

(2010) 02 MAD CK 0195

Madras High Court

Case No: Writ Petition No's. 14617, 18187 and 19338 of 2009 and M.P. No's. 1, 2, 1 and 1 of 2009

R. Tamilarasi, K. Selvam, K.
Vijayan and K. Amutha

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision: Feb. 4, 2010

Acts Referred:

- Constitution of India, 1950 - Article 243

Citation: (2011) 6 RCR(Civil) 2515

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: R. Nalliappan, in W.P.14617/2009, R. Ramesh, in W.P. 18187/2009 and N. Anand, in W.P. 19338/2009, for the Appellant; R. Neelakantan, GA for R1 and A. Arumugam, for R2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

Civilised Ancient India:

1 . We Indians were inheritors of a great civilisation. We are proud of Mohenjo-Daro and Harappa. Our History texts are replete with the great style of living of our forefathers.

2. The known history of "baths and bathings" is almost 5,000 years old, beginning from Mohenjo-Daro in the Indus Valley Civilisation when every house had bathrooms fitted with terra cotta pipes encased in bricks. In the remains of Harappa civilisation at a place called Lothal (62 km from Ahmedabad) sewerage system, drains and water supply systems were found in an excavation. It was the time when

people amazingly had water-borne toilets in each house and the toilets were covered with burnt clay bricks. To facilitate operation and maintenance, they had man-hole covers and chambers. It was the finest form of sanitary engineering. But, with the decline of the Indus Valley Civilisation, the science of sanitary engineering disappeared from India, only to be revived 2000 years later when French and Britishers started coming to the country.

3. Harappa village also shows evidence of building blocks separated by parallel streets, bathrooms connected by terra cotta pipes with soakage jars. In the Khukera alluvial plain, mud brick was used. But burnt bricks have also been found to have been used in drains. At Hastinapur, excavations have shown drains constructed with burnt bricks. In individual houses, several vertically placed jars with perforation at the bottom were used as soakage pits. At Mohenjo-Daro, there is a remarkable building to the west of the main street. The central focus of this building is series of rooms. The room areas, are generally alike in size and shape and were used as ablution places. At Kalibangan atop one of the platforms, there lay a series of "seven fire altars" and to the west of these altars was a well and bath pavement, suggesting ablutions before the performance of a ritual.

An area of darkness?

4. Today we have fallen from those great heights. Mahatma Gandhi said India lives in its villages. But in the present sanitation situation where 1.5 billion under-privileged people in the developing and under-developed world of Asia and Africa, (which represents 42% of the world's population and over half of those without access to sanitation) do not have access to appropriate facilities of sanitation and human excreta disposal, as a result of which they continue to suffer the huge burden of infectious diseases. Defecation in the open is still prevalent in India where 630 million people defecate in the open. Women are the worst sufferers as they have to go out before sunrise or after sunset for want of privacy.

5. Because of neglect of sanitation any hygiene, morbidity of infectious diseases like diarrhoea, cholera, viral hepatitis and enteric fever, remains almost unaltered. The high incidence of infectious diseases in the developing world which are primarily related to lack of sanitation, hygiene and safe water is also primarily responsible for the abnormally high child mortality in countries of Sub Saharan Africa and India.

What people want the most?

6. A survey was conducted among the people of U.S.A. and its result makes startling revelations. After a pre-millennium opinion poll, Time magazine of the US has reported that the people have voted sanitation as the most important invention of this century - more important than atomic bomb, space vehicles, life-saving drugs and thousands and thousands of other inventions which have made our times far too different and better than any that humankind had known in its recorded history. Toilet is one single small-time invention that has made us civilized persons to enjoy

splitting atom, probing the psyche, splicing genes, cloning sheep, inventing plastic, radar, silicon chips, television, satellite, telephone and everything else that has changed this century beyond recognition. Toilet is humankind's top achievement.

Constitutional cover for the local self government:

7. Ultimately in order to give constitutional status to our local self governments, the Constitution of India was amended and Part IX and IX-A was introduced. The panchayats were given functional authority and its elected leaders have to run the local self government. Under Article 243 W read with 12th Schedule, the powers of Town Panchayats and municipalities have been set out. Entry 6 deals with public health and sanitation. Entry 17 deals with public amenities including public convenience.

8. But when in the Respondent Town Panchayat, its elected body decided to give to its dalit inhabitants certain minimum sanitation facilities, it is shocking to note the Petitioners from the same village have come to this Court targeting the construction of public toilets. If their attempts are allowed to go, then our villages will be taken back to the era of pre-civilisation. With this back drop, let us examine the three writ petitions which are filed one after the other.

Petitions against Public Toilet:

9.W.P. No. 14617 of 2009 is filed by one Tamilarasi, who is the wife of Rajendran, residing in the 9th Ward of Chinnannan Asari Street, Kannankurichi, Salem. The prayer in the writ petition is to forbear the Respondents from constructing a public toilet in Survey No. 48/, Ayyothiyapattinam Village, Salem District. The said writ petition was admitted on 28.7.2009. Pending the writ petition, this Court directed maintenance of status quo as on 28.7.2009.

10. The Respondent Executive Officer and the President of Ayyothiyapattinam Special Selection Grade Town Panchayat have filed M.P. No. 2 of 2009 to vacate the status quo order. In the counter affidavit, it was stated that to an extent of 0.47.5 hectares in Survey No. 48/2 in Ayyothiyapattinam village was gifted to in favour of the second Respondent panchayat by a gift deed dated 20.9.2006. The said document was registered as document No. 2009 of 2006 at the Sub-Registrar's Office, Ayyothiyapattinam. The gift deed came to be made pursuant to the conditions for granting layout approval. The land is now vested with the panchayat. It is a requirement of grant of layout approval that the land owners/promoters have to gift the lands towards roads, parks, playgrounds and other common area. It is for the local body to maintain and administer the property.

11. It was stated that the first Respondent, i.e. The District Collector, Salem allocated certain funds for construction under the Anna Marumalarchi scheme for a sum of Rs. 50 lakhs to provide basic amenities for the villagers. Therefore, in the park area maintained by the Panchayat, it was proposed to construct a toilet in S. No. 48/2 to

meet public needs including attending to their natural calls when visiting the park. The said issue was brought up in the Town Panchayat meeting held on 19.2.2009. 15 members have attended the same and unanimously had decided by a resolution No. 144(5) to approve the plan. Accordingly, an administrative sanction was given by the District Collector for a sum of Rs. 3,50,000/- for construction of public toilet in the 4th ward of Chindamani Nagar. The said work was also entrusted to one Marimuthu by a work order dated 10.7.2009 and he was a successful tenderer. The project will have to be complete^d within 120 days from 10.7.2009.

12. It was further stated that once the land was gifted through a gift deed, the donor cannot have any say in the matter and it is a public property. The earmarked area for park in S. No. 48/2 was 9030 sq.ft., out of which 120 sq.ft. was occupied by toilet complex, wherein there will be six units, three for men and three for women. It was under these circumstances, a prayer was made to vacate the interim order.

13. Even when that writ petition was pending, the second writ petition came to be filed by two Petitioners, i.e. M/s.K. Selvam and K. Vi-jayan, who are residents of Ayyoithiyapattinam village, seeking to forbear the Respondents from constructing a public toilet in the Petitioners' agricultural land in S. Nos. 156/2, 156/3, 157/5 and 157/6 in Ayyoathiyapattinam village. When the writ petition came up on 18.9.2009, status quo order was passed. Reliance was placed upon the earlier order passed by this Court in the first writ petition.

14. It is the claim of those two Petitioners that they are doing agriculture in the said land and they are living there for 18 year,. They came to know that the pathway was sought to be obstructed by the construction of toilet from the funds available from the MLA local area development fund. It was claimed that not only their access will be affected, but water from the toilet will pollute their land.

15. On behalf of the second Respondent, a counter affidavit was filed. It was stated in the counter affidavit that S. Nos. 157/5 and 157/6 have been classified in the village land register as Grama natham and it was Government poramboke. It was further stated that the proposal for construction of public toilet was also there, but it was not at the entrance of the land owned by the Petitioners. The proposed construction will not affect the agricultural land. The construction of toilet is to fulfill the present needs of the people. All the rules for construction of toilet will be strictly followed.

16. It was further stated that the construction of septic tank was already completed. The toilet building has also come upto the roof level. Because of the interim order, they could not complete the process. The apprehension that there will be seepage of water was denied. It was also stated that the place where the present toilet is built is 500 feet away from the land owned by the Petitioners. There was a colony of adi dravidars in existence between the proposed place and the lands and house of the Petitioners. For the purpose of construction of toilet, due procedures were

followed calling for tenders. The funds have been allocated from Anna Marumalarchi Scheme. By construction of toilet, about 50 families will be benefited. It was unfortunate that the Petitioners stalled the entire thing by filing the present writ petition.

17. Further, another person by name K. Amutha filed a writ petition in W.P. No. 19338 of 2009 with a similar relief seeking for a restraint order directing the Respondents not to construct a public toilet in S. No. 280/1 at Karpadyachikadai, Ayyoithayapattinam. When the writ petition came up, this Court directed the Respondents to take notice and a status quo order was also granted.

Panchayat indeffence of Public Toilets:

18. On notice from this Court, a counter affidavit has been filed by the second Respondent, stating that the Respondents have chosen to construct a public toilet only in S. No. 157/5 and not in S. No. 280/1 as alleged by the Petitioner. It was not correct to state that the proposed construction of public toilet was adjacent to the property of the Petitioner. Even otherwise, there was no illegality if a toilet is built near the house of the Petitioner. The proposed public toilet will not affect the bore well or water sintex tank. It was also stated that the sintex tank will be shifted to another place proposed by the local body subject to the convenience and benefit of general public. There will not be any disturbance to the Petitioner. The apprehension seepage of sewage water into their land was denied. The construction of toilet was neither in S. No. 280/1 nor 280/3. It was located in Grama natham land belonged to the Government in S. No. 157/5. The decision to construct the toilet was taken in the panchayat meeting. The construction of septic tank was already over and the toilet also has come upto roof level. About 50 families will be benefited by the same.

19. These three matters were grouped together as they raised a similar contention. Heard the arguments of Mr. R. Nalliappan, Mr. R. Ramesh and Mr. N. Anand counsels appearing for Petitioners and Mr. R. Neelakan-tan, learned Government Advocate for the District Collector and Mr. A. Arumugam, learned Special Government Pleader for the Town Panchayat.

20. The Respondents have produced a copy of the minutes of the panchayat meeting held on 25.9.2009, in which it was stated that originally under Anna Marumalarchi scheme, the toilet was to be located at S. No. 157/6. But since stay was obtained, the approval of council was obtained to locate the toilet in S. No. 157/5. A copy of the topoplan was also produced certified by the Village Administrative Officer as well the extract of the land register. S. Nos. 157/5 and 157/6 are clearly shown as Grama natham lands. The Petitioners who are only the residents, can never have any objection for the construction of toilet, which is for public good in the village. The decision was taken by the Town panchayat and funds were allocated.

21. However the Petitioner in W.P. No. 14617 of 2009 contended that since the land was gifted only to be maintained as park, it cannot be used for any other purpose. As stated by the Respondents, the open place will be maintained as open place, but in a portion of the land and in public interest, the toilet is being constructed.

Open space not owned by Panchayats:

22. Mr. R. Nalliappan, Learned Counsel for one of the Petitioner relied upon the judgment of the Supreme Court in [Pt. Chet Ram Vashist \(Dead\) by Lrs. Vs. Municipal Corporation of Delhi](#), and placed reliance upon the following passage found in paragraph 6, which is as follows:

6. Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law.

23. He also relied upon the judgment of this Court in [M.R. Gopalakrishnan Vs. Special Officer, Corporation and Others](#), to contend that the original owner who dedicated the land continues to be the owner and it does not vest with the local body.

24. He also relied upon the judgment of this Court in R. Varadarajan and Ors. v. The Director of Town and Country Planning and Ors. reported in 2004 W.L.R. 514, wherein it was held that the housing society which promoted the housing colony cannot use the land contrary to the sanctioned layout plan much less alienate the property in favour of private individuals for any use contrary to layout plan.

Public interest was the moving factor:

25. It is not clear as to how these judgments have any assistance to the Petitioner. On the contrary, Respondents have clearly demonstrated that there was necessity to built toilet as there were 50 dalit families living in that area and further, the land in question was grama natham land. Sufficient safeguards have been taken to avoid any seepage and it is being constructed with modern ideas. It was also stated that the funds have been sanctioned and already construction was in advanced stage. But for the interim orders, it was stopped.

26. It is not clear as to the nature of objections made by the Petitioners. The Petitioners" contention that the toilet was in the land owned by them is clearly found to be erroneous. Further, it was on the way to the field or next to the land was also denied. Even otherwise when toilets are constructed inside houses, the Petitioners" objections were sentimental than of any substance. The town panchayat is an elected body. Being conscious of the public need, especially of the Dalits, they have passed resolution unanimously to construct the toilets for needy people.

27. It is not for the Petitioners to forestall such efforts made by Respondent Panchayat. Since the construction is in advanced stage, the Petitioners cannot challenge it on untenable grounds. The Petitioners have never questioned the resolutions of the panchayat. They came forward to challenge the action of the town panchayat taken pursuant to the resolution. The contentions raised by the Petitioners cannot be accepted.

Finale:

28. Hence all the writ petitions will stand dismissed. However, there will be no order as to costs. Consequently connected miscellaneous petition stands closed.