

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2015

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.20903 of 2014

And

M.P.No.1 of 2014

Suraj and Chaand Towers Residents Welfare
Association, (Reg.No.591/2000)
Represented by its President
Mr.K.Venkatraman

... Petitioner

Vs.

1.The Corporation of Chennai, Rep by its
Commissioner, Ripon Building,
Chennai - 600 003.

2.The Assistant Commissioner-Zone XIII,
Corporation of Chennai,
115, Dr.Muthulakshmi Salai,
Adyar, Chennai 600 020.

3.South Chennai District Siruvyaparigal
Pothunala Sangam,
Represented by its President Natrajan

(R3 impleaded as per the order of this
Court dated 03.03.2015 made in
M.P.No.2 of 2014 in W.P.No.20903 of 2014)

... Respondents

Prayer:

Petition filed under section 226 of the Constitution of India to
issue a Writ of Mandamus directing the respondents not to use the
path way measuring to an extent of 809 Sq.mt.(Approximately 200 feet
long and 35 feet wide) for the purpose it was gifted.

For Petitioner : Mr.R.Kannan

For Respondents: Mrs.Karthikaa Ashok for R1 and R2

Mr.C.P.Moses for R3

for Mr.D.Nagasaik

O R D E R

Heard the learned counsel appearing for the petitioner and the
learned counsels appearing for the respondents.

2.The petitioner is a Welfare Association of residents of an apartment complex and they have sought for a direction to the respondent not to use the path way measuring to an extent of 809 Sq.mt., which was gifted to the petitioner to be retained as open space for the purpose of promoting hawkers to establish their shops.

3.In the affidavit filed in support of the writ petition, the petitioner has stated that they have put up construction, that they are all residents of apartment complex and that the pathway lead to the complex from L.B.Road and that the developers has gifted considerable extent of land which has to be retained as open space and if any hawkers will have to be located there, the petitioner will be put to hardship and their right to enter into the property will be affected and the purpose for which the gift deed was made will be violated and the Corporation cannot be allowed to violate the said rules.

4.From the counter it is seen that the hawkers which are said to be located in the said place have been identified by the Hawking Committee and there was initially a proposal to provide alternate site to them in Indra Nagar foot path (Northern Side). This area was objected by the residents of the Association and therefore, it is stated that the proposal has been dropped. Subsequently, another location was cited and that was also objected to by the residents Association of the area.

5.It is seen from the proceedings of the Hon'ble Chairman of the Hawking Zone Implementation Committee dated 02.07.2014, the Hawkers Association have been directed to visit two places suggested by the Corporation of Chennai namely,

'Proposal - 1:- The space available inside the Corporation Shopping Complex along the compound wall at 3rd Avenue, Indira Nagar.

Proposal - 2:- There is a 80 meter length space available at L.B.Road 3rd Street.'

6.According to the third respondent the area mentioned in proposal no.2 is more suitable and it is dead end and it will not be a hindrance to the movement of traffic.

7.The writ petitioner is aggrieved by the proposal no.2 since the 80 meter length available is an area said to have been gifted to them for the purpose of obtaining planning permission and the area is said to be a open space reservation area and should be retained as open space. Therefore, it is submitted that the place cannot be allotted for the purpose of promoting hawkers to carry on the trade and it will be not only violation of the purpose for which the land is gifted but will be of great hindrance to the land in property.

8.In my view, suitability of the space provided by the Corporation cannot be challenged in a writ petition. The expert body which has been appointed for this purpose is Hawking Zone Implementation Committee. Therefore, what are all the grievance of the hawkers or the residents have to be placed before the Hawking Zone Implementation Committee which will be looked into by the Committee.

9.Accordingly, there will be a direction to the petitioner to place their objections before the Hawking Zone Implementation Committee and produce all the relevant documents in support of their claim. After receipt of the objections, the Hon'ble Chairman, Hawking Zone Implementation Committee, shall afford an opportunity of personal hearing to the writ petitioner Association as well as the office bearers of the third respondent Association and after hearing the officials of the Corporation of Chennai shall consider as to whether the proposal no.2 as proposed by the Corporation is feasible for consideration. The petitioner is directed to submit their objections within a period of three weeks from the date of receipt of a copy of this order.

10.This writ petition is disposed of with the above observation. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Commissioner, Corporation of Chennai,
Ripon Building,
Chennai - 600 003.
- 2.The Assistant Commissioner-Zone XIII,
Corporation of Chennai,
115, Dr.Muthulakshmi Salai,
Adyar, Chennai 600 020.

- + 1 cc to Mr.R. Kannan, Advocate Sr.11817
+ 1 cc to Mr.D. Nagasaik, Advocate SR.11713
+ 1 cc to M/s. A. Karthika Ashok, Advocate sR.11709

W.P.No.20903 of 2014
And
M.P.No.1 of 2014

RSI (CO)
Eu 19.03.2015