



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.02.2019

Pronounced on : 18.03.2019

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CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN

and

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. (MD) Nos. 11343, 12956, 13215, 13922, 14156 and 18664 of 2018
and**

**W.M.P. (MD) Nos. 10329, 16503, 11841, 12053, 12649, 12838, 19793 and
16511 of 2018**

W.P. (MD) No. 11343 of 2018:-

M. Ahamed Fathima

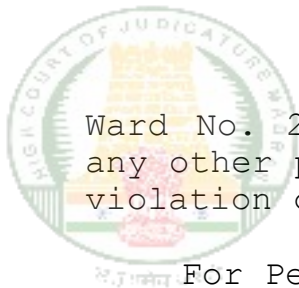
... Petitioner

-VS-

1. The District Collector,
Tirunelveli District,
Tirunelveli.
2. The Director of Town and Country Planning,
No. 807, Cherangalvarayan Building Fourth Floor,
Anna Salai,
Chennai - 600 002.
3. The Member Secretary,
Local Planning Authority,
No. 108, Trivandrum Road,
Palayamkottai,
Tirunelveli.
4. The Commissioner,
Tirunelveli City Municipal Corporation,
Tirunelveli.
5. The Assistant Commissioner,
Palayamkottai Ward Office,
Tirunelveli City Municipal Corporation,
Tirunelveli.

... Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, forbearing the Third and Fourth Respondents from converting the land earmarked as Park in the Mubarak Nagar, approved Layout No. 12/1986 situated in



Ward No. 21 of the the Tirunelveli City Municipal Corporation for any other purpose including the construction of Vermicompost unit in violation of the approval of layout.

For Petitioner

: Mr. H. Arumugam

For Respondents

: Mr. K. Chellapandian,
Additional Advocate General
assisted by Mr. N. Shanmugaselvan,
Special Government Pleader
(for R1 to R3)

Mr. K. Chellapandian,
Additional Advocate General
assisted by Mr. Aayiram K. Selvakumar
(for R4 & R5)

W.P. (MD) No. 12956 of 2018:-

Raja Rajeswari Nagar Residents Association,
Rep. by its Secretary,
K. Jeyabalan,
28, Raja Rajeswari Nagar,
Perumalpuram,
Tirunelveli.

... Petitioner

-vs-

1. The District Collector,
Tirunelveli District,
Tirunelveli.
2. The Commissioner,
Tirunelveli City Municipal Corporation,
Tirunelveli.
3. The District Environmental Enginner,
Tamil Nadu Pollution Control Board,
Tirunelveli.

... Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, forbearing the Second Respondent from constructing the "Bio Degradation Unit" in the land at Raja Rajeswari Nagar, Ward No. 27, Melapalayam Zone, Tirunelveli by considering the Petitioner's representation dated 06.06.2018 within a time frame fixed by this Court.

For Petitioner

: Mr. T. Selvakumaran

For Respondents

: Mr. K. Chellapandian,
Additional Advocate General
assisted by Mr. N. Shanmugaselvan,



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Special Government Pleader
(for R1 and R3)

Mr. K. Chellapandian,
Additional Advocate General
assisted by Mr. Aayiram K. Selvakumar
(for R2)

W.P. (MD) No. 13215 of 2018:-

D. Chandra Paul

... Petitioner

-vs-

1. The Commissioner,
Tirunelveli Municipal Corporation,
Tirunelveli.

2. The District Collector and the Chairman,
Local Planning Authority,
Tirunelveli- 627 009.

3. The Director,
Town and Country Planning,
807, Anna Salai,
Chennai - 600 002.

... Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, forbearing the Respondents from putting up any construction or whatsoever nature except for the purpose of park in the area earmarked as park in layout No. 93/79 and situated in Re Survey No. 366/part, Vijayaragavamudaliar Chathiram Village, Palayamkottai Taluk and further directing the Respondents to develop the same as park, for the common employment of all the residents of Kumaresan Nagar, Saibaba Colony, Royal Colony and Sankar Colony.

For Petitioner : Mr. P. Ronald

For Respondents : Mr. K. Chellapandian,
Additional Advocate General
assisted by Mr. Aayiram K. Selvakumar
(for R1)

Mr. K. Chellapandian,
Additional Advocate General
assisted by Mr. N. Shanmugaselvan,
Special Government Pleader
(for R2 & R3)

W.P. (MD) No. 13922 of 2018:-

<https://hcservices.ecourts.gov.in/hcservices/>

G. Haris Victor

... Petitioner



-vs-

1. The District Collector,
Tirunelveli District,
Tirunelveli.

2. The Commissioner,
Tirunelveli Municipal Corporation,
Tirunelveli,
Tirunelveli Distrit.

3. The Assistant Commissioner,
Thachainalloor Regional Office,
Tirunelveli Municipal Corporation,
Tirunelveli District.

... Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Respondents not to construct the Composite waste Yard and Septic Tank in the Children's Park in Indian Cement Limited (ICL) Officers Colony, Tharapuram, Tirunelveli District.

For Petitioner : Mr. S. Xavier Rajini

For Respondents : Mr. K. Chellapandian,
Additional Advocate General
assisted by Mr. N. Shanmugaselvan,
Special Government Pleader
(for R1)

Mr. K. Chellapandian,
Additional Advocate General
assisted by Mr. Aayiram K. Selvakumar
(for R2)

W.P. (MD) No. 14156 of 2018:-

Electricity Staff Co-operative Building Society Ltd., 0.2193,
Rep. by its President,
No. 49, E.B. Colony,
Maharajanagar, Tirunelveli.

... Petitioner

-vs-

1. The District Collector,
Tirunelveli District,
Tirunelveli.

2. The Director,
<https://hcservices.ecourts.gov.in/hcservices/>
Town and Country Planning,
No. 807, Cherangalvarayan Building, IV Floor,



Anna Salai,
Chennai - 600 002.

3. The Member Secretary,
Local Planning Authority,
No. 108, Trivandrum Road,
Palayamkottai,
Tirunelveli.
4. The Commissioner,
Tirunelveli City Municipal Corporation,
Tirunelveli.
5. The Assistant Commissioner,
Melapalaym Ward Office,
Tirunelveli City Municipal Corporation,
Tirunelveli.

... Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, forbearing the Fourth and Fifth Respondents from erecting the Vermicompost in the land belonging to the Petitioner Society in the approved layout of Electricity Staff Co-op. Building under Labout Approval No. L.P.H.-D.T.P. - No. 57/70.

For Petitioner : Mr. H. Arumugam

For Respondents : Mr. K. Chellapandian,
Additional Advocate General
assisted by Mr. N. Shanmugaselvan,
Special Government Pleader
(for RR1 to 3)

Mr. K. Chellapandian,
Additional Advocate General
assisted by Mr. Aayiram K. Selvakumar
(for RR4 to 5)

W.P. (MD) No. 18664 of 2018:-

A. Mohammed Rafiq

... Petitioner

-vs-

1. The Commissioner,
City Municipal Corporation,
Tirunelveli.
2. The Member Secretary,
Town and Country Planning Authority,
City Municipal Corporation,
Tirunelveli.



3. The Chief Health Officer,
Tirunelveli Municipal Corporation,
Tirunelveli.

4. The District Environmental Engineer,
Tamil Nadu State Pollution Control Board,
Pettai,
Tirunelveli - 10.

5. The Assistant Commissioner,
Zonal Office - Palayamkottai,
City Municipal Corporation,
Palayamkottai,
Tirunelveli.

... Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the First to Fifth Respondents to find out alternative available places for installation of solid waste management unit instead of site earmarked at Survey No. 1, Darling Nagar, V.M. Chathiram, Palayamkottai, Tirunelveli -11 on the grounds of health and environmental hazards on the basis of representation dated 10.07.2018.

For Petitioner : Mr. S.Sivasubramanian

For Respondents : Mr. K. Chellapandian,
Additional Advocate General
assisted by Mr. N. Shanmugaselvan,
Special Government Pleader
(for R2 to R5)

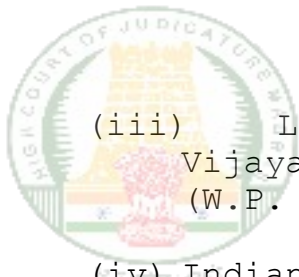
Mr. K. Chellapandian,
Additional Advocate General
assisted by Mr. Aayiram K. Selvakumar
(for R1)

O R D E R

(Order of the Court was made by P.D. AUDIKESAVALU, J.)

The Petitioners in these Writ Petitions (except W.P. No. 14156 of 2018) filed as Public Interest Litigation have opposed the construction of the micro-compost plants in the following locations in Tirunelveli Corporation:-

- (i) Mubarak Nagar approved Layout No. 12/1986 situated in Ward No. 21 (W.P. (MD) No. 11343 of 2018);
(ii) Raja Rajeswari Nagar, Ward No. 27, Melapalayam Zone (W.P. (MD) No. 12956 of 2018);



(iii) Layout No. 93/79 and situated in Re Survey No. 366/part, Vijayaragavamudaliar Chathiram Village, Palayamkottai Taluk (W.P. (MD) No. 13215 of 2018);

(iv) Indian Cement Limited (ICL) Officers Colony, Tharapuram (W.P. (MD) No. 13922 of 2018); and

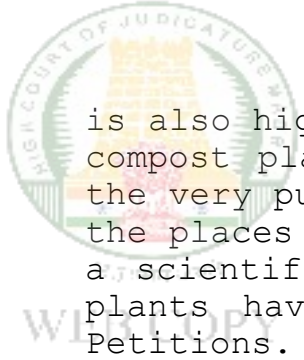
(v) Survey No. 1, Darling Nagar, V.M. Chathiram, Palayamkottai, Tirunelveli -11 (W.P. (MD) No. 18664 of 2018).

The Petitioner in W.P. (MD) No. 14156 of 2018, which is a Co-operative Society of Electricity Staff and has developed the lands in Kulavanigarpuram Village in Tirunelveli for housing plots and got approved layout, has filed that Writ Petition seeking to forbear the Tirunelveli Corporation from erecting Vermicompost in the land belonging to them in that layout.

2. We have heard the Learned Counsel for the Petitioners, the Learned Counsel for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

3. The Learned Counsel appearing for the Petitioners contended that the micro-compost plants that were constructed by the Tirunelveli Corporation in the aforesaid places had been earmarked for 'park', but the officials of the Tirunelveli Corporation were proceeding with constructions despite their objections and protests, which has forced them to seek redressal from this Court. It is also the case of the Petitioners that when an area is earmarked to be maintained as 'park', it could not be used by the Respondents for any other purpose. It is complained that construction of the said micro-compost plants at the aforesaid places were causing air pollution and serious health hazards to the residents in the neighborhood. In that factual backdrop, these Writ Petitions have been filed.

4. The Learned Counsel for the Respondents submitted that in furtherance to the Scheme formulated by the Central Government under the Solid Waste Management Rules, 2016, it had been decided by the Tirunelveli Corporation that instead of dumping the daily collected waste in a single plant or land fill site, the same should be disposed within the respective wards of the local body by adopting advanced technologies by opening a number of solid waste handling facilities called micro-compost plant so that such waste generated can be re-used in the respective areas. It is explained that due to rapid urbanization, there is scarcity of place in Tirunelveli Corporation limits and with great difficulty, small portions of larger extents of land belonging to the Tirunelveli Corporation that had been earmarked for 'park' have been identified for locating the micro-compost plants, for which the Petitioners cannot take any exception. Reliance is placed on the decision of the Division Bench of this Court in **M.G.M. Nagar Nala Munnetra Sangam -vs- Commissioner** (Order dated 11.12.2018 in W.P. No. 12779) in which a similar contention that the place earmarked by local body for maintaining a 'park' could not be used for any other purpose has been rejected. It



is also highlighted that it would be meaningless to shift the micro-compost plants to some other distant places as it would not serve the very purpose of establishing the same if they were far away from the places where waste generated had to be collected and disposed in a scientific manner. It is further added that the micro-compost plants have become functional during the pendency of these Writ Petitions.

5. Having due regard to the aforesaid rival submissions, we had sought for a report from the District Environmental Engineer, Tamil Nadu Pollution Control Board, Tirunelveli in respect of the aforesaid micro-compost plants and after inspection, a report dated 23.11.2018 has been filed, in which it has been reported as follows:-

"I respectfully submit that Rule No. 15 (y) of the Solid Waste Management Rules, 2016, states that setting up waste processing, treatment or disposal facility, if the volume of waste is exceeding five metric tons per day including sanitary landfills has to obtain authorisation from the State Pollution Control Board or the Pollution Control Committee, as the case may be. Since the said Micro Composting facility is constructed to process a maximum of 1.0 tons/day of compostable waste, authorisation from Tamilnadu Pollution Control Board is not required.

Also as per B.P. No. 06 dated 02.08.2016 on the list of industries under revised categorisation of industries in view of directions issued by the Central Pollution Control Board under Section 18 (1) (b) of the Water (P&CP) Act, 1974, and the Air (P&CP) Act, 1981, the production of "organic manure (manure mixing)" is categorized as White Category vide No. 4028 and as per B.P. No. 06 dated 02.08.2016 there shall be no necessity of obtaining the consent to operate for white category of industries and an intimation to SPCB shall suffice as per B.P. No. 5 dated 02.08.2016.

I respectfully submit that the Tirunelveli Municipal Corporation shall take necessary action on the following:

- a. The micro compost facility shall receive only segregated bio compostable solid waste and no segregation process shall be carried out in the compost site.*
- b. The Leachate shall be re-circulated in compost plant for moisture maintenance.*
- c. The micro compost facility shall receive only require quantity of bio compostable solid waste so as to be treated in the facility and storage of waste shall not be practised in the premises.*
- d. Necessary precaution shall be taken to minimise nuisance of odour, flies, rodents, bird menace and fire hazard;*



- e. *The compost produced from the facility shall be removed then and there and shall be utilised without accumulation in the premises."*

In the light of the aforesaid report, we find that the apprehension of the Petitioners that the location of the micro-compost plants would create air pollution and other health hazards is imaginary and unsubstantiated. The Petitioners have not been able to show that the location of the micro-compost plants are in violation of any statutory provision for which this Court could intervene in the matter. Further, as seen from the report of the Pollution Control Board, the volume of waste generated each day does not exceed 5 metric tonnes and as such, the necessity to obtain authorization from the State Pollution Control Board or the Pollution Control Committee under Rule 15(y) of the Solid Waste Management Rules, 2016, does not arise in these cases. It is needless to reiterate that it is not within the realm of the Courts to decide which area should be used or not used for the purpose of establishing the micro-compost plants in the absence of any statutory prohibition. There does not appear to be any infirmity in the decision-making process of the Respondents in locating the micro-compost plants warranting interference of this Court in the exercise of the discretionary jurisdiction under Article 226 of the Constitution of India, 1950. However, it is made clear that the refusal of this Court to grant the aforesaid relief claimed by the Petitioners would not preclude the rights of the Petitioners to seek necessary relief from the concerned forum when there is any dereliction of duty by the concerned officials of the Tirunelveli Corporation in the maintenance of the micro-compost plants in a hygienic condition in strict compliance of the relevant laws and norms stipulated by the Pollution Control Board in this regard.

6. Accordingly, the Writ Petitions are dismissed with aforesaid observations. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (T AND P)

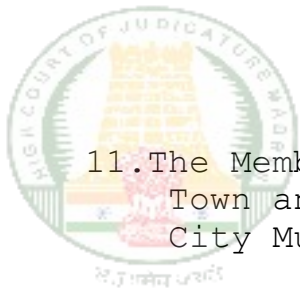
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Sub Assistant Registrar (CS II)



To

1. The District Collector,
Tirunelveli District,
Tirunelveli.
2. The Director of Town and Country Planning,
No. 807, Cherangalvarayan Building Fourth Floor,
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Chennai - 600 002.
3. The Member Secretary,
Local Planning Authority,
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Palayamkottai,
Tirunelveli.
4. The Commissioner,
Tirunelveli City Municipal Corporation,
Tirunelveli.
5. The Assistant Commissioner,
Palayamkottai Ward Office,
Tirunelveli City Municipal Corporation,
Tirunelveli.
6. The Director,
Town and Country Planning,
807, Anna Salai,
Chennai - 600 002.
7. The Assistant Commissioner,
Thachainalloor Regional Office,
Tirunelveli Municipal Corporation,
Tirunelveli District.
8. The Member Secretary,
Local Planning Authority,
No. 108, Trivandrum Road,
Palayamkottai,
Tirunelveli.
9. The District Collector of the Chairman,
Local Planning Authority, Tirunelveli 627 009.
10. The District Environmental Engineer,
Tamil Nadu pollution Control Board, Tirunelveli.



11. The Member Secretary,
Town and Country Planning Authority,
City Municipal Corporation, Tirunelveli.

12. The Assistant Commissioner,
Melapalaym Ward Office,
Tirunelveli City Municipal Corporation,
Tirunelveli.

13. The Chief Health Officer,
Tirunelveli Municipal Corporation,
Tirunelveli.

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Tamil Nadu State Pollution Control Board,
Pettai,
Tirunelveli - 10.

15. The Assistant Commissioner,
Zonal Office - Palayamkottai,
City Municipal Corporation,
Palayamkottai,
Tirunelveli.

+1CC to Mr.T.SELVAKUMARAN , Advocate SR.No. **54890**.
+1CC to Mr.S.XAVIER RAJINI , Advocate SR.No. **55437**.
+1CC to Mr.P.RONALD , Advocate SR.No. **55144**.
+1CC to Mr.H.ARUMUGAM , Advocate SR.No. **55205**.

**W.P. (MD) Nos. 11343, 12956, 13215,
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