

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.01.2020
CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No. 4415 of 2014
and M.P.Nos. 2 & 3 of 2014

Vimala

...Petitioner

-vs-

1. The President,
Jallipatti Village,
Udumalpet Taluk.
2. The Block Development Officer,
Udumalpet Panchayat Union,
Udumalpet.
3. The Tahsildar,
Udumalpet.
4. The District Collector,
Tiruppur District. ... Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the Short-Term Tender notice in Na.Ka.No.1486/2013/A2 dated 25.09.2013 issued by the 2nd respondent and quash the same and consequentially directing the respondents to construct the lavatory at any other place other than the water tank situated in Jallipatti, Onnakkallu Village in S.F.No.54.

For Petitioner : Mr.A.S.Thambuswamy
For Respondents : Mr.D. Suriyanarayanan [R1 & R2]
Ms.A.Sri Jayanthi
Special Govt. Pleader [R3 & R4]

ORDER

Heard Mr.A.S.Thambuswamy, learned counsel for the petitioner, Mr.D.Suriyanarayanan, learned counsel for the respondents 1 and 2 and Ms.A.Sri Jayanthi, learned Special Government Pleader for the respondents 3 and 4.

2. With consent of learned counsel on either side, the writ petition itself is taken up for final disposal.

3. This writ petition has been filed praying for issuance of a writ of certiorarified mandamus to quash the short term tender notice dated 25.09.2013 issued by the 2nd respondent and consequently direct the respondents to construct lavatory at any place other than the water tank situated in Jallipatti, Onnakkallur Village in S.F.No.54.

4. At the time when the writ petition was entertained, an interim order was granted. A report was filed by the Block Development Officer/2nd respondent that the construction was commenced and the toilet complex has not been put to use because of the interim order. The question is as to whether the location of the toilet complex is justified. The land in which the Public Toilet has been constructed is S.F.No.54. The "A" register shows that the said survey number has been subdivided into various survey Numbers and from which the subsequent part of the subdivided survey numbers are shown as Water Body and Public Works Department Channel. The sub-divisions being 54/B1, 54/B2B, 54/B5A, 54/B5C, 54/B6B, 54/B7B, 54/C1B, 54/C1D, 54/D1, 54/D2, 54/D3, 54/D4 and 54/D5. Apart from such classifications, there is a Well in survey No.54/B5B. Thus, it is seen that the extent of land in survey No.54 is essentially a Water Body/Water Channel. Therefore, it would be highly improper on the part of the second respondent to construct the toilet in the said area.

5. The classification of the land has not been disputed by the second respondent in the counter affidavit and the second respondent seeks to justify their action by filing additional counter affidavit dated 13.11.2019 stating that the Public Works Department had inspected the type of construction and found that there is no possibility of contamination and the Public Toilet Construction is located 40 meters from the Water Tank and 32 meters from the Public Well. However, the second respondent has stated that there is a duty cast upon him to protect a water body. The sketch, which has been certified by the Village Administrative Officer clearly shows that the Toilet Complex is nearer to the Water Body as well as the Well.

6. The argument of the learned counsel for the second respondent is that the District Collector sanctioned the funds. Though money would have been spent for the construction of Toilet Complex that cannot be a ground to sustain the construction because larger public interest has to be looked into. Even if there is any possibility for seepage there should be preventive action for preservation of water bodies and ensuring pollution free and precautionary principle has to be applied and if it is done then the location of the Toilet

Complex has to be definitely shifted and relocated to a different place.

7. For the above reasons, the writ petition is allowed and the respondents are directed to relocate the Toilet Complex in a different location and the District Collector is directed to sanction the requisite funds. The second respondent is directed to demolish the Toilet Complex, which has been put up and restore the land to its original position. These directions shall be complied with by the respondents within three (3) months from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CJ Conf)

// True Copy//

Sub Assistant Registrar

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To

1. The President,
Jallipatti Village,
Udumalpet Taluk.
2. The Block Development Officer,
Udumalpet Panchayat Union,
Udumalpet.
3. The Tahsildar, Udumalpet.
4. The District Collector,
Tiruppur District.

+1cc to Mr.A.S.Thambuswamy, Advocate, SR.No.72.
+1cc to Mr.D. Suriyanarayanan, Advocate, SR.No.74.
+1cc to Government Pleader, SR.No.454.

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NMI (CO)
CSR: 24.02.2020