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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.18438 of 2017
and WMP No.20005 of 2017

P.Rajavel

... Petitioner

Vs.

1. The State of Tamilnadu,
Rep. by its Secretary,
Animal Husbandry,
Fort St. George,
Chennai - 9.

2. The District Collector,
Collector Office Complex,
Semmandalam,
Cuddalore District.

3. The Managing Director,
Animal Husbandry,
DMS Complex,
Teynampet, Chennai.

4. The Joint Director,
Animal Husbandry,
Pudhu Palayam,
Cuddalore District.

5. The Deputy Director,
Animal Husbandry,
Melbuvanagiri,
Buvanagiri Taluk,
Cuddalore District.

6. The Sub Divisional Officer,
(Construction and Maintenance)
Public Works Department,
Railway Feeders Road,
Chidambaram, Cuddalore District.



7. Muthusamy

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Mandamus, directing the respondents 1 to 6 to drop the construction of Animal Husbandry Dispensary (Hospital) in the proposed place just abutting the northern bank of east-west Khan Saheb Drainage-cum-Irrigation Taluk, Cuddalore District as per our representation dated 17.06.2017.

For Petitioner : No appearance

For Respondents: Mr.E.Manoharan (for 1 to 6)
Additional Government Pleader
No appearance (for R7)

O R D E R

(Order of this Court was made by S.Manikumar, J.)

Instant writ petition has been filed for a writ of mandamus, directing the respondents 1 to 6 to drop construction of Animal Husbandry Dispensary (Hospital) in the proposed place just abutting the northern bank of east-west Khan Saheb Drainage-cum-Irrigation Taluk, Cuddalore District as per the representation dated 17.06.2017.

2. Short facts leading to the filing of writ petition, are as follows:

(i) According to the petitioner, there are three hundred families, residing in the hamlet Chidambaranathan Pettai of Meethikudi Revenue Village of Chidambaram Taluk, Cuddalore District. All the inhabitants of the hamlet Chidambaranathan Pettai are agriculturists. Government of Tamilnadu through the respondents 1 to 6 have decided to construct / built an Animal Husbandry Dispensary (Hospital) in petitioner's village, in survey no.63, just abutting the northern bank of the Khan Saheb Drainage-cum- Irrigation main canal. The width of the canal is 30 ft. and it is the main canal from Veeranam Lake, meant for discharge of excess water from the lake during the heavy down pour, canal is used for irrigation purpose.

(ii) According to the petitioner, flood water and excess water which is drained from Veeranam lake used to gush through the said canal with heavy tides and during the rainy season, in the month of September, October, November and December. The land which the respondents 1 to 6 have chosen to construct a hospital for animal dispensary is almost inundated with water upto knee level always. The place just abutting on the northern



of the said canal is low lying and always been water logging. The petitioner and all the Villagers have made representation to the respondents 1 to 6 and also the Member of Legislative Assembly (MLA) of Chidambaram Constituency to relocate the proposed construction of the said hospital on the northern side of the house plot owned by one Kunchithapatham, which is comparatively, higher elevated than the proposed place. The entire extent in survey no.63 of Chidambaranathan Pettai consist of 34.5Ar equivalent to 85 cents of land. The place which the entire people of the village have requested the respondents to relocate the proposed hospital is sufficient, having an extent 18 cents of land out of total extent of 85 cents which is having a pucca Tar road on the eastern side of the said 18 cents of lands and the place is also most convenient, having all the facilities and accessibility than the one that the respondents have chosen, which is low lying and abutting the flooding canal.

(iii) Petitioner and all the villagers have directly approached the respondent for redressing their grievance. But there was no fruitful result. Further on 17.06.2017, they have made a representation to the respondents, for which also, no action is taken by the respondents till date. Respondent No.7, who is the contractor and to whom the construction project has been entrusted has started earth work for foundation. The villagers have made a protest during the second week of July, 2017 against the said earth work. The proposed built up area is completely a hostile location and it will not serve any public purpose. However, the 7th Respondent has ventured speeding up the work with an ulterior oblique. Hence, the petitioner has filed the instant writ petition for the relief stated supra.

3. On notice, the Deputy Secretary to the Government, Animal Husbandry, Dairying and Fisheries Department, Chennai, has filed a counter affidavit and the same reads thus:

(i) Government of Tamil Nadu have proposed to construct a Veterinary Dispensary (Hospital) for Animal Husbandry Department in Chidambaranathanpettai Village, in Survey No.63/1, is beyond 30 feet from the Canal Bank, on the Northern side of the Khan Sahib Irrigation Canal. As per the proposal, ultimately water from this canal reaches Bay of Bengal, after the use for irrigation purposes by the villagers, on the Bank of the canal and the site is not on a low lying area.

(ii) Land chosen for construction of Veterinary Dispensary for Animal is an ideal and it is false to state that the land proposed is situated in a low lying area and prone to water logging, because some pucca houses are built up on the northern side of the canal, and that too, very near to Survey No.63. If the place is actually a low lying and water logging area, no one will venture into the land and build pucca houses on the



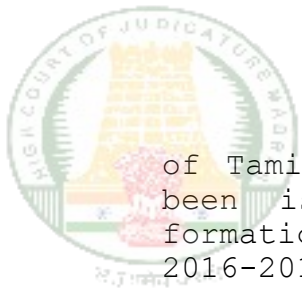
northern side of the canal. Thus the respondent has denied the petitioner's averments.

(iii) First respondent has further stated that the extent mentioned in the Survey No.63/1 is only 0.78 cents (0.31.5 Ares as per Revenue Record - VAO Certificate and not 0.85 cents (0.34.5 Ares)), as stated by the petitioner. It cannot be relocated to the northern side of the house plot owned by one Kunchithapatham, as suggested by petitioner and it is only a smaller extent, which is not at all sufficient or convenient for the construction of a Dispensary, as per the proposal and Plan approved. Further the said Kunchithapatham stated in the affidavit is none other than the petitioner's father-in-law, who has encroached and illegally occupied a portion measuring 0.40 cents out of 0.78 cents, belonging to the Animal Husbandry Department in Meikkal Mandhaveli Poramboke in R.S.No.63/1 on the northern side of the same survey number and also constructed a tiled house. In the remaining portion of 0.38 cents in S.No.63/1 belonging to Animal Husbandry Department a Veterinary Dispensary has been proposed to be constructed.

(iv) First respondent has further stated that there are Seven Villages surrounding this site and Cattle population in these Villages are 1) Kumaramangalam Village - Cows 302 Nos, Goats 410 Nos, Poultry 909 Nos, Dogs 51 Nos, 2) Chidambaranathanpettai village - Cows 155 Nos, Goats 259 Nos, Poultry 150 Nos 3) Sithalapadi Village - Cows 205 Nos, Goats 451 Nos, 4) Vasaputhur Village - Cows 159 Nos, Goats 206 Nos 5) Natarajapuram Village - Cows 102, Goats 155 Nos 6) Kanakarapattu Village - Cows 503 Nos, Goats 904 Nos, 7) Meethigudi Village - Cows 301 Nos, Goats 803 Nos and Chidambaram Town - Cows 1958 Nos Dogs 852. There are no hostile surroundings, for the proposed construction of a Veterinary Dispensary and it will be usable by the general Public, feasible for the officials to operate the Hospital, feasible for the villagers to bring their cattle for the treatment including artificial insemination. Further, the place is not a water logging area, as averred by the petitioner. The Village Administrative Officer has endorsed that the proposed site is not a water logging area. It is false to state that the villagers of Chidambaranathanpettai village are not interested to have an Hospital built / constructed, in the proposed place by the department and there are hostile circumstances for the same.

(v) Chain of process involved to construct Veterinary Dispensaries and Hospitals in the State and particularly for the present Veterinary Dispensary are as follows: -

(a) It was a policy Decision taken, by the Government of Tamil Nadu announced under Rule 110 of the Tamil Nadu Legislative Assembly on 31.08.2016 by the Hon'ble Chief Minister



of Tamil Nadu and after that, necessary Government Orders have been issued under G.O. (D) No. 28, dated 21.02.2017 for formation of 115 New Veterinary Institutions under RIDF-XXII 2016-2017 Plan, in the State of Tamil Nadu.

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(b) On the basis of the Government's decision, under NABARD XXII Plan for the year 2016-2017, selection of suitable place for construction of a new Veterinary Dispensary for Animal Husbandry Department was processed at Chidambaram. But it was communicated by the Commissioner Chidambaram Municipality that no such place is available within Chidambaram Municipal Limits. Meikkal Manthaveli Poramboke land in Survey No.63/1 in Chidambaranathanpettai village in Kumaramangalam Panchayat belongs to the Animal Husbandry Department which is very near to Chidambaram Municipality was selected for the construction of the New Veterinary Dispensary in the balance of portion of 0.38 cents out of 0.78 cents (the remaining 0.40 cents was encroached by the said Velappan S/o Kunjithapatham and Aravalli W/o Ayyakannu as per VAO Certificate enclosed).

(c) First respondent has further stated that after getting No Objection, prior permission and approval obtained from the District Collector, Cuddalore for the construction of Veterinary Dispensary building, further action was taken. For that, necessary allotment of funds of about Rs.23.56 lakhs was granted by Government of Tamil Nadu. Then the construction work of Animal Husbandry Department, Veterinary Dispensary at Chidambaranathanpettai village, was entrusted with the Public Works Department. All the above process have been made as per orders and proceedings. Some persons have encroached and occupied 0.40 cents in the above Survey Number. Balance of 0.38 cents in S.No.63/1 is available and it is sufficient and convenient for construction. Further, the building proposed to be constructed is beyond 30 feet from the Bank on the northern side.

(d) In the said 0.38 cents also, two families have put up fences and it was also removed with the assistance of Killai Police on 19.05.2017.

(e) On 19.06.2017 when the, preliminary work started, it was obstructed by the said encroachers and the said fact was intimated to the District Collector, through the Regional Joint Director of Animal Husbandry, Cuddalore.

(f) The place has been classified as Manthaiveli Poramboke and belongs to Animal Husbandry Department, as per the chitta and Adangal of the Revenue Department.



(g) There was no Poromboke land available in Chidambaranathanpettai for construction, and C.Kothangudi village is also not near Chidambaram Municipal area.

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(h) Thus, the construction work of a new Permanent Animal Husbandry Veterinary Dispensary building for Chidambaram in Chidambaranathanpettai Meikkal Manthaiveli Poramboke place was entrusted with the Public Works Department the 7th respondent herein, and construction of the building is going on.

(vi) In the counter, it is further stated that it is only a threat by the petitioner alone (and not by the villagers), as if the Hospital is being built up in the disadvantageous place. The averments are baseless.

(vii) First respondent has further contended that it is false to state that there is egocentrism on the part of the respondents 1 to 6, that they have harboured in their mind, in taking a decision with an ulterior motive. The respondents are acting bonafidely, without any bias and discharging their duties, in the normal course of official business to fulfill the Government Policy for Public Purpose and for the benefit of general public, especially, for the Villagers, and the petitioner has no right to find fault with the activities of the respondents. The averments made in para 13 are baseless.

(viii) Since the construction work in the above S.No.63/1, 0.38 cents is already in progress, the question of switching over to another place does not arise. The remaining portion of 0.40 cents in S.No. 63/1 which belongs to the department has been encroached and occupied by the petitioner's father-in-law Kunchithapatham, and the petitioner, son-in-law has come forward to save his father-in-law from eviction from the place by the department. The petitioner has filed this Writ Petition only for his personal gain and not with any Public interest.

(ix) Process of construction of the Veterinary Dispensary is being taken, in a suitable place. Since the petitioner is only a self-styled Head of the village, he has no authority or right or locus standi to file the Public Interest litigation petition. Hence the Writ Petition is not maintainable and liable to the dismissed.

(x) On the basis of the averments, made in the counter affidavit filed by Deputy Secretary to Government, Animal Husbandry, Dairying and Fisheries Department, Chennai, the 1st respondent, Mr.E.Manoharan, learned AGP submitted that the proposed construction of Animal Husbandry Dispensary (Hospital) is not in a water body, but the only allegation is that it is



in a place where water logging would be there, during rainy season.

4. Heard the learned Additional Government Pleader and perused the materials available on record.

5. Before advertng to the pleadings, we deem it fit to consider that, after considering various judgments of the Hon'ble Supreme Court on Public Interest Litigations, in WP No.3666 of 2019 between Kongu Nadu Saandror Kula Nadar Munnetra Sangam, rep. by its President Vs. State, rep. by the Chief Secretary, Fort St. George, Chennai and 3 others, dated 07.02.2019, this Court has summarised as hereunder.

4. Of late, we can notice a growing trend in the abuse of public interest litigation. Public Interest Litigation was intended to secure the justice for poor and the weaker section of the community, who were not in a position to protect their own interests.

5. The Hon'ble Supreme Court, has time and again, observed that there is, in recent years, a feeling which is not without any foundation that public interest litigation is now tending to become publicity interest litigation or private interest litigation and has a tendency to be counterproductive. PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief. {Refer BALCO EMPLOYEES' UNION (REGD) Vs. UNION OF INDIA AND OTHERS {2002 (2) SCC - 333}.

6. The present writ petition cannot be said to be in public interest. This petition seems to be purely motivated by a desire to seek publicity. In fact, the Hon'ble Supreme Court, has held that by filing vexatious and frivolous petitions, the queue standing outside the doors of the Court never moves which piquant situation creates frustration in the minds of the genuine litigants and resultantly, they lose faith in the administration of judicial system.

7. A reading of instant writ petition would show that there is nothing in this petition which can be said in public interest. It does not advance any cause of the poor and down trodden. ..."

6. Averments made in the counter affidavit of the 1st respondent are not denied by any rejoinder, by the writ petitioner.



7. Firstly, it could be seen that a policy Decision has been taken, by Government of Tamil Nadu, announced under Rule 110 of the Tamil Nadu Legislative Assembly on 31.08.2016 by the Hon'ble Chief Minister of Tamil Nadu and thereafter, necessary Government Orders have been issued in G.O. (D) No. 28, dated 21.02.2017 for formation of 115 New Veterinary Institutions under RIDF-XXII 2016-2017 Plan in the State of Tamil Nadu.

8. Contention that the petitioner is the son-in-law of Mr.Velappan S/o.Kunjithapatham, who has encroached 0.40 cents in S.No.63/1, and filed the instant writ petition, opposing the construction of a Veterinary dispensary and the further contention that the lands on which veterinary dispensary is constructed, belong to Animal Husbandry Department, have not been disputed. Though the petitioner has contended that the villagers have objected to the construction of a veterinary dispensary in S.No.63/1, Chidambaranathanpettai Village, Chidambaram Taluk, Cuddalore District, the same is refuted by the 1st respondent. It is well settled that, disputed questions of fact, cannot be gone into in a writ petition. We deem it fit to consider few decisions on the above aspect.

(a) In (1976) 1 SCC 292 (Arya Vyasa Sabha and Ors. v. The Commissioner of Hindu Charitable and Religious Institutions & Endowments, Hyderabad and Ors.) the view taken by the High Court that disputed questions of fact are to be left open to be decided before the Civil Court was upheld by the Supreme Court.

(b) In the decision reported in (2003) 4 SCC 317 (Rourkela Shramik Sangh v. Steel Authority of India Ltd. and Anr.) it is held that the disputed questions of fact could not be entertained in the writ proceedings. In paragraph 19, the Supreme Court held as follows:

"19. The question as to whether the workmen concerned had been continuously working for a period of ten years so as to enable them to derive benefit of the judgment of this Court in R.K. Panda case (1994) 5 SCC 304 was essentially a question of fact...."

In paragraph 22, the Honourable Supreme Court further held as follows:

"22. ...a disputed question of fact normally would not be entertained in a writ proceeding. This aspect of the matter has also been considered by a Constitution Bench of this Court in Steel Authority of India Ltd. v. National Union Waterfront Workers (2001) 7 SCC 1...."



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(c) In (2006) 9 SCC 256 (Himmat Singh v. State of Haryana and Ors.), the Honourable Supreme Court held that

'the statement of the appellant or the 5th respondent was correct or not could not ordinarily be tested in writ proceedings and it is well known that in writ petition ordinarily such a disputed question of fact could not be entertained'.

(d) In yet another decision reported in (2007) 7 MLJ 687 (Food Corporation of India v. Harmesh Chand), the Supreme Court held as follows:

"Since the facts were seriously disputed by the appellant and no factual finding could be recorded without consideration of evidence adduced by the parties, it was not an appropriate case in which the High Court ought to have exercised its writ jurisdiction. The parties could have approached a civil court of competent jurisdiction to adjudicate the matter."

9. Giving due consideration to the undisputed averments of the 1st respondent, we have no hesitation to conclude that the instant writ petition, though styled as a public interest litigation, as pointed out, by the respondents, it is purely a private interest litigation.

10. Averments in the counter affidavit of the 1st respondent shows that steps have been taken to identify a suitable place and accordingly, land measuring 0.40 cents in S.No.63/1 in Chidambaranathanpettai Village, Chidambaram Taluk, Cuddalore District, has been chosen. Funds to the tune of Rs.24 Lakhs has been allotted and construction work by Public Works Department is in progress, and at this stage, to vindicate a personal cause, petitioner has chosen to file the instant writ petition. Averments made in the supporting affidavit do not justify, issuance of any order, in the instant writ petition. Instant writ petition is frivolous.



11. Though the writ petition deserves to be dismissed with costs, we refrain from doing so, hoping that the petitioner would not indulge in filing, a frivolous writ petition.

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12. In view of the above discussion and decisions, instant writ petition is dismissed. No Costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

To

1. The Secretary,
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