



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

and

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A. (MD) No. 624 of 2019

and

C.M.P. (MD) No. 5249 of 2019

Vasanthi : Appellant/4th Respondent

Vs.

1.Sreelatha : 1st respondent/Petitioner

2.State of Tamil Nadu,
Rep. by District Collector,
Kanyakumari District at Nagercoil.

3.Deputy Director of Health Services,
Department of Health and Family Welfare,
Krishnan Kovil, Nagercoil-1,
Kanyakumari District.

4.Executive Officer,
Puthukadai Town Panchayath,
Puthukadai Post,
Kanyakumari District.

: Respondents 2 to 3 /
Respondents 1 to 3

PRAYER: Writ Appeal is filed Clause 15 of Letters Patent Act, against the order dated 23.04.2019 made in WP(MD) No.883 of 2019.

Prayer in WP(MD). 883 of 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue Writ of Certiorarified Mandamus directing the respondents 1 to 3 to remove the latrine and septic tank that have been constructed on the north side of petitioner s well and restraining respondents 1 to 3 from allowing the 4th respondent constructing any septic tank within a distance of 50 feet from the petitioner s Well in Resurvey No.345/2 in Munchirai Revenue Village, under the patta No.4742 Vilavancode Taluk, Kanyakumari District.



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For Appellant : Mr.K.N.Thampi
For R-1 : Mr.V.H.S.Prathap
For R-2 to R-4 : Mr.M.Karuppasamy

JUDGMENT

[Judgment of the Court was delivered by **K.RAVICHANDRABAABU, J.**]

Feeling aggrieved against the order of the Writ Court in W.P.(MD)No.883 of 2019, dated 23.04.2019, the fourth respondent therein filed the present writ appeal.

2.The writ petition was filed by the first respondent/writ petitioner for Mandamus directing the respondents 1 to 3 therein to remove the latrine and septic tank that has been constructed on the northern side of the petitioner's well in Resurvey No.345/2 in Munchirai Revenue Village, under the patta No.4742, Vilavancode Taluk, Kanyakumari District.

3.The grievance of the writ petitioner is that the fourth respondent therein/appellant herein is trying to put up a septic tank attached with latrine within the prohibited distance from the petitioner's Well. Therefore, the writ petition was filed with the relief as stated supra. The Writ Court after hearing both sides and also noting Section 32 of the Tamil Nadu Public Health Act, 1938, directed the third respondent therein, viz., Executive Officer of Puthukadai town panchayat to hold an enquiry on the petitioner's representation and take a decision based on the spot inspection and measurement.

4.Mr.K.N.Thambi, learned counsel appearing for the appellant contended that the Executive Officer of the Town Panchayat is not the competent person to consider the representation of the writ petitioner and make a spot inspection, since it is only the concerned Health Officer coming under the control of the second respondent, is the competent person to look into the complaint made by the petitioner and take an appropriate action. Therefore, he submitted that the Writ Court is not correct in issuing direction to the Executive Officer of Puthukadai town panchayat to do a statutory exercise to be done by the Health Officer.

5.We have given our careful consideration on the above submissions made by the learned counsel for the appellant and perused the impugned order as well.

6.It is seen that the grievance of the writ petitioner has to be considered and decided by a competent authority as to whether the appellant herein is causing any nuisance by way of putting up



Septic tank within the prohibited distance of 50 feet or within such other distance therefrom as the Health Officer may consider to be practicable having regard to the circumstances of the locality. Needless to say that a local inspection has to be conducted by such authority in order to pass an order on the representation made by the petitioner.

7.It is true that the Writ Court has directed the Executive Officer, Puthukadai village to make such inspection and conduct an enquiry and thereafter to pass appropriate orders. As rightly pointed out by the learned counsel appearing for the appellant, it is only the Health Officer, has to make such inspection and conduct an enquiry as contemplated under Section 32 of the Tamil Nadu Public Health Act. Therefore, we are of the view that the order passed by the Writ Court has to be modified to the effect that instead of the third respondent, the concerned Health Officer, has to be deputed by the second respondent viz., Deputy Director of Health Services, Kanyakumari District, to conduct such enquiry by making local inspection and pass appropriate orders on the petitioner's representation. Accordingly, the Deputy Director of Health Services, Kanyakumari District, who is the third respondent in the writ appeal is directed to depute the concerned Health Officer to make such inspection and conduct an enquiry and pass such order within a period of four weeks from the date of receipt of a copy of this order.

8.With the above modification, this Writ Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(Records)

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The District Collector,
Kanyakumari District at Nagercoil.
- 2.The Deputy Director of Health Services,
Department of Health and Family Welfare,
Krishnan Kovil, Nagercoil-1,
Kanyakumari District.



3. The Executive Officer,
Puthukadai Town Panchayath,
Puthukadai Post,
Kanyakumari District.

+1CC TO MR.K.N.THAMPI, Advocate Sr. No.69409
+1CC TO MR.K.ESAKKI, Advocate Sr. No.69584
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 69781

W.A. (MD) No. 624 of 2019
18.06.2019

NRK (CO)
TR (03.07.2019) 4P 7C