



W.P.No.7838 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.7838 of 2023
and
WMP No.8088 of 2023

Saravanan

... Petitioner

-Vs-

- 1.The Secretary to the
Government of Tamil Nadu
Municipal Administration and Water Supply
Secretariat, Fort St. George
Chennai-600 009.
- 2.The Director of Town Panchyat
Town Panchayat Directorate
M.R.C. Nagar,
Raja Annamalaipuram
Chennai-600 028.
3. The District collector
Erode-638 011.
4. The Commissioner
Kanjukvil Town Panchayat, Erode District.
- 5.Mr.Manikanda Prabhu



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6.Indirani

7.Kumuthavalli

8.Kannammal

9.Avanashiappan

10.Kailasam

11.A.Sivaraj

12.Selvaraj

.. Respondents

[R5 to R10 impleaded vide order dt.18.4.2023 made in
WMP No.9432 of 2023 in WP.No.7838 of 2023 by NAVJ)

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, to direct the respondents not to construct the proposed Park in S.No.234/1, 234/3, 236/5 and 236/6 to the extent of 3.42 acres situated in Kanjikovil Perundurai, Erode District, by considering the petitioner's representation dated 18.02.2023.

For Petitioner Mr.TN.Rajagopalan
for Mr.V.Anandhamurthy

For Respondents Mr.S.Silambanan
Additional Advocate General
Asst.by:
Mr.S.Arumugam
Government Advocate
for R1 to R3

Mr.C.Arun Kumar
Government Advocate
for R4



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ORDER

This writ petition has been filed for the issue of a writ of mandamus directing the respondents not to construct the proposed Park in the subject property measuring an extent of 3.42 acres situated in Kanjikovil Perundurai, Erode District, by considering the representation made by the petitioner on 18.02.2023.

2.The matter came up for hearing on 18.4.2023 and this Court heard the learned counsel on either side in detail and the following order was passed by this Court:

Heard Mr.T.N.Rajagopalan, learned counsel appearing on behalf of the writ petitioner, Mr.Silambanam, learned Additional Advocate General appearing on behalf of the 4th respondent and Mrs.M.N.Sumathy, learned counsel for impleaded respondents.

2. On the conclusion of the hearing, this Court expressed its mind and informed the learned counsel for the petitioner that the nature of dispute that is being agitated before this Court cannot be decided in the writ petition and that if there is any violation of the terms of the gift deed that was executed in favour of the panchayat, the issue can be decided only before a competent Civil Court. This is in view of the fact that the panchayat has become the exclusive owner of the property by virtue of the gift deed and the panchayat is not holding the property in its



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capacity as a trustee as is the case with the OSR lands that are gifted at the time of getting approval for a layout.

3. The learned counsel for the petitioner seeks for some time to think over the matter and also to take instructions from the petitioner.

4. Post this case under the caption for “Part heard case” on 24.04.2023.

3. When the matter was taken up for hearing today, the learned counsel appearing on behalf of the writ petitioner submitted that pursuant to the above order, he took instructions from his client and a decision was taken to workout the remedy before the Competent Civil Court. The learned counsel for the petitioner submitted that liberty must be granted to the petitioner to workout his remedy before the Competent Civil Court.

4. The learned counsel for the petitioner further brought to the notice of this Court the allegation that was made in paragraph 4 of the affidavit filed in support of the writ petition and for appreciation, the same is extracted hereunder:

'4. I submit that the above said gifted land has not been utilized for the purposes specified by the donors till date. There is a water body namely Vavikkulak is there from the year 1950 in the 4th respondent Panchayat, and its storing capacity is upto 48.70 lakhs to 1.31 crores of liters of water, now



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the said Canal is highly polluted due to mixing of sewage water. The said pond was neither desilted nor cleaned at any point of time by the 4th respondent. The seepage water from the Lower Bhavani project is the main source of pond during monsoon season and rain water is another source by which it recharges the ground water level. The said water is of great use during the summer season.

5.The learned counsel pointing out to the above allegation, submitted that for the public interest, this Court may consider issuing directions to the official respondents to clean up the Vavikkulam Pond, which is now in dire straits since the seepage water is let into the Pond.

6.The learned Additional Advocate General appearing on behalf of the 4th respondent-Panchayat submitted that the seepage water has not been let into the Pond and it is being maintained and infact license is given to the persons by granting fishing rights in the said pond. The learned Additional Advocate General submitted that if the Pond is in such a bad shape, there is no question of giving fishing rights since the fishes cannot survive if the Pond is unclean.

7.In the considered view of this Court, the issue that has been raised at paragraph no.4 of the affidavit has nothing to do with the actual dispute that was raised by the petitioner in this writ petition. In any case, the said dispute has to be worked out only before



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the Competent Civil Court. However, considering the fact that the allegation has been made regarding a water body with a storing capacity of nearly 1.31 crore liters of water, this Court wants to satisfy itself that the Pond is maintained well and if really it is getting polluted, to ensure it is clean-up to safeguard public interest and the environment.

8.In the light of the above discussion, this writ petition is disposed of in the following manner:

(a) The main grievance that was raised by the petitioner is left open to be agitated before the Competent Civil Court. The order passed in this writ petition will not have any bearing and it will be considered by the Competent Civil Court, on its own merits and in accordance with law. and ;

(b) There shall be a direction to the 4th respondent – Panchayat, to file a status report before this Court with regard to the condition of the Vavikkulam Pond, in order to enable this Court to satisfy itself that the Pond is being properly maintained. If there is any pollution in this Pond, steps shall be taken to clean the Pond and sustain the same for the betterment of the environment in and around the Pond.

9.Accordingly, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.



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10.Post this writ petition under the caption “for filing status report” on **12.06.2023**,
on the second direction **8(b)** that was given by this Court.

24.04.2023

KP

Internet : Yes/No

Index : Yes/No

Speaking Order:Yes/No

Neutral Citation :Yes/No

To

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Government of Tamil Nadu
Municipal Administration and Water Supply
Secretariat, Fort St. George
Chennai-600 009.

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N.ANAND VENKATESH, J.



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