

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 29-08-2008

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.3582 of 2001

Nagercoil Perumalkulam Munnal
Puravu Land Owners Association,
rep. by its President,
Regd.No.51, Nagercoil, Kanyakumari.

.. Petitioner.

Versus

1.The District Collector,
Kanyakumari at Nagercoil,
Collectorate, Nagercoil.

2.Revenue Divisional Officer
Kanyakumari District,
Office of the Collectorate
Nagercoil.

3.Tahsildar,
Agastheeswaram Taluk,
Nagercoil.

4.Nagercoil Municipality
Rep. by its Commissioner,
Nagercoil.

.. Respondents.

Prayer: This petition has been filed seeking for a writ of Mandamus, directing the respondents 1 to 4 herein to take suitable, proper and effective steps to remove the encroachment in S.No.13/1, Ward-E Block, No.11 a per detailed development plan No.XXIII Map No.4 and 5 Nagercoil Local Planning area and keep the said odai as public drainage canal.

For Petitioner : Mr.V.Veluchami

For Respondents : Mr.T.Seenivasan

Additional Government Pleader (R1 - R4)

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

2. This writ petition has been filed by the Nagercoil Perumalkulam Munnal Puravu Land Owners Association. The petitioner Association has filed the present writ petition, praying for a writ of mandamus, to direct the respondents to take suitable and effective steps to remove the encroachment in S.No.13/1, Ward E, Block No.11, as per the detailed development Plan No.XXIII, Map No.4 and 5, Nagercoil Local Planning area and to keep the Odai as a public drainage canal.

3. It is stated that due to the congestion of traffic in Nagercoil Town and for the reason that a separate bus stand, for the moffusil buses and for the inter-State Transport buses, had to be built, the fourth respondent had converted the land in Perumalkulam of Vadasery into a bus stand. Due to the sudden closure of the irrigation facilities, agriculturists who were owning lands in the ayacut of Perumalkulam were put to serious hardship. Further, the rain water and sullage water, which was, originally, let into Perumalkulam had got channelised through the Odai located in S.No.13/1, Nagercoil village, Agastheeswaram Taluk. Survey No.13/1, was only an odai (waste water channel) running from South to North on the eastern side of Ward-E Block No.11. Due to the excess water and sewerage water being allowed to flow through the odai, and due to certain blockage the waste water, sullage and sewerage water overflows and immerses the nearby area, especially, during the monsoon seasons.

4. After the formation of the bus stand in the year 1988-89, several representations were made to the authorities concerned to keep the odai clean for the public purpose of drainage of water. However, certain persons had illegally encroached in Survey No.13/1, due to which the channel was getting blocked and the adjoining areas were being inundated with sewerage and other waste water. Even though the respondents are duty bound to keep the channel free of encroachments for the waste water and the sewerage water to be drained off, they have failed in their duties. On the other hand plans have been made to allot certain portions of the land to various persons and to grant them the necessary pattas. In such circumstances, the petitioner Association, has preferred the present writ petition before this Court under Article 226 of the Constitution of India, praying for the reliefs as stated therein.

5. Even though no counter affidavit has been filed, the learned counsel appearing on behalf of the respondents had stated that since the existing Anna Bus stand in Nagercoil Town was established in the year 1955, and as it was inadequate to meet the growing vehicular traffic there were demands for a more convenient place to locate the bus stand. Therefore, the Nagercoil Municipality had made a project for the Construction of Vadasery Christopher Bus Stand to serve the the requirements as a moffusil bus stand, with adequate

infrastructural facilities to cope up with the present as well as the future needs. Therefore, an extent of 9.32 acres of land in Perumalkulam Tank Poramboke, was identified as a suitable location for the construction of a new bus stand. A Government Order in G.O.No.807, Revenue, dated 16.6.89, had been issued to alienate 9.32 acres of Kulam Poramboke in T.S.No.E-11/2-2, to the Nagercoil Municipality. The Perumalkulam Tank which was having an ayacut had been converted into housing plots by the land owners. Since no cultivation was being done by the agriculturists, the permission was granted for the construction of a new bus stand in the said area.

6. It has been stated that the Vadasery Christopher Bus Stand has been provided with a pucca drainage to let in storm water, sullage water, etc., without draining them into the Perumalkulam Tank. A separate drainage having a width of about 8 feet has been created for the draining of the rain water from the adjoining areas and the sullage water through the channel in T.S.No.E-11/13-1 of Nagercoil Town. Therefore, there is no possibility of stagnation of rain water due to inadequate drainage facilities. The drains are regularly cleaned to prevent water logging, especially, during the rainy season. The Government had issued certain house site pattas to the eligible people living in the Government Poramboke land for construction of houses. However, the encroachers were not given the patta. Since slums had developed in certain areas, facilities like roads, water supply and street lights were provided to the slums for their safety and hygienic condition. Since a pucca drain was constructed connecting Dennision Road and Balamore Road, along the space provided for the storm water drain, there is no possibility of stagnation of rain water due to inadequate drainage facilities.

7. It has also been stated that the suit property in T.S.No.E-11/13-1 is a Channel Poramboke which is under the control and maintenance of the Public Works Department. As per G.O.Ms.No.168, Revenue, dated 27.3.2000, a high level committee consisting of the District Collector, the District Revenue Officer and the Executive Engineer P.W.D (irrigation), Nagercoil, had inspected the site and regularised the encroachments in the Kalvai lands by way of construction of houses and free house site pattas have been issued only to the eligible persons, on 21.2.2001. While issuing house sites pattas to the eligible persons, sufficient space has been left vacant for the alignment of forming roads, drains etc. As per the sanctioned detailed Development Plan No.XXIII, cultivated areas adjoining the suit property were converted from agricultural use to other commercial activities. Further, the level of the lands adjoining the suit property is being raised by filling of earth to prevent inundation during the rainy seasons.

8. The learned counsel appearing on behalf of the respondents had submitted that in spite of adequate drainage facilities having been provided, if any acts of illegal encroachment is brought to the

notice of the respondents, such encroachments would be removed in accordance with law.

9. In view of the averments made on behalf of the petitioner Association, as well as the respondents and on a perusal of the records available, this Court is of the considered view that the petitioner Association, has not shown sufficient cause or reason for this Court to grant the reliefs sought for in the present writ petition. It is seen that the respondents have provided sufficient drainage facilities for the free flow of excess water and sewerage water. House site pattas have been granted only to eligible persons and without causing any obstruction to the drainage system. Earth fillings have been done to heighten the bunds to prevent inundation of the low lying areas during rainy seasons.

10. In view of the undertaking given by the learned counsel appearing on behalf of the respondents, it is open to the petitioner Association, to bring specific instances of illegal encroachments to the knowledge of the respondents to enable them to take necessary steps for removal of such encroachments.

With the above observations, the writ petition stands closed. No costs

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sd/
Asst. Registrar

/true copy/

Sub Asst. Registrar

To

1.The District Collector,
Kanyakumari at Nagercoil,
Collectorate, Nagercoil.

2.The Revenue Divisional Officer
Kanyakumari District,
Office of the Collectorate
Nagercoil.

3.The Tahsildar,
Agastheeswaram Taluk,
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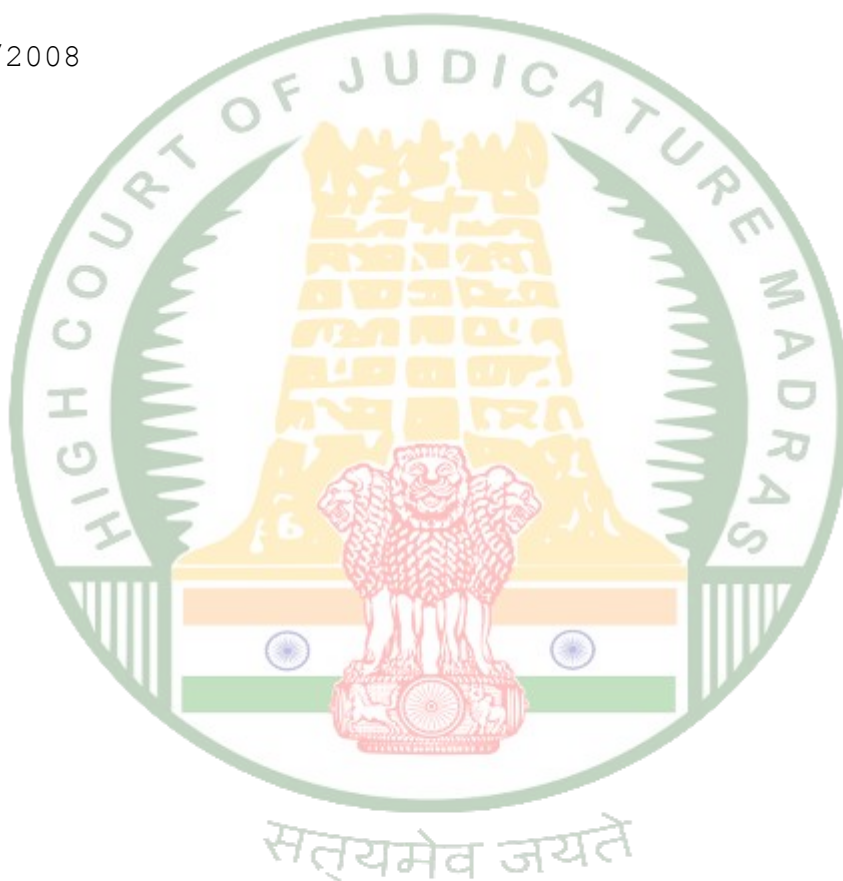
4.The Commissioner,
Nagercoil Municipality,
Nagercoil

+1 CC to Mr.M.A.Abdul Wahab, Advocate SR 49689

+1 CC to The Government Pleader in 49560

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BK (CO)
SRA 23/10/2008



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