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W.P.No.35424 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

W.P.No.35424 of 2015

and

M.P.Nos.1 & 2 of 2015

V.Sivakumar
Representing on behalf of
C.K.K.Nagar Residents Association
Residing at 23A, Sathy Road,
C.K.K.Nagar,
Gobichettipalayam – 638 452.

... Petitioner

Vs.

- 1.The District Collector,
O/o. District Collector Erode,
Erode District.
- 2.The Commissioner,
Gobichettipalayam Municipality,
Gobichettipalayam,
Erode District.
- 3.The Revenue Divisional Officer,
O/o. Revenue Divisional Officer,
Gobichettipalayam,
Erode District.
- 4.The Territory Manager,
Bharat Petroleum Corporation Limited,
Post Box No.1644, Peelamedu,
Coimbatore – 641 004.



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5. Ms. Rajeshwari Ayyamuthu
Proprietrix,
Raj Gas Agencies,
C.K.K. Nagar,
Gobichettipalayam,
Erode District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records in connection with the order passed by the 3rd respondent in Order No.661/2012/A1 dated 19.12.2012 and quash the same as null and void.

For Petitioner	: No appearance
For R1 and R3	: Mrs.M.Geetha Thamaraiselvan Special Government Pleader
For R2	: Mrs.M.E.Rani Selvam
For R5	: Mr.M.Narayanaswamy
For R4	: No appearance

ORDER

This writ petition is filed for issuance of Writ of Certiorari to quash the order passed by the 3rd respondent, dated 19.12.2012.

2.The petitioner has filed this writ petition for himself as well as a person representing the residents of C.K.K.Nagar Residents Association.



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3.The petitioner, who is the resident of C.K.K.Nagar, has stated that the residents have formed an Association and they have spent substantial amount for beautifying the park, which was reserved in the approved layout.

4.The 5th respondent has obtained Gas Agency Distributorship from an Oil Company. It is the specific case of the petitioner that the 5th respondent is operating his business in an area which is classified as residential area. It is his submission that no commercial activities can be permitted in the residential area. The petitioner has come up with several grievances against the 5th respondent for not taking proper care on the request of the residents in the locality. It is stated by the petitioner that the 5th respondent is causing threat to the life of the residents, while loading and unloading the cylinders without proper care.

5.The 3rd respondent/Revenue Divisional Officer, by the impugned order, has directed the 2nd respondent/Commissioner of Gobichettipalayam to remove the fencing around the area, which is reserved for the purpose of park, to provide sufficient space for parking the vehicles belonging to the customers of 5th respondent. Aggrieved by the said communication of the 3rd respondent, dated 19.12.2012, the above writ petition is filed.



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6.The petitioner has raised several grounds. From the order impugned and the subsequent communication by which the 2nd respondent has addressed a letter to the 3rd respondent on 08.01.2013, the following facts are revealed :

6.1.A small area was reserved in the layout for park. The petitioner and the plot owners have developed a park to cater to the needs of the public by contributing their personal funds. The stand of the local body is also in tune with the petitioner by referring to the position that a park reserved for a public purpose in the approved layout vest with the local body by virtue of Gift Deed executed by the promoter in favour of the 2nd respondent and that the land that was reserved for park cannot be used for any other public purpose as per Tamil Nadu Parks, Play-Fields and Open Spaces (Preservation and Regulation) Act, 1959 (Act 26 of 1959).

7.This Court, on perusal of records, has found that the 3rd respondent has issued the impugned communication without any authority or jurisdiction. When a particular piece of land is reserved for public purpose, namely park, the 3rd respondent has no business to issue impugned communication for conversion of the said place to be used for a different



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purpose. The 5th respondent is carrying on business as a dealer of Gas cylinders. Merely because the people visiting the 5th respondent require more space, the 3rd respondent cannot request or direct the 2nd respondent to provide a parking space in connection with the business of the 5th respondent, a private entrepreneur. The impugned order is, therefore, highly illegal and without jurisdiction.

8.As it is complained by the petitioner, the 5th respondent appears to be distributing thousands of cylinders per day and the loading and unloading of cylinders in a residential area is already causing nuisance and some hindrance to the neighbours and residents of the locality. The promoters of the layout had gifted an extent of 10,261 sq. ft. to the 2nd respondent for the purpose of establishing a park and the said land cannot be used for any other purpose, as it has been settled by the Hon'ble Supreme Court in few judgments. The 3rd respondent appears to have acted in an arbitrary fashion just to help the 5th respondent with oblique motive. This Court find that the object and intention behind issuing such letter to the 5th respondent is to help the 5th respondent at the cost of public convenience. Therefore, this writ petition is liable to be allowed and accordingly, allowed. The impugned order passed by the 3rd respondent, dated 19.12.2012, is quashed. No costs.



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Consequently, connected miscellaneous petitions are closed.

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9.It is open to the petitioner to make further representation to the 2nd respondent regarding the nuisance that is being caused by the 5th respondent. If the 5th respondent is carrying on business which is contrary to any regulation, and in a manner causing nuisance to the public, the 2nd respondent may also take appropriate action against the 5th respondent. If any action is required to be taken against the 5th respondent, proper opportunity may be given to the 5th respondent. No costs.

25.11.2022

mkn

Internet : Yes

Index : Yes / No

Speaking order / Nonspeaking order

To

1.The District Collector,
O/o. District Collector Erode,
Erode District.

2.The Commissioner,
Gobichettipalayam Municipality,
Gobichettipalayam,
Erode District.

3.The Revenue Divisional Officer,
O/o.Revenue Divisional Officer,

<https://www.mhc.tn.gov.in/judis>



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S.S. SUNDAR, J.



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