

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.V.KATHIKEYAN

W.P.No.296 of 2020
and
W.M.P.No.341 of 2020

VGN Garden Plot Owners Welfare Association,
Rep by its President, Mr.T.Gopalakrishnan,
No.176, Chelsfield Street, VGN Melrose Garden
Tambaram, Chennai - 600 045.

... Petitioner

vs.

1. The District Collector,
Office of the District Collector,
Thaiyar Kullam, Kancheepuram - 631501.
2. The Chief Engineer,
Public Works Department, Water Resources Department,
Chepauk, Chennai - 600 005.
3. The Executive Engineer,
Public Works Department, Water Resources Department,
Lower Palers Basin Division,
Kancheepuram.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to consider the representation dated 27.12.2019 submitted by the petitioner and pass appropriate orders on merits after conducting due enquiries as may be required within a time frame as fixed by this Hon'ble Court.

For Petitioner : M/s.Ganesh and Ganesh
For Respondents : Mr.R.Govindasamy,
Additional Government Pleader

O R D E R

This Writ petition has been filed in the nature of Mandamus directing the respondents to consider the representation dated 27.12.2019 submitted by the petitioner.

2. The petitioner is President of VGN Garden Plot Owners

Welfare Association. In the affidavit filed in support of the writ petition, it has been stated that VGN Developers had laid out a plot for development in the name of VGN Garden (Mayfield) to a large extent of about 25 Acres situated in Tambaram, comprised in T.S.No.6,9,10,14,15 & 16. It was proposed to construct about 700 residential plots. It was also stated that due approval was obtained from the authorities, particularly from CMDA. It has been stated that as on the date of filing of the writ petition, 50 fully constructed residential buildings are available and are occupied by several families. Further, 60 number of residential houses are under construction. Moreover, another 50 residential houses are in the stage of commencement of construction.

3. It is also stated that there is only one road, which is an access road to the entire layout. It has also stated that there is a lake in Irumbuliyur in S.No.348. It is also stated that there is a 30 feet canal for passing and draining of excess water from the lake.

4. It is also stated that the authorities of the 3rd respondent viz., the Executive Engineer, Public Works Department-Water Resources Department, Lower Palers Basin Division, Kancheepuram, came to the premises and stated that they have proposed to lay a new 15 feet canal as passage and for draining the excess water from Irumbuliyur lake, leaving aside the long existing 30 feet canal. The resident of the petitioner's Association V.G.N. Gardens, enquired about the details. It is stated that the compound wall of Park-3 was damaged on 11.01.2019, due to the use of hydraulic excavator. It is stated that they have filed a complaint on 12.12.2019. They have also submitted a representation dated 27.12.2019 to the third respondent, with a copy sent to the second respondent. It is stated that they have brought to the notice of the respondent that there is an existing 30 feet canal and there would be serious damages caused to the residents and occupants of the plots. It is also stated that if an underground storm water drain as proposed is laid, then, it would not be possible to lay the underground electricity cable, underground water supply pipes and underground drainage pipes. It is therefore stated that the construction as proposed, would cause severe damages and would cause extreme difficulties and hardships to the residence of the VGN Garden (Mayfield). Under these circumstances, seeking a direction to answer the representation given, the writ petition has been filed in the nature of mandamus.

5. Even though, the writ petition has been filed in the nature of a Mandamus, during the course of arguments, it had turned out to be a multifarious debate on whether the proposed

construction is required or not, whether it is authorised or not and whether it would be beneficial or not.

6. It is pointed out by the learned counsel for the petitioner that there is an existing 30 feet canal and the respondents may very well use the same for laying of an underground storm water drain. It was stated that the proposed project would seriously obstruct the privileges which the residents were promised at the time when they had proposed to purchase the plots and construct residential buildings. It is also stated that the Court should re-examine the entire project.

7. A counter affidavit has been filed on behalf of the third respondent. In the counter affidavit, it has been stated that by Government Order in G.O.Ms.No.350, Revenue and Disaster Management Department, Disaster Management Wing, DM-II Section, dated 27.09.2019, administrative sanction had been granted for 12 number of works, to a total value of Rs.238.13 Crores, to carry out Long Term Flood Mitigation Works for the highly vulnerable areas for the floods in Tamil Nadu by Public Works Department (WRD) and the work of 'Formation of Cut & Cover macro drain from Tambaram Big Tank to the Macro drain near Tambaram - Mudichur Junction along service road in Tambaram Taluk of Kancheepuram District for Rs.13,73,76,038/-, is one of them. The site for the work was handed over to the contractor on 09.12.2019.

8. It is stated that the site has been handed over to the contractor on 09.12.2019. In the counter affidavit, it has also been stated that due to inundation, the Tambaram Big Tank, which is located between the GST road and Chennai Bypass Road, in Tambaram Municipal limit, results in higher inflow and outflow of water from the said Tank. During the month of November and December 2015, due to unprecedented NorthEast monsoon floods, Tambaram area witnessed heavy inundation when this particular tank viz., Tambaram Big Tank, had to discharge water.

9. There is only one surplus weir and two fusees. When the tank fills up, the discharge has to be through the weir and it was found that the existing weir was not sufficient to discharge water from the tank. It was stated that previously the entire area consisted of agricultural lands. Therefore, there was unhindered flow of water even in the case of heavy rain from the Big Tank through the agricultural land and the water finally reached the Adayar River at Durgas Road and Pappan channel. Owing to urbanization, the Ayacuts have become residential areas with road networks. Therefore, the necessity to construct an underground storm water drain was felt imminent and it was with that object, that in G.O.Ms.No.350 referred above, among other projects, the present project which is seriously objected to the

petitioner, was also envisaged.

10. The learned counsel for the petitioner also stated that if the storm water drain is constructed as stated above, underground electricity lines, underground water pipes and underground drainage pipes, cannot be constructed. Therefore, it is stated that immense hardship would be caused to the petitioner herein.

11. With respect to this representation, in the typed set of papers filed, reference was made to the reply of the Executive Engineer by the 3rd respondent. The 3rd respondent addressed a reply to the communication from the Special Officer of the Chief Minister Cell. This also relates to a petition which is dated 02.01.2020 given by the Chief Minister Cell Petition in No.1056155/21/2020.

12. The learned counsel for the petitioner stated that they have given representation to the respondents and had never given any representation to the Chief Minister Cell. At any rate, the answer to the petitioner is given in the said reply given by the 3rd respondent to the said complaint dated 02.01.2020. Whether the said complaint dated 02.01.2020 was given by the petitioner or any other interested person is not for this Court to examine. The relevant paragraph is extracted hereunder:

'As there is no well defined surplus course, the flood water could not be discharged through the existing weir at Kurinji Nagar in Tambaram. After detailed investigation, it is proposed to provide additional regulator with Cut and Cover provision through the municipal roads and join it with the already laid Cut and Cover in the service road. The access to the houses will become difficult for short period of upto 15 to 20 days. Hence, it is informed to the petitioner that the work will be completed within short period by our Department to enhance permanent flood mitigation for the residents of VGN may field part at Kurinji Nagar and it is impossible to cancel this work. Similar works are being carried out in Chitlapakkam, Urapakkam an Mudichur and other flood affected areas for permanent flood mitigation.'

13. The learned counsel for the petitioner again pointed out the above extract and stated that the access to the houses will become difficult for a short period of 15 to 20 days, whereas in the counter, it has been stated the said project would be completed within 120 days.

14. With much respect, I must point out that the access to the houses are a different issue from construction of underground drainage storm water drainage pipes. Digging of the road and laying down the drainage pipe would cause only temporary difficulty in having access to the houses. The respondents have stated it would be completed within 15 to 20 days. The completion of the project is an issue between the PWD and the contractor, to whom the work has been assigned. It is not for the Court to sit over it and examine whether the project is being completed within a particular period of time.

15. With respect to the access, it is also stated in the counter that the storm water drainage will be laid only to an extent of 21 feet width in the middle of the 30 ft. road and on the either side, there will be 5 ft, available, through which electricity cables or underground water pipes or underground drainage pipes can always be laid for the benefit of the residents of the petitioner Association.

16. It is also stated that the work had been held up for more than three weeks to explain to the petitioner's Association the nature of the work. This Court is of the view that this was not necessary. If a work in the nature of public interest is initiated by the respondent, they have a right to do the work. Minor difficulties will have to be put up with, since flooding will affect the residence of the petitioner's Association members themselves. It is for their benefit also that an underground storm water drainage pipe is laid. It is also seen very specifically that the respondent in their counter affidavit have stated that electricity cable, sewerage pipes and drainage pipes will never be affected. It is also stated that the respondents have a legitimate right to use the road for laying down such storm water drainpipe. It is also stated that the same type of underground channels were constructed in Chitlapakkam residential Area, Tambaram Municipality to drain flood water without causing inundation and it has been stated that during northeast monsoon of the year 2019, there was free flow of excess water without causing damage to any property. It is thus seen that the work undertaken by the respondents is only for the benefit of the petitioner's Association. Photographs have also been produced before the Court that the pipes have been practically laid and the road has been covered and there is no difficulty for access to the residential houses of the petitioners

17. In view of all these facts, I have no hesitation to hold the petitioners have not made out any case for issuance of Mandamus to the respondents and therefore, I do not find any

merits in the materials submitted on behalf of the writ petition and therefore, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
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Thaiyar Kullam,
Kancheepuram - 631501.
2. The Chief Engineer,
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Water Resources Department,
Chepauk, Chennai - 600 005.
3. The Executive Engineer,
Public Works Department
Water Resources Department,
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Kancheepuram.

+1cc to M/s.Ganesh and Ganesh, Advocate, S.R.No.10956
+1cc to the Special Government Pleader, S.R.No.10878

W.P.No.296 of 2020
and

W.M.P.No.341 of 2020

RP(CO)
CS/19/03/2020

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