

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2017

CORAM

THE HON'BLE Mr.JUSTICE M.M.SUNDRESH

W.P.No.13191 of 2016
& WMP No.11560 of 2016

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

... Petitioner

Vs.

1. The District Collector,
The District Collector Office,
Sathuvachari,
Vellore, Vellore District.
2. The Commissioner,
The Vellore Municipal Corporation,
Vellore, Vellore District.
3. The Assistant Commissioner,
Zone-2, Vellore Municipal Corporation,
Sathuvachari, Vellore, Vellore District.
4. The Executive Engineer,
Tamil Nadu Housing Board, Sathuvachari,
Vellore, Vellore District.
5. The Executive Engineer,
Tamil Nadu Pollution Control Board,
Gandhi Nagar, Vellore.
6. M/s.V.M. Constructions,
Rep. by its Managing Partner Mr.Murugan,
Son of Annamalai, aged about 47 years,
No.45/A1, Rasi Arunachala Street,
Gudiyatham, Vellore.

(R-6 is impleaded as per order dated
06.01.2017 by TRJ in WMP.No.19674/2016
in WP No.13191/2016)

... Respondents

Writ Petition is filed under Article 226 of The Constitution
of India praying to issue a writ of mandamus to Forbear the

respondents from converting the open space by cutting the large trees and constructing the building to house the new Zonal Office in the space earmarked for public purpose (R-27) at Vallalar (Phase-III) Sathuvachari, Vellore, Vellore District.

For Petitioner : Mr.R.Sunilkumar

For respondents : Mr.S.Diwakar,
Special Government Pleader for R1

Mr.Silambanan, S.C., for
M/s.P.Shanthi for R2 & R3

Mr.G.K.Ilanthiraiyan for
Mr.Sai, Bharath Ilan for R6

No appearance for R4 and R5

ORDER

This writ petition has been filed by the petitioner, which is an Association of residents Phase-III of the layout approved under the Tamil Nadu Town and Country Planning Act, 1971, on the premise that a place earmarked for the Park is being used for the construction of an office by respondents 2 and 3.

2. The learned counsel appearing for the petitioner would submit that the approved lay out plan qua the lands earmarked for the public purposes has already been violated by respondents 2 and 3. Thus, irrespective of the fact that the proposed construction is in the public area or not, no construction should go on since there are standing trees. In other words, the learned counsel submits that the proposed place has to be treated as Park though not mentioned in the approved lay out.

3. An undertaking affidavit has been filed by respondents 1 to 3, wherein the following statements have been made.

"3. In the said layout plans various portion of the lands have been earmarked for various purposes such as public purpose, open space, park etc. The Municipal Corporation is maintaining the parks and utilizing the public purpose areas for the benefit of the public by putting up construction etc., to serve the public. One such endeavour was to put up a Zonal office to cater to the needs of the public in Phase III. The Zonal office is functioning in a godown in Phase -II which was

not convenient for the public and had to be located in an area suitable to the public. Hence, when it was decided to demolish and construct a new Zonal office in the same area, the respondent could not get permission as the area was earmarked for park. Hence it was decided to construct the Zonal office in Phase-III in a place earmarked for public purpose.

4. It is submitted that the Corporation will strictly adhere to the maintaining of the various purposes mentioned in the layout etc. Hence the Corporation undertakes to maintain the park areas as earmarked in the layout plans. It is submitted that once the Zonal office is constructed and the entire office is shifted from the existing godown to the proposed site in Phase III, the area earmarked as park in which the godown was existing will be developed as a park. It is also pertinent to point out that the respondent Corporation is now developing a park at the cost of Rs.47.10 lakhs under Amrut Scheme about 500 metres from the proposed area where the Zonal office needs to be constructed. The Corporation is in the process of developing and maintaining all such parks and will also develop the park area in Phase II & Phase III. The Vellore Municipal Corporation is in the process of planning and developing the Municipal Corporation as it has been selected for "SMART CITY" under the Smart City Scheme and has also been selected under Amrut Scheme and MODEL CITY Scheme."

4. From the above, it is clear that the layout contains several lands which have been earmarked for public purposes, such as, open space, children playground and parks. As per the Government Order passed in G.O.Ms.No.1730, Rural Development and Local Administration Department, dated 24.07.1974, in the zone public, Smart public use zone, and the public offices are permitted. Thus, there is no bar to put up construction in the proposed place. The proposed place is not earmarked as a park in the approved layout, which is an admitted fact. In fact, the earlier attempt made by respondents 2 and 3 in putting up construction in public area, in which, godown is existing, was rejected by the authorities concerned on the very same ground that it has been earmarked for the creation of the park, though in phase II. In the undertaking affidavit filed by respondents 1 to 3, it has been stated that the original area would be maintained as a park. The statement made in paragraphs 3 and 4 in the undertaking affidavit is hereby recorded.

5. In pursuant to the interim order passed by this Court, a report was filed by the Revenue Divisional officer. The Report states as follows:

"On 22.06.2016 I inspect, audit the approved place for the proposed construction of new office building to Vellore Municipal Zonal -II office. I found that there was a 30 trees in the Survey No.330 (PT) at Sathuvachari, and decided to removal 11 trees only for the proposed construction of Zonal Office. As per R.O.C.No.172/2016 dated 22.06.2016 ordered removal of 11 trees only.

4.All the Government rules and regulations are followed and selected the place for proposed construction new office building to Vellore Municipal Zonal -II office at Sathuvachari in Survey No.330 (PT). There was no other places except this. This place is centre of the 15 wards. There is four sides road, so the people are easily come to the office."

6. Thus, from the abovesaid report, it is clear that only 11 standing trees are sought to be removed. The due procedure has been followed. There is no other suitable place other than the proposed place. Therefore, the report of the Revenue Divisional Officer appears to be correct and therefore, the same is placed on record and accepted.

7. Coming to the other contention of the learned counsel for the petitioner that the other places, which have been earmarked for the public purposes, have been alienated by respondents 2 and 3, the same is denied by the learned Senior Counsel appearing for them. Be that as it may, the place, which is available as of now meant for public purposes including playground and parks will have to be used for the aforesaid purposes alone subject to the Government Order in G.O.Ms.No. 1730, Rural Development and Local Administration Department, dated 24.07.1974. To clarify this position, it is hereby ordered that the places which are earmarked for children playground and parks are to be maintained and developed as such for the aforesaid purposes alone and they may not be utilised for any other purposes.

8.The learned counsel appearing for the petitioner has made reliance upon the decision rendered by this Court in MAHARANI AVENUE KUDIYIRUPPOR NALA SANGAM VS. THE COMMISSIONER, TOWN AND COUNTRY PLANNING AND FIVE OTHERS (2006 (3) Law Weekly 963). This Court is afraid that the said judgment does not apply to the case on hand. In the said case, plots have been made out over a place earmarked for the public purposes, which is not the

situation here. What is proposed is a construction of an office by respondents 2 and 3 in a place which has not been earmarked either as a playground or a park. As such, the place, which has been earmarked otherwise for a public purpose can be used for the purpose of construction of an office building as stated in the Government Order referred to supra. There is no explanation forthcoming from the petitioner as to why he has not come to this Court earlier if it is of the view that some of the area earmarked for the public purpose have been utilised otherwise. This Court does not find any illegality warranting interference. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
The District Collector Office,
Sathuvachari, Vellore, Vellore District.
2. The Commissioner,
The Vellore Municipal Corporation,
Vellore, Vellore District.
3. The Assistant Commissioner,
Zone-2, Vellore Municipal Corporation,
Sathuvachari, Vellore, Vellore District.
4. The Executive Engineer,
Tamil Nadu Housing Board, Sathuvachari,
Vellore, Vellore District.
5. The Executive Engineer,
Tamil Nadu Pollution Control Board,
Gandhi Nagar, Vellore.

+1cc to Mr.R.Sunilkumar, Advocate, S.R.No.17124
+1cc to Mr.Sai, Bharath Ilan, Advocate, S.R.No.17208
+1cc to Mr.P.Shanthi, Advocate, S.R.No.17098
+1cc to the Government Pleader, S.R.No.17357

W.P.No.13191 of 2016

EV(CO)
CA(24/03/2017)