



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.10.2020

CORAM:

THE HONOURABLE Mr.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE Mr.JUSTICE B.PUGALENDHI

W.A(MD) .No.731 of 2020

and

C.M.P(MD) .No.4252 of 2020

S.M.Nizam

... Appellant/Petitioner

Vs.

1. The District Collector,
Virudhunagar District,
Virudhunagar.

2. The Commissioner,
Srivilliputhur Municipality,
Virudhunagar District.

... Respondents/Respondents

PRAYER: This Writ Appeal is filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P(MD).No.22479 of 2018, dated 31.10.2019 on the file of this Court.

Prayer in WP(MD) .22479/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned tender notification of the 2nd respondent made in Na.Ka.No.3192/2018/E1 Sl.No.3 dated 11.09.2018 and quash the same as illegal.

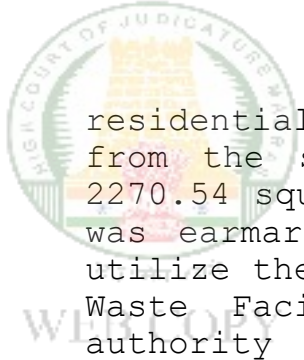
For Appellant : Mr.A.John Vincent
For R2 : Mr.J.Parekkumar

JUDGMENT

[Order of the Judgement was delivered by
N.KIRUBAKARAN , J.]

This Writ Appeal has been preferred by the appellant/writ petitioner against the dismissal of the writ petition challenging the tender notification issued by the second respondent for installing an Integrated Municipal Solid Waste Facility in the precinct of Survey Ward No.2, Block No.26, which has been earmarked for Children Park.

<https://hcservices.courts.mca.gov.in/> According to the appellant/writ petitioner, he is a resident of Ashok Nagar and he is also the President of Ashok Nagar Residential Welfare Association. The said Ashok Nagar has formed a

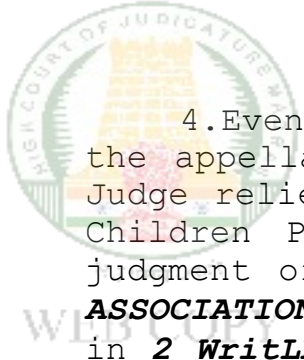


residential layout comprising 500 house sites and also got approval from the second respondent. The area measuring to an extent of 2270.54 square metre of open land in Survey Ward No.2, Block No.26, was earmarked for Children Park. The second respondent sought to utilize the said place for installing the Integrated Municipal Solid Waste Facility, for which, the second respondent has got no authority or right under the Law. According to him, if such Integrated Municipal Solid Waste Facility is installed, that will spoil the health atmosphere and cause health hazard to the residents of the said layout. Therefore, the petitioner has challenged the said notification.

3.The learned Single Judge, after hearing both sides, held in Paragraph Nos.5 and 6, as under:-

"5.Before going into the facts of the case, decision taken by the Hon'ble Division Bench of this Court in similar issue in **W.P.No.32938 of 2017, dated 14.03.2018 [T.G.Ruthramani Vs. The Member Secretary]; M.G.M.N.N.M.Sangam V. Commissioner, Municipal Authority** reported in 2019(2) MLJ 114; **W.P(MD).Nos.19552 and 20471 of 2018 dated 13.03.2019 [P.Radhakrishnan Vs. The District Collector, Theni District]; W.P.No.29791 of 2018, dated 29.08.2019 [K.Karunaimoorthy Vs. The District Collector, Coimbatore District]; W.P(MD).No.19334 of 2019, dated 06.09.2019 [Anthony Raj Vs. The District Collector, Virudhunagar District]** and also the decision of the Hon'ble Supreme Court in **Petition for Special Leave to Appeal (C) No.12543 of 2019, dated 08.07.2019 [M.Krishnakumar Vs. District Collector and ors.]**, has to be considered.

6.In the afore-mentioned judgments, while dismissing the Writ Petitions, the Division Bench of this Court has uniformly held that since the construction of micro compost centre is in larger public interest, there is no question of injuncting the local body. 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. 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 cleared 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 shall 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."



4. Even though Mr. A. John Vincent, learned counsel appearing for the appellant/writ petitioner would submit that the learned Single Judge relied upon the judgment to show that the area earmarked for Children Park would be utilized for public purpose, there is a judgment of a Division Bench of this Court in **SIDCO NAGAR WELFARE ASSOCIATION Vs. CHENNAI METROPOLITAN DEVELOPMENT AUTHORITY**, reported in **2 WritLR 645**, in which, it has been held that once the area has been earmarked for public purpose, especially, for Children Park, that cannot be re-allotted or for commercial purpose. He also relied upon the paragraph No.25 of the said judgment, in support of his contention.

5. The facts in the said case can easily be distinguished from the case on hand. An open space sought to be used for development of a commercial complex. Whereas, in this case, it is only for the larger interest of the people, namely, the Compost Yard is going to be installed. If the Compost Yard is now going to be installed, that will create a lot of health hazard and there may not be any scientific disposal of garbage. Only for scientific disposal of garbage generated from the urban area, this Integrated Municipal Solid Waste Facility is sought to be installed and therefore, for larger public interest, the place which has been earmarked for Children Park can be reconverted only for public purpose, like Integrated Municipal Solid Waste Facility. Therefore, there is no illegality in the order passed by the learned Single Judge and the writ appeal fails and the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

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/ /2020

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The District Collector,
Virudhunagar District,
Virudhunagar.



+1 CC to Mr.A.JOHN VINCENT, Advocate SR-19526.
+1 CC to the SPL GP SR-19598.

W.A(MD) .No.731 of 2020

and

C.M.P(MD) .No.4252 of 2020

08.10.2020

SJ(CO)

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