

(2016) 11 MAD CK 0037

In the Madras High Court

Case No : WP(MD) No. 21110 of 2016 and WMP(MD) Nos. 15090 to 15091 of 2016

Pulavar K. Krishnan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 10-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 MLJ 72

Hon'ble Judges : Mr. S. Nagamuthu Mr. M.V. Muralidaran, JJ.

Bench : Division Bench

Advocate : Mr. A. Thiyagarajan, Advocate, for the Petitioner; Mr. S. Chandrasekar Government Advocate, for the Respondent No. 1 to 6

Final Decision : Allowed

Judgement

1. The writ petitioner has filed this writ petition for the issuance of Writ of Certiorarified Mandamus and call for the records relating to the order Na.Ka.No.A2/1732/2016 dated 22.07.2016 passed by the 3rd respondent and quash the same and consequently, direct the respondent to construct the Health Sub Centre on the land in survey No.75/24 in at Viraiyadhakandan Village, Ilayangudi Taluk, Sivagangai District within a time limit to be fixed by this Court.

2. The case of the petitioner is that the writ petition has been filed under the Public Interest Litigation, since the petitioner is a native of Viraiyadhakandan Village in Ilayangudi Taluk, Sivagangai District and he was a retired Teacher and serving for the welfare of poor public of his and other nearby villages.

3. The petitioner further states that the Government Health Sub-Centre functioning at Viraiyadhakandan Village from 1987 for the benefit of the residents of about 10 small villages/habitants viz. Viraiyadhakandan, Panchathi, Vadukudiyiruppu (Vadugai), Sangani, Arasadi, Vadavirukkai, Kilanchunai, Thugavur, Chinna Thugalur and Karaimelkudiyiruppu which are comes under the

Viraiyadhakandan Village Panchayat and the said Health Sub-Centre is mostly beneficial to the people belong to downtrodden Adi-Dravidar Community.

4. The petitioner also come forward by saying that in the Viraiyadhakandan Village, the following offices / institutions are located:

"1. Panchayat Office of the Viraiyadhakandan Village Panchayat.

2. VAO office of Viraiyadhakandan Village.

3. Panchayat Union Primary School.

4. Agricultural Cooperative Bank.

5. Ration Shop.

6. Fertilizer Storage Centre.

7. Library.

8. Newlife Project Office.

9. Food sharing centre.

5. He also states that the Government has also extend the bus facility to the Viraiyadhakandan Village to Ilayangudi and other small villages covered under this Panchayat. Therefore, the Public all other villages under Viraiyadhakandan Village Panchayat are regularly visiting Viraiyadhakandan Village and fulfilling their day to day requirements for so many decades.

6. He also sates that the Government Health Sub-Centre functioning at Viraiyadhakandan Village from the year 1987 under the control of Government Primary Health Centre at Sooranam in Sivagangai District and the Health Sub-Centre at Viraiyadhakandan Village is being manned by a Nurse to cope up urgent medical needs of the public of this area. The fourth respondent by its letter dated 07.07.1997 has been reported as follows:-

"a. the residents of Vadukudiyiruppu (Vadugai) did not agree to provide a building on rent or free, for the functioning of the Health Sub-Centre at Vadugai, the said Health Sub-Centre is functioning at Viraiyadhakandan Village for the past more than 10 years (i.e.from 1985)

b. the site selected by the public of Viraiyadhakandan Village is situated in survey No. 75/2 in Viraiyadhakandan Village is suitable for the construction of Health Sub-Centre and this site is situated near Adi-Dravidar residential area.

c. the site selected by the public of Vadugai village at Survey No.135/6 of Vadugai village is also suitable for construction of Health Sub-Centre."

7. The petitioner also states that as per the letter No. 124546/Inn.3/97-S2 dated 21.07.1997 to the fourth respondent/ Deputy Director of Health Services, Sivagangai stating that the Health Sub Centre Site selected in Viraiyadhakandan

village is considered more suitable. Therefore, the fourth respondent is directed to take further action with the Revenue authorities to transfer the above site in the name of the Director of Public Health and Preventive Medicine. Pursuant to the above letter dated 21.07.1997 passed by the second respondent, the fourth respondent sent proposal dated 18.08.1997 to the third respondent for transfer of 6 cents of land in Survey No.75/2 in Viraiyadhakandan Village to the Public Health Department for the construction of Health Sub-Centre. The reminder was also sent by the fourth respondent on 13.03.1999.

8. The petitioner also come forward by saying that the Health Supervisor of the Primary Health Centre, Salaigramam, Ilayangudi also submitted his report dated 29.09.1998, along with the statements and representations received from the public and the same is reported as follows:-

"the proposed site at survey No.75/2 in Viraiyadhakandan village is located near three Harijan habitants viz. Karaimelkudiyiruppu, Arasadi etc where more than 400 persons were living and this proposed site is just 300 yards away from Vadugai and 1/2 Km through Tar road and the public of the above villages are demanding to locate the said Health Sub-Centre at Viraiyadhakandan village".

9. The petitioner further states that Vadugai Magalir Mandram represented by one Vallimayil has filed O.S.No.122 of 1997 before the District Munsiff Court, Manamadurai, for permanent injunction restraining the authorities for transferring the Health Sub-Centre functioning at Vadugai to Viraiyadhakandan village and on knowing about the same, since the Health Sub Centre was actually functioning in Viraiyadhakandan village, this petitioner has filed Interlocutory Application in I.A.No.408 of 1999 with a prayer to implead himself and another as defendants in the above suit for merit disposal of the said suit and the District Munsiff Court allowed the Interlocutory Application. Aggrieved against the said order, the said Vallimayil plaintiff in the suit filed in O.S.No.21 of 2000 has filed the Civil Revision Petition before the Principal Bench of this Court in C.R.P. (PD)No.3474 of 1999 and this Court was also dismissed the said Civil Revision Petition and passing the following orders:

"10.From the written statement filed by the first defendant / Deputy Director, Health Services, it is made clear that the Primary Health Centre has been located and functioning only in Viraiyadhakandan village even from the year 1987. The relevant averment in the written statement is as follows:

"tpuahjfz;ld; fpuhkj;jpYk; midj;J trjpfSk; cs;sJ/ tpuahjfz;ld; g";rhaj;jpy; jhd; \$dj;bjhif mjpfk; ,Uf;fpwJ/ Jiz Muk;g Rfhjhu epiyak; 1987y; Muk;gpf;fg;gl;L tLif fpuhkj;jpy; ,a";fp tUtjhf TwpapUg;gJ cz;ikay;y/ 1987k; Mz;L Jiz Rfhjhu epiyak; Muk;gpj;j md;wpypUe;nj tpiuahjfz;ld; fpuhkj;jpy; jhd; ,a";fp tUfpwJ"

When that being so, the prayer in the plaint "for permanent injunction" restraining the defendants 1 and 2 from shifting the Primary Health Centre from Vadugai Kudiyiruppu to Viraiyadhakandan village is "highly misconceived". The plaintiff "Mandram" has suppressed the material fact of existence and

functioning of Primary Health Centre in Viraiyadhakandan village. The Villagers of Viraiyadhakandan village would be directly affected as a result of the judgement and decree and in that view of the matter, the villagers of Viraiyadhakandan village are necessary parties to the suit."

10. In view of the order passed by this Court, Vallimayil, who is the plaintiff in the suit have not pursue the suit and hence, the same was dismissed by the learned District Munsiff Court, Manamadurai.

11. The public of the Viraiyadhakandan village have also submitted a consent letter dated 24.03.2008 to the third respondent/ District Collector for construction of Health Sub-Centre at Survey No. 75/2 in Viraiyadhakandan village. Based on the above letter, the third respondent/District Collector, Sivagangai has passed the order in Na.Ka.No.C4/35882/2006 dated 30.12.2008 and 6 cents of land bearing sub-divided Survey No.75/24 and allotted to the Public Health Department and the said fact was informed to the petitioner in letter No.5346/A5/2010 dated 23.08.2010 by the fourth respondent. Thereafter, the transfer of land has been recorded in the village records i.e. Adangal, as certified by the Village Administrative Officer of Viraiyadhakandan village on 12.11.2011.

12. Pursuant to the above, the Viraiyadhakandan Village Panchayat also passed the Resolution No.54 dated 02.10.2010 granting consent for the construction of Health Sub-Centre at Survey No.75/24 of Viraiyadhakandan village at the cost of Rs.6.38 lakhs. Thereafter, no action was taken for the last 5 years. Subsequently, after knowing about the same, the petitioner also sought for information under Right to Information Act about the inaction by the respondents by constructing the Health Sub-Centre. But, the fourth respondent in its letter dated 28.02.2003 a reply was furnished to the petitioner stating that the fund was available with the fifth respondent/ B.D.O. (Block Panchayat), Ilayangudi. Therefore, the reason stated above by the fourth respondent for non constructing the above Public Health Sub-Centre, even after the order of the third respondent/ District Collector, the fund was available with the fifth respondent/B.D.O. (Block Panchayat), Ilayangudi.

13. Thereafter, the petitioner also made another representation under the Right to Information Act to the fifth respondent/ B.D.O. in which the fifth respondent has replied that during the year 2010-2011 the third respondent's proceedings dated 08.11.2010 has been modified and the said amount of Rs.6.38 lakhs has been allotted for the construction of Ration Shop (Fair Price Shop) at Vijayangudi village in Vijayangudi Panchayat vide the third respondent's order dated 15.12.2012 alleging that there was a pending case as to the construction of Health Sub-Centre at Viraiyadhakandan village or Vadugai village.

14. The petitioner also further submits that the suit filed by the Vadugai Magalir Mandram in O.S.No.21 of 2000 has not to shift the Health Sub-Centre from Vadugai to Viraiyadhakandan was dismissed as not prosecuted by the plaintiff by

order dated 22.09.2005, by the learned District Munsiff-cum-Judicial Magistrate Court, Ilayangudi and after that there was no case pending against the Health Sub-Centre at Viraiyadhakandan village. Therefore, in the above circumstances, this petitioner has made a representation on 15.06.2014 to the fourth respondent. In fact, the petitioner has filed the writ petition in W.P. (MD)No.12645 of 2014 with a prayer to issue a Writ of Mandamus directing the respondents therein to locate the Health Sub-Centre at Viraiyadhakandan village, Ilayangudi Taluk, Sivagangai District and the Hon"ble Division Bench of this Court was disposed of the writ petition on 24.11.2015, directing the District Collector to consider the petitioner's representation dated 15.06.2014 and take appropriate action in accordance with law. Pursuant to the above order, the petitioner also sent a copy of the order to the District Collector on 04.01.2016 and the Contempt Notice was issued on 06.08.2016, but, no action was taken.

15. On receipt of the Contempt notice, thereafter only the third respondent/ District Collector sent a reply on 10.08.2016 along with a copy of the order dated 22.07.2016 passed by the third respondent / District Collector along with a copy of the Minutes dated 20.07.2016 of the meeting of a Committee consisting of Deputy Director of Health Services, Sivagangai, P.A. to Collector (Development), Assistant Director (Panchayat), Block Development Officer (Block Panchayat) and Tahsildar, Ilayangudi. As per the above letter dated 22.07.2016, it was informed by the third respondent to the petitioner that to establish the Health Sub-Centre at Vadugai instead of Viraiyadhakandan village for the reasons stated in the Committee's report dated 20.07.2016, the order dated 22.07.2016 was passed. The petitioner states that without considering all the above mentioned supra since the Health Sub-Centre is functioning at Viraiyadhakandan village from its inception in the year 1987 and 6 cents of land also transferred in Survey No.75/24 for the construction of the Health Sub-Centre, the present impugned order dated 22.07.2016 was passed. Therefore, the writ petition has been filed by the writ petitioner challenging the order dated 22.07.2016 and consequently, direct the respondent to construct the Health Sub-Centre on the land in Survey No.75/24 at Viraiyadhakandan village, Ilayangudi Taluk, Sivagangai District within a time limit to be fixed by this Court.

16. Heard Mr. A. Thiyagarajan, learned counsel appearing for the petitioner and Mr. S. Chandrasekar, learned Government Advocate appearing for the respondents 1 to 6.

17. As per the letter issued by the Director of Public Health and Preventive Medicine, Chennai-6, it is made clear that the Deputy Director of the Health Services, Sivagangai is informed that the Health Sub-Centre site selected in Viraiyadhakandan village is considered more suitable. It is also made clear that the Health Sub-Centre is functioning at Viraiyadhakandan village from the year 1987. It is also made clear that the Deputy Director of Health Services, Sivagangai also sent a letter to the third respondent/District Collector, Sivagangai District, the land in Survey No.75/2 by totally to an extent of 6 cents requesting

the District Collector to transfer the land in favour of the Director of Health Services for construction of Health Sub-Centre at Viraiyadhakandan village. Pursuant to the above letter, the third respondent/District Collector also granted permission by transferring the above said land in the name of the Director of Health Services.

18. This Court also considered this petitioner's case in the Civil Revision Petition filed by the Vadugai Magalir Mandram in CRP(PD)No. 3474 of 1999 that the Primary Health Centre is functioning only in Viraiyadhakandan village even from the year 1987. The Vadugai Kudiyiruppu is comprised in Viraiyadhakandan Village Panchayat and only Viraiyadhakandan village has all facilities and more population and hence, the above said Health Sub-Centre is located and functioning in Viraiyadhakandan village from 1987. This Court also considered that even the people of Vadugai Kudiyiruppu has not come forward to give any building for rent for locating the Primary Health Centre. Since, the Primary Health Centre has been located in Viraiyadhakandan village for more than one decade. It is recommended to give priority to the Viraiyadhakandan village to have its own building for Primary Health Centre and accordingly, the Government also take steps to putting up the construction in Survey No.75/2 and also a transfer of property was also effected. Therefore, the order passed by the third respondent/ District Collector, dated 22.07.2016 is totally wrong and against the interest of the people of Viraiyadhakandan village. Therefore, the petitioner has make out his case before this Court, since the Health Sub-Centre is functioning from the year 1987 onwards, which was not disputed by the respondents. But, all in sudden after the long years i.e. 29 years, without considering the same contrary to their own orders and violation of this Court's order passed in CRP(PD)No.3474 of 1999, the present impugned order has been passed by the third respondent, based on the report given by the Committee, which is not at all proper. When all the offices are situated in the Viraiyadhakandan village and all other facilities are available in the village and the Health Sub-Centre has functioning from the year 1987, the third respondent without gone into the same in a proper manner had passed the order after 29 years, for shifting of the Health Sub Centre from Viraiyadhakandan to Vadugai.

19. Considering all these facts, We are inclined to set aside the order dated 22.07.2016 with a direction to the respondents to construct the building for Health Sub-Centre in Survey No.75/24 at Viraiyadhakandan village.

20. In the result:

(a) this writ petition is allowed and the order of the third respondent in Na.Ka.No.A2/1732/2016 dated 22.07.2016 is hereby quashed;

(b) further a direction is hereby issued to the respondents to construct the Health Sub Centre building in Survey No.75/24, Viraiyadhakandan Village, Ilayangudi Taluk, Sivagangai District, as originally proposed by the Director of Public Health and Preventive Medicine, Chennai, by his proceedings in

R.No.124546/Inn.3/97-S2 dated 21.07.1997;

(c) the said exercise shall be completed within a period of six months from the date of receipt of a copy of this order without any further delay.

21. With the above observation, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.