



W.P.(MD) No.21986 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
23.06.2022	04.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.(MD) No.21986 of 2021
and
W.M.P.(MD) No.18601 of 2021

A.Wins Anto

... Petitioner

-VS-

- 1.The District Collector
Kanyakumari District
Nagercoil
- 2.The Executive Engineer
Kodayar Irrigation System WRD/PWD
Nagercoil, Kanyakumari
- 3.The Assistant Executive Engineer
Pazhayaru Irrigation Sub Division, WRD/PWD
Nagercoil, Kanyakumari District
- 4.The Tahsildar
Thovalai Taluk, Boothapandi
Kanyakumari District



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5.The Superintending Engineer
Tamilnadu Urban Habitat Development Board
Madurai Circle, No.161, K.K.Nagar
Opposite to Jawahar Hospital, Madurai-20

6.The Executive Engineer
Tamilnadu Urban Habitat Development Board
Tirunelveli Division, NGO B Colony Extension
Perumalpuram, Tirunelveli-627 007

7.Baldwin Bruce
[R7 is impleaded vide Court Order dated
23.03.2022 in W.M.P.(MD) No.2927 of
2022]

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus forbearing the respondents from putting up construction or altering the physical nature of the land in S.No.558/7, Kumarapuram Village, Thovalai Taluk, Kanyakumari District, considering the petitioner's representation dated 30.11.2021.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.P.Thilakkumar
Government Pleader for R1 to R6
No appearance for R7



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ORDER

P.N.PRAKASH, J.

Alleging that Survey No.558/7 of Kumarapuram Village, Thovalai Taluk, Kanyakumari District, wherein, tenements for the underprivileged are proposed to be constructed by the fifth respondent, would not be an ideal location, the petitioner herein has filed the present public interest litigation for a direction to forbear the respondents from constructing the same.

2. Heard Mr.G.Prabhu Rajadurai, learned counsel for the petitioner and Mr.Veera Kathiravan, learned Additional Advocate General, assisted by Mr.P.Thilak Kumar, learned Government Pleader appearing for the respondents 1 to 6.

3. Mr.G.Prabhu Rajadurai, learned counsel for the petitioner, submitted that in the revenue records, Survey No.558/6 of Kumarapuram Village has been classified as “நீர்வழி விளக்கி”, which is a water channel and the same runs through Survey No.558/7 and hence, no construction should be put up there. He further contended that the approach to the proposed site is a tank bund abutting Athikulam tank in Survey No.660 of Kumarapuram



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Village and therefore, if dwelling houses are constructed, there is every possibility of the tank being polluted.

4. Mr.G.Prabhu Rajadurai, learned counsel, took us through the proceedings dated 01.10.2020 of the District Collector, Kanyakumari District, in support of his contention that there is a “நீர்வழி விளக்கி” in that area. He also contended that the authorities have sliced the tank bund and therefore, if the water in the tank rises, there is every possibility of the tank bund giving way and the entire area getting inundated. It is his further allegation that the Public Works Department, which is in-charge of the water tank, would not have given their approval under normal circumstances, but, since the District Collector has already identified the proposed site, they have not objected to his decision.

5. In response to the aforesaid allegations, the District Collector, Kanyakumari District, has filed a detailed counter affidavit, dated 27.04.2022, wherein, *inter alia*, he has stated that the Tamil Nadu Urban Habitat Development Board is proposing to construct houses for the economically weaker section, who are living in urban local bodies, for which the Revenue Department has identified the land in Survey No.558/7 in Kumarapuram



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Village. He has also stated that 700 meter long bund has been strengthened in order to provide an approach road for the proposed tenements.

6. It appears that all the authorities, including Public Works Department, Hill Area Conservation Authority, District Fire Officer, Department of Geology and Mining, Kanyakumari District, Agricultural Engineering Department and Forest Department, have given clearance for the project and the layout has also been approved by the District Town and Country Planning Authority on 26.04.2021. Based on that, building permission approval has also been obtained from the Executive Officer of Aralvoimozhy Town Panchayat, on 11.05.2021 and the project has been registered with the Real Estate Regulatory Authority, Chennai, on 02.08.2021.

7. As regards the contention of the petitioner that there is a “நீர்வழி விளக்கி”, in Paragraph Nos.7 and 8 of the counter affidavit of the District Collector, it is stated as follows:

“7. It is submitted that allegations in paras 1 to 6 are concerned most of the alleged paras are pertaining to the writ petitioners personal matters out of which few are the revenue matters. It is admitted that the said Tank is situated at R.S.No.660 of



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Kumarapuram village. But from this tank only 53.6 acres alone benefited. Moreover to this tank only 17 cubic feet of water can come through the inlet kal but 100 cubic feet of water can pass through the surplus weir. Moreover from this tank the water is being let out through 2' RCC hume pipe to the field and other tanks The said pipe was erected away from the said property of S.No.558/7. Moreover it is pertinent to note that the property comprised in RS.No 558/7 is stated about 23 meter away from the said Marugal Odai and 75 feet away from the said Tank. As such absolutely there is no possibility to obstruct the water flow from the tank and thereby will not affect the agriculture operation in the surrounding lands. The provisions available for overflow such as underground pipe, surplus weir and marugal odai which are located away from the scheme area are well enough to

discharge the surplus water to lower areas used for agricultural purpose without affecting project site in Sy.No.558/7.

Moreover there is no wild stream running through the land in Sy.No.558/7 and during rainy season the excess water overflowing through the surplus weir provided in the Athikulam tank which is located in Sy.No.660 as alleged by the petition. It is submitted that the pipes which was installed by the



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public work department did not crossing (or) passing the said land and the same is not in any manner connected with the proposed construction. As such it does not affect the agriculture operation in the surrounding lands.

8. It is respectfully submitted that with regarding to the averments of the petitioner in para 8 of the affidavit the same is denied. The land in S.No. 558/7 is classified as Government Puramboke Barren Natham(Theerval Erpatta Tharisu) lands having an extent of 0.99.0 hectares as per the available revenue records. It is clearly indicated that neither the wild stream nor the excess water from Athikulam tank passes through this land. There is a surplus weir in the tank beyond the proposed land to pass the excess water from the tank. There is no high tension power cable also passing through the said land. In reality the land is actually preserved without any change. Rather it is more preserved because by raising the existing level of the ground, the same would be protected. There is no connection between the tank and the said land directly or indirectly. Therefore the tank and the quality of water is ought to be preserved as it is in its own nature.”



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8. Thus, a reading of the above shows that the “நீர்வழி விளக்கி” is a natural outlet for draining rain water during monsoon and the same is not an open one, but through a 2' RCC hume pipe, which has been erected away from the proposed site in Survey No.558/7.

9. Mr.G.Prabhu Rajadurai, learned counsel, fairly submitted that he is not alleging any statutory violation, but only contending that the proposed site in Survey No.558/7 would not be suitable for the project and there are other Government lands in that area.

10. In the absence of any statutory violation, this Court cannot interdict a project on the grounds urged by the petitioner and direct the Government to put up the project elsewhere. After all, the proposed site belongs to the Government and they have, after obtaining statutory clearance from all the independent expert bodies, like Hill Area Conservation Authority, Department of Geology and Mining and Forest Department, began the construction by putting up 336 columns. Therefore, they cannot be asked to shift the place, just because, the present site appears to be not congenial from the standpoint of the petitioner.



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11. In the result, the writ petition is devoid of merits and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[P.N.P., J.]

[R.H., J.]

04.07.2022

Index : Yes / No

Internet : Yes / No

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