



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2022

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**S.A. (MD)No.627 of 2010**

WEB COPY

C.Nalla Thangam

... Appellant/Respondent/Plaintiff

Vs.

Agasteeswaram Town Panchayat,  
Rep. By its Executive Officer,  
College Road,  
Agasteeswaram Village,  
Agasteeswaram Taluk,  
Kanyakumari District.

... Respondent/Appellant/Defendant

**Prayer:** Second appeal filed under Section 100 of C.P.C., against the Decree and Judgment dated 18.06.2008 made in A.S.No.73 of 2007 on the file of the Principal Subordinate Judge, Nagercoil, reversing the Decree and Judgment dated 16.11.2005 made in O.S.No.433 of 2002 on the file of the II Additional District Munsif, Nagercoil.

For Appellant : Mr.P.Thiagarajan  
For Respondent : Mr.R.Ragavendran,  
Government Advocate.  
\* \* \*

### **J U D G M E N T**

The plaintiff in O.S.No.433 of 2002 on the file of the II Additional District Munsif, Nagercoil, is the appellant in this second appeal.

2. The suit has been filed for permanent injunction and mandatory injunction. The local body was shown as the defendant. The local body was proposing to put up a public toilet in the suit property. That necessitated filing of the said suit. Based on the divergent pleadings, the trial Court framed the necessary issues. The plaintiff examined himself as P.W.1 and two other witnesses were examined on his side. Ex.A.1 to Ex.A.9 were marked. A Panchayat official was examined as D.W.1. Ex.B.1 to Ex.B.4 were marked. An Advocate Commissioner was appointed and his interim report, final report and plan were marked as Ex.C.1 to Ex.C.3. After consideration of the evidence on record, the trial Court by judgment and decree dated 16.11.2005 decreed the suit as prayed for. Aggrieved by the same, the local body filed A.S. No.73 of 2007 before Principal Sub Court, Nagercoil. By the impugned judgment and decree dated 18.06.2008, the decision of the trial Court was reversed and the appeal came to be allowed and the suit came to be



dismissed. Challenging the same, this second appeal came to be filed.

3. The second appeal was admitted on 07.01.2011 on the following substantial questions of law:-

" 1. Whether the finding of the lower appellate Court that the nuisance alleged by the appellant herein / plaintiff was not proved is perverse?

2. Whether the lower appellate Court has committed an error in law in not considering the absence of certificate from the Health Officer as required under Section 33 of the Tamil Nadu Public Health Act, 1939? "

4. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellant and set aside the impugned judgment and decree and restore the decision of the trial Court.

5. Per contra, the learned Government Advocate appearing for the local body submitted that the impugned judgment and decree passed by the first appellate Court does not call for any interference.

6. I carefully considered rival contentions and went through the evidence on record.

7. The local body had admittedly spent public funds and put up the public toilet. The suit property admittedly does not belong to the appellant herein. The local body had put up the toilet on the land belonging to the Panchayat. Merely because a public toilet had been put up in the vicinity, the appellant cannot complain that it constitutes nuisance and that therefore, injunction could be granted. However, the appellant is entitled to demand that the local body must maintain the public toilet in a hygienic condition so that it does not pose health hazard to the persons residing in the vicinity.

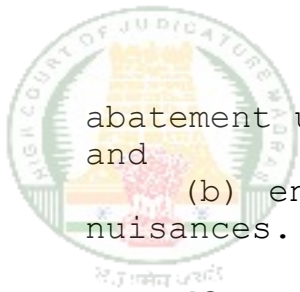
8. Under Section 37 of the Tamil Nadu Public Health Act 1939, every local authority is obliged to provide public sanitary conveniences. It is this statutory obligation that has been discharged in this case. Hence, the trial Court could not have granted the decree of injunction restraining the local body from putting up the public toilet. Sections 42, 43, 44 and 45 of the Tamil Nadu Public Health Act are as follows:-

#### **42. Detection of nuisance**

Every urban local authority shall-

(a) cause its local area to be inspected from time to time with a view to ascertain what nuisance exist therein calling for

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abatement under the powers conferred on such authority by this Act ;  
and

(b) enforce the provisions of this Act in order to abate such nuisances.

#### **43. Information regarding nuisance**

Any person aggrieved by a nuisance in any local area may give information of the same to the Health Officer or any other Officer of the public health establishment of the local authority.

#### **44. Power of Health Officer to abate nuisance**

If the Health Officer is satisfied, whether upon information given under Section 43 or otherwise of the existence of a nuisance, he may, by notice require the person by whose act, default or sufferance the nuisance arises or continues, or, if that person cannot be found, the owner or occupier of the premises on which the nuisance arises or continues, to abate the nuisance and to execute such works and take such steps as may be necessary for that purpose : Provided that-

(a) where the nuisance arises from any defect of a structural character, the notice shall be served on the owner of the premises ;  
and

(b) where the person causing the nuisance cannot be found and it is clear that the nuisance does not arise or continue by the act, default or sufferance of the owner or the occupier of the premises, the Health Officer may himself forthwith do what he considers necessary to abate the nuisance and to prevent a recurrence thereof.

#### **45. Power of local authority to abate nuisance**

If the person, on whom a notice to abate a nuisance has been served under section 44, makes default in complying with any of its requirements within the time specified therein, or if the nuisance although abated within such time is, in the opinion of the local authority, likely to recur on the same premises, the local authority may arrange for the execution of any works necessary to abate the nuisance or to prevent its recurrence, as the case may be, and may recover the cost from such person as if it a tax due to the local authority. "

Therefore, even while answering the first substantial question of law against the appellant, the respondent / local body is directed to maintain the public toilet in a hygienic condition so that it is not a source of nuisance.

9. The second contention of the learned counsel appearing for the appellant is that without complying with the requirement under Section 33 of the Tamil Nadu Public Health Act, the local body could not have put up the suit public toilet. Section 33 of the Tamil Nadu Public Health Act is as follows:-



**33. Prohibition of occupation of new building without drains**

No owner of any building constructed or reconstructed after the commencement of this Act in any urban local area shall occupy it, or cause or permit it to be occupied, until he has obtained a certificate from the Health Officer that the building has been provided with sufficient means of drainage.

Section 33 of the Tamil Nadu Public Health Act applies only to individuals and not to a local body. The second substantial question of law is also answered against the appellant.

**10.** The decision of the first Appellate Court is sustained with the aforesaid directions. This second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PMU

**Note:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

**To:**

- 1.The Principal Subordinate Judge,  
Nagercoil.
- 2.The II Additional District Munsif,  
Nagercoil.
- 3.The Executive Officer,  
Agasteeswaram Town Panchayat,  
College Road,  
Agasteeswaram Village,  
Agasteeswaram Taluk,  
Kanyakumari District.



**COPY TO:-**

The Section Officer,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai. (2 Copies)

+1 CC to M/s.SPL GP ( SR-11825[F] dated 14/03/2022 )

S.A.(MD)No.627 of 2010  
11.03.2022

sp (CO)  
GC (28.04.2022) 5P 7C