26/09/2018)