

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.02.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.11483 of 2018
&
W.M.P.No.13413 and 17375 of 2018

Kuppuraj

.. Petitioner

Vs.

1. The District Collector,
Erode District, Erode.
2. The Tahsildar,
Bhavani Taluk, Bhavani,
Erode District.
3. The District Education Officer,
District Education Office,
Old Railway Station Road,
Erode.
4. Senthil Seerangan
(impleaded as per order dated 26.2.2020
made in WMP.No.17548 of 2018)

.. Respondents

PRAYER:-

Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus forbearing the respondents from constructing School building in R.S.No.23/5, 23/6 and 23/121 of Vairamangalam Village, Kuttipalaiyam, Gavundanpudur, Bhavani Taluk, Erode District .

For Petitioner : Mr.S.Lakshmanasamy

For Respondents : Mr.R.Vijayakumar, AGP
for R1 and R2.
Mr.S.T.S.Murthy, AAG-IV,
Assisted by Mr.C.Munusamy,
Spl. Govt. Pleader (Education)
for R3.

O R D E R

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

The Writ Petition is styled as a Public Interest Litigation filed by the resident of Goundenpudur, Kuttupalaiyam Post, Bhavani Taluk, Erode District and he would aver among other things that the Collector of Erode District/1st respondent, vide proceedings dated 17.12.2015 in e.f.No.30886/2014/c4, has allotted 03200 sq.ms of land in Vairamangalam Village, Natham Survey No.9/169 for the construction upgraded High School and also for enrollment of additional students and the said proceedings were also given effect to and the land allotted for construction of the Government High School, Kuttupalaiyam was also assigned with Survey No.9/191 to an extent of 03200 sq.mts, despite, such an allotment, attempts have been made by the official respondents for the reasons best known to them to shift the School to Survey Field No.23/6.

2. Learned counsel appearing for the petitioner would submit that the said place is not at all suitable for the reasons that there is existence of very many offices in that building and the pendency of the suit in O.S.No.209 of 2017, on the file of the Court of District Munisif at Bhavani, is nothing to do with them for the reason that interlocutory application filed by the petitioner to file suit in a representative capacity came to be dismissed, which means the suit itself is not entertained and therefore the subsistence of the interim order dated 23.8.2017 in CRP PD.No.2880 of 2017 and CMP.13585 of 2017 will not prohibit the respondent to proceed further in respect of the land allotted under S.No.9/169 (after Sub-Division).

3. Mr.K. Balu, learned counsel appearing for the 4th respondent, apart from supporting the stand of the petitioner, would reiterate that in the lands in Survey Nos.23/1, 23/ 6 and 23/121, there exist regular weekly Chandy and the office Cooperative Milk Society and it is also crowded and therefore the constructing of the High School on the land in S.No.23/6 would cause hindrance to the students, and he would further add that though it is open to the respondents to go for vacation of the interim orders passed in the said CMP, they did not do so, even otherwise, the interim order would not prevent them from exercising their rights in respect of the S.No.9/169 and prays for allowing of this writ petition.

4. Per contra, Mr.S.T.S.Murthy, learned Addl. Advocate General, assisted by Mr.C.Munusamy, learned Special Government Pleader (Education) appearing for the official respondents has drawn the attention of this Court to the affidavit filed in respect of WMP.No.17375 of 2018 for vacating the interim order as well as the counter affidavit of the 2nd respondent and would

submit, in the light of the claim made by the plaintiff in O.S.No.209 of 2017, namely Mr.K.M.Loganathan, as to their traditional right in respect of the lands in S.No.9/169, Vairamanalam Village, a conscious decision has been taken to shift the location of the school and the 1st respondent also who vide proceedings dated 23.3.2018 in Na.Ka.No.7221/2018/c/4 has granted pre entry permission in respect of S.No.23/5 and in pursuant to the said proceedings, further progress has also been made in the form of handing over possession of site land in SF.No.23/6 on 2.5.2018 and that works in the said site was also commenced on 7.5.2018 and that the outer time limit for completion of work was fixed on 6.3.2019 and in the light of the subsistence of the interim order passed in the writ petition, further progress could not be made.

5. It is also pointed out by the learned Addl. Advocate General, the land in S.No.23/6 also lies close proximity to S.No.9/169 and in that survey number, the Elementary School is continues to function and in S.No.23/6, the proposed High School building along with playground, would be constructed for public utility and he also undertakes to file the progress/status report in this regard.

6.The 2nd respondent has also taken a similar stand in the counter affidavit. In response to the said submission, learned counsel appearing for the petitioner, apart from reiterating the submission that the interim order passed in CMP is nothing to do with the present case, would also urge this Court to transfer the said CRP to the file of this Court to be taken up along with the writ petition and also prays for appropriate direction, directing the official respondents to furnish the copy of the proceedings of the 1st respondent dated 23.3.2018 in Na.Ka.No.7221/2018/2.4.

7. This Court has carefully considered and perused the materials placed before it.

8. No doubt, the 1st respondent vide proceedings dated 17.12.2015, has ordered transfer of 3200 sq.mts in S.No.9/169, Vairamangalam Village and in the light of the suit in O.S.No.209 of 2017, on the file of the Court of District Munisf at Bhavani and pendency of the interim order, the educational authorities took a conscious decision to re-locate the construction of school to another land for which, they have also obtained necessary permission from the 1st respondent, vide proceedings dated 23.3.2018. It is also pointed out that survey No.23/5, lies within a short distance from S.No.9/169 and from the counter affidavit, it appears that the site has been handed over to PWD and the work was also commenced on 7.5.2018 fixing the outer time line on 6.3.2019 and in the interregnum interim

orders has been obtained in the present writ petition styled as 'Public Interest Litigation.'

9. This Court in exercise of powers under Article 226 of Constitution of India, is not expected to go deep into the fact as to the convenience or otherwise of the location of the school building, and it appears from the materials placed that the respondents have taken into consideration the relevant aspects and reached the conclusion to locate the High School Building in S.No.23/6 and in the light of the facts and circumstances, it cannot be faulted with.

10. In the result, the Writ Petition is dismissed and the interim order dated 16.5.2018 granted in WMP.No.13413 of 2018 is vacated and consequently, the same is dismissed, however, in the circumstances of the case, there shall be no order as to cost. Consequently WMP.No.17375 of 2018 is closed.

11. The office of the 1st respondent is directed to communicate the copy of the proceedings dated 23.3.2018 in Na.Ka.No.7221/2018/24 to the petitioner within a period of three weeks from the date of receipt of copy of this order.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msr

To

1. The District Collector,
Erode District, Erode.
2. The Tahsildar,
Bhavani Taluk, Bhavani,
Erode District.

(Note: For filing of status report as to the progress made in the construction of High School building, the 2nd respondent is directed to file the status report with supporting documents and photographs on 20.03.2020.)

3. The District Education Officer,
District Education Office,
Old Railway Station Road,
Erode.

+1cc to the Government Pleader, S.R.No.17785

W.P.No.11483 of 2018 &
W.P.No.13413 and 17375 of 2018

LN(CO)
CS/18/03/2020



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