



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.11.2019

CORAM:

**THE HONOURABLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
and**

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

W.A. (MD) No.8 of 2019

B.Nagalakshmi @ Saratha Hariharan

... Appellants

-vs-

1.The District Collector,
Madurai District,
Madurai.

2.The Commissioner of Corporation,
Zone 4, Madurai Corporation,
Department of Water Supply and Sanitation,
Madurai District,
Madurai.

3.The Junior Engineer,
Department of Water Supply and Sanitation,
Zone 4, Madurai Corporation,
Madurai.

4.The Tamil Nadu Water Supply and Drainage Board,
Opp. To Mattuthavani Bus Stand,
Melur Main Road,
Madurai.

5.Mrs.Janaki

... Respondents

PRAYER: Writ Appeal has been filed under Clause 15 of Letters Patent, against the order dated 11.12.2018 passed in W.P.(MD) No.24279 of 2018 by a learned Single Judge of this Court.

Prayer in WP(MD). 24279/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to remove the septic Tank situated within the premises of the 5th respondent in Plot No.126, Balaji Nagar, Kovallan Nagar Extension, Pallanganatham Post, Madurai, as it is contaminating the fresh water source, based on the report of the 4th respondent within a stipulated period of time.



For appellant : Ms.T.K.Akalya
For R1 & R3 : Mr.A.K.Baskarapandian
Spl.Govt.Pleader
For R2 : Mr.R.Murali
For R4 : Ms.Porkodikannan
For R5 : Mr.R.Subramanian

JUDGMENT

**[Judgment of the Court was delivered by
THE HON'BLE ACTING CHIEF JUSTICE]**

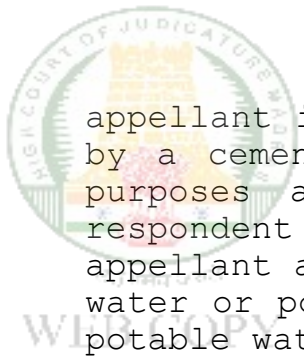
The appellant / petitioner B.Nagalakshmi @ Saratha Hariharan has filed this intra Court appeal, aggrieved by the order dated 11.12.2018, made in W.P.(MD)No.24279 of 2018 whereby, the learned Single Judge dismissed the writ petition filed by the appellant / petitioner with the following observations:-

"4.It could be seen that there is a dispute between two persons, who are neighbours and whether the bore well is situated next to the house of the fifth respondent or not is question of fact and has to be decided by letting in evidence and the said facts cannot be gone into by this Court by passing orders in the writ petition. It is left open to the parties to go before the proper forum and file a petition and seek remedy, if they are aggrieved. There is a civil dispute between the parties regarding factual aspect of construction of septic tank and this Court is not inclined to interfere with the same. There is no fundamental right involved in this dispute and hence, under Article 226 of the Constitution of India, Writ Petition is not maintainable. Accordingly, this Writ Petition is dismissed. No costs."

2. The learned counsel for the appellant / petitioner submitted that the statutory minimum requirement of distance between septic tank dug by the 5th respondent and the bore well dug by the appellant in her own backyard has to be minimum 15 meters, but the septic tank created by the respondent No.5 / Mrs.Janaki is between the prohibited limit of 15 meters and therefore, the respondent Corporation should have taken action for removal of that septic tank created by the respondent No.5.

3. We have perused the materials on record, including the site photographs.

4. From these photographs it becomes clear that the bore well dug by the appellant herself is within the boundary wall of the



appellant in the backyard of her house and the bore well is covered by a cement pipe from which the water is taken out for drinking purposes and other purposes. The septic tank created by the respondent No.5 appears to be outside the boundary wall of the appellant and therefore, we do not find any chance of mixing of bad water or polluted water of the respondent No.5 septic tank with the potable water of the appellant from her bore well.

5. The respondent No.5 has disputed the allegations and her learned counsel has also urged before us that the septic tank created by the respondent No.5 is about 75 feet away from the bore well of the appellant and actually, her own bore well is dug very near to the septic tank.

6. Be that as it may, having heard the learned counsel for the parties, we are of the opinion that not only disputed question of facts are involved in the present case, for which we do not find the writ jurisdiction to be an appropriate remedy and therefore, in our opinion, the learned Single Judge has rightly relegated the parties to the Civil Court, as such civil disputes are to be decided by letting appropriate evidence before the Civil Court. This Court cannot hold that the septic tank created by the respondent No.5 would cause pollution to the potable water of the appellant from her own bore well and the Municipal authorities have to take action in accordance with law. We do not find any justification for interfering in the matter in a writ jurisdiction. Therefore, we do not find any merit in the intra Court appeal and we are inclined to dismiss the appeal and the same is dismissed, with the aforesaid liberty given by the learned Single Judge. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

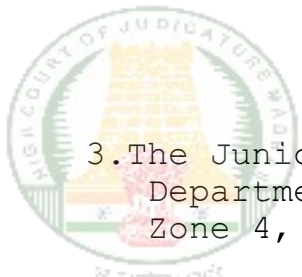
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To

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<https://hcservices.ecourts.gov.in/hcservices/>



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Melur Main Road, Madurai.

+1 CC to Mr.PORKODI KARNAN, Advocate (SR-96540[F] dated
06/11/2019)

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-96666[F] dated
07/11/2019)

+1 CC to SPL GP (SR-96689[F] dated 07/11/2019)

+1 CC to Mr.R.MURALI, Advocate (SR-96796[F] dated 07/11/2019)

+1 CC to Mr.S.THAMIZHARASAN, Advocate (SR-96841[F] dated
07/11/2019)

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