

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2016

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.1528 of 2016

W.M.P.No.1299 of 2016

S.Thenmozhi

[PETITIONER]

Vs

- 1 Directorate of Town and Country Planning Authority
Represented by its Director
807 Anna Salai, Chennai-600 002.
- 2 The Member Secretary Local Planning Authority
Balaji Street, 5/60 IB Subramani Nagar
I Gate, Suramangalam, Salem-636005.
- 3 The District Collector
Collectorate, Namakkal-637001.
- 4 The Tashildar
Rasipuram, Namakkal District.
- 5 The Block Development Officer
BDO Office, Rasipuram Taluk,
Namakkal District.
- 6 The Village Administrative Officer
Rasipuram Taluk, Namakkal District.
- 7 N.Balasubramani
- 8 The President
Koneripatti Panchayat
Rasipuram Taluk
Namakkal District.

[RESPONDENTS]

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of Mandamus, to forbear the 8th respondent from putting up any construction of alleged Community Centre in the Land earmarked as Public Park and direct to remove the developments found in the areas reserved for public purpose measuring 11,770 sq.ft. comprised in S.F.No.114/3 in Koneripatti Village, Rasipuram Taluk, Namakkal District being

the areas as shown as Public Park in the sanctioned layout (Sanction No. D.T.C.P. No.81/2007).

For Petitioner : Mr.A.V.Arun

For Respondents :Mr.R.Vijayakumar -R3, R4 & R6
Addl.Govt. Pleader

Mr.P.Chinna Durai-R1,R2,R5 & R8
Government Advocate

O R D E R

Heard Mr.A.V.Arun, learned Counsel appearing for the petitioner, Mr.R.Vijayakumar, learned Additional Government Pleader accepting notice for the respondents 3, 4 & 6 and Mr.P.Chinna Durai, learned Government Advocate accepting notice for the respondents 1,2, 5 & 8 and with their consent the Writ Petition is taken up for final disposal.

2.The petitioner is a resident of Neela Gardens, which is said to be a layout promoted by the seventh respondent and approval has been granted by the second respondent vide D.T.C.P.No.81 of 2007. The layout consists of 36 housing plots and while approving the layout plan, an area of 11,770 sq.ft. has been earmarked for Public Park, Water Tank, Well and Temple. The allegation is that the eighth respondent attempted to put up a Community Hall/Service Centre in the land earmarked for Park.

3.The learned counsel for the petitioner has drawn the attention of this Court to the approved Layout plan, which has been filed in page No.4 of the typed set of papers, showing the area earmarked as Park. Further, reliance has also been made on the proceedings of the then President of the Panchayat dated 14.12.2007, in and by which those areas have been gifted to the Local Body.

4.The learned counsel further submitted that the land which has been transferred in favour of the Local Body and earmarked as a Park vests with the Local Body to be maintained as such and the revenue authorities do not acquire title to the property and the law on the subject is well settled, wherein it has been held that the Local Body viz. the Panchayat, Municipality or Corporation, is only a custodian of the said land. Though a Community Centre or the Hall, may sub-serve the public interest, the larger public interest would be to keep the park area free

from any constructions. In this regard, the learned counsel has referred to several decisions of the Hon'ble Supreme Court and this Court.

5. Since the writ petition is disposed of at the admission stage on notice being accepted by the learned counsel for the respondents, merits of the allegations have not been gone into and the above observations are only with effect to state the legal position.

6. In the light of the above, there will be a direction to the second respondent to consider the petitioner's representation dated 21.12.2015 and conduct an inspection of the site in question, ascertain full facts and after notice to all concerned, pass a speaking order on merits and in accordance with law, within a period of two weeks from the date of receipt of a copy of this order. Further, from the photographs produced by the petitioner, it is seen that the construction has just commenced and building materials have been stored. Therefore, till the second respondent takes a decision in the matter as per the direction issued by this Court, the status quo which is prevailing as on date (19.01.2016) shall be maintained and it shall abide by the orders to be passed by the second respondent. The second respondent is entitled to call for necessary reports from the fourth respondent, if it is required. The petitioner is directed to send a copy of the representation along with the copy of this order to the second respondent forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

To

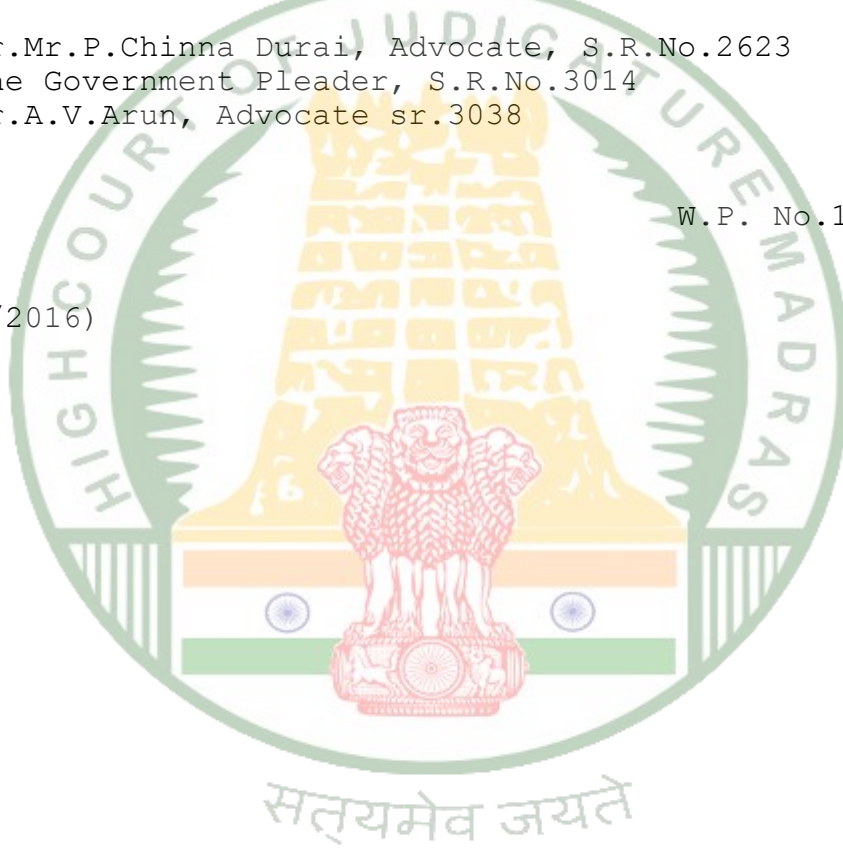
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+1cc to Mr.Mr.P.Chinna Durai, Advocate, S.R.No.2623
+1cc to the Government Pleader, S.R.No.3014
+1cc to Mr.A.V.Arun, Advocate sr.3038

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jsv(CO)
srg(22/01/2016)



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