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W.P.(MD)NO.11980 OF 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.11980 of 2024 AND
W.M.P.(MD)Nos.10661 & 10663 of 2024

G.Namasivayam

... Petitioner

Vs.

1. The District Collector,
Karur District, Karur.
2. The Commissioner,
Kulithalai Municipality,
Municipality Office,
10, Old Hospital Road,
Kulithalai – 629 104,
Karur District.
3. The Join Director,
Regional Directorate of Municipal Administration(RDMA),
253, Rajaji Kalaimandram Building,
Bretts Road, Hanging Garden,
Salem – 636 007.
4. The Chief Educational Officer,
O/o.the Chief Educational Officer,
District Collector's Office,
Karur.
5. The District Educational Officer(Primary),
O/o.the District Educational Officer,
Opp. to Karur Municipality Office,
Karur.



6. The Head Master,
Municipality Middle School,
Mariyamankoil,
Kulithalai.

7. The Executive Officer,
Neelamegaperumal Thirukovil,
Town Hall Street,
Kulithalai.

8. A.Matheshwaran

(R-8 is impleaded vide order dated 14.06.2024
in W.M.P.(MD)No.11123 of 2024)

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to remove the toilet constructed near to Hanuman temple situated in Town survey No.3 and 10 of Block 11 and Ward No.D, Town Hall street, Kulithalai, Karur District on the basis of the petitioner's representation dated 29.05.2024.

For Petitioner : Mr.K.Govindarajan,
for Mr.A.Thirumalai Raja.

For R-1, R-3,R-4
R-5 & R-6 : Mr.K.Balasubramanian,
Special Government Pleader.

For R-2 : Mr.AN.Ramanathan

For R-7 : Mr.Arun Swaminathan

For R-8 : Mr.B.Saravanan,
Senior counsel,
for M/s.Saravanan Associates.

* * *



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ORDER

Heard both sides.

2. The only question that calls for consideration in this writ petition is whether Kulithalai Municipality is entitled to construct toilet adjacent to the seventh respondent temple.

3. The toilet is proposed to be constructed for the benefit of 200 boy students studying in the sixth respondent school. The stand of the local body is that the toilet was originally in existence and that it had become dilapidated and that is why, a new construction is being put up. The learned counsel appearing for the petitioner as well as the learned counsel appearing for the seventh respondent submitted that originally, there was sufficient space between the temple and the earlier structure and that the present construction is being put up by committing encroachment on a public street.

4. The learned Senior counsel appearing for the impleaded respondent would argue that the writ petition suffers from the vice of



laches. According to him, the work order was issued in January 2024 and that the construction has come up substantially and if further works are restrained at this point of time, it would definitely affect the interests of the students.

5. I carefully considered the rival contentions.

6. The seventh respondent temple is a few hundred years old. It is coming under the purview of the HR&CE Department. A compound wall measuring 8 feet height has been constructed and the boys' toilet is located within the compound wall and it will be only for the exclusive use of the children studying in the school and this is not going to be used as a public toilet. Since the construction is within the compound wall already put up, neither the petitioner nor the seventh respondent can have any objection. At the same time, I cannot disregard two objections raised by the learned counsel appearing for the petitioner as well as the learned counsel appearing for the temple; (a) there is no provision of set back area and (b) encroachment on a public street. When buildings are put up by the local body or the Government, prior permission from the planning authority is not required. Section 58 of the Tamil Nadu Town and



Country Planning Act, 1971 however envisages that any development undertaken on behalf of the Government or the local authority will have to conform to the planning norms. It reads as follows:-

“ 58. Development undertaken on behalf of any State Government or Central Government or local authority.-

(1) When any department of any State Government or the Central Government or any local authority intends to carry out development of any land or building, the officer-in-charge thereof shall inform, in writing, the planning authority concerned the intention to do so, giving full particulars thereof, and accompanied by such plans and documents atleast thirty days before undertaking such development:

Provided that in case where any local authority is the local planning authority under this Act, it shall inform the fact of any such proposed development to the regional planning authority concerned within whose jurisdiction such local authority is situated.

(2) Where a planning authority concerned or the regional planning authority concerned, as the case may be, raised any objection to the proposed development on the ground that the development is not in conformity with the provisions of any development plan under preparation or for any other material consideration, the officer of the State Government, Central Government or any local authority, as



the case may be shall-

(i) either make necessary modifications in the proposals for development to meet the objections raised by the planning authority concerned, or

(ii) submit the proposals for development together with the objections raised by the planning authority concerned to the Government for decision.

(3) The Government, on receipt of the proposal for development together with the objections of the planning authority concerned shall, in consultation with the Director, either approve the proposals with or without modifications or direct the officer to make such modifications in the proposals as they consider necessary in the circumstances and the officer concerned shall be bound to make such modifications as proposed by the Government.”

7. That apart, encroachment on a public street cannot be permitted. I therefore direct the first respondent to cause survey to be conducted by the Taluk Surveyor. This shall be done immediately and without any delay. The petitioner as well as the seventh respondent are permitted to place their case in writing before first respondent. The first respondent will pass a speaking order on the petitioner's representation on the basis of the revenue record as well as the outcome of the survey



exercise. If the two objections flagged in this order are found to be correct, then the construction cannot go on. If the planning norms have been violated and there has been encroachment on the public street, then the consequences will have to follow. The first respondent should complete this exercise within a period of three weeks from the date of receipt of a copy of this order.

8. Objection has been raised only regarding the construction of the boys' toilet adjacent to the temple. There is absolutely no objection as regards the construction of the girls' toilet. I am told by the learned Standing counsel appearing for the local body that the construction of the girls' toilet has been put on hold. It shall be resumed immediately. I direct the first respondent to ensure that mobile toilets are available in sufficient number to cater to the needs of the children(boys and girls) studying in the sixth respondent school. This shall be done forthwith. Since the local body is responsible for sanitation, the first respondent can get it done through the local body.

9. At the same time, the impleaded respondent cannot be left high and dry. I find considerable force in the submission of the learned Senior counsel that the contractor cannot be blamed at all. He is after all carrying out the work order assigned to him. Therefore, if the District



Collector, Karur upholds the stand of the petitioner / R7, then the implicated contractor has to be paid for the work already carried out by him in terms of the agreement. Payment shall be made to the contractor without any delay. This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

14.06.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes/ No

PMU

Note : Issue order copy on 19.06.2024.

To:

1. The District Collector, Karur District, Karur.
2. The Join Director,
Regional Directorate of Municipal Administration(RDMA),
253, Rajaji Kalaimandram Building, Bretts Road, Hanging Garden,
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O/o.the Chief Educational Officer, District Collector's Office,
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G.R.SWAMINATHAN,J.

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