



C.R.P.(MD)No.1837 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.1837 of 2023

and

CMP (MD) No.9190 of 2023

1.Shenbagamani
2.Jothi

: Petitioners/
Petitioners 1 and 2/
Plaintiffs

Vs.

1.Baskar Raja

: 1st Respondent/
3rd Petitioner/
3rd Plaintiff

2.Dheebalakshmi
3.Block Development Officer,
Office of the Sivakasi Panchayat Union,
Sivakasi Taluk,
Virudhunagar District.

4.Director,
Office of the Town and Country Planning,
Hakim Ajmilkhan Road,
Chinnachokkikulam,
Madurai District.

5.Assistant Electricity Engineer (Distribution),
Tamil Nadu Electricity Board,
Sithu Rajapuram,
Sivakasi Taluk,
Virudhunagar District.

6.Assistant Executive Engineer (Distribution),
Tamil Nadu Electricity Board,
Pariapatti,
Sivakasi East,
Sivakasi Taluk,
Virudhunagar District.

: Respondents 2 to 6/
Respondents 1 to 5/
Defendants



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PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the order passed in IA No.2 of 2023 in OS No.170 of 2019 on the file of the District Munsif Court, Sivakasi, dated 17/04/2023.

For Petitioner : Mrs.P.Jessi Jeeva Priya
For 1st Respondent : Dispensed with
For 2nd Respondent : Mr.M.Ashok Kumar
For R3 and R4 : Mr.J.Ashok Kumar
Additional Government Pleader
For R5 and R6 : Mr.S.Deenadhayalan
Standing Counsel

ORDER

This civil revision petition has been filed seeking to set aside the order, dated 17/04/2023 passed in IA No.2 of 2023 in OS No.170 of 2019 by the District Munsif Court, Sivakasi.

2.The facts in brief:-

The suit in O.S No.170 of 2019 was filed by the plaintiffs seeking the relief of permanent injunction and for costs. The defendants entered appearance and filed their written statement also. Pending further process, a petition was taken out by the plaintiffs who are the



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petitioners herein and the first respondent in IA No.2 of 2023 seeking appointment of Commissioner with the following averments:-

'The suit mentioned properties are the residential house sites. The plaintiffs are residing in the property by putting up houses. But the 1st defendant within the residential area, started running business of printing and binding work. If any such nature of work is put up, then there will be noise and water pollution and apart from that, causing inconvenience to the public. A complaint was given to the Pollution Control Board and they also inspected the property and filed a report that in the event of establishment of business of printing and binding work, pollution will occur. So, the main suit filed seeking various relief as stated above. If the Commissioner is appointed and inspect the suit property, the actual work or the business carried on by the 2nd defendant will come into record.'

3.That was resisted by the respondents herein on various grounds.

4.After hearing both sides, the trial court thought it fit to dismiss the petition stating that absolutely,



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no necessity for appointment of Commissioner in the facts and circumstances of the case. The case must be proved in accordance with law by leading evidence.

5.Against which, this civil revision petition has been preferred.

6.The grievance of the petitioners is that the 2nd respondent herein/2nd defendant is running a printing and binding business by installing heavy machineries and because of the continuous running of the machineries, there is noise and water pollution in that area. The 2nd respondent has no right to put up any such commercial business affecting the safety and health of the local residents. To ascertain that only, they wanted the Commissioner to be appointed.

7.Per contra, the learned counsel appearing for the 2nd respondent would submit that they are not running any such business in that area, but they are running a small cottage industries, which does not have any effect upon the atmosphere.



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8.Now whatever it may be, when the plaintiffs alleges that because of the running of the business, there is noise and water pollution, it must be proved through oral and documentary evidence. So, without proving the same, the Commissioner petition has been taken out. The Commissioner cannot assess the noise and pollution and for ascertaining the fact that any machineries are available in that locality, that can also be proved through evidence.

9.So, I am of the considered view that the steps taken by the petitioners is a premature one. If during the course of evidence and if in the opinion of the trial court, any necessity arises to assess the ground situation, appointment of Commissioner may be taken, either by the trial court on its own motion or at the instance of the petitioners herein. Even during the course of the trial process, either the parties or the court *suo motu* request the assistance of the officials of the Pollution Control Board to resolve the issue. In that event, they may visit the suit property and give opinion.

10.In the result, this civil revision petition stands **dismissed**. But however, in the opinion of the trial court during the course of the evidence,



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appointment of Commissioner is required for ascertaining the pollution or the physical features, as the case may, this petition can be revived either by the petitioners or by the trial court *suo motu*. No costs. Consequently, connected Miscellaneous Petition is closed.

12/03/2024

Index:Yes/No
Internet:Yes/No
er

To,

- 1.The District Munsif,
Sivakasi,
Virudhunagar District.
- 2.Block Development Officer,
Office of the Sivakasi Panchayat Union,
Sivakasi Taluk,
Virudhunagar District.
- 3.Director,
Office of the Town and Country Planning,
Hakim Ajmilkhan Road,
Chinnachokkikulam,
Madurai District.
- 4.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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