



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.4464 of 2021

Iyarkai Valam Matrum Perumpalla
Odai Padukappu Nala Sangam,
rep. by its President K.Shanmugasundaram,
(Register No.83/2013)
424, Avarangattu Thottam,
Kathirampatti Village,
Kathirampatti Post,
Erode District - 638 107.

.. Petitioner

Vs

1. The Secretary to Government,
Land Administration Department,
Fort St. George,
Chennai - 600 009.
2. The District Collector,
District Collector Office,
Erode.
3. The District Revenue Officer,
Erode.
4. The Revenue Divisional Officer,
Erode.
5. The Tahsildar,
Erode.
6. The Assistant Director,
Department of Land Survey and Land Records,
Erode.
7. The Block Development Officer,
Panchayat Union,
Erode.



8. The Commissioner,
Erode Corporation, Erode.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the respondents to refrain from disturbing or altering the Perupalla Odai i.e. R.S.No.147/3 and R.S.No.163 in Kathirampatti Village in the name of smart city scheme and to act according to the interim order dated 16.12.2015 in W.P.No.36135 of 2015 by considering the petitioner's representation dated 22.12.2020.

For Petitioner : Mr.T.Mohan
for M/s.M.Guruprasad

For Respondents : Mr.P.Muthukumar
Counsel for the State
for respondents 1 to 7

: Mr.R.Shunmugasundaram
Advocate-General
assisted by
Mr.M.Rajamathivanan
for 8th respondent

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The matter pertains to the proposed beautification of a perumpallam odai in Erode under the Smart City Mission sponsored with more than Rs.100 crore of funding by the Union Government.

2. The matter has been taken up on several occasions upon the petitioner's complaint that in the name of beautification, a natural water channel was being completely destroyed and devastated and amusement areas, entertainment parks, recreational spots together with eateries and like facilities were proposed to be constructed in what is essentially a wide and green channel which sees flowing water during the rainy season, but may dry up at other times.

3. When the matter last appeared, the State emphasised that the embargo on the construction by a previous order of this court should be lifted since a large amount was at stake and the inability to utilise the funds would cause irreparable prejudice. On the other hand, the petitioner advised caution



since a green patch was being attempted to be substantially converted into concrete, albeit a part of the channel being left untouched. It was at this stage that the court required the environmental impact assessment report pertaining to the project to be produced.

4. The State has relied on several documents, including G.O. (Ms) No.35 issued by the Municipal Administration and Water Supply (MA2) Department on April 11, 2017, the minutes of the Eighth Smart City High Powered Project Sanctioning Committee held on January 9, 2019, the approval of the Tamil Nadu Urban Finance and Infrastructure Development Corporation Limited for "Development of Perumpallam Odai Project", a notification dated September 14, 2006 issued by the Ministry of Environment and Forests and a document said to be the Environmental, Social and Stakeholder Consultation Report, which appears to have been adopted on October 11, 2013.

5. The petitioner, however, refers to the 2006 notification issued by the Union Ministry of Environment and Forests. The notification appears to have been issued under the authority of the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986. Such notification mandates prior environmental clearance from the concerned regulatory authority before embarking on any work in respect of certain classified projects. Paragraph 4 of the notification categorises projects and activities. Paragraph 5 refers to an Expert Appraisal Committee at the level of the Central Government and a State Expert Appraisal Committee at the level of the State or the Union Territory. The notification otherwise includes the prescribed form in which applications need to be made. Certain norms pertaining to the appraisal of a project, including public consultation and the like, are also detailed. The schedule to the notification covers several projects in various sectors ranging from materials processing to manufacturing to physical infrastructure and buildings. Clause 8 in the schedule covers "Building/Construction projects/Area Development projects and Townships." Sub-clause (a) thereunder deals with buildings and construction projects. The fourth column indicates that if the relevant building and construction project covers 20,000 square metre or more and up to 1,50,000 square metre of built-up area, in case the facilities are open to sky, it will be considered as an activity area. What the schedule and the entries quoted above imply is that such a project would require prior environmental clearance. In addition, a note appended to the schedule stipulates that if any project or activity is located in whole or in part within 10 kilometre of the boundary of certain specified areas, including ecologically sensitive areas, special clearance would be required.



6. The report that the State and the official respondents rely on and which appears at pages 63 to 134 of the typed-set of documents filed by the eighth respondent covers environmental assessment and the like, but appears to have been prepared by the stakeholders internally and no clearance obtained from any regulatory authority in terms of the notification of 2006 and the applicable provisions of the Act of 1986 or the Rules framed thereunder.

7. The petitioner points out that it was the categorical submission on behalf of the State that the total area on the sides of the odai has been broken into eight tenders to facilitate the simultaneous working thereof and each of the areas independently tendered is less than 20,000 square metre.

8. The petitioner insinuates that the division of the totality of the construction into lots below 20,000 square metre in each case cannot be a coincidence, but is a ploy to try and escape the rigours of the 2006 notification and the requirement of obtaining prior environmental clearance for the project.

9. What is undeniable is that there is no environmental impact assessment report prepared, nor any clearance obtained from any regulatory authority. A, B and C collaborating on a project may produce a well-intentioned report on the impact of the project on the environment; but that cannot be a substitute for the clearance envisaged under the 2006 notification and the statute and rules governing the same.

10. Indeed, there is considerable substance in the petitioner's assertion that the entirety of the construction, which appears to be in the range of 1,50,000 square metre, should be seen as one and such a project involving such level of construction mandatorily requires clearance from the regulatory authority, which has not been considered by the respondents.

11. Since the matter boils down to a clearance under the Environment (Protection) Act, 1986 or the Rules framed thereunder, it is best that the matters complained of by the petitioner are left free to be carried to the National Green Tribunal and the Bench thereof exercising jurisdiction over the area of Erode City. Apart from the fact that the requirement of an environmental impact assessment report or the effect of the project not having appropriate environmental clearance are matters which ought to be dealt with the National Green Tribunal, even if theoretically, the Tribunal constituted for matters environmental may also be presumed to have greater domain knowledge in respect of such matters.

12. Since a large area is involved and the enormity of the



project would irreversibly change the course of a water channel, it is necessary that the merits of the matter be addressed. Accordingly, the petitioner is left free to approach the National Green Tribunal at the Bench exercising jurisdiction over Erode with all points raised herein. The National Green Tribunal would do well to get to the bottom of the matter and assess the environmental feasibility or viability of the project.

13. The injunction restraining any further work of the project being undertaken will continue for a period of six weeks from date. If the petitioner approaches the National Green Tribunal within four weeks from date, the National Green Tribunal will consider whether it would be appropriate to extend the interim order or limit or vary or modify the same. It is made clear that the National Green Tribunal may not be embarrassed in any manner in vacating or modifying or substituting the order in accordance with law.

14. W.P.No.4464 of 2021 is disposed of with liberty to the petitioner to approach this court in respect of the same project if jurisdictional constraints impede the National Green Tribunal in addressing any aspect of the matter. The observations herein should not unduly influence the National Green Tribunal in the proceedings that may be brought by the petitioner before such Tribunal. The National Green Tribunal will be free to pass such orders as may be appropriate and in accordance with law.

There will be no order as to costs. Consequently, W.M.P.Nos.8983, 5091, 5092 and 9221 of 2021 are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sasi

To:

1. The Secretary to Government,
Land Administration Department,
Fort St. George,
Chennai - 600 009.



2. The District Collector,
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Panchayat Union,
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8. The Commissioner,
Erode Corporation, Erode.

Copy to:

National Green Tribunal,
Kalas Mahal,
Kamarajar Salai,
PWD Estate, Chepauk,
Triplicane, Chennai
Tamil Nadu - 600 005

+1cc to Mr.M.Rajamathivanan, Advocate, S.R.No.34541
+1cc to Mr.M.Guruprasad, Advocate, S.R.No.34664

W.P.No.4464 of 2021

LN (CO)
SU (27/07/2021)