

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.08.2019

PRONOUNCED ON : 30.08.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.23765 of 2019 and
W.M.P.Nos.23648 & 23649 of 2019

1.P.Karthikeyan
2.K.Palanisamy
3.N.C.Anand
4.M.Rajagopal
5.N.Shylaja

... Petitioners

Vs

The Commissioner,
Coimbatore Corporation,
Coimbatore - 641 001.

... Respondent

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Mandamus forbearing the respondent from establishing a waste disposal incinerator/compost yard in the place ear-marked for part/children's play space in the approved layout vide Ref.No.LP/DTCP No.108/88 comprised in S.F.Nos.397/6 (Pt) and 398, Thiru.Vi.Ka.Nagar, Vadavalli Village, Coimbatore District.

For Petitioners

:Mr.N.Manokaran

For Respondent

:Mr.R.Sivakumar,
Standing Counsel

ORDER

The petitioners are residents of Thiru.Vi.Ka.Nagar, Vadavalli, Coimbatore. The layout is approved by DTCP with adequate space for public purposes specifically earmarked for formation of road, Park, playground, shops etc. In the said layout, 5678 sq.mts (61117 sq.ft) of land is earmarked for park and children's play area. The said land is transferred to the respondent by way of gift deed for the said purpose.

2. Recently, the respondent has started constructing a compost yard in the space earmarked for park/children's play ground. Learning from the sources that the respondent intend to use this portion of the land for dumping waste, the petitioners opposed the action of the respondent in converting the park area as dumping yard. Hence, the petitioners have joined together and filed this writ petition seeking mandamus to forbear the respondent from establishing the waste disposal incinerator/compost yard in the place earmarked for park/children's play space.

3. In the affidavit filed in support of the writ petition, the petitioners have contented that, the proposed construction likely to cause public nuisance and health hazard to the residents. It will disturb the ecology and affect their right to live with dignity and peace. The respondent being the custodian of the lands meant for public purposes cannot usurp the properties for the construction of compost yard affecting their right of property. Under the Public Trust Doctrine, the respondent is legally stopped from constructing a compost yard .

4. The Learned counsel for the petitioner strenuously argued that the action contemplated by the respondent is in violation of fundamental rights and Municipal laws besides contrary to the principle laid down by the Courts in catena of judgments. Listing out the judgments which has emphasised that the land which is reserved for 'public purpose' cannot be converted for any other purpose even by the State. The Learned counsel for the petitioner further submitted that, the space reserved for communal and recreational purposes in a layout, it does not vest with the Government or the owner or developer. The ownership actually vests with the purchasers of the plots as an amenity under section 2(2) of the Tamil Nadu Town and Country Planning Act, 1971. Therefore, the decision of the respondent to construct compost yard in the space allotted for park is against the welfare and interest of the residents. In support of his submissions, the learned counsel for the petitioners would rely on the following judgments:-

"1) In Sri Devi Nagar Residences Welfare Association v. Subbathal (2007 (3) LW 259) ;

2) In Kirubakaran v. The Commissioner (East), Corporation of Coimbatore (2013 (6) CTC 441)

3) In Khajuria (Dr) v. Delhi Development Authority (1995 (5) SCC 762) and

4) In SIDCO Nagar Welfare Association -vs- CMDA (2018(5) CTC 857)."

5. Per contra, the respondent has filed counter affidavit wherein, it is stated that, after the implementation of the Municipal Solid Waste (Management & Handling) Rules, 2000 (Hereinafter referred to "the said Rules"), the respondent corporation is maintaining a centralized waste processing and disposal plant at Kurichi - Vellalore Village. The daily average municipal solid waste generated within the Coimbatore corporation limit is about 890 MT's, out of which, 584 MT's is biodegradable (wet) waste. The issue of managing and handling of huge quantity of Municipal Solid Waste at the centralised plant at Vellalore dumping yard was a point of concern for the respondent for a long time. Meanwhile, the Union of India, in superstition of the said Rules framed Municipal Solid Waste Rules, 2016 under which the local bodies are casted upon with duties and responsibilities to establish waste processing facilities adopting suitable technology to Minimize the transportation cost and environmental impacts by decentralising the process. Following this Rules, to promote 100% segregation and storage of waste in three separate streams, viz Bio-degradeable, Non- degradable and Domestic hazardous waste by the waste generator themselves, the respondent decided to establish 65 decentralised processing facilities/Micro composting Centres to handle bio-degradable waste exclusively. These Micro Composting Centres (MCC's) will handle bio-degradable waste collected within the respective ward. After due diligence sites for MCC's are identified and no disturbance will be caused to the petitioners' residences.

6. Earlier, transporting and dumping of municipal solid waste at centralised Vellalore dumping yard was subject matter of a case before the National Green Tribunal. After MSW, 2016 Rules and proposal to establish decentralised MCC's at 65 places, the Principal Bench of National Green Tribunal has recorded the statement of the respondent and disposed the application referring the matter to the Regional Monitoring Committee, Southern Zone headed by a retired High Court Judge. The said committee is periodically monitoring the process of establishing decentralised MCC's.

7.Explaining the functioning of MCC, the respondent states that in an area of 630 sq mts (6,781 sq ft) a high roof completely closed shed is proposed to be constructed. The microbial composting process, the odour as well as fly generation will be completely eliminated. In a cycle of 14 days, the solid waste get city compost and turn into soil enricher. The end product will be distributed to farmers or local residents at free of costs. In his counter affidavit, the respondent has also given an undertaking that, after utilizing 630 sq mts of land for the purpose of establishing MCC, remaining land of 5,048 sq mts will be developed as a park and children play area with a green belt, around the MCC shed at the costs of the respondent Corporation.

8. According to the learned Standing Counsel for the respondent, the apprehension of the petitioners is uncalled. The park area is not to be taken away or misutilised for a purpose other than a public purpose. The park area is not be converted into dumping/compost yard as alleged. MCC's are established through out country as per the said Rules. They are scientifically designed and free from any hazard. The Union of India has taken a conscious decision to adopt segregation of waste and to manage it locally through decentralised process instead of collecting the waste and transporting to the centralised dumping yard. The method is working successfully. Waste generated are managed locally and the compost end product is utilised as soil enricher by the locals.

9.The learned Standing Counsel for the respondent would submit that the judgements referred by the petitioner counsel is not relevant to the facts of the present case. They are in respect of converting the place earmarked for public purpose into commercial purpose. Whereas, as far as the case in hand is concerned, a small portion of the land earmarked for park is to be utilized for construction of MCC which is for the welfare of the public of that area. The proposal of the respondent will in fact help the residents to keep their vicinity clean and hygene without garbages and solid waste spilled all over the area. The construction is done getting clearance from the Tamil Nadu Pollution Control Board and under the supervision of the monitoring committee headed by a retired High Court judge appointed by the Principal Bench of National Green Tribunal. The public including the petitioners need not be apprehensive of the project. The intention of the respondent is to enhance their quality of life by providing better and clean environment and not to infringe their right to life.

10.To buttress his submission, the learned Standing Counsel for the respondent would rely upon the judgement of a Division Bench of this Court rendered in T.G.Ruthramani, Secretary -vs- Member Secretary, CMDA and other (W.P 32938 of 2017 order dated 14/03/2018) and submitted that, the facts of the case cited is identical to the facts of the case in hand. The Division Bench after considering the observations made in Sri Devi Nagar Residences Welfare Association case and other cases including Bangalore Medical Trust -vs- Mundappa case has distinguished those cases and has held that, in case of establishing MCC in a portion of a park, the interest of the individual/ Association has to give way to the interest and welfare of the public at large. Hence, the issue is no more res-integra.

11.On hearing the rival submissions made by respective counsel, this Court finds that the law and judgments relied by the petitioners indicates conversion of space earmarked for public purpose to any other purpose is restrained. However, the present case does not squarely fall under that category. It is the admitted case of the petitioners that the space earmarked for park/children's play area is presently vacant and in a portion of it, the respondent has started construction. In the counter affidavit, the respondent has given an undertaking that, it is going to be a closed shed with green cover around it. The MCC proposed to be establish is going to manage bio-degradable waste generated by the residents of that area and the intention of the respondent is not to use it as dumping yard as contented by the petitioners. Therefore, the area is to be used for public purpose and not for any commercial usage.

12.In T.G.Ruthramani case (cited supra), the Division Bench has cleared the proposal of constructing Micro Compost Yard in a small portion of the park, holding that, the individual/association interest should not stand in the way of general public interest. The interest of the society is paramount. This Court also does not find any breach of public trust in the action of the respondent. The principle of 'public trust doctrine' or, 'promissory estoppel' will not apply in this case. Contrarily, it is polluter pay doctrine will be most appropriate . A portion of the land vested to the Corporation for a park, is to be used to decompose waste generated in that area in order to keep the area clean and hygiene. Further, the respondent has also given an undertaking in the counter affidavit that they will establish park and children's play area

in the remaining land and maintain it at their costs. Therefore, recording the undertaking given by the respondent in his counter affidavit, the writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed. No order as to costs. Consequently, interim injunction already granted by this Court shall stand vacated and the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

To

The Commissioner,
Coimbatore Corporation,
Coimbatore - 641 001.

+1cc to Mr.N.Manokaran, Advocate sr.75808

W.P.No.23765 of 2019

nr 14/10/2019