

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.NO.29791 OF 2018
AND
W.M.P.NO.34766 OF 2018

K.Karunaimoorthy

... Petitioner

Vs.

1. The District Collector,
Coimbatore District.
2. The Joint Director,
Municipal Administration,
Collectorate,
Coimbatore.
3. The Executive Officer,
Idikarai Town Panchayat,
Idikarai, Coimbatore - 641 022.

... Respondents

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, forbearing the Respondents herein their agents or servants from constructing Solid Waste Management Building in the reserved Public Park site situated in S.F.No.140/1A Part, 211/2, 216 Part, Idikarai Co-operative Nagar, Idikarai, Annur Taluk, Coimbatore District or for converting it for any other purpose.

For Petitioner : Mr.L.Mouli

For R1 and R2 : Mr.E.Manoharan
Additional Government Pleader.

For R3 : Mr.V.Jayaprakash Narayanan

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Claiming himself to be a public interest litigant, petitioner has filed the instant writ petition, for a Writ of Mandamus, forbearing the respondents herein, their agents or servants, from constructing Solid Waste Management Building in the reserved public park site, situated in S.F.No.140/1A Part, 211/2, 216 Part, Idikarai Co-operative Nagar, Idikarai, Annur Taluk, Coimbatore District or for converting it for any other purpose.

2. In the supporting affidavit petitioner has contended that an extent of 4.32 1/2 acres in S.F.No.140/1A Part, 221/2, 216 part in Idikarai Village, Annur Taluk, Coimbatore District, was developed, as Housing Plots by P.Chellamuthu, P.Srinivasan, R.Suganadevi, P.Chokkappan and S. Manimegalai and the said Lay-out consists of 44 Housing Plots, was approved by the Deputy Director of Town Planning, vide D.D.T.P./C.L.P.A.No.26/2008, dated 19.03.2008.

3. Petitioner has further contended that the said approved layout consists of 44 housing plots, shops, roads, and an area of 11760 sq. feet and another 8010 sq. feet was reserved as Park Site and the same was handed over to the Executive Officer, Idikarai Town Panchayat, Coimbatore/the 3rd respondent, through registered Gift Deed, dated 04.02.2009, bearing Document No.864/2009.

4. Petitioner has further contended that the developers of house site, had sold entire house site to the Coimbatore Co-operative Housing Society Ltd., No.1081, by Sale Deed, dated 08.06.2009 in Document No.4558 of 2009 and thereafter, the house site, named as "Idikarai Co-operative Nagar".

5. Petitioner has further contended that the 3rd respondent, after taking the possession of two park sites, did not develop the same, as Public Park and left it vacant and further the respondents, did not provide basic facilities, such as laying roads, street light, sewerage connection, and water connection, till today. The residents of "Idikarai Co-operative Nagar" have made several demands, to the 3rd respondent, for development of public park and for providing basic facilities, but the 3rd respondent, did not consider the demands of "Idikarai Co-operative Nagar" and on the other hand, the 3rd respondent herein, was involving in illegal act by dumping heavy wastages in the public park site and burning them which had resulted in causing lot of health hazard to the residents of Idikarai Co-

operative Nagar.

6. Petitioner has further contended that in the month of May, 2018, the 3rd respondent and their representatives, started foundation work, for construction of a Solid Waste Management building in the reserved park site. Immediately, the public started to agitate the illegal action of the 3rd respondent and one Mr.Kumar, a resident of "Idikarai Co-operative Nagar", has made representation, dated 29.05.2018 to the respondents requesting them, to stop the illegal activities and further requested them, to provide park in the site reserved as Public Park. After receiving the said representation, the 3rd respondent herein, did not consider the same and therefore, one Chandrakanthi another resident of "Idikarai Co-operative Nagar, has sent another representation, dated 25.09.2018 to the respondents herein, again requesting them, to stop the illegal activities, but the 3rd respondent, without considering the same, is continuing their construction in the reserved park site.

7. Petitioner has further contended that, he has also sent a representation, dated 01.10.2018 to the respondents, to stop the illegal construction, but the respondents did not consider his representation, till today and they are proceeding with the construction work.

8. Petitioner has further contended that there are more than 40 residents are living in "Idikarai Co-operative Nagar" area, by constructing houses by obtaining proper approval from the 3rd respondent. The open space in a residential area, is treated as lung space of the area and it provides fresh air and refreshment to the public in the neighbourhood and it is for the health and well being of the inhabitants of the residential area and the same cannot be used for any other purpose.

9. Petitioner has further contended that, when a open space for construction of public park, is earmarked in the plan for development of a housing site, the respondents cannot ignore or neglect, to develop that open space into a public park, within a reasonable time, but the respondents herein without developing the open space into a public park are illegally converting for the purpose carrying out Solid Waste Scheme. For the abovesaid reasons, petitioner has filed the instant writ petition, for the relief, stated supra.

10. Heard the learned counsel for the petitioner and perused the materials available on record.

11. On this day, when the matter came up for hearing, Mr.L.Mouli, learned counsel for the petitioner, fairly submitted

that in a similar W.P.No.34048 of 2017, this Court, vide order dated 10.07.2019, dismissed the same, as follows:-

The instant Public Interest Litigation has been filed for a Writ of Mandamus, forbearing the respondents herein, their agents or servants from constructing Solid Waste Management Building in the reserved Public Park site situated in S.F.No.363/1 Part, 364/Part, Chinnaiah Gardens, P.Vadugapalayam, Palladam Taluk, Tiruppur District or for converting it for any other purpose.

2. It is the case of the petitioners that an extent of 12.09 Acres in Chinnaiah Garden Lay out in S.Nos.363/1 part, 364 part of Vadugapalayam Village, Palladam Taluk, Tiruppur District in Palladam Municipality, was developed as Housing Plots, by M.Chinnaiah Gounder, through his Power Agent, Mr.R.A.Rahman and the said Lay-out was approved by the Deputy Director, Town and Country Planning in his proceedings in Na.Ka.No.24260/94 dated 27.07.1994 and DTP Approval No. is 1123/94.

3. According to the petitioners, Chinnaiah Gardens Lay-out, consists of 135 Housing Plots, Shops, Road and an area of 39806 sq.feet or 91 cent and another 13194 sq.feet or 30.125 cent, reserved as parks were handed over to the Commissioner, Palladam Municipality, Tiruppur District, the 3rd respondent herein by a registered Gift Deed dated 03.08.1194 in Document No.2876. The Commissioner, Palladam Municipality, Tiruppur District, the 3rd respondent herein, after taking possession of two parks sites, did not develop the same, as Public Park and left it as Vacant. The respondents did not provide, basic facilities, such as, laying of roads, street light, sewerage connection, water connection, even though the residents of Chinnaiah Gardens have paid the development charges.

4. Petitioners have further contended that the residents of Chinnaiah Garden have made several representations to the Commissioner, Palladam Municipality, Tiruppur District, the 3rd respondent herein, for development of public park, and for providing the basic facilities, but on other hand, in the year 2009, the Commissioner, Palladam Municipality, Tiruppur District, the 3rd respondent herein, indulged in an illegal act, dumping heavy wastages, in the Public Park site, and burning them, which resulted in causing lot of health hazards to the residents of Chinnaiah Gardens and due to the

objections raised by the public, the Zonal Director, Municipal Administration, Tiruppur, the 2nd respondent herein stopped dumping of the Garbages and heavy wastages, in the Public Park site.

5. Petitioners have further contended that on 13.09.2017, to their great shock and surprise, the Commissioner, Palladam Municipality, Tiruppur District, the 3rd respondent herein and their representatives started, foundation work for the Solid Waste Management building, in the reserved park site. Immediately, the public started to agitate the illegal action of the 3rd respondent and sent their objections, through a representation dated 23.09.2017 to the respondents asking them to stop the illegal activities and further requested them to provide a park in the site reserved, as public park. Respondents herein after receiving their representations dated 23.09.2017 are continuing their construction in the reserved park site.

6. According to the petitioners, there are more than 130 residents in Chinnaiah Gardens area by constructing houses by obtaining proper approval from the 3rd respondent. Petitioners have submitted that the open space in the residential area, is treated as a lung space of the area and it provides fresh air and refreshment to the public in the neighbourhood and it is for the health and well being of the inhabitants of the residential area and the same cannot be used for any other purpose.

7. Petitioners have further submitted that when a open space for construction of public park is earmarked in the plan for development of a housing site, the respondents cannot ignore or neglect to develop that open space into a public park within reasonable time, but the respondents herein without developing the open space into a public park, they are illegally converting for the purpose carrying out the Solid Waste Scheme.

8. According to the petitioners action of the respondents herein is illegal and in violation of Articles 14, 19 and 21 of the Constitution of India. In spite of petitioners' objections, the respondents are carrying out their preliminary works for establishing a Solid Waste Management Building in the Park site situated in Chinnaiah Gardens, P.Vadugapalayam, Palladam Taluk. Therefore, the petitioners have filed the instant writ petition for the relief stated supra. Supporting the prayer sought

for learned counsel for the petitioner relied on a judgment of this Court in SIDCO Nagar Welfare Association Vs. Chennai Metropolitan Development Authority and others, reported in 2018 (5) CTC 857.

9. Heard the learned counsel for the petitioner and perused the materials available on record.

10. Issue as to whether a Solid Waste Management building can be constructed in a place earmarked for park has been considered by us in W.P.No.7038 of 2018 dated 15.11.2018. Order reads thus.

5. The issue regarding disposal of solid waste is being continuously monitored by National Green Tribunal. In fact, as late as 31.08.2018, the National Green Tribunal, Principal Bench, New Delhi has given directions regarding disposal of solid waste. The relevant paragraphs of the order dated 31.08.2018 made in OA No.606 of 2018 in the matter of "compliance of Municipal Solid Waste Management Rules, 2016", reads as hereunder.

"7. Following issues were circulated to the States and UTs to facilitate interaction:

i) Whether State-wise Action Plan with timelines and budgetary support/provision for management of MSW has been prepared?

ii) Whether each city/town/urban local body is covered under the said Plan and individual Action Plan has timelines with budgetary provisions?

iii) What time has been fixed to completely comply with the provisions of the Rules, 2016?

iv) What are the main constraints of non-compliance of Rules, 2016?

8. Meetings were held with all the States and Union Territories on 02.08.2018, 07.08.2018, 08.08.2018, 13.08.2018 and 20.08.2018 on the aforesaid matter. At the conclusion of the interaction with the States and Union Territories, it was decided and declared that certain binding directions need to be issued by the Tribunal by forming Apex Level, Regional Level and State Level Committees to oversee the steps taken for implementation of the Rules, 2016 and the directions issued by the Tribunal and give a report to this Tribunal at the end of the quarter. The Committees may have interaction individually with the Statutory Authorities and the Urban Local Bodies. Accordingly, we are recording this order. The Registry may register these proceedings as a fresh Original

Application.

17. We accordingly, propose to direct constitution of an Apex Monitoring Committee, Regional Monitoring Committees and State Level Committees to oversee the steps to be taken to give effect to the directions of this Tribunal so that if necessary, further action can be taken in the matter.

18. The role of the Apex Monitoring Committee will be to interact with the concerned Ministries and the Regional Monitoring Committees. The Apex Monitoring Committee may formulate guidelines/directions which may be useful to the Regional Monitoring Committees and the States/Union Territories. The Apex Monitoring Committee may meet preferably every month to take stock of the situation. Outstation members/invitees may participate by video conferencing unless their presence is considered necessary. The Apex Monitoring Committee may have meeting with all the Regional Monitoring Committees at least once in a month for two days to take stock of the progress and fix new targets. The report may be given to the Tribunal by e-mail once in a quarter. The Apex Monitoring Committee may have its website for dissemination of such information as may be necessary and also to enable public participation. The Committee may function for a period of one year subject to any further order.

The constitution of the Apex Monitoring Committee will be as follows:

1.	Hon?ble Mr. Justice D.K. Jain, Former Judge, Supreme Court of India, Former President, NCDRC, Former Chairman, Law Commission of India.	Chairman
2.	Chairman, Central Pollution Control Board	Member
3.	Jt. Secretary of Ministry of Environment, Forest & CC	Member
4.	Jt. Secretary & Mission Director, Swachh Bharat Mission, Ministry of Housing & Urban Affairs, Govt. of India	Member Secretary

The Apex Monitoring Committee will have the following Special Invitees:

1.	Principal Secretary, Urban Development, Govt. of Goa
2.	Ms. Ritu Sain, IAS Addl. Resident Commissioner, Govt. of Chattisgarh, Chattisgarh
3.	Dr. Asad Wari, Team Leader, SBM, Indore Municipal Corporation, Indore, M.P
4.	Shri C. Srinivasan, Vellore, TN, Project Director-SLRM

The MoHUA will provide all logistic and secretarial support along with functional Secretariat to the Apex Monitoring Committee. The Committee may operate from Delhi. The Apex Monitoring Committee can also use the conference facilities available with the National Green Tribunal (Principal Bench). The Chairman and the special invitees who are either retired or private professionals of the Committee may be provided remuneration in consultation with them.

19. The Regional Monitoring Committees shall ensure effective implementation of the Rules, 2016. The Regional Monitoring Committees shall also ensure that mixing of bio-medical waste with municipal solid waste does not take place and bio-medical waste and processed in accordance with The Bio-Medical Waste Management Rules, 2016. The Regional Monitoring Committees may meet preferably once in every week or longer intervals as per requirements. Out station members may participate by video conferencing unless physical presence is required. They may interact with Apex Monitoring Committee at suitable intervals. The Regional Monitoring Committees may also have inter se interaction as and when necessary. The Regional Monitoring Committees may have interactions with the concerned States at regular intervals. The Regional Monitoring Committees may also consider having their website for the same purpose with the same objective as the Apex Monitoring Committee. The Regional Monitoring Committees if feel appropriate can solicit the service of the Special Invitees of the Apex Monitoring Committee and others whom they think can contribute to the cause of monitoring of the Rules,

2016. The Regional Monitoring Committees may specially consider compliance of the mandate of the Rules, 2016 at or around railway platform, railway tracks, bus stands or other places frequented by public. The Ministry of Railway may appoint Nodal Officers at Central, Zonal or other levels having specific responsibility of compliance of the Rules, 2016. The Regional Monitoring Committees may interact with such officers at appropriate intervals. The report may be given to the Apex Monitoring Committee twice in a quarter. Initially, a report may also be sent to the Tribunal by the Regional Monitoring Committees after three months of their working. The Regional Monitoring Committees will be paid remuneration and such logistic support as required by Department of Urban Development, Government of Punjab, Madhya Pradesh, Maharashtra, Tamil Nadu and West Bengal for Northern Zone, Central Zone, Western Zone, South Zone and Eastern Zone respectively. The States will be entitled to recover proportionate expenses from the member States and Union Territories in the respective zones. All the States are advised to maintain the parity with regard to the remuneration of Chairperson of the Regional Monitoring Committees. The Committees may function for a period of one year subject to any further order.

20. The constitution of the Regional Monitoring Committees will be as follows:

North Zone - Chandigarh - Delhi		
1.	Mrs. Rajwant Sandhu, IAS, Former Secretary, GoI & Former Member, CAT	Chairpers on
2.	Principal Secretary of Urban Development, Government of Punjab, Punjab	Member Secretary
3.	Principal Secretaries of Urban Development of Government of Jammu & Kashmir, Himachal Pradesh, Haryana, Uttarakhand, NCT Delhi, Uttar Pradesh, Union Territory, Chandigarh	Members

North Zone - Chandigarh - Delhi		
4.	Member Secretaries of State PCBs/PCCs of Jammu & Kashmir, Himachal Pradesh, Haryana, Punjab, Uttarakhand, NCT Delhi, Uttar Pradesh, Union Territory, Chandigarh	Members
5.	Representative of Central Pollution Control Board (CPCB).	Member

Eastern Zone - Kolkata		
1.	Hon'ble Mr. Justice Jayanta Kumar Biswas Former Judge, Calcutta High Court	Chairman
2.	Principal Secretary, Urban Development, Government of West Bengal, Kolkata, West Bengal.	Member Secretary
3.	Principal Secretaries of Urban Development of State of Bihar, Jharkhand, Odisha, Arunachal Pradesh, Assam, Tripura, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim	Members
4.	Member Secretaries of PCBs/PCCs of Bihar, Jharkhand, Odisha, Arunachal Pradesh, Assam, Tripura, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim	Members
5.	Representative of CPCB	Member

Western Zone - Mumbai - Pune		
1.	Hon'ble Mr. Justice J.P. Devadhar Former Judge, Bombay High Court	Chairman
2.	Principal Secretary, Urban Development, Government of Maharashtra	Member Secretary
3.	Principal Secretaries of Urban Development of Govt. of Gujarat, Goa, Daman & Diu, Dadra and Nagar Haveli	Members

Western Zone - Mumbai - Pune		
4.	Member Secretaries of State PCBs/PCCs of Maharashtra, Gujarat, Goa, Daman & Diu, Dadra and Nagar Haveli	Members
5.	Representative of Central Pollution Control Board	Member

Central Zone - Bhopal		
1.	Hon'ble Mr. Justice K.K.Trivedi Former Judge, Madhya Pradesh High Court	Chairman
2.	Principal Secretaries of Urban Development Government of Madhya Pradesh, Bhopal. Madhya Pradesh.	Member Secretary
3.	Principal Secretary of Urban Development, Government of Chattisgarh and Rajasthan	Members
4.	Member Secretaries of Madhya Pradesh, Rajasthan and Chattisgarh State Pollution Control Boards	Members
5.	Representative of Central Pollution Control Board.	Member

Southern Zone-Chennai		
1.	Hon'ble Mr. Justice P.Jyothimani Former Judge Madras High Court Former Judicial Member, NGT, Southern Bench, Chennai	Chairman
2.	Principal Secretary, Urban Development, Government of Tamil Nadu	Member Secretary
3.	Principal Secretaries of Urban Development of Government of Karnataka, Kerala, Andhra Pradesh, Telangana Puducherry, Andaman & Nicobar Islands, Lakshadweep Islands.	Members

Southern Zone-Chennai		
4.	Member Secretaries of PCBs/PCCs of Tamil Nadu, Karnataka, Kerala, Andhra Pradesh, Telangana and Puducherry, Andaman & Nicobar Islands, Lakshadweep Islands.	Members
5.	Representative of CPCB	Member

6. As directed under para 20, the South Zone, Chennai consists of following members.

Southern Zone-Chennai		
1.	Hon'ble Mr. Justice P.Jyothimani Former Judge Madras High Court Former Judicial Member, NGT, Southern Bench, Chennai	Chairman
2.	Principal Secretary, Urban Development, Government of Tamil Nadu	Member Secretary
3.	Principal Secretaries of Urban Development of Government of Karnataka, Kerala, Andhra Pradesh, Telangana Puducherry, Andaman & Nicobar Islands, Lakshadweep Islands.	Members
4.	Member Secretaries of PCBs/PCCs of Tamil Nadu, Karnataka, Kerala, Andhra Pradesh, Telangana and Puducherry, Andaman & Nicobar Islands, Lakshadweep Islands.	Members
5.	Representative of CPCB	Member

11. Though we dismissed W.P.No.7038 of 2018 on the grounds of alternative remedy, subsequently in WP No.12779 of 2018 dated 11.12.2018, we have also considered use of space earmarked for park, for conversion as a composite dumping yard, as hereunder.

9. Having a proper waste management program is one of the biggest challenges which is being faced by any Municipality. Courts can take judicial notice of the increase in the industrial, commercial and residential waste. Due to rapid urbanization, virtually no space is available for dumping waste. The Municipalities have therefore to balance the competing interests of having parks/ lung space on one hand and dumping yards on the other hand. The Municipalities therefore cannot be found fault with for converting portions of parks in to dumping yard. It is also the duty of the Municipality to ensure that the parks are maintained properly and that the entire park is not converted into dumping yard. The majority of the park is being kept intact and only a small portion of the park is being utilized for the compost yard. Similar issues have been raised before this Court in the Writ Petitions challenging conversion of the park to micro compost yard. This Court, by its order dated 08.11.2017 in W.P.No.26704, 25653 and 26720 of 2017 in the case of Janakar Vs. The Commissioner, Hosur Municipality, Hosur, has observed as under:-

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 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.

10. Similarly, the Division Bench of this Court by its order dated 14.03.2018 in W.P.No.32938 of 2017 in the case of T.G.Ruthramani, Secretary, Poonamallee Nanbargal Nagar, Veettu Manai Urimaiyalargal Nalasangam, Poonamallee, Thiruvallur District, Chennai, Vs. The Member Secretary, Chennai Metropolitan Development Authority, Thalamuthu Natarajan Maligal, Egmore, Chennai, has observed as under:-

One cannot ignore a primordial fact that interests of individuals/sangam/society may not come in the way of the interest and welfare of the public. To put it succinctly, the interest and welfare of the society is paramount. This Court, also taking note of the detailed counter affidavit filed by the fourth respondent/Municipality and also the contentions projected on either side, holds that the present writ petition filed by the petitioner/Sangam sans merit.

This Court, by its order dated 22.01.2018 in the case of M.S.Rangarajan Vs. The Pammal Municipality, Pammal, Chennai, has observed as under:-

14. According to the 1st respondent/Municipality, the playground in question was not maintained properly. As per the Municipal Solid Waste Rules, 2016, the local body is required to set up Municipal Solid Waste handling facility as well as Micro Composting Facility within a small geographical area, so that the highly bio-degradable wastes, such as vegetables, fruits

and food waste can be reused by means of micro composting, where, the end product viz. manure can be effectively used for gardening and agriculture. It is the further case of the 1st respondent/Municipality that the Micro Composting facility is to occupy only a meagre portion of the playground with a Toilet for the workers engaged in the composting facilities to prevent open defecation in the area, apart from a small storage room for the safe storage of the packaged manure meant for disposal.

15. While making a layout, it is now mandatory to reserve 10% of the total land for public purpose excluding the land for streets and roads within the layout. But, the same has not been done in the case on hand, as the layout was approved earlier to the Development Rules. Though the petitioner contends that the setting up of Micro Compost Plant in the playground in question is bound to create irreparable and non-reversible pollution of air, land, ground water, besides emanating unbearable, filthy and dangerous odour, it is the case of the 1st respondent/Municipality that the waste generated by the residents of the petitioner's layout and the immediately surrounding areas, are being dumped by them in and around the Playground space itself.

16. Though the petitioner has raised genuine issues as regards pollution of all sorts due to the setting up of Micro Compost Plan in the Playground, this Court opines that the garbage that is dumped in and around the layout and playground, will be collected by the workers of Micro Compost Yard and segregated into biodegradable wastes and non-bio-degradable wastes, to ensure that the place is neat. As regards pollution, the 1st respondent/ Municipality, in paragraph 9 of its counter affidavit, has clearly stated that the composting will be carried out in hermetically constructed tubs using bricks and concrete of proper specifications for water proofing and will be self-contained to prevent any spread of decaying matter or leachate into the surrounding environment.

17. Private lawns or public parks are not a luxury, as they were considered in the past. Public Park is a gift of modern civilization and that reservation of vacant land as an open land is in conformity with the rules and regulations for formation of the layout and is meant for public use and enjoyment and it cannot be disputed that Open Space Reserve is treated as lung space.

18. The Apex Court has categorically held that where open space is preserved and earmarked in the plan for development of a planned town, the authorities cannot ignore the public interest and allot the same for construction of godowns, thereby causing environmental hazards. Ecology has been completely destroyed by human beings by encroaching OSR, playgrounds, river bunds, lakes, etc. But the official respondents must ensure that the waste has to be disposed of in a scientific manner. In a developing country, technicalities should not be a bar for development.

19. When a public park is a gift of modern civilization, Open Space Reserve is the lung space and setbacks are for the purpose of rain harvest, Micro Compost Yards are essential for disposal of the waste, so that it will not endanger the health of the citizens, more particularly, children, who are likely to be affected on account of mosquitoes, flies, etc, which cause air borne and water-borne diseases. When citizens want development, certainly, they will have to co-operate for the betterment of the environment and ensure that no pollution is caused on account of their attitude in disposing of the waste from their respective residence. Though, strictly speaking, Development Rules have come into effect in 1975 and that the layout in question was approved in 1972, there is no hard and fast rule that there cannot be any development at all.

20. Residents/citizens cannot expect the authorities to identify a different place far away from the place of residence to have a Compost Yard and that there is a possibility of the residents of that area to object for setting up of a Compost Yard for disposal of the waste

which are not generated from their residence.

21. Now that the Government has come up with effective policies in segregation of wastes of all kinds, people are expected to welcome such measures and must co-operate with the authorities in maintaining a healthy environment. Even though garbage bins are set up in every street, it is painful to see people throw garbage near the bin and not into the bin. From stone-age, we have come to the modern era. Certainly development is required for our betterment and hence, technicalities should not come in the way that may be detrimental to the development of the Society.

22. In view of the above and taking into account the submissions of the 1st respondent/Municipality that the Micro Compost Yard, that is to be set up in the Playground in question, will be neatly maintained without any pollution and that only a meagre portion of the Playground is required for setting up of Micro Compost Yard, this Court finds no reason to interfere with the impugned tender notice published by the 1st respondent/Municipality.

23. It is made clear that if the Micro Compost Yard that is to be set up in the Playground in question is not maintained properly, the officials, who are in-charge of that place during the relevant period shall be dismissed from service, on the ground that the Officer has failed to maintain absolute integrity, devotion to duty and that he has done the work of unbecoming of a member of his service.

11. As noticed in the above said judgments, it is the duty of the Municipal authorities to ensure that there is no nuisance created to the residents. The authorities shall ensure that the Municipal Solid Waste Management Plant/Transfer Station is to be cleaned twice a day and is to be done very regularly to avoid mosquitoes breeding in the portion of park. It is the duty of the authorities to ensure the park

to maintain properly. The Municipality is directed to ensure that the remaining area of the park is developed into a well maintained park. It is also directed that footpath and green belts and play equipments should be installed in the park. If the park is not maintained, it will be taken as contempt of the orders of this Court.

12. Instant writ petition is on similar facts. Decisions stated supra, squarely apply to the facts on hand. Following the decisions stated supra, WP No.34048 of 2017 is dismissed. No Costs. Consequently, the connected miscellaneous petition is closed."

12. In the light of the above, order made in W.P.No.34078 of 2017, dated 10.07.2019, is squarely applies to the case on hand. Following the same, instant writ petition is dismissed. No Costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

dm
To

1. The District Collector,
Coimbatore District.
2. The Joint Director,
Municipal Administration,
Collectorate, Coimbatore.
3. The Executive Officer,
Idikarai Town Panchayat,
Idikarai, Coimbatore - 641 022.

+lcc to Mr.V.Jayaprakash Narayanan, Advocate, S.R.No.74904
+lcc to Mr.L.Mouli, Advocate, S.R.No.74420
+lcc to the Government Pleader, S.R.No.75517

W.P.No.29791 of 2018
and
W.M.P.No.34766 of 2018

SS(CO)
CS/25/11/2019