



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.07.2019

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WEB COPY

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.12969 of 2019andW.M.P(MD)Nos.9664 and 9665 of 2019

Kanan Nagar Welfare Association,
registration No.59/2009,
represented by its President,
K.Rajagopal.

... Petitioner

Vs.

1.The Commissioner of Municipal Administration,
Ezhilagam, 6th floor,
Chepauk, Chennai-600 005.

2.The District Collector,
Thanjavur District, Thanjavur.

3.The Commissioner,
Thanjavur Corporation, Thanjavur.

4.The District Environmental Engineer,
Tamilnadu Pollution Control Board,
Thanjavur.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents from converting the classification and usage of the land in T.S.No.11/2, New T.S.No.104, admeasuring to 50050 sqfts at Kannan Nagar 3rd street, Thanjavur, Thanjavur District from that of a children play ground to any other purpose and restrain the respondents from establishing a Micro-Compost Centre in the place.

For Petitioner : Mr.R.Gowrishankar

For Respondents : Mr.A.K.Baskara Pandian
Special Government Pleader
for R.1 and R.2

: Mr.N.Dilip Kumar
for R.3

**ORDER****(Order of the Court was made by M.SATHYANARAYANAN, J)**

The petitioner claims to be a Public Interest Litigant stating among other things that there are 120 houses in Kannan Nagar at Thanjavur and more than 1000 houses in nearby surrounding areas such as Rajppa Nagar and Selvam Nagar etc., and that apart Kundavai Nachiyar Government Arts College for Women is also located near to their area, it is the specific case of the petitioner that in Kannan Nagar 3rd street, there is a children play ground in old T.S.No.1/2, New T.S.No.104 admeasuring to an extent of 50050 sqfts and previously very many children from the said area used to play and since the said play ground has not been maintained properly, it has become the stage of disuse. The petitioner would further aver that during the Independence day and Republic day, they are used to flag hoisting by the residents of that locality.

2. The grievance expressed by the petitioner in this Writ Petition styled as a Public Interest Litigation is that in a portion of the property reserved for play ground, the third respondent is attempting to put up a solid waste management facility and in that event, there would be definitely emanation of foul smell and the improper maintenance would also lead to serious health hazardous and hardship to the nearby residents and the representations dated 02.05.2019 and 23.05.2019, submitted in this regard are failed to invoke any kind of response and hence, he came forward to file this Writ Petition.

3. The writ petition was entertained on 07.06.2019 and in the light of the fact that no play ground was maintained for the benefit of the children, this Court has granted interim orders.

4. The learned Counsel appearing for the petitioner would submit that this Court can also take judicial notice to the fact that once solid waste management facility is established, the concerned official respondents are not in a habit of maintaining it properly and the place is reserved for public purpose and it should not be used for any other purpose and the third respondent is not entitled to put up the solid waste management facility in that place and hence, prays for allowing of the writ petition.

5. Per contra, the learned Counsel appearing for the third respondent would submit that out of 50050 sqfts in the land reserved for public purpose, the solid waste management facility is going to be put up in the land corner opposite to the area reserved for park and play ground and also assures that the solid waste management rules would be strictly implemented and there will not be any emanation of foul smell and there will not be any health hazardous to the residents of the said locality also.



6. The said submission, on instructions, is placed on record.

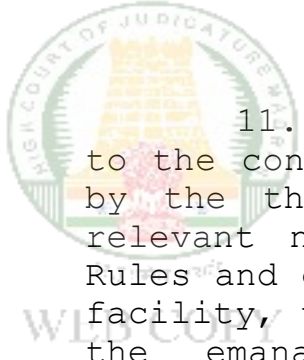
7. The location of solid waste management facility in the area reserved for public purposes is also came for consideration before the Division Bench in **M.G.M.Nala Munnetra Sangam, Thiruvallur Vs. Commissioner, Municipal Authority, Thiruvallur** reported in **(2019)2 MLJ 114** and it is relevant to extract hereunder the following paragraph:

" 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. Municipalities have to balance the competing interest of having parks/lung space on one hand and dumping yards on the other hand. Municipalities cannot be found fault with for converting portions of parks in to dumping yard. 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. 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."

8. The Division Bench of this Court has already taken note of the decisions in LNIND 1991 SC 315(**Bangalore Medical Trust Vs. B.S.Muddappa and Others**); LNIND 2013 SC 1033(**Purushottam Vs. State of Karnataka**); LNIND 2011 SC 2621(**R.K.Mittal and Others Vs. State of Uttar Pradesh**), which laid down the proposition that a place which is earmarked for parks cannot be converted and put to any other use.

9. Admittedly, the solid waste management facility is purely for public purposes and this Court can also take judicial notice of the fact that the citizen of this Country generally lack awareness, as to the civic sense and though laws are in place, as to the unnecessary dumping of garbage in public use, the said laws are hardly use. The generation of garbage is increased day by day and the only solution as on today appears to be is the solid waste management facility.

10. In the light of the undertaking and assurance given by the third respondent, on instructions and also in the light of the memo dated 25.06.2019, this Court is of the considered view that the third respondent be permitted to put up the solid waste management facility.



11. In the result, this Writ Petition is dismissed, subject to the conditions that the solid waste management facility put up by the third respondent shall be in strict compliance to the relevant norms and rules, including the Solid Waste Management Rules and on account of the construction of solid waste management facility, there shall not be any health hazardous, which including the emanation of foul smell to the residents of that locality. The third respondent is also under obligation to maintain the solid waste management facility in a neat, tidy and sanitary condition. The third respondent is also directed to file status report with supporting documents as to the operation and maintenance of solid waste management facility. No costs. Interim order already granted shall stand vacated. Consequently, the connected Miscellaneous Petitions are dismissed.

12. Call on **05.08.2019**, for filing status report of the third respondent.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Commissioner of Municipal Administration,
Ezhilagam, 6th floor,
Chepauk, Chennai-600 005.

2.The District Collector,
Thanjavur District, Thanjavur.

3.The Commissioner,
Thanjavur Corporation, Thanjavur.

4.The District Environmental Engineer,
Tamilnadu Pollution Control Board,
Thanjavur.

+1 CC to Mr.N.DILIP KUMAR, Advocate SR-74272.

+1 CC to Mr.R.GOWRI SHANKAR, Advocate SR-74144.

W.P. (MD) No.12969 of 2019

08.07.2019

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