

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.26704, 25653 and 26720 of 2017
and
W.M.P.Nos.28431, 27046 and 28452 of 2017

Mr.Janakar ..Petitioner in W.P.No.26704 of 2017

Mr.Anil Kumar Pillai ..Petitioner in W.P.No.25653 of 2017

Mr.Anil Kumar ..Petitioner in W.P.No.26720 of 2017

Vs.

1. The Commissioner,
Hosur Municipality,
Hosur.

2. The Principal Secretary
to the Government of Tamil Nadu,
Municipal Administration and Rural
Development Department,
Fort St.George, Chennai-600 009.

.. Respondents in W.PNos.26704
and 25653 of 2017

1. The Commissioner,
Hosur Municipality,
Hosur.

2. The Regional Director,
Municipal Administration,
Salem.

3. The Director,
Municipal Administration,
Chennai.

4. The Principal Secretary
to the Government of Tamil Nadu,
Municipal Administration and
Rural Development Department,
Fort St.George, Chennai-600 009.

5. The District Environment Engineer,
No.149-A, First Floor, Dargah,
Sipcot, Hosur-635 109.

.. Respondents in W.P.No.26720 of 2017

Writ Petition Nos.26704 and 25653 of 2017 filed under Article 226 of the Constitution of India, praying for issuance of Writs of Mandamus to direct the first respondent to clear the garbage dumped/process in that area of public residence of the locality in the Tamil Nadu Housing Board Phase VIII, New ASTC HUDCO, Hosur and at or other nearby places.

Writ Petition No.26720 of 2017 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the first respondent not to construct any building for the process of putting up of manure yard in the area of public residence situated at Tamil Nadu Housing Board Phase VIII, New ASTC HUDCO, Hosur and at or other nearby places.

For Petitioner in all W.Ps. : Mr.K.Anbarasan
For Respondents in W.P.Nos.26704 and 25653 of 2017 :

Mr.O.Selvam, Govt. Advocate for R-1

Mr.S.Diwakar, Spl.G.P. for R-2

For respondents in W.P.No.26720 of 2017:

Mr.O.Selvam Govt. Advocate for R-1

Mr.S.Diwakar, Spl.G.P. for RR-2 to 4

Not ready in notice regarding R-5

COMMON ORDER

Writ Petition Nos.26704 and 25653 of 2017 are filed for issuance of Writs of Mandamus to direct the first respondent to clear the garbage dumped/process in that area of public residence of the locality in the Tamil Nadu Housing Board Phase VIII, New ASTC HUDCO, Hosur and/at/other nearby places.

2. Writ Petition No.26720 of 2017 is filed for issuance of a Writ of Mandamus to direct the first respondent not to construct any building for the process of putting up of manure yard in the area of public residence situated at Tamil Nadu Housing Board Phase VIII, New ASTC HUDCO, Hosur and/at/other nearby places.

3. The sum and substance of the issue raised in all these Writ Petitions is that the respondents are dumping the garbage in the locality of the petitioners and nearby residential area and that they should clear the garbage dumped in the area where the persons are residing in the Tamil Nadu Housing Board Phase VIII, New ASTC HUDCO, Hosur.

4. According to the petitioners, they have made representations requesting the authorities not to dump the garbage and perform the sterilization of street dogs and the proposal for manure compost yard and related activities are carried on, which pollutes the area as well as they are danger to the local residents. Further, the children who are playing in the park, will be mostly affected. It is the further case of the petitioners, that when the area in question is identified for residential purpose and that a park has also been earmarked in the area, even the Municipality cannot encroach upon the property that has been earmarked for the purpose of park in the map and approved plan. According to the petitioners, the respondents have identified the area and the park for dumping and within 100 meters, there is a lake and in view of the continuous dumping, there is possibility of contamination. It is reliably understood that the first respondent, without following any rules or guidelines, decided to have a manure compost yard in the area and that if the project is completed, it would cause harm to the citizens, more particularly, the residents therein and that the respondents have commenced the construction of the building in the park and the same will have to be stopped and that the respondents may be directed not to have any manure compost yard in the residential area.

5. The first respondent has filed counter affidavit stating that the relief sought for by the petitioners in these Writ Petitions, is not maintainable and it appears to be in the nature of Public Interest Litigation (PIL). The petitioners are the residents of the residential complex that was allotted by the Tamil Nadu Housing Board and there are more than 500 families in the area, apart from school, park, lake, library, playground etc. It is further stated by the first respondent that it is incorrect on the part of the petitioner in stating that garbage is being dumped in the middle of the housing colony. The issue relating to dumping of garbage has been raised by the residents even in the year 2012 by sending representations and it has been stated that the area has been identified being the corner of the colony for dumping of garbage and that the garbage was being cleared by hand carts by the scavengers appointed by the Municipality on a day-to-day basis and the entire garbage is being cleared manually. Further, mass clearing of the garbage is also resorted to by engaging the Compactor Lorry in frequent intervals. If the garbage mounts, the same will also be cleared by using JCB machine. It is further stated by the first respondent in the counter affidavit that the garbage is being cleared then and there and therefore, the residents cannot express much hardship over the same.

6. With regard to the averment that the place where the garbage is being dumped was utilised as a park, it is stated in

the counter that the park is in existence even today, and a portion of the park was utilised for the purpose of setting up of a compost yard to scientifically process the garbage and the setting up of a compost yard is a part of the process to clear the garbage, as no other place is available in the vicinity for setting up the compost yard. It is further stated that the compost yard is intended to minimise the hardship that is faced by the residents by reason of the mounting of garbage and to scientifically process the garbage collected on a day-to-day basis. This is one of the scientific process mooted by the Municipality in an effort to minimise the hardship faced by the respondents. It is further stated in the counter that even though there was a lake that served as a source of water, the dumping of garbage over the lake area is attributable only due to the negligence of the residents and the residents of the area indiscriminately litter and dump the garbage. The garbage dumped is strewn over all the corner bunds of the lakes. In spite of many efforts taken by the Municipality to sensitise the residents to segregate the garbage into able and de-able, little help is forthcoming from the residents to ensure that the garbage which is being dumped is segregated as required by the Municipality. The dumping of garbage in the lake area is an act perpetrated only by the residents in the locality. Unless the residents in the locality extend their cooperation, whatever efforts that may be taken by the Municipality will be of no use. Even the manure compost yard project mooted by the Municipality did not take off well due to various administrative reasons.

7. It is further stated in the counter that the Municipality has in fact burnt its finger and it is learning from the past failures and it is not as though the Municipality did not realise the failure confronted in the yard project. Merely because the yard project failed, the petitioner cannot take it as an advantage to criticise the Municipality. The Municipality is not closing their eyes to the woes of the residents. As there is no other alternative site, the dumping of Municipal waste is a challenging task for the Municipal officials. Wherever a site is identified, immediately the people residing in and around the locality raise their objection and resort to a strike. The residents of the locality where the petitioner is residing is no exception to it. It is needless to mention that all efforts are being made by the Municipality to prevent any disease out of the garbage dumping.

8. It is also stated in the counter that anti-dengue drive is being conducted and fogging operations are periodically undertaken. The grievance expressed by the petitioners in their representation, dated 18.02.2017 will be objectively considered and appropriate orders will be passed in accordance with law, after affording an opportunity to the petitioners and the

residents in the locality to submit their grievance in person. Though there were frequent representations made by the residents of the petitioners' locality, a report was also sent by the first respondent to the District Collector indicating that garbage is being collected in hand carts, lorries and clearance through JCB machine in periodic intervals. Such an action is being continued even today. Action is being taken to clear the garbage then and there. The dogs are sterilized to ensure that none of the citizens suffer from rabies due to street dog bite and dogs are sterilized in an area earmarked in the locality. After sterilization, the dogs are let out and therefore, the hardship that may be caused to the residents due to barking of dogs continuously is only for a few hours and even an alternative place for the same will also be considered. To allay the apprehension of the petitioners that the dumping of garbage may result in water and air borne diseases, the Municipality is taking best efforts to overcome the challenging task of dumping of garbage, for which cooperation of the residents is absolutely necessary. Without the actual participation and cooperation of the residents in dumping the garbage only in the place earmarked, it will be difficult for the Municipality to do anything in the waste management process. The construction of the yard is intended to prevent the garbage from being strewn all over.

9. It is further stated in the counter that even as admitted by the petitioners, the land where construction activity is in progress, is in Survey No.355/1 which is classified as Vari Poramboke and the Government is the paramount title holder of such land. Even before the commencement of a construction, the petitioners cannot say that a massive building is being constructed without knowing as to what is actually being constructed. The construction activity is to benefit the public at large where a manure compost yard is coming up, which would in fact benefit the residents of the locality to get the garbage segregated and processed scientifically. The construction will not only prevent the garbage from being strewn all over the locality, but also ensure collection of garbage in the place earmarked, which will enable the Municipality to scientifically process and decompose the garbage. Such construction is being made after passing appropriate Resolution by the Municipality and such construction cannot be called in question by the petitioners as it is being put up in public interest.

10. The petitioners' contention is that the area earmarked for park, cannot be converted into a manure compost yard. The learned counsel for the petitioners relied upon an order of this Court in W.P.No.35970 of 2003, dated 16.07.2012, wherein in paragraph 24, it has been observed by this Court as under:

"24. Though, the 3rd respondent has denied that no loud speakers have been used and the existence of a small temple has not affected the education of the children, what is necessary to be considered is whether an encroachment upon an earmarked area can be permitted to be continued and whether there is a failure on the part of the respondents 1 and 2 in maintaining the public amenities, such as street, park, road, etc., earmarked at the time of approving the plan by the Director of Town and Country Planning, Chennai. Once, the land has been developed into housing plots and thereafter, vested with Hosur Municipality, it is the duty of the Commissioner of the said Municipality to maintain, street, road, park and such other public amenities, without any encroachment. If any encroachment is allowed to continue by the competent authorities, then it would amount to perpetuating an illegality. Then, those who have muscle power or money or influence, can easily convert any earmarked area, as temple or for any other purpose and squat over the same and thereafter, claim immunity from encroachment laws or seek for regularisation of the usage of land on behalf of the general public and also contend that the construction put up on the said land should not be removed."

11. Heard both sides and perused the materials available on record.

12. The relief sought for in these Writ Petitions is to remove the encroachment made in the area earmarked for park as per the site plan of the Tamil Nadu Housing Board, Phase VIII New ASTC HUDCO, Hosur, approved by the Director of Town and Country Planning. In the above said case, the learned Judge has categorically observed that no one can encroach the public place earmarked and the residents have to maintain the public amenities such as street, park or road earmarked at the time of approving the plan. When once the land has been developed into housing plots, it is the duty of the Commissioner of the Municipality to maintain the street, road, or park and such other public amenities without any encroachment. What has been stated is that private parties are not supposed to encroach on the land. It is true that whenever an Open Space Reserve (OSR) place is identified as a park, no construction can be made in it, but however, it cannot be stated that a portion of the area cannot be used as a compost yard. When the citizens want the Government to remove the garbage, there should be a place for dumping the garbage and clearing it.

13. The compost yard in a small portion of the park, cannot be said to be an encroachment, as the Municipality has not encroached upon any private property. It is pointed out by the learned counsel for the petitioners that there is no alternative site identified for compost yard. It is made clear that whenever a site is identified, the people will raise objections and in that process, good efforts to clear the garbage is being stalled as contended by the first respondent-Municipality. The contention that the respondents can take the garbage to some other place, cannot be accepted, as the Municipality's efforts to dump the garbage in another place, may be objected to by the residents in that area. As pointed out by the respondents, if the petitioners want to maintain healthy atmosphere, and if they should not face any health hazard, then they must come forward to use the compost yard for removing the garbage and other waste. The contention that the compost yard should be removed and taken to some other place, cannot be accepted in the facts and circumstances of the case. However, at the best, the petitioners can do so without preventing the compost yard being constructed in a portion of the park and they should ensure that the area is litter-free zone and regular fogging operations and other measures are being taken care of by the Municipality. If there is no activity for a day on account of any other reason, there is possibility of infectious and contagious diseases being spread.

14. Though the relief sought for by the petitioners cannot be granted, when the compost yard comes, the respondents shall ensure that it is cleaned twice a day and fogging the zone is also done, more particularly during sunset to avoid mosquito breed. That apart, the residents in the area shall also cooperate in keeping with the wastage in different forms, namely degradable and bio-degradable forms of segregation of waste. Though this Court would suggest that the Corporation/Municipality concerned shall provide degradable wastage disposal bags to each and every house, as there is possibility of scam in that process, this Court is avoiding such observation. The respondents must also be aware that the provisions of the Tamil Nadu Public Health Act are not only applicable to the residents, but also applicable to the Municipal authorities. If any defects are pointed out by means of videograph or photograph by the residents with regard to the improper maintenance of the compost yard, the officers will be liable to pay costs and face prosecution as per law.

15. With the above observations and directions, the Writ Petitions are disposed of. No costs. W.M.Ps. are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
Hosur Municipality,
Hosur.
2. The Principal Secretary
to the Government of Tamil Nadu,
Municipal Administration and Rural
Development Department,
Fort St.George, Chennai-600 009.
3. The Regional Director,
Municipal Administration, Salem.
4. The Director, Municipal Administration, Chennai.
5. The District Environment Engineer,
No.149-A, First Floor, Dargah,
Sipcot, Hosur-635 109.

+ 6 ccs to M/s. D. Selvam, Advocate Sr.79096, 79097, 79098
+ 2 ccs to M/s. K. Anbarasan, Advocate SR.79480, 79481
+ 1 cc to Government Pleader SR.80159 to 80161

W.P.Nos.26704, 25653 and 26720
of 2017

NRI (CO)
EU(15/12/2017)