

W.P.(MD)No.16032 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 28.11.2024

Delivered On : **28.02.2025**

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.16032 of 2024

and

W.M.P.(MD)Nos.13934 and 19740 of 2024

A.Renuka

... Petitioner

Vs.

1.The District Collector,
Theni,
Theni District.

2.The Commissioner,
Cumbam Municipality,
Cumbam,
Theni District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, restraining the second respondent in constructing the toilet in front of the petitioner's property situated in Mariamman Koil Street, Cumbum Town, Theni District, on the basis of the representation dated 12.07.2024.

For Petitioner	: Mr.Sricharan Rengarajan, Senior Counsel For Mr.C.Jeganathan
For 1 st Respondent	: Mr.D.S.Neduncheliyan Government Advocate
For 2 nd Respondent	: Mr.K.Hema Karthikeyan Standing Counsel



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ORDER

The Writ Petition is filed, restraining the second respondent in constructing the toilet in front of the petitioner's property situated in Mariamman Koil Street, Cumbum Town, Theni District, on the basis of his representation, dated 12.07.2024.

2.The petitioner herein is the owner of the land in Survey No. 856/1B1 in Town Survey No.17/3A1, ward B, Block No.10, to an extent of 2242 square feet situated at Mariamman Kovil Street, ward No.20, Cumbum. The land originally belonged to her father and thereafter, he had executed a settlement deed in favour of the petitioner, on 14.07.2006, by document No.2575 of 2006 on the file of the Cumbum Sub Registrar Office. The petitioner is enjoying the same without any interference or hindrance. Earlier the second respondent had constructed a public toilet, which was blocking the petitioner's pathway to her plot and the said toilet was not properly maintained by the second respondent. A temple, namely, Mariamman Temple, is existing nearby the said vicinity and the existence of such a public toilet had been a big menace to the general public, since the said area is too much congested for public use. Due to the non-maintenance of the said toilet, the entire area had become suffocating because of the bad stink, which emanated from that public toilet. Hence, the people of the entire area and also the petitioner made a request to close



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the said toilet and also protested to close down the unusable toilet. Based on the said protest for the last one year, the said toilet was closed by the second respondent. However, the second respondent is trying to put up a construction of toilet in the said place, by totally blocking the petitioner's access to her plot. Out of the 30 feet of her western face of her plot, the second respondent is trying to block 25 feet of her access. In view of the said construction, the petitioner is not able to access her property. Hence, the petitioner made a detailed representation to the respondents on 12.07.2024 and the public also had given a representation to the respondents on 12.07.2024, requesting to stop the construction of the said toilet. However, no positive action has been taken at the end of the respondents and hence, this Writ Petition came to be filed by the writ petitioner, seeking to restrain the second respondent from constructing the toilet in front of the petitioner's property situated in Mariamman Kovil Street, Cumbum Town, Theni District, on the basis of the representation given by the petitioner dated 12.07.2024.

3.The learned Senior Counsel appearing for the writ petitioner submitted that the petitioner's property consists an area of 2242 square feet and the same is situated in Mariamman Kovil Street. To the west of the property of the writ petitioner is her access from the road. To the north of the writ petitioner's property is a Vinayagar temple. Another temple namely, Mariamman temple is also situated in the same street very nearby



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to the petitioner's property and the said temples were frequented by hundreds of devotees every day. The public toilet, which was situated to the west of the writ petitioner's property earlier had been a menace to the petitioner as well as the general public, due to the improper maintenance of the same, which had resulted in malodorous environment in the said vicinity. It was only because of the objection raised by the general public, including the objection of the petitioner and also the protest made by the general public in the said area to close down the said public toilet, the same was closed before a year. However, without consulting the people of the area, the second respondent is indulging to put up a toilet in the said place by blocking the petitioner's access to her plot. In the presence of two more public toilets within a distance of 100 meters in the same street, the necessity for the construction of a new toilet near a temple is highly unwarranted and hence, the petitioner had made a representation along with the general public on 12.07.2024. However, even after the same, the second respondent has not responded properly and has geared up the ongoing construction. Hence, the second respondent has to be forbearred from further carrying out the construction and pressed for allowing the Writ Petition for the welfare of the common public and for the petitioner to access her property without any hindrance.

4. Since at the time of admission, an interim order of stay was passed by this Court in this Writ Petition, a vacate stay petition was also filed by



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the respondents in W.M.P.(MD)No.19740 of 2024.

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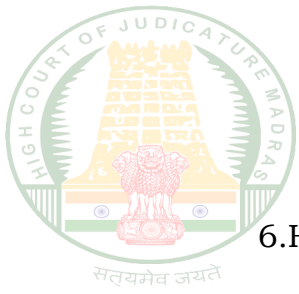
5.The learned Government Advocate appearing for the second respondent categorically submitted that the second respondent had constructed a toilet in Kambarayar Temple street long back even before 2004. During the year 2004, when the aforesaid toilet was in a dilapidated condition, the same was demolished and thereafter, it was decided by the second respondent to put up a new toilet in the same place as early as in the year 2004, after duly passing a resolution in this regard by the second respondent Municipality on 31.08.2024. Only thereafter, a public toilet for ladies was constructed in the said place in the year 2004 and the same was functioning till the last year and only because of the condition of the building, which was dangerous, the same was closed. Thereafter, the second respondent sought permission for construction of a public toilet for gents and ladies under Clean India scheme 2.0 for the period from 2023-2024 from the Director of Municipal Administration, Chennai and accordingly, the Director of Municipal Administration gave administrative sanction and following which, a resolution was passed by the second respondent Municipality in resolution No.479 dated 21.06.2024.

Pursuant to the same, a tender was called for and thereafter, the successful tenderer one Thiru.V.Krishnan, Contractor, was also issued with a work order in this regard with a time limit for constructing the said



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toilet within a period of 9 months. It was only under such circumstances, the old toilet was demolished and the foundation works have already commenced and pillars were also erected in the said place. In fact, the petitioner is running a bar in the name and style of RRC bar. The petitioner's claim that the toilet is blocking the access to her property is not correct because she has an access behind the toilet, which would connect the main road and adjacent to the bar. The petitioner is unauthorizedly running a two wheeler parking stand in the name and style of RRC two wheeler stand near bus stand Cumbum and the said bar and the two wheeler stand are functioning for more than 5 years. The petitioner became the owner of the property in question only after the execution of a settlement deed dated 14.07.2006, in her favour by her father. However, even before she became the owner of the said property, a public toilet was in existence in the said vicinity for several years and subsequently, it was demolished in the year 2004 and reconstructed and now further it is demolished for reconstruction. Had the claim of the petitioner been genuine that the said toilet would block her access to the property situated in Town Survey No.17/3A1, she would have taken appropriate steps long before as soon as she became the owner of the said property in the year 2006 through the appropriate forum in the manner known to law. Having not done so, it is a clear case of concorded facts and on that basis alone, the Writ Petition is liable to be dismissed.



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6. Heard the learned counsel for the petitioner, the learned Government Advocate for the 1st respondent, the learned Standing Counsel for the 2nd respondent and carefully perused the materials available on record.

7. From the facts placed before me by the respective parties, it has become clear that the construction of a new toilet has been commenced by the second respondent Municipality under the Swachh Bharat Mission - Urban 2.0, by duly resolving before the Municipal Council of the second respondent municipality for construction of a public toilet for men and women. Thereafter, the second respondent sought permission for construction of a public toilet for gents and ladies under Clean India Scheme 2.2 for the period from 2023 - 2024 from the Director of Municipal Administration, Chennai. The Director of Municipal Administration, by proceedings bearing Roc.No.6450/2024/SBM-1(1) dated 07.03.2024, had permit construction of public toilet under the head community toilet, at Cumbum. Thereafter, the said proceedings was placed before the Municipal Council for further appreciation and a resolution was further resolved to proceed with the construction of the public toilet in the said vicinity. Following which, construction of community toilet for gents and ladies at ward No.7, Subramanya Kovil street in Cumbum Municipality, came to be sanctioned at an estimated amount of Rs.19.28 Lakhs, for which a public tender was also notified, in which the successful tenderer

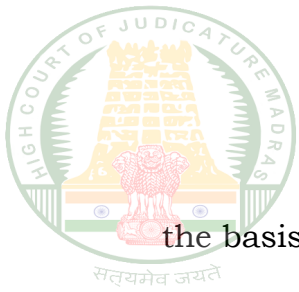


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one Thiru.V.Krishnan was also issued with the work order and the work has already been commenced and foundation laid and the same is under full progress. The time limit for the construction of the same is 9 months. The old toilet has already been demolished and foundation works are also completed and pillars have also been erected in the said place.

8.That apart, it is brought to the notice of this Court that the petitioner had never used the said building belonging to her for her personal use, but only she is running a bar in the said place and hence, the question of blocking her access will not arise at all. It is also understood that the petitioner's contention that two other toilets are available in the same vicinity within a distance of 100 meters is incorrect and that actually the toilet which is present in new bus stand is almost 450 meters from the petitioner's property and another toilet in old bus stand is also with a distance of 150 meters. However, both the said toilets are paid toilets for the common public purpose. However, the new toilet complex which is under construction is a free use toilet. The construction of new toilet is only for the advantage of the common public, who are frequenting the two nearby temples and it will not in any way cause any difficulty to the common public or even to the petitioner.

9.That apart, I am of the considered view that without challenging the resolution of the second respondent Municipality dated 13.09.2004, on



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the basis on which, the ongoing construction of the new toilet is proceeded, the writ petitioner cannot seek a relief before this Court, to forbear the respondents by means of a Writ of Mandamus, from exercising their statutory duties, which is commenced and proceeded after appropriate permission from the Director of the Municipal Administration and the Municipality Council in accordance with law.

10. Accordingly, the Writ Petition fails and the same is not maintainable. The Writ Petition is dismissed. There shall be no order as to Costs. Consequently, connected miscellaneous petitions are closed.

28.02.2025

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

To

1. The District Collector,
Theni,
Theni District.
2. The Commissioner,
Cumbam Municipality,
Cumbam,
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L.VICTORIA GOWRI, J.

Mrn

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