

In the High Court of Judicature at Madras

Dated : 22.4.2019

Coram

The Honourable Mr. Justice T.S.SIVAGNANAM
and

The Honourable Mrs. Justice V.BHAVANI SUBBAROYAN

Writ Appeal No.1385 of 2019 & CMP.No.9583 of 2019

M/s.K.P.Park Sports Club, rep.

By its President S.P.Kumanan ...Appellant/Petitioner

Vs

1.The District Collector,
Chennai District, Chennai.

2.The Commissioner,
Corporation of Chennai.

3.The Chairman, Tamil Nadu Slum
Clearance Board, Chepauk,
Chennai-5.

4.The Executive Engineer, Division III,
Tamil Nadu Slum Clearance Board,
Vyasarpadi, Chennai-39.

5.M/s.P.S.R. Engineering Construction
& Co., having office at Nedumcombai
Post, Kalappanaickenpatty, Namakkal.
Pin : 637404 temporarily at K.P.Park,
Demellows Road, Chennai-12.

6.Tharun Construction & Co., rep.by its
Manager Partner T.Amutha,
Namakkal. ... Respondents/Respondents

APPEAL under Clause 15 of the Letters Patent against the
order dated 15.3.2019 passed in W.P.No.4410 of 2019.

Prayer in W.P.No.4410 of 2019 :-

The Writ Petition is filed under Article 226 of the

Constitution of India, seeking for a writ of Mandamus directing the 2 to 5 respondents herein not to put up any construction in K.P.Park Playground area situated at K.P. Park (East) Basin Elephant Road, Chennai 600012.

For Appellant : Mr.B.Sundar
For Respondent-1 : Mr.R.P.Prathap Singh, GA
For Respondent-2 : Mrs.Karthika Ashok
For Respondents 3 & 4 : Mr.S.Prabhu
For Respondent-6 : Mr.K.Govindaraj

Judgment was delivered by T.S.SIVAGNANAM, J

We have heard Mr.B.Sundar, learned counsel for the appellant, Mr.R.P. Prathap Singh, learned Government Advocate accepting notice for the first respondent, Mrs.Karthika Ashok, learned Standing Counsel accepting notice for the second respondent, Mr.S.Prabhu, learned Standing Counsel accepting notice for respondents 3 and 4 and Mr.K.Govindaraj, learned counsel accepting notice for the sixth respondent.

2. This appeal is directed against the order dated 15.3.2019 passed by the learned Single Judge in W.P.No.4410 of 2019.

3. The appellant is stated to be a sports club represented by its president one Mr.S.P.Kumanan. They filed the said writ petition seeking a direction upon respondents 2 to 5 herein not to put up any construction in a particular area situated at K.P.Park (East), Basin Elephant Road, Chennai-12, which, according to the appellant, is a playground.

4. In the said writ petition, respondents 3 and 4 herein namely the Tamil Nadu Slum Clearance Board (TNSCB) filed a counter, which was taken note of by the learned Single Judge and the said writ petition was ultimately dismissed by the impugned order. At this juncture, it would be beneficial to refer to the findings rendered by the learned Single Judge in paragraph 6 of the impugned order :

"In the counter affidavit, it is clearly stated that Corporation of Chennai by resolution No.122 of 2018 handed over 168 grounds and 357 sq.ft. in Survey No.1730/1pt, 1733, 1734/1, 1734/2 in the then Municipal Division 60, in the year 1980 for construction of tenements and due to the aforesaid buildings are in dilapidated condition, the old buildings are demolished and new buildings are constructed in a

phased manner. So far, 14 blocks were completed and out of four blocks, two blocks are completed and two blocks are yet to be completed. Further, in paragraph 8 of the counter affidavit filed by the respondents 3 and 4, it is stated that admittedly, only 192 temporary huts were in existence in the open space land from the year 2009 to 2019 and there is no playground or play activities in that land. Now, the temporary huts were removed and the work of construction of 1056 EWS tenements for the poor people are in progress now, the pile foundation work for the building and two sumps are already constructed in that land. The board will provide playground within the scheme area once the construction work is over. Moreover, there is a huge playground already in usage adjacent to the subject matter of the land and now the scheme area tenements people as well as other people are using the said playground. The petitioner has not placed any materials or documents to show that the aforesaid land is earmarked for playground, utilized for playground and encroached by the respondent for the construction of tenements. The respondent Board in the counter affidavit has specifically stated that they will provide land for playground in the said Scheme after completion of the construction work."

5. The learned counsel for the appellant would vehemently contend that a playground should vest with the Corporation of Chennai, that the Corporation of Chennai had not filed any counter in the said writ petition and that they, being the custodian of the land earmarked as a playground, will have to come and state as to why the playground had not been retained as such.

6. From the counter affidavit filed by the TNSCB, it is seen that the area, in which, the construction activities have commenced, has not been earmarked as a playground. However, in the counter affidavit, they admitted that the Board would provide a playground within the scheme area once the construction is over. Therefore, if an area, which has been earmarked as a playground in the scheme formulated by the TNSCB is utilized for any other purpose, it is always open to the appellant to approach the Authority concerned for necessary relief. Further, as mentioned earlier, the appellant was not

able to place any material or document to show that the land in question was earmarked as a playground.

7. The learned Standing Counsel appearing for the TNSCB has placed before this Court a tentative park site plan for reconstruction of residential dwelling units at Kesavapillai Park Phase I in R.S.Nos.1730/1 part, 1733, 1734/1 & 2 part, 1735/8, 1735/145, Block No. 39, Ward 77, Zone VI, Chennai Corporation. It is pointed out that the place earmarked as OSR - 3 measuring an extent of 1310 sq.meter, which is equivalent to 14,110 sq.ft., has been earmarked as a playground.

8. This submission made by the learned Standing Counsel for the TNSCB is placed on record. It is made clear that if there is any violation, the matter will be taken serious note of by this Court. We also grant liberty to the appellant to approach the appropriate forum in the event the area, which is earmarked as a playground, is not maintained as such.

9. In the light of the above, we find no good ground to interfere with the order passed by the learned Single Judge.

10. Accordingly, the writ appeal is dismissed. No costs. Consequently, the connected CMP is also dismissed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

RS

To

- 1.The District Collector,
Chennai District, Chennai.
- 2.The Commissioner,
Corporation of Chennai.
- 3.The Chairman, Tamil Nadu Slum
Clearance Board, Chepauk,
Chennai-5.
- 4.The Executive Engineer, Division III,
Tamil Nadu Slum Clearance Board,
Vyasarpadi, Chennai-39.

+1 cc to The Government Pleader, Sr.No. 38816
+1 cc to M/s.Karthikaa Ashok, Advocate, Sr.No. 38291
+2 cc to Mr.B.Sundhar, Advocate, Sr.No. 38304
+1 cc to M/s.Govind Chandrasekhar, Advocate, Sr.No. 38306
+1 cc to Mr.S.Prabhu, Advocate, Sr.No. 38305

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CSL/20.06.2019



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