

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.03.2016

Coram

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.40595 of 2015
and
M.P.No.1 of 2015

Vallalar (Phase -3)
Residents Welfare Association,
rep. by its General Secretary,
Mr.G.Mohan, Regd No.490/1995,
No.217/2, Double Road, Phase - III,
Sathuvachari, Vellore - 632 009.

...Petitioner

Vs.

1. The District Collector,
The District Collector Office,
Sathuvachari, Vellore District.
2. The Vellore Municipal Corporation,
Rep. by its Commissioner,
Vellore, Vellore District,
3. The Assistant Commissioner,
Zone -2, Vellore Municipal Corporation,
Sathuvachari, Vellore,
Vellore District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, forbearing the respondents 2 and 3 from converting the playground as a garbage dumping yard by putting up any construction in the place earmarked as children playground (CPS-6) at Vallalar, (Phase -III) Sathuvachari, Vellore, Vellore District.

For Petitioner	:	Mr.R.Sunil Kumar
For Respondent-1	:	Mr.R.Rajeswaran
		Special Government Pleader
For Respondents 2 & 3:		Mr.R.Muthukumarasamy
		Senior Counsel assisted by
		Mrs.P.Shanthi
		Standing Counsel for
		Municipal Corporation

O R D E R

Heard Mr.R.Sunil Kumar, the learned counsel appearing for the petitioner, Mr.R.Rajeswaran, the learned Special Government Pleader for first respondent/District Collector, and Mr.R.Muthukumarasamy, learned Senior Counsel, assisted by Mrs.P.Shanthi, learned Standing Counsel for respondent/Corporation.

2. The petitioner is a Welfare Association of residents, who are residing in Vallalar Phase-III area, Sathuvachari, and the said area is a lay-out, developed by the Tamil Nadu Housing Board. The residents of the said area have invested their hard earned money, and constructed small houses, and had been living there for several years. Now, the petitioners are aggrieved by the action of the respondent/Corporation in attempting to establish a dumping yard, termed as "Segregation cum Compost Shed", in a portion of the said area, which has been reserved as a "Park".

3. It is not in dispute and admitted by the respondent/Corporation that the entire area, measuring an extent of 17300 square feet, has been earmarked and reserved as a Park area, in the approved lay-out, developed by the Housing Board. If that is so, then, as per the decision of the Hon'ble Supreme Court in re (Pt. Chet Ram Vashist Vs. Municipal Corp. of Delhi) reported in A.I.R. (1995) S.C. 430 as well as the Hon'ble First Bench of this Court, in re (R.Chandran Vs. State of Tamil Nadu, rep. by Secretary) reported in (2010) 4 C.T.C. 737, there is no power, vested with the respondent/Corporation to convert the Park area into any other area, for any purposes, however laudable, the same may be.

4. The learned Senior Counsel for the respondent/Corporation submitted that the respondent/Corporation would admit that the entire area, measuring 17300 sq.ft., has been reserved as a Park area. The respondent/Corporation would further admit the legal position that the Park area cannot be reserved, or put to use for any other purpose. However, they seek to justify their action by stating that, only some part of it, viz., 1,600 sq.ft alone, has been proposed to be utilized for establishing the said Segregation Cum Compost Shed. In para No.3 of the counter affidavit, it is stated that the respondent/Corporation proposed to use only 1,600 sq.ft. out of 17300 sq.ft., for establishment of the Segregation Cum Compost Shed in the site, where, the garbage will be collected, segregated into degradable and non degradable wastes, and the degradable wastes, which will be segregated through that Compost Shed, will be used as manure. Further justification, the

respondent/Corporation seeks to make is, by stating that the manure, that may be generated from the Compost Shed will be utilized for the growth of trees and plants in the said Park area itself.

5. In my view, the abovesaid plea raised by the respondent/Corporation is thoroughly far fetched and misconceived. The Hon'ble Supreme Court in Pt. Chet Ram Vashist case (referred supra) held that reserving any site, for any street, open space, school, etc., in a lay-out plan, is normally a public purpose, as it is inherent in such reservation, that it shall be used by the public in general. It is further pointed out by the Hon'ble Supreme Court that the effect of such reservation is that, the owner ceased 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, which may result in creating an obligation in nature of trust, and may preclude the owner from transferring or selling his interest in it. Thus, the respondent-Corporation is a custodian of the park area, and, in no manner, act in breach of such obligation/trust.

6. In a recent decision of the Hon'ble Full Bench of this Court, in which I was a party, viz., in re (T.K.Shanmugam, Secretary Vs. The State of Tamil Nadu, and others) reported in (2015) Writ Law Reporter 1029, the Hon'ble Full Bench extensively discussed the scope of the Public Trust Doctrine and pointed out re-reservation, or re-classification of sites, classified as water bodies into lands, which could be assigned, amounted to clear breach of public trust vested with the State. In this connection, useful reference may be made to certain portions of the decision of the Full Bench, which is extracted hereunder:-

"34. In Michigan Law Review, Vol.68, No.3 (Jan.1970), Pages 471-566, Prof. Sax said that three types of restrictions on governmental authority are often thought to be imposed by the public trust doctrine, namely:

"1. the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;

2. the property may not be sold, even for fair cash equivalent;

3. the property must be maintained for particular types of use (i) either traditional uses, or (ii) some uses particular to that form of resources."

35. The Hon'ble Supreme Court in Indian Council for Enviro-Legal Action v. Union of India [(1996) 5 SCC 281], held that there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment.

36. Thus, the public trust doctrine requires that natural resources such as lakes, ponds etc., are held by the State as a "trustee" of the public and can be disposed of only in a manner that is consistent with the nature of such a trust."

7. In the instant case, while accepting the fact that the total extent of land is, 17300 sq.ft, and, it has been earmarked and reserved as Park site, there can be no justification on the part of the respondent/Corporation to carve out a portion of the land for the purpose of putting up Segregation cum Compost Shed. The Corporation, being the custodian of the said land, cannot act in breach of trust reposed on it, which enshrined on it to preserve the land as Park. Therefore, essentially, area has to be preserved as a Park area.

8. The learned Senior Counsel for the respondent/Corporation referred to the decision of this Court in W.P.No.36440 of 2015, dated 27.11.2015, in re (N.Mala and another Vs. The Director of Town and Country Planning Dept.), wherein, the petitioner sought for a direction upon Vellore Corporation not to put up any construction in the park site. The Court considered the said case, and observed that the purpose for which the extent of 2500 sq.ft. is sought to be used, is for a public purpose, and a roof is to be put up, which is not a permanent structure, and the bio-degradable waste would be converted to bio-fertilizer and used for the trees and plants in the park alone; and the waste collected from 1500 families, which would consist of unused vegetable,s and the process also would not involve any pollution. Here, the submission of the respondent Corporation is that the collected waste would be disposed without allowing them to get accumulated.

9. I have my reservation on the statement made by the respondent Corporation, as what is proposed in the part site is a segregation-cum-compost shed. Thus, any garbage, both degradable and non degradable would be brought into the area, segregated in the said site, and it is stated that Compost Shed is also to be established. This segregation process is undoubtedly bound to generate large quantities of wastes, particularly non-biogradable, as the respondent-Corporation, by

their own stand, stated that segregation will be done on the park site, which shows there is no mechanism for segregation at source. The next question would be as to when and how the segregated non-biogradable waste would be removed. The further question would be, where, they will compost the bio-degradable waste, as it would require a large compost pit with necessary steps being taken for decomposition. Therefore, eventually the park area would be further encroached upon, a compost pit being excavated etc. Bio-degradable waste would not a turn into manure by a magic wand. The action of the respondent Corporation is in clear and utter breach of their obligation cast on them to preserve a park as such. The specific stand of the petitioner that there is a school and drinking water tank near the park area, has not been denied by the respondent-Corporation. Further, the averment that are water channels running on two sides of the park area has also not been denied. The allegation that there is a compound wall around the children play area, which has been demolished and building materials stored in the play area has not been denied. That apart an extent of 1968 sq.mts of open space in S.Nos.181, 192, 193(R-12) has been handed over to the Electricity Board, and it is alleged that the Board has encroached into the adjacent lands, which has been challenged in W.P.No.1089/2010 and the same is pending. It is further stated that the District Administration and the respondent have leased out an extent of 1.27 acres of land in S.No.327, meant for park within Phase III has been leased out to be State Transport Corporation. This averment has not been denied by the respondent Corporation.

10. In the light of the above facts, the present attempt of the respondent/Corporation to establish a Segregation Cum Compost Shed, would result in disastrous consequence, which many of us may not live to witness.

11. For all the above reasons, this Court is not inclined to permit the respondent/Corporation to carve out the area of the site, which has been exclusively earmarked as a Park area, in the lay-out formed by the Housing Board for any purpose, and the same shall be utilized/preserved as Park.

12. In the result, the Writ Petition is allowed, as prayed for. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
The District Collector Office,
Sathuvachari, Vellore District.
2. The Vellore Municipal Corporation,
Vellore, Vellore District,
Rep. by its Commissioner.
3. The Assistant Commissioner,
Zone -2, Vellore Municipal Corporation,
Sathuvachari, Vellore, Vellore District

+1cc to Mr.P. Shanthi, Advocate, S.R.No.13039

+2ccs to Mr.R. Sunil Kumar, Advocate, S.R.No.13411

CA(CO)

EU(21/03/2016)

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