

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 25.09.2019

Pronounced on: 27.09.2019

CORAM::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.24541 of 2019
& W.M.P.No.24228 of 2019

C.Loganathan,
S/o.Chinnasamy,
H20, Housing Unit,
No.150, Gandhi Veethi, Karur Bye pass Road,
Erode - 2.

... Petitioner

/versus/

1. The Commissioner,
City Municipal Corporation,
Erode.

2. The District Collector,
Erode District. Erode.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Mandamus forbearing the 1st respondent from converting the Park Area in the approved layout "Erode Kollampalayam Housing Unit SNH Thittam" in S.No.1244/2,1223, 1224, of Erode Taluk and District and pass order.

For Petitioner : Mr.A.K.Kumarasamy, Senior Counsel,
for Mr.S.Kaithamalai Kumaran

For R1 : Mr.M.Rajamathivanan, Standing Counsel

For R2 : Mr.N.Inbanathan,
Additional Government Pleader

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The case of the petitioner is that, Tamil Nadu State Housing Board acquired the land and promoted a layout in Erode by name "Erode Kollampalayam SNH Thittam", with proper plan

approval, earmarking space for road and park. The Erode City Municipal Corporation is vested with the responsibility of maintaining the road and park. The residents of the layout were till recently enjoying the park area created in an extent of 85 cents. His father Chinnasamy was one of the allottee of residential house constructed by the Tamil Nadu Housing Board under the said scheme. The house was allotted to his father in the year 1991. Sale deed was executed by Tamil Nadu Housing Board in favour of his father on 31.10.2013. In the family partition, the house was allotted to the petitioner, thus, he has become the absolute owner of the house. The promoter (TNHB) has collected costs which includes the price for the park area. While so, the 1st respondent/Municipal Corporation, Erode, inspite of the objections raised by the residents, recently constructed a room inside the park for Tax Collection Centre. Now, the Municipal Corporation, Erode, with intention to convert the entire park area as Transport Training Centre, had handed over the park area to Police Department. The District Police, Erode, has demolished a portion of the compound wall and had started constructing in the park space. The public are not allowed to access the park.

3. The petitioner contents that, the attempt of the respondents converting the open space earmarked for the park is illegal and such conversion have been deprecated by the Courts in several cases. Ignoring the prohibition of Tamil Nadu Town and Country Planning Act, 1971, and the Courts order, the Municipal Corporation, Erode, has handed over the park area to Police Department for putting up Transport Training Centre. Hence, the Writ Petition is filed seeking Writ of Mandamus forbearing the 1st respondent/City Municipal Corporation, from converting the park area in the approved layout for any other purpose.

4. The 1st respondent, Commissioner of Erode, City Municipal Corporation, has filed counter affidavit, in which he has categorically stated that the area allotted for park is not handed over to the Police Department or converted into Transport Training Centre as alleged by the Writ petitioner. For the convenience of the allottees, to pay the taxes, a room is constructed in a small portion of the park, without affecting the utility of the park. To establish "Traffic Awareness Park" under the smart city mission, several parks in the state under the control of Municipal Corporations, are renovated without affecting the nature and utility of the park. The park, which is subject matter of the park is property of Erode Municipal Corporation. The conversion of the general park as Traffic Awareness Park will help the public better. The Municipal Corporation not intend to utilise the park area for any other purpose. It will be only used as park with better purpose to serve namely Traffic awareness. The intention of the respondent

is not to violate the Town and Country Planning Act or the dictum of the Courts.

5. Heard the submissions made by the Counsels for the petitioner and the respondents. Affidavit and counter affidavit perused. Both the counsels circulated photographs of the park area to emphasis their respective submissions.

6. Through the pleadings, documents and arguments it is focussed by the petitioner that area allotted for park is given to Police Department to construct Transport Training Centre which amounts to conversion of park area for other purpose. Contrarily, the 1st respondent/City Municipal Corporation, has denied the said averments. To prove the same, the proposed plan and the photographs are produced before this Court.

7. The perusal of the plan and photographs supports the case of the respondent. Apart from the existing building, the 1st respondent has planned to put up a meeting hall in 40 x 20 feet in the total park area of 20,759 sq.ft. leaving the rest of the space for greenery, lawn, walking path and play field. The photographs show that the work of laying lawn, children play field, toilet, sump is underway. Thus, it appears that the intention of the first respondent is to convert the general park into a theme park (Traffic awareness park).

8. If the 1st respondent/Municipal Corporation, Erode, with true intention to maintain the area as Traffic park with greenery and play area and free access to general public, then, such action cannot be viewed as conversion of park area for some other purpose. At the same time, the 1st respondent/Commissioner, Erode City Municipal Corporation, under the guise of theme park cannot take away the character of the park by putting Additional Structures. It should not breach the plan submitted to the Court in this writ petition. No change in the physical feature or conversion of purpose other than what submitted before this Court shall be permitted.

9. With the above observations, Writ Petition is disposed. No costs. Consequently, connected Miscellaneous Petition is closed.

bsm

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
City Municipal Corporation,
Erode.

2. The District Collector,
Erode District. Erode.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, SR.No.83405

+1cc to Mr.M.Rajamathivanan, Advocate, SR.No.83108

+1cc to the Govt.Pleader, Vide Sr.No.83672

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Kak(01.10.2019)