

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**Reserved on
21.12.2018****Delivered on
13.03.2019**

CORAM:

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**THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU**

W.P.(MD) No.19552 and 20471 of 2018
and
WMP(MD) No. 17348,17349 & 18422 of 2018
IN WP(MD) No. 19552 of 2018
AND
WMP(MD) No. 18220 & 18221 of 2018
IN WP(MD) No. 20471/2018

W.P. (MD) No.19552 of 2018

P.Radhakrishnan ... petitioner
versus

1.The District Collector,
Theni District.

2.The Commissioner,
Cumbum Municipality,
Cumbum, Theni District

... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records pertaining to the 2nd respondent's impugned tender notification in Na.Ka.No.1260/2018/ E1 dated 24.08.2018 and quash the same and further direct the respondents to set aside and continue the park in Sri Nandagopalasamy Nagar.

W.P. (MD) No.20471 of 2018

M.Krishnakumar ... Petitioner

- vs. -

1 The District Collector,
Collectorate, Theni Dt.-625531.

2 The Commissioner,
Cumbum Municipality, Cumbum,
Theni Dt.-625 516.



3 The District Environmental Engineer,
Tamilnadu Pollution Control Board,
Sar Complex, D.No.15-4-12-a3,
Boothipuram Road, Back to National Theatre,
Theni Dt.-625 531.

... respondents

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Prayer in WP(MD). 20471 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for records pertaining to the Impugned Notice in Na.Ka.No.1260/2018/E1 dated 24.08.2018 passed by the 2nd respondent and to quash the same as illegal and void and consequently directing the respondents to use the already existing park site situated at Sri Nandhagopalasamy Nagar only for developing and maintaining as public park and not for any other purposes.

For petitioner : Mr.S.Bharathi,
in W.P.(MD) No.19552 of 2018

Mr.A.K.Hemaraj,
in W.P.(MD) No.20471 of 2018

For Respondents : Mr.N.Shanmugaselvam,
Additional Government Pleader
for 1st respondent, in both WPs.

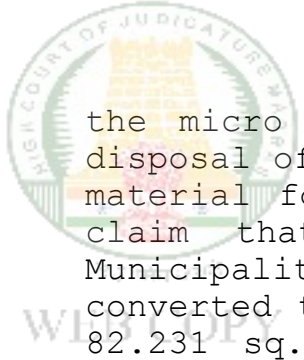
Mr.K.Hema Karthikeyan,
for 2nd respondent, in both WPs.

COMMON ORDER

These two Writ Petitions are filed to restrain the Cumbum Municipality from putting up a micro compost centre by utilizing a portion of the park.

2. The challenge in W.P.No.20471 of 2018 is to the notification dated 24 August 2018 issued by Cumbum Municipality, calling for tenders for construction of micro compost centre. The petitioner in W.P.No.19552 of 2018 also challenges the very same notification dated 24 August 2018. The primary objection appears to be the conversion of a portion of the park for putting up the micro compost centre.

3. The Commissioner, Cumbum Municipality has filed a counter affidavit indicating that the municipality is collecting waste from door to door and segregating it as bio gradable and non bio-gradable. According to the local body, the State Government has taken a policy decision to set up micro processing centres in all the local bodies across the State. The Cumbum Municipality is one among the municipalities selected by the Government for implementing



the micro compost project. The micro compost centre is used for disposal of wastes and the biodegradable wastes would be used as raw material for manufacture of manure. The municipality contested the claim that the proposed land is a park. According to the Municipality, the total plots are only 342. The promoter has converted the common area into plots. The total park area is about 82,231 sq.ft. The Municipality is proposed to utilize only 4000 sq.ft. at the South-West corner of the park. In short, it is the contention of the municipality that only 4.86% of the total area is intended for construction of the micro compost yard, which is in larger public interest.

4. We have heard the learned counsel for the parties.

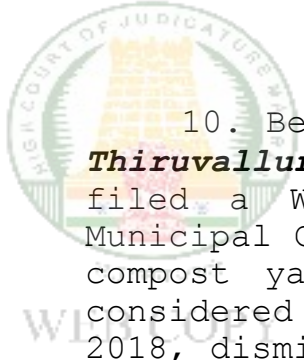
5. There is a statutory obligation on the part of the municipality to clear the garbage and keep the city clean. There is also an obligation on the part of the local residents to locate a suitable place for disposal of the garbage. The residents of the Cumbum Municipality failed to earmark a proper place for disposal of the garbage and the same resulted in identifying the place by the municipality for establishing a micro compost centre.

6. The petitioners have alleged that a park is sought to be converted as a micro compost centre. The counter affidavit filed by the municipality clearly shows that only 4.86% of the park area is taken for putting up the micro compost yard. The total area of the park is stated to be about 82,231 sq.ft. The municipality proposes to utilize 4000 sq.ft. for putting up the micro compost centre.

7. The construction of the micro compost centre is in larger public interest. It would be of considerable advantage to the residents. In case the garbage is not treated and proper arrangements are not made for its disposal, it would result in health hazard to the local people.

8. The Municipal Solid Waste Management Rules 2016, mandates that ever local body must set up municipal solid waste disposal centres as well as micro compost facility. There is also an obligation to be carried out on the part of the residents to identify a suitable place for putting up the micro compost centre. The petitioners have not identified a suitable place for locating the micro compost centre. The municipality is not in possession of any other suitable land, and therefore a decision was taken to utilize 4.86% of the total area earmarked as a park to put up a micro compost yard. Since action was taken in larger public interest, it would not be correct on the part of this Court to direct the local body to discontinue the process and develop the entire area as a park.

9. The issue raised by the petitioners is squarely covered by a decision of the Principal Bench in W.P.No.12779 of 2018.



10. Before the Principal Bench, **MGM Nagar Nala Munnetra Sangam, Thiruvallur vs. Commissioner, Municipal Authority, Thiruvallur**, filed a Writ Petition in W.P.No.12779 of 2018, directing the Municipal Corporation, Tiruvallur, to stop the construction of micro compost yard in the area reserved for park. The Division Bench considered the issue extensively and by order dated 11 December 2018, dismissed the Writ Petition.

11. While negating the contentions taken by the petitioners in **MGM Nagar Nala Munnetra Sangam**, the Division Bench directed the Municipality to ensure that the area is kept neat and clean and the park is also developed in larger public interest.

Para 11 of the order reads thus :-

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. Since the construction of micro compost centre is in larger public interest, there is no question of injuncting the local body. The Writ Petitions are therefore liable to be dismissed.

13. In the upshot, we dismiss the Writ Petitions. No costs. Consequently, connected miscellaneous petitions in W.M.P.(MD) Nos.17348, 17349, 18220, 18422 and 18221 of 2018 are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The District Collector,
Theni District.

2.The Commissioner,
Cumbum Municipality,
Cumbum, Theni District



+1 CC to M/s.SPL GP (SR-54371[F] dated 15/03/2019)

+2 CC to M/s.A.K.Hemaraj, Advocate, (SR-53715[F] dated 13/03/2019)
(SR-53890[F] dated 14/03/2019)

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Order in
W.P.(MD) No.19552 & 20471/2018 &
WMP(MD) No. 17348,17349 & 18422 of 2018
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AND
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13.03.2019

SP-06.04.2019/5P-7C