



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:28.08.2018

C O R A M

WEB COPY

**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

Writ Petition (MD) Nos.6029 and 6030 of 2017 &
8802 and 8803 of 2018

and

W.M.P.(MD).No.8237 and 8238 of 2018
in W.P.(MD).No.8802 of 2018

and

W.M.P.(MD).Nos.8239 and 8240 of 2018
in W.P.(MD).No.8803 of 2018

and

W.M.P.(MD).Nos.4756, 4757 and 12219 of 2017
in W.P.(MD).No.6029/17

and

W.M.P.(MD).Nos.4759, 4760 and 12220 of 2017
in W.P.(MD).No.6030/17

W.P. (MD) .Nos.6029 and 6030 of 2017

A.Lakshmi	...	Petitioner in W.P.(MD).6029/17
D.Saraswathi	...	Petitioner in W.P.(MD).6030/17

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to the Government
Fort St. George
Chennai-02.
2. The Director of Town & Country Planning,
807, Anna Salai,
Chennai-02.
3. The Deputy Director of Town & Country Planning
4, Hakkim Amalkhan Road,
Chinna Chokkikulam
Madurai-625 002.
4. The District Collector
Collectorate, Madurai Road,
Theni District 625 531.
5. The Executive Officer,
Palanichettipatti Town Panchayat,
Palanichettipatti,
Theni.



6. The Executive Officer,
Tamil Nadu Water Supply and Drainage Board,
33, Gandhiji Main Road, NRT Nagar,
Theni, Tamil Nadu 625 531.

... Respondents in both W.Ps

Prayer in both W.Ps: Petitions filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorarified Mandamus calling for the records of the 4th respondent's impugned proceedings bearing Na.Ka.No.27216/2016/C2 dated 08.03.2017 quash the same as illegal, arbitrary, excess of his jurisdiction and against the 3rd respondent's approval order bearing Ma.Va/Na.Vu.Thu.EE (MM) No.16/2011 and contrary to the provisions of the Tamil Nadu Town and country Planning Act, 1971 and consequently forbear the 4th respondent from any manner convert, vary, revoke or modify the open space in SF.No.1447/1448/3-4 for any other purpose except public park.

W.P. (MD) .Nos.8802 and 8803 of 2018

A.Lakshmi	...	Petitioner in W.P.(MD).8802/18
D.Saraswathi	...	Petitioner in W.P.(MD).8803/18

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to the Government,
Town & Country Planning Department,
Fort St. George, Chennai-02.
2. The Director of Town & Country Planning,
807, Anna Salai, Chennai-02.
3. The Deputy Director of Town & Country Planning
4, Hakkim Amalkhan Road,
Chinna Chokkikulam,
Madurai-625 002.
4. The District Collector,
Collectorate, Madurai Road,
Theni District 625 531.
5. The Executive Officer,
Palanichettipatti Town Panchayat,
Palanichettipatti,
Theni.
6. The Executive Officer,
Tamil Nadu Water Supply and Drainage Board,
33, Gandhiji Main Road, NRT Nagar,
Theni, Tamil Nadu 625 531.

... Respondents in both W.Ps

Prayer in both W.Ps: Petitions filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorarified Mandamus calling for the records of the 2nd respondent's impugned proceedings bearing Na.Ka.No.114/2017/LA1

dated 07/06/2017, quash the same as illegal, arbitrary, excess of his jurisdiction and against regulation 9(2)(d) & Regulation 9(3)(v) of Development Control Regulations for Erode/ Vellore/ Tiruvellore/ Coimbatore /Madurai / Gummudipoondi /Kaanchipuram / Salem/ Chengalpattu/ Tirrupur/ Tiruchirapalli Local Planning Area, 2010 and against the provision of the TamilNadu Town and Country Planning Area 2010 and against the provision of the Tamil Nadu Town and Country Planning Act, 1971 and consequently forbear the respondents from any manner convert, vary, revoke or modify the open space in SF.No.1447/1448/3-4 for any other purpose except public park.

For Petitioners : Mr.G.Prabhu Rajadurai for
Mr.R.Pandiyaraj
For Respondents : Mr.A.K.Baskara Pandian
Special Govt. Pleader
for RR-1 to 4
Mr.T.S.Mohamed Mohideen for R-5
Mrs.Porkodi Karnan for R-6

(In all writ petitions)

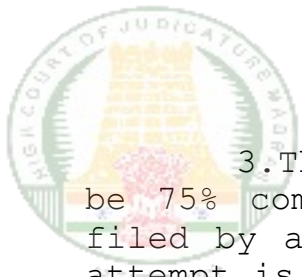
COMMON ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

Writ petition (MD).Nos.6029 and 6030 of 2017 have been filed, challenging the order of the District Collector, by which the representation made by a similarly placed person, which was directed to be disposed of in W.P.(MD).No.12085 of 2016, is put into challenge. Incidentally, the District Collector has granted permission to install Sewerage Pumping Station. A further prayer has been sought for against the Tamil Nadu Water Supply and Drainage Board, restraining them from converting the open space, which is to be preserved as public park.

Writ Petitions (MD).Nos.8802 and 8803 of 2018 have been filed by the petitioners, challenging the order passed by the Director of Town and Country Planning, by which the approved lay out was modified, giving a small portion of the land earmarked for the public purpose, which is about 8.93 % with an extent of 1097 sq.ft to be used as a Pumping Station.

2.The petitioners are purchasers of plots in the approved lay out. Sanction was accorded by the Government for the implementation of underground sewerage Scheme at five panchayats at a cost of Rs.166,38,00,000/- crores. One among the Town Panchayats is P.C.Patti Town Panchayat. They have found that there is no other alternative Government land available and a small extent of land in Sy.No.1447 in Ward No.3 was selected for the establishment of Pumping Station. This would only include 100 sq.ft of building which is a 10 x 10 pumping room. The pipeline will run underneath the earth.



3. The work has been going on and at present, it is stated to be 75% completion. On an earlier occasion, a writ petition was filed by a similarly placed person by *inter alia* alleging that an attempt is being made to put up sewerage treatment plant. After the disposal of the writ petition, the District Collector passed the impugned order. Needless to state that there was no proposal to treat it as a sewerage plant, but only a Pumping Station. Now, the orders passed by the District Collector and the Director of Town and Country Planning, granting permission and modifying the approved lay out are to be under challenge in these writ petitions.

4. The learned counsel appearing for the petitioners would submit that the Director of Town and Country Planning has no power or authority for such modification. The provisions of Town and Country Planning Act would be applicable. Therefore, there is a mandatory 10% reservation to be made for maintaining the park. In support of his submissions, the learned counsel appearing for the petitioners made reliance upon the following decisions:

i) *Bangalore Medical Trust Vs. B.S.Muddappa and Others* **reported in (1991) 4 Supreme Court Cases 54**

ii) *Krishna Nagar Residents' Welfare Association rep. by its Secretary Mr.A.V.Dhakshnamurthy and others Vs The Director of Town and Country Planning Madras-2 and three others* **reported in 2001-3-L.W.828**

iii) *Villupuram Municipality rep. by its Commissioner, Villupuram Vs M.Subramanian and others* **reported in 2002 (5) CTC 729**

iv) *Sri Devi Nagar Residences Welfare Association, rep. by its President Vs Subbathal and four others,* **reported in 2007 - 3-L.W. 259.**

v) *Southern Petrochemicals Industries Co. Ltd., Vs Electricity Inspector and E.T.I.O & Others,* **reported in 2007-3-L.W.268**

vi) *Kirubakaran & Others, rep. by their Power of Attorney Agent, Sunanthini Vs The Commissioner (East), Corporation of Coimbatore, Coimbatore,* **reported in 2013-5-L.W.597.**

vii) *K.Rajamani and three others Vs Alamunagar Residents' Welfare Association, rep. by its President M.Balasubramanian and three others,* **reported in 2011 (1) CTC 257.**

5. The learned counsel appearing for the respondents would submit that one has to see the larger public interest. There is another park available under the same lay out. Apart from that there are 5 more places earmarked for the park. What is sought to be used is only 8.13% of the park. Out of 12278 sq.ft, only 1097 sq.ft is being used. Even in that, the construction of the building is very small. The remaining portion has to be used only as a park. There is no other place available to establish the Pumping Station, even the petitioners shall be benefitted by the Pumping Station. Section 47 of the Town and Country Planning Act, 1971 (hereinafter referred as Act) gives sufficient power to the Planning



Authority to modify or vary a lay out approved. Thus, the writ petitions will have to be dismissed.

6. The fact that 75% of the work has already been completed is not in dispute. Similarly, the other facts such as existence of larger area to be used as parks an extent of 1097 sq.ft alone would be used, inasmuch a small construction would be made, the non-availability of alternative Government land and the larger public interest in having a sewerage Pumping Station, are not in dispute.

7. Section 47 of the Tamil Nadu Town and Country Planning Act, 1971 carves out an exception. While the section prohibits the individual from using the land earmarked for public purpose, it does not prohibit a State Government or local authority subject to satisfaction of Section 54 of the Act. Section 54 of the Act speaks of power of revocation or modification of permission to development.

8. This power has been exercised by the Director of Town and Country Planning. Therefore, we are of the view that power is certainly available to the Director of Town and Country Planning under the Tamil Nadu Town and Country Planning Act, 1971, for passing the impugned order.

9. We have perused the orders under challenge. These orders in clear terms state that the out of 1097 sq.ft, 8.93% of the land is earmarked for the park. It is ideally situated based upon gravity basis. The impugned orders also say that the remaining extent of the land constituting about 91.07% will have to be maintained as a park. It further states that the local authority shall not use the smaller extent for any other purpose except as a Pumping Station. Thus, from the above said orders, we do not find any illegality involved. It is not the case of the petitioners that there are alternative lands available.

10. A public purpose can also be changed with another in a given situation. It is not as if that the respondents are using it for any other commercial purpose. Secondly, what is being used is only a very small park, for which the specific conditions have been imposed. The need for a sewerage is much greater than a park. An untreated sewerage will destroy the environment and cause severe health hazard, apart from spoiling the water bodies. In fact, this is one of the problem, which is being faced by every country. In the case on hand, the pipelines are underground and usage is only for Pumping Station. It requires a very small construction. In such view of the matter, the decisions relied upon by the learned counsel appearing for the petitioners are to be held as not applicable to the case on hand. If at all the beneficiaries are the general people, it would also include the petitioners, hence, stopping the on-going process, which is completed 75% of work would also be against public interest. We also keep in mind that this scheme is not only meant for one local body, but others as well. Hence, it is not as if the petitioners were not aware of the



project. The very fact that the impugned orders passed by the District Collector and the Director of Town and Country Planning Act are challenged itself would show that the petitioners knew about the scheme much earlier. Therefore, the challenge made after the completion of the work at 75% also a factor to hold against the petitioners. Therefore, the principle of laches and acquisition also would come into play.

11. In such view of the matter, the writ petitions are dismissed. However, we make it clear that the local body shall convert the remaining larger extent of land earmarked for the park for the aforesaid purpose. The work will have to start within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected writ miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Secretary to the Government
Town and Country Planning
State of Tamil Nadu,
Fort St. George, Chennai-02.
2. The Director of Town & Country Planning,
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Palanichettipatti, Theni.
6. The Executive Officer,
Tamil Nadu Water Supply and Drainage Board,
33, Gandhiji Main Road, NRT Nagar,
Theni, Tamil Nadu 625 531.

+ 4 CC TO Mr.R.S.PANDIYARAJ, ADVOCATE IN SR No. 81070 & 81071 (2+2)
+ 2 CC TO M/s.POLAX LEGAL SOLUTIONS, IN SR No. 80567 & 80568
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 80782

VS

TE/SKN/SAR-1 : 26/09/2018 : 6P/14C

Writ Petition (MD) Nos.6029 and 6030 of 2017
& 8802 and 8803 of 2018
28/08/2018