

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.10.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.29659/2019 & WMP.No.29550/2019

G.S.Gnanasekaran

..Petitioner

Versus

1. The Commissioner
Kumarapalayam Municipality
Kumarapalayam-638183.
Namakkal District.

2. The District Collector
Namakkal, Namakkal District.

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus forbearing the respondents from relocating the overhead water tank from southern side to northern side of East West public road, by endangering the compound wall of A/M Sakthi Mariamman Temple besides causing other public nuisances enumerated in the petitioner's representation dated 08.10.2019.

For Petitioner : Mr.N.Manoharan

For R1 & R2 : Mr.V.Jayaprakash Narayan
Government Pleader

ORDER

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

(1) By consent, the writ petition is taken up for final disposal. Mr.V.Jayaprakash Narayan, learned Government Pleader accepts notice on behalf of respondents 1 and 2.

(2) The petitioner is a resident of Kumarapalayam Municipality and is doing Textile business. The petitioner was a Councilor for Ward No.13 for the period between 2011-2016 and claims that he is always fighting for the cause of the public, particularly, the residents of his Ward.

- (3) The grievance expressed by the petitioner is that the Local Body has constructed an Overhead Tank on the North side of the site No.82 which is opposite to Arulmighu Sakthi Mariamman Temple and on account of passage of time, it got dilapidated and one Chellammal had filed a suit in OS.No.241/2017 on the file of the learned Principal District Munsif at Tiruchengode, against the Local Body, viz., Kumarapalayam Municipality, for permanent injunction not to put up the Overhead tank within 7 feet from her place and it was partly decreed on 20.09.2019 and no further appeal was filed. The grievance expressed by the petitioner is that under the garb of demolition of the dilapidated Overhead Tank and putting up of a new superstructure, they sought to locate it near the temple compound which is located opposite side of the place where the tank was in existence.
- (4) The learned counsel for the petitioner would submit that in the event of the new water tank put up, it will not only cause obstruction to the users of the road but also affect the visibility of the riders and there is every possibility of very many accidents take place. The petitioner also in this regard, has also submitted a detailed representation dated 08.10.2019 to the 1st respondent and despite receipt and acknowledgment, no action has been taken and steps are being taken to construct the new water tank and hence, the petitioner is constrained to approach this Court by filing the present writ petition styled as a Public Interest Litigation.
- (5) Mr.V.Jayaprakash Narayan, learned Government Pleader appearing for respondents 1 and 2 would submit that as per the location of the water tank, admittedly it is going to be located on the land belonging to the Local Body and it is not for the petitioner to dictate as to the place in which the water tank is to be located or constructed and further points out that the construction is in midway.
- (6) This Court has considered the rival submissions and also perused the materials placed before it.
- (7) The petitioner wants a positive direction, restraining the 1st respondent / Local Body from putting up a water tank on the land belonging to it. In the light of the limited scope of interference available to this Court to enter into the said factual aspect, this Court is not in a position to come to issue any positive direction. However, taking into consideration of the fact that the petitioner is a resident of the locality and also the former Councilor and has also submitted a detailed representation, pointing out the difficulties to be faced by the travelling public in the event of construction of the new water tank in the form of his

representation dated 08.10.2019, this Court, without going into the merits of the claim projected by the petitioner either in his representation or in this writ petition, directs the 1st respondent to consider and dispose of the petitioner's representation dated 08.10.2019 on merits and in accordance with law and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner.

(8)The writ petition stands disposed of. No costs.
Consequently, the connected miscellaneous petition is cloed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

AP

To

1.The Commissioner
Kumarapalayam Municipality
Kumarapalayam-638183.
Namakkal District.

2.The District Collector,
Namakkal, Namakkal District.

+1 CC to Mr.N.Manoharan, Advocate sr 87033

+1 CC to Govt. Pleader sr 87017.

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WP.No.29659/2019

SPD (CO)
SP (02/12/2019)

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