



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.05.2019

PRONOUNCED ON : 16.05.2019

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) No.11893 of 2019

and

W.M.P. (MD) .No.8987 of 2019

Arulanandammal Nagar Welfare Association,
Arulanandammal Nagar,
Thanjavur - 613 007,
rep. by its President,
Mr.V.Poovalingam.

.. Petitioner

Vs.

The Commissioner,
Thanjavur Corporation,
Thanjavur.

.. Respondent

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus forbearing the respondent herein, his subordinates, men and agents or any one claiming under him from in any manner from converting the children's playground in T.S.No.3295/97, Ward No.42 as compost yard/dumping garbage or any way altering the physical features of the play ground of the children.

For petitioner : Mr.Veera Kathiravan,
Senior Counsel for
M/s.Veera Associates

For respondent : Mr.N.Dilip Kumar

ORDER

This writ petition has been filed by the petitioner for issuance of a Writ of Mandamus, forbearing the respondent / Corporation from converting the children's play ground in T.S.No.3295/97, Ward No.42 as compost yard/dumping garbage or any way altering the physical features of the playground of the children.

2. Mr.N.Dilip Kumar, learned standing counsel takes notice for the respondent.

3. By consent, the writ petition is taken up for final disposal at the stage of admission itself.



4. The learned senior counsel appearing for the petitioner submitted that the petitioner / Arulanandammal Nagar Welfare Association is a registered society and that Arulanandammal Nagar is an DTCP approved lay out and there are totally 215 housing plots in the said lay out. While approving the said lay out, the Director of Town and Country Planning had earmarked the land measuring 36,000 sq. ft. in T.S.No.3295/97 Ward No.42 as children's playground. Now the petitioner Association is taking steps to develop the said playground as a Sports Centre enabling the children in and around locality to use the same. While so, the officials of the respondent informed that a compost yard will be constructed in a portion of the playground area. The area which has been earmarked for playground cannot be used for any other purpose. The conversion of playground into compost yard will affect the children's right to play in the playground earmarked by DTCP and the creation of compost yard near the residential area will lead to health hazards in the locality. Thus, he prayed for aforesaid direction.

5. The learned standing counsel for the respondent / Corporation submitted that due to urbanization, there is hardly any land left for use of public purposes and that the respondent / Corporation is planned to use a portion of the playground area as compost yard, which would not totally affect the children's play in the land earmarked for playground. He assured that the respondent/Corporation will take utmost care to maintain the compost yard without any pollution and health hazards. Thus, he prayed to dismiss this writ petition.

6. Heard the learned counsel for both sides and perused the records carefully.

7. The Court can take judicial notice that owing to urbanization, population growth, change in life style, etc., every year the quantum of waste generated has been increasing rapidly. The respondent / Corporation have, therefore, to balance the competing interests of having playgrounds/parks/lung space on one hand and dumping yards on the other hand. Therefore, the respondent / Corporation cannot find fault with in taking over a portion of the land specified for playground for making compost yard.

8. When a similar issue arises for consideration before a Division Bench headed by the Hon'ble Chief Justice of this Court in an unreported decision in **S.Sethupathy Vs. the District Collector and others, (W.P.No.13178 of 2018, dated 06.06.2018)**, it has been held by the Hon'ble Chief Justice as follows:

<https://hcservices.ecourts.gov.in/hcser/Mcs/> The petitioner has, in the writ petition, sought shifting of the site to some other place



available three kms. away. It is not for this Court exercising jurisdiction under Article 226 of the Constitution of India to decide which site would be appropriate or suitable for construction of a garbage compost yard. The interference of this Court is not warranted.

7. The writ petition is, accordingly, disposed of, with the direction on the third respondent being the Commissioner, Vedaranyam Municipality, to ensure that the garbage compost yard does not inconvenience the public, that there is no foul smell, there is treatment of the garbage and no infection spreading materials are dumped in the compost yard. "

9. When an identical issue arises for consideration, a learned Single Judge of this Court in an unreported decision in **M.S.Rangarajan Vs. The Pammal Municipality, Pammal, Chennai and others, (W.P.No.26581 of 2017)** has held in paragraph Nos.19 to 23 as follows:

"19. When a public park is a gift of modern civilization, Open Space Reserve is the lung space and set backs 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 waterborne diseases. When citizens want development, certainly, they will have to cooperate 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



in maintaining a healthy environment. Even though garbage bins are set up in every street, it is painful to say 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.

The writ petition stands dismissed with the above observation."

10. As stated in the above decisions, it is the duty of the respondent / Corporation to maintain the compost yard without any pollution and nuisance to the residents in the locality. With the above observation, this Court is inclined to dismiss this writ petition.

11. This Writ Petition stands dismissed accordingly. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar ()

// True Copy //



To

The Commissioner,
Thanjavur Corporation,
Thanjavur.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-65924[F] dated
16/05/2019)

gcg

Order made in
W.P(MD)No.11893 of 2019
16.05.2019

_KM/ (28.05.2019) 5P 3C