



WP (MD) No. 9342 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**RESERVED ON: 20.06.2023
PRONOUNCED ON: 21.12.2023**

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)No.9342 of 2015
and
WMP(MD)Nos.1 and 2 of 2015**

A.Rajapandian

... Petitioner

Vs

1.The District Collector,
Nagercoil,
Kanyakumari District.

2.The Assistant Director,
Rural Development Department,
Nagercoil,
Kanyakumari District.

3.The Block Development Officer /
The Commissioner,
Pazhavilai,
Kanyakumari District.

4.The President,
Dharmapuram Panchayat Union,
Dharmapuram Panchayat,
Kanyakumari District.

... Respondents



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of certiorari calling for the records relating to the impugned communication of the 3rd respondent in proceedings Na.Ka.No.A2/1662/2015 dated 02.06.2015 and quash the same.

For petitioner : Mr.S.Alagusundar
For Respondent : Mr.J.K.Jeyaseelan,
Nos.1 and 2 Government Advocate
For Respondent : Mr.S.Satheesh Kumar
No.3
For Respondent : No appearance
No.4

ORDER

This writ petition was filed in the year 2015 by the then Ward Member of Dharmapuram Village Panchayanth as against the tender notice invited by the 3rd respondent in Na.Ka.No.A2/1662/2015 dated 02.06.2015.

2.By the notice impugned in this writ petition, the Commissioner, Rajakkamangalam Union has invited tenders for construction of public toilet adjacent to the Etha Library Building.

3.The case of the petitioner is that the 3rd respondent has attempted to construct a toilet within 14 feet from the existing borewell. The learned Counsel



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for the petitioner submits that for utilising the Member of Parliament Fund, the 3rd respondent has hurriedly invited the tender for construction of public toilet adjacent to the borewell and the 3rd respondent has neither followed the relevant provisions of law nor got any permission from the 1st respondent District Collector before issuing the impugned notice. He also submits that the 4th respondent Panchayat President has also raised objections to construct the toilet and despite the same, the 3rd respondent has proceeded with the construction.

4. This Court while entertaining the writ petition in the year 2015 has passed an interim order on 12.06.2015 that even if the tenders are opened, the results shall not be declared until further orders of this Court. Thereafter this writ petition was taken up for hearing in the year 2023. The 3rd respondent has filed a counter stating that the proposed construction is 20 feet away from the existing borewell and it is not a proposal to construct a new toilet and the proposal was only to renovate the public toilet, which was in existence in the library building and it would not affect the water source available under 60 feet of the borewell from the ground level. It is further stated that the existing toilet was not in use for the past several years and therefore, it is in an unhygienic condition. This counter affidavit was filed in the year 2015. However another report has also been filed



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before this Court on 20.06.2018 that in view of the interim order passed by this

Court, they have constructed a toilet in the nearby place.

5.This Court considered the rival submissions made and perused the materials placed on record.

6.The invitation of the tender by the 3rd respondent for construction of the public toilet is challenged in this writ petition. The petitioner was the ward member of the panchayat. He has taken a stand that the proposal for construction of toilet was objected to by the President of the panchayat. From the report of the 3rd respondent, it appears that in order to utilise the MP fund ,the 3rd respondent has proposed for construction of the toilet. This Court in the earlier occasion has appointed an Advocate Commissioner by order dated 06.04.2023 to find out the ground reality. Accordingly the Advocate Commissioner has caused inspection on 22.04.2023 and filed a report that a new toilet was constructed in the year 2017-2018 and the distance between the toilet and the borewell is 11.01 feet only, the distance between the old toilet and the new toilet is 1.5 feet, the distance between the toilet and the drinking water tape is 4 feet, the distance between the old toilet and borewell is 22 feet, the distance between old septic tank



and borewell is 21 feet, the distance between the old septic tank and the drinking water tap is 16 feet and the new septic tank is situated at the back side of the new toilet and the distance between borewell and the septic tank is 24.06 feet.

7. Even prior to the independence, during the British period, in order to have a proper public health an Act was enacted during the year 1939 as Tamil Nadu Public Health Act, 1939 [in short 'the Act']. This Act mandates supply and maintenance of drinking water by the local bodies and it also mandates periodical checking of quality of water. Section 32 of the said Act stipulates conditions for construction and closure of cesspool and the same is extracted hereunder:

“32. Construction and closure of cesspool – (1) No person shall construct a cesspool

(a) beneath any part of any building or within fifty feet of an tank, reservoir, water-course or well or within such other distance therefrom as the Health Officer may consider to be practicable having regard to the circumstances of the locality; or

(b) within any local area, or outside such area, but within three hundred feet of any reservoir used for the storage of filtered water to be supplied to such area, except upon a site and in a position which have been approved in writing by the Health Officer.

(2) The Health Officer may, at any, time, by notice, require



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any person within whose premise any cesspool is constructed in contravention of sub-Section (1) to remove such cesspool or to fill it up with such material as may be approved by him.”

8.The cesspool was not defined in the Act. However this Court had an occasion in a second appeal in **S.Kamatchi Vs G.Saraswathy** reported in 2011 (1) CTC 458 to discuss the term 'cesspool', wherein this Court has defined it as synonym to 'septic tank'. As per the Act, there cannot be any septic tank within 50 feet of any tank, reservoir, water course or well and it is the duty of the Health Officer to ensure the same. As per the report of the Advocate Commissioner in this case, there is drinking water tape within 4 feet from this toilet. There was an old toilet and the distance of the septic tank and the old toilet is 16 feet from the drinking water tank.

9.This Court while entertaining this writ petition has granted an interim order not to proceed with the tender process. This interim order has not been vacated so far. The 3rd respondent has taken a stand in the counter filed in the year 2015 that it is not a proposal for construction of a new toilet, but it is only for renovating the old toilet, which was in existence in the library building. However a



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contrary stand has been taken in the year 2018 that a new toilet was constructed in the adjacent place, to the place earlier fixed by them for construction of toilet.

From this report it appears that in order to utilise the funds of Member of Parliament, they have hurriedly constructed the public toilet without even considering the parameters, as required in the Act. Even though the writ petition is pending, the 3rd respondent was particular in constructing the toilet may be on the compulsion of the Member of Parliament or the reasons best known to him. The fact remains that public toilet has been constructed within 4 feet from the drinking water tape and the distance between new septic tank and the borewell is only 24.6 feet. The public money has been utilised and the construction has been completed. Now they are taking a stand that this toilet is very much useful for the library building. In the earlier report they have stated that the library building is in dilapidated condition and it was not in usable condition. Instead of utilising the fund for renovating the library building, they were very particular in constructing the toilet.

10. Since the toilet has already been constructed by utilising the public money, this Court is not inclined to pass any further orders. However, this Court directs the 1st respondent/ the District Collector, to look into the issue if possible to



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have a personal visit, find out whether the toilet constructed is causing any inconvenience to the person using the public tap and shall take necessary steps in accordance with the the Tamil Nadu Public Health Act, 1939. The officials are expected to execute the projects in accordance with law and if they are violating the same, the District Collector shall initiate necessary action as against the concerned officers, who are responsible for construction of the toilet adjacent to the public water tank.

11.The writ petition is disposed of in the above terms. No costs.
Consequently connected miscellaneous petitions are closed.

21.12.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No

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To

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Kanyakumari District.
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B.PUGALENDHI, J.

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