

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 17.07.2018	Delivered on 02.08.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.31844 of 2017
and WMP Nos.34992 of 2017 & 21544 of 2018

1. Mr.K.Krishnan
2. Mr.S.Sugumaran ...Petitioners

Vs.

1. Chennai Metropolitan Development Authority,
Rep. By its Member Secretary,
No.1, Gandhi- Irwin Road,
Egmore, Chennai 600 008.
2. Chennai Petroleum Corporation Limited,
Rep. By its Chairman cum Managing Director,
Manali, Chennai 600 068.
3. The Government of Tamil Nadu,
Rep by its Secretary,
Department of Municipal Administration & Water Supply,
Fort St. George, Chennai 600 009.
4. The Director,
Chennai Metropolitan Development Authority,
Rep. By its Member Secretary,
No.1, Gandhi-Irwin Road,
Egmore, Chennai 600 008.
5. M/s.NRP Projects Private Limited,
Rep. By its Managing Director,
Deshbandhu Plaza,
No.47 Whites Road, Royapettah,
Chennai 600 014.

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6. M/s.Crab Tech,
Rep. By its Managing Director,
No.896A, Thiruvallur Salai,
Brindhavan Avenue,
Kayarambedu,
Guduvanchery 603 203.

...Respondents

WMP No.21544 of 2018

1. J. Kosumani

2. K.R.Sivakumar

Petitioners in WMP No.21544/18

Vs.

1. Mr.K.Krishnan

2. Mr.S.Sugumaran

3. Chennai Metropolitan Development Authority,
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No.1, Gandhi- Irwin Road,
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Deshbandhu Plaza,
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...Respondents in WMP No.21544/18

Writ Petition Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 1st respondent herein and also the 3rd and 4th respondents to forthwith prohibit the 2nd respondent from doing any further excavation work for the purpose of laying down pipe lines for carrying oil from Madras Harbour to Chennai Petroleum Corporation Limited, Manali except in accordance with the provisions of the Tamil Nadu Town and Country Planning Act, 1971 and obtaining necessary permissions there under.

WMP 21544 of 2018 Prayer: To implead the petitioners 1 and 2 as party respondents as 9 and 10 in the Writ Petition.

For Petitioners : Mr. V.Prakash, Senior Counsel
for Mr.P.Ganeshram

For Respondents : Mr.Karthik Raja for RR 1 & 4

Mr.R.Senthil Kumar for R2

Mr.V.Anandha Moorthy
Additional Govt. Pleader for R3
R5-No Appearance

Mr.Ar.L.Sundaresan, Senior Counsel
for M/s.A.Maheshnath for impleading petition

ORDER

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The petitioners seek a Writ of Mandamus directing the respondents 1, 3 and 4 to prohibit the 2nd respondent from excavating the Earth for the purpose of laying pipe line from the Chennai Harbour to the refinery of the 2nd respondent situate at Manali, except in accordance with the provisions of the Tamil Nadu Town and Country Planning Act, 1971.

2. The 2nd respondent is a Public Sector undertaking and has its Oil Refinery at Manali, which is situate at the distance of about 15 kms from the Chennai Port. There is an existing pipe line, which runs through thickly populated areas of the City, laid in the late 60's for carrying crude oil from Chennai Port to the refinery of the Chennai Petroleum Corporation Limited, viz. the 2nd respondent. Since a need was felt for laying a new pipe line with a larger capacity and also using the modern technology that is available the 2nd respondent Corporation

proposed to lay a new pipe line for a total length of about 16.9 kms from Chennai Port to the Refinery of the 2nd respondent situate in Manali Town. The new pipe line which is now being laid passes along the seashore on the service road of Express High Way for a distance about 5.9 kms and thereafter goes inland to the refinery of the 2nd respondent Corporation.

3. The Petitioners who claim to be public spirited individuals have come forward with this Writ Petition on the ground that the work of laying a pipe line by excavating the land to a depth of about 30 feet, amounts to development as defined under the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter referred to as "the 1971 Act"), and since the 2nd respondent has not obtained the permission from the 1st respondent as required under the 1971 Act, the 2nd respondent is not entitled to proceed with the work. According to the petitioners, the work of excavating the Earth and laying a pipe line would amount to a "development" within the meaning of Sub Section 13 of Section 2 of the 1971 Act, therefore the 2nd respondent is prohibited from carrying out the said work without permission of the appropriate Planning Authority namely the 1st respondent in view of Sections 48 and 49 of the 1971 Act.

4. The petitioners would further allege that certain untoward incidents took place in the process of laying the pipe line. It was only when such incidents were brought to light, it came to the knowledge of the petitioners that the 2nd respondent has not obtained permission as required under the provisions of the 1971 Act. Hence they have come forward with the above Writ Petition seeking the aforesaid prayer.

5. The Writ Petition is resisted by the 2nd respondent contending that the work being carried on viz. laying of the pipe line beneath the earth cannot be termed as a "development", within the meaning of Sub Section 13 of Section 2 of the 1971 Act. The 2nd respondent would further contend that the work was commenced in the year 2014 after obtaining necessary clearances and after holding various public hearings in Chennai and Thiruvallur Districts. In fact the environmental clearance was granted for the work on 03.01.2014, subject to certain conditions and all the conditions prescribed by the Authorities while granting the environmental clearance have been complied with. The work of laying the new pipeline has been entrusted with as an Indian Oil Corporation which has experience of laying pipe lines to the length of about 11200 Kms across the country. The Indian Oil Corporation had engaged the 5th respondent in the Writ Petition M/s. NRP Project Pvt Ltd., as its contractor.

6. According to the counter affidavit filed on behalf of the 2nd respondent as on the date of the filing of the counter affidavit i.e., 07.03.2018, 79.5% of the new pipe line has already been laid. The work of laying of pipe line to the length of about 12.81 kms out of 16.9 kms has been fully completed. Even with reference to the remaining work for an extent of only 2.3 km fabrication and testing has been substantially completed. According to the 2nd respondent, the remaining extent of the pipe line to be laid is either in the service lane of the National High Way or in the Fishing Harbour area. In these areas there is no house or habitation. Out of these 3.33 kms for a stretch about 2.25 kms, the 2nd respondent is employing horizontal drilling method for installing the pipe line. This horizontal drilling method does not involve excavation of the Earth from the surface the same method is also proposed to be used in respect of the balance 1.06 kms stretch also.

7. Thus according to the 2nd respondent, there will be no excavation of the Earth in the ongoing work or in the work proposed to be carried out. The 2nd respondent has also given the details of the distance with the length of the pipe line and the areas in which the said pipe line is said to be laid. The said details are as follows:

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|--|-----------|
| 1. Within Chennai Port | : 2.00 km |
| 2. Chennai Port Gate to N4 Police Station | : 1.60 km |
| 3. N4 Police Station to MOR Road Junction | : 5.90 km |
| 4. MOR Road Junction to Manali Refinery R&D Gate | : 4.40 km |
| 5. Within CPCL | : 3.00 km |

8. The 2nd respondent has also obtained permission from the Indian Railways, since the pipe line passes beneath the Railway line and an indemnity agreement has also been signed with the National Highways Authority of India inasmuch as major portion of the pipe line runs along the Ennore Express Road for about 5.90 km. According to the 2nd respondent, the Writ Petition itself is not maintainable at this belated stage. It is also averred in the counter affidavit that wherever individuals were affected by the digging work, they have been paid the just compensation and the Writ Petition filed after almost 79% of the pipeline work having been completed is only an attempt to scuttle a project meant for public good.

9. The Member Secretary of the 1st respondent CMDA has filed a counter affidavit, wherein, it is stated that the work that is being carried out by the 2nd respondent, viz. laying of pipe line will not come within the definition "development" under Section 2(13) of the Act. A reference is also made to the provisions of Sections 48 & 49 of the 1971 Act and it is stated that since there is no reference to such work namely laying of pipe line in the Master Plan and the Development Regulations also do not prescribe any guide lines as to grant of permission for such work. The 1st respondent would contend that the said work cannot be treated as development within the meaning of Sub Section 13 of Section 2 of the Act.

10. We have heard Mr.V.Prakash, Senior Counsel appearing for M/s.P.Ganeshram, for the petitioners, Mr.Karthik Raja, learned counsel appearing for the Respondents 1 and 4, Mr.R.Senthil Kumar, learned counsel appearing for the 2nd respondent, Mr.V.Anandha Moorthy, learned Additional Government Pleader appearing for the 3rd respondent and Mr.Ar.L.Sundaresan, Senior Counsel appearing for M/s.A.Maheshnath for the petitioners in impleading petition.

11. The only question that arises for consideration in this Writ Petition is, as to whether, the work namely laying of underground pipe line carried out by the 2nd respondent would amount to a development within the meaning of Sub Section 13 of Section 2 of the 1971 Act and if so whether the 2nd respondent could be restrained from continuing the work without obtaining permission from the 1st respondent.

12. Section 2 (13) of the Tamil Nadu Town and Country Planning Act, 1971, reads as follows:

Section 2(13): "development" means the carrying out of all or any of the works contemplated in a regional plan, Master plan, Detailed Development Plan or a New Town Development Plan prepared under this Act, and shall include the carrying out of building, engineering, mining or other operations in, or over or under land, or the making of any material change in the use of any building or land:

Provided that for the purposes of this Act, the following operations or uses of land shall not be deemed to involve development of the land, that is to say,-

(a) the carrying out of any temporary works for the

maintenance, improvement or other alteration of any building, being works which do not materially affect the external appearance of the building;

(b) the carrying out by a local authority of any temporary works required for the maintenance or improvement of a road, or works carried out on land within the boundaries of the road;

(c) the carrying out by a local authority or statutory undertaker of any temporary works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;

(d) the use of any building or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such; and

(e) the use of any land for the purpose of agriculture, gardening or forestry (including afforestation) and the use for any purpose specified in this clause of this proviso of any building occupied together with the land so used;

13. Mr.V.Prakash, learned Senior Counsel appearing for the petitioners drawing our attention to the provisions of Section 2 (13) of the Act would contend that the work, namely laying of underground pipe line, that is being carried out by the 2nd respondent would amount to building, engineering, mining or other operations in or over or under land and therefore would amount to development being carried out within the meaning of the provisions of Section 2(13). The learned Senior Counsel would further point out that Section 48 of the Act prohibits an owner or any other person from carrying out any development work without the written permission from the appropriate Planning Authority. The learned Senior Counsel would also refer to Section 49 of the Act, which provides for permission to be granted by the Planning Authority.

14. Per contra, Mr.Karthik Raja, learned counsel appearing for the respondents 1 and 4 would contend that the work that is being carried out in the laying of underground pipe line cannot be called as development within the meaning of Section 2(13) of the 1971 Act. The learned counsel would point out that the word "development" means carrying out of all or any of the works contemplated in the Regional Plan, Master Plan, Detailed Development Plan or New Town Development Plan and it shall include carrying out the building, engineering, mining or other

operations in or over or under the land or making of any material change in the use of any building or land. Therefore, according to Mr.Karthik Raja, "development" would mean carrying out work contemplated in the Development Plan or a Regional Plan and it will also include carrying out of building, engineering, mining or other operations in or over the land.

15. MR.Karthik Raja, learned counsel would further argue that the words "other operations in or over or under land" cannot be read in isolation and they should be read ejusdem generis along with the words that appear before them viz., building, engineering and mining. According to him, if so read the word "development" as defined under Section 2(13) will not take within its ambit, the work that is being carried on by the 2nd respondent namely laying of the under ground pipe line. He would also point out that the development regulations framed under the Act, which operate as a guideline for the Planning Authority do not contain any reference to a work of the nature that is being carried on by the 2nd respondent and hence the Authorities or the legislature never contemplated such work as a development which would require permission of the Authorities.

16. Mr.R.Senthil Kumar, learned counsel appearing for the 2nd respondent would invite our attention to the Development Regulations and contend that the Development Regulation No.25 contains specific parameters, which operate as guidelines to the Planning Authority and the said Regulations does not contain any specific parameter for the work of laying of pipe line and therefore, according to him, the work itself cannot be called a development within the meaning of Section 2(13) of the Act.

17. The learned counsel would add that the Petroleum Act empowers the 2nd respondent, being a Public Sector undertaking engaged in Oil Refining, permitting it to transport crude oil by laying pipe lines. Arguing further, Mr.R.Senthil Kumar, would submit that the major portion of the pipe line runs through the service road portion of the Ennore Express Way, which is a National High Way and the 2nd respondent had obtained permission from the National Highways Authority of India to lay the pipe line beneath the service road. He would also submit that in view of proviso (b) of Sub Section 13 of the Section 2 of the Act, permission from the Planning Authority is not required for the purpose of laying a pipe line beneath the road portion, which belongs to the National Highways Authority of India.

18. We have considered the rival submission made by the counsel appearing for the parties.

19. Subsection 13 of Section 2 of the Act defines "development". The said definition is in two parts. The first part of the definition uses the word means and the second part of the definition uses the word includes. A reading of the first part of the definition shows that insofar as the works that are contemplated in the Regional Plan, Master Plan, Detailed Development Plan or a New Town Development Plan prepared under the Act would straight away come within the meaning of the word "Development" because the first part of the definition is exhaustive in nature and it is not an inclusive definition. The word "development" would take within its ambit carrying out of building, engineering, mining or other operations in or over or under land or making of any material change in the use of any building or land. It is the firm case of the 1st respondent that it laying of underground pipe line has not been provided for in the Development Plan, which is in force in the area in question hence the first part of the Sub Section 13 of Section 2 of the Act, would have no relevance.

20. Coming to the second part, the argument of Mr.Prakash, learned Senior Counsel appearing for the petitioners is that the work viz. laying of underground pipe line could be included in the definition of "development", in view of the usage of the words carrying out of "engineering, mining or other operations in or over or under land". Heavily relying upon the second part of the definition, Mr.Prakash, learned Senior Counsel appearing for the petitioners would contend that this definition would definitely take in the work of laying of underground pipeline.

21. Per contra Mr.Karthik Rajan, learned counsel appearing for the Respondents 1 and 4 and Mr.R.Senthil Kumar, learned counsel appearing for the 2nd respondent would submit that in the absence of any regulation in the Development Regulations providing for regulating the activity, viz. the laying of pipe line the same cannot be included in the definition of "development". The Hon'ble Supreme Court had an occasion to consider the use of the words "means" and "includes" in the definition clause in Bharat Coop. Bank (Mumbai) Limited v. Coop. Bank Employees Union reported in 2007 (4) SCC 685, the provision that was considered by the Hon'ble Supreme Court that 2(bb) of the Industrial Disputes Act, 1947 which defines a "banking Company". While considering the impact of the words "means" and "includes" used in Section 2(bb) of the Industrial

Disputes, the Hon'ble Supreme Court had observed as follows:

"23. Section 2(bb) of the ID Act as initially introduced by Act 54 of 1949 used the word "means.. and includes" and was confined to a "Banking Company" as defined in Section 5 of the Banking Companies Act, 1949, having branches or other establishments in more than one province and includes Imperial Bank of India. Similarly, Section 2(kk), which was also introduced by Act 54 of 1949, defines Insurance Company as "an Insurance Company as defined in Section 2 of the Insurance Act, 1938 (4 of 1938), having branches or other establishments in more than one province". It is trite to say that when in the definition clause given in any statute the word "means" is used, what follows is intended to speak exhaustively. When the word "means" is used in the definition, to borrow the words of Lord Esher M.R. in *Gough vs. Gough*, it is a "hard-and-fast" definition and no meaning other than that which is put in the definition can be assigned to the same. (Also see: *P.Kasilingam and Ors. vs. P.S.G. College of Technology*). On the other hand, when the word "includes" is used in the definition, the legislature does not intend to restrict the definition; it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word "means" followed by the word "includes" in Section 2(bb) of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and would cover only those banking companies which fall within the purview of the definition and no other."

(emphasis applied)

22. From the above Law declared by the Hon'ble Supreme Court, it is clear that the definition of "Development" under Sub Section 13 of Section 2 of the Act is exhaustive and not inclusive. Once the definition is held to be exhaustive, it cannot take in all other acts or works done as "development" within the meaning of the said section. This Court in *General Manager Indian protection and Pharmaceuticals, Coimbatore v. Exclusive Nandanam Town Panchayat* reported in 1986 LW Cr1 330, had held that the word "development" can only relate to anything done on the land and develop the land and mere putting up of

compound walls and or fence would not amount to "development" within the meaning of Subsection 13 of Section 2 of the Act. It is also pointed out that the Development Regulations framed under the Tamil Nadu Town and Country Plan Act provides for various parameters for the development works that could be carried out with the permission of the Planning Authority. The entire Regulation 25 is silent about the parameters within which the work of laying underground pipe line would be carried out.

23. According to Mr.R.Senthil Kumar, learned counsel appearing for the 2nd respondent this by itself would indicate that the legislative intent was not to include all works to be carried out in or over the land, as a Development within the meaning of Subsection 13 of Section 2 of the Act.

24. The Provisions of Section 48 for the Act, prohibits any person from carrying out any development in or over the land without the permission of the Planning Authority. Section 49 details the procedure for obtaining a planning permission, in order to invoke the prohibition under Section 48, it should be shown that the work that is carried on is a "development" within the meaning of Sub Section 13 of Section 2 of the Act. A close reading of the above provision particularly the definition clause in Subsection 13 of Section 2 would show that the work that is being carried on by the 2nd respondent, viz. laying of underground pipe line cannot be termed as a development.

25. The first part of the Section of the definition clause, admittedly does not apply and we are unable to accept the submission of Mr.V.Prakash, learned Senior Counsel, which proceeds on a more liberal interpretation of an exhaustive definition found in Section 2(13). In order to come within the second limb of Section 2(13), it should be a building or engineering or mining or other activity which would amount to making a material change in the use of any building or land. We do not think the present activity viz. laying of underground pipe line could be called as building or engineering or mining of the land or it would amount to changing the use of the land in question. May be, there will be a temporary cessation of the use of the land as such, due to the digging that is done, in order to lay the underground pipe line, but the same cannot be construed as a change of the user of the land as contemplated under Subsection 13 of Section 2 of the Act.

26. We are therefore of the considered opinion that the activity carried out by the 2nd respondent viz. laying a underground pipe line cannot be termed as a "development" within the meaning of Section 2(13) and as such the same does not require the permission of the Planning Authority, viz. the first respondent. No other contention was raised by the learned counsel for the petitioners. Hence, we see no merit in the Writ Petition, the Writ Petition is dismissed. However, in the circumstances of the case without costs. Consequently, the connected miscellaneous petition in WMP No.34992 of 2017 is closed.

27. It is brought to our notice that an application for impleading has been filed in WMP No.21544 of 2018, the same appears to have been filed on 16.07.2018 by two persons claiming themselves to be persons interested in the subject matter of the above Writ Petition.

28. From the affidavit filed in support of the impleading petition, it is seen that the petitioners therein seeks to raise several other contentions which have not been raised by the petitioners in the main Writ Petition. The said impleading petition itself was re-presented on 17.07.2018 viz. the date fixed for hearing of the Writ Petition with the consent of all the counsels, who are appearing in the Writ Petition and the same came to be numbered after we had reserved orders in the Writ Petition. Hence we do not think that we should go into the merits of the impleading petition and as such an impleading petition stands rejected.

29. It is also brought to our notice that nearly 95.9% of the work is over and the job that remains to be carried out is horizontal drilling of a length of about 600 mts and open cut of a length of about 211 mts. of the total distance about 16.9 kms.

It should also be borne in mind that the work was started in 2015 and even at the time of the Writ Petition was filed in December 2017, 79% of the work was completed and as of today 95.9% work has been completed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

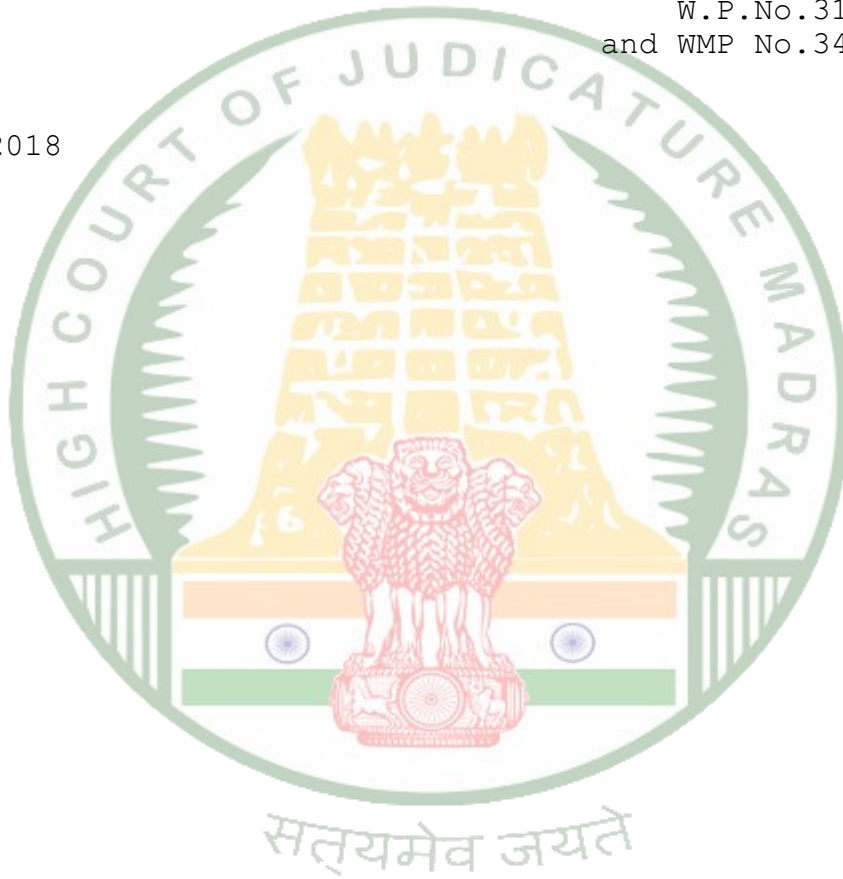
1. The Secretary,
Government of Tamil Nadu,
Department of Municipal Administration & Water Supply,
Fort St. George, Chennai 600 009.

+1cc to Mr.Karthik Raja, Advocate sr.no.53686

+1cc to M/s.R.Senthil Kumar, Advocate sr.no.53140

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