



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2021

CORAM:

THE HONOURABLE MR. JUSTICE **M.M. SUNDRESH**

AND

THE HONOURABLE MRS. JUSTICE **S. ANANTHI**

W.P. (MD) No. 2626 of 2019

and

W.M.P. (MD) Nos. 1989 & 14467 of 2019

Soodamanipuram House Owners Welfare Association,
Rep. by its President,
R. Radhakrishnan

: Petitioner

Vs.

1. The District Collector,
Sivagangai District,
Sivagangai.

2. The Commissioner,
Karaikudi Municipality,
Karaikudi,
Sivagangai District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents not to put up any garbage dumping unit and segregation unit within the premises of Soodamanipuram Layout in T.S.No.429/9 of Karaikudi Municipality, Sivagangai District and also to maintain the parks which have been developed in the Soodamanipuram layout by not deviating from the purpose for which the same has been allotted.

For Petitioner : Mr. A. Srinivasan

For Respondents : Mr. K. P. Krishnadoss,
Special Government Pleader
for R.1

Mr. P. Mahendran,
Standing Counsel for R.2

ORDER

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

This writ petition has been filed by the petitioner Association seeking a writ of mandamus directing the respondents not to put up any dumping unit within the premises of Soodamanipuram Layout in an area, which is earmarked to be used as a Park.

2. The second respondent has proposed to create a Micro Compost Plant to an extent of 800 sq. meter, in and out of the 4.75 acres, which has been earmarked as a Park. This is sought to be done as a



policy decision by converting the waste from the household into organic garden manures. It is a scientific process of clearing the garbage and put it into use. Accordingly, both the State and Central Governments under the Swachh Bharat Mission Scheme decided to set up Micro Compost plants. Funds for the aforesaid project is shared by both the Central and the State Governments, apart from the local authority.

3. An administrative sanction was granted and approved for the aforesaid purpose by the local body. A resolution was also passed to that effect. Technical sanction was also accorded. Tenders were called for in pursuant to the tender notification dated 27.08.2018. About 30% of the work has been done and at that point of time, the present writ petition has been filed and an interim order was also obtained.

4. The learned Counsel appearing for the petitioner submitted that the place, which is earmarked for Park, cannot be used for any other purpose. The petitioner has identified a separate area, which has not been looked into by the authorities. The petitioner is also ready and willing to make payment for the work already done, in the event of the place being shifted and the alterations made in the present place may be used for any other purpose.

5. The learned Standing Counsel appearing for the second respondent submitted that a similar issue has been dealt with by this Court in R.Radhakrishnan v. District Collector, Theni District and another, [W.P.(MD)Nos.19552 & 20471 of 2018, dated 13.03.2019], wherein, it has been held as follows:

"8.The Municipal Solid Waste Management Rules, 2016, mandates that every 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.

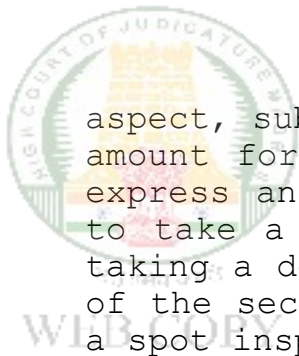
12. Since the construction of micro compost centre is in larger public interest, there is no question of injuncting the local body. The Writ Petitions are therefore liable to be dismissed."

The aforesaid decision has also been upheld by the Hon'ble Apex Court in SLP(C).No.12543 of 2019, dated 08.07.2019. Thus, no interference is required.

6. We have heard the learned Counsel appearing on either side and perused the records.

7. What is sought to be used is only a smaller extent of land. The process is scientific and the project is under a Scheme. Out of 4.75 acres, only 800 sq. meter is sought to be used. The suitability of the place cannot be a concern of this Court. The proposed construction is for a public purpose. The petitioner Association itself states that this area can be used for any other purpose and therefore, the contention that there is a gross violation in converting an area earmarked for Park cannot be countenanced. After all, the beneficiary is the petitioner.

8. However, inasmuch as the petitioner has stated that it is willing to pay the differential amount and the said land can be used for any other purpose, coupled with the availability of land in the same area, we direct the second respondent to look into the said



aspect, subject to the condition that the petitioner pays the entire amount for the work already done. It is made clear that we do not express anything on the merits, as it is for the second respondent to take a decision in this regard. We have already indicated that taking a decision as to the suitability of the land is in the realm of the second respondent. The second respondent is expected to have a spot inspection, after putting the petitioner on notice and take a decision on the suitability of the place. The aforesaid exercise will have to be done within a period of six weeks from the date of receipt of a copy of this order. Till such time, *status-quo*, as on date, shall be maintained.

9. With the above observations and directions, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

gk

To

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Commissioner,
Karaikudi Municipality,
Karaikudi,
Sivagangai District.

+1 CC to M/s.A.SRINIVASAN, Advocate (SR-5502[F] dated 17/02/2021)

+1 CC to M/s.P.MAHENDRAN, Advocate (SR-5696[F] dated 17/02/2021)

W.P. (MD) No.2626 of 2019
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