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W.P.(MD)No.17009 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2022

CORAM

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

W.P.(MD)No.17009 of 2014

S.Arumugam

.. Petitioner

Versus

1.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Municipal Administration and
Water Supply Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Commissioner of Municipal Administration,
Cheppakkam, Chennai - 600 005.

3.The Commissioner,
Madurai Corporation,
Aringnar Anna Maligai,
Madurai - 625 002.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to maintain existing parks under the control of Madurai Corporation in Madurai City by appointing sufficient staff and by providing sufficient water supply, bench and other infrastructure to maintain them, consequently to direct the respondents to ensure one park in one ward by considering the petitioner's representation dated 23.05.2014 within the time stipulated by this Court.



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For Petitioner : Mr.R.Alagumani
For Respondents : Mr.P.Thilak Kumar
Government Pleader for R1 & R2
Mr.R.Murali for R3

ORDER

(Order of the Court was made by **R. MAHADEVAN, J.**)

The prayer made in this writ petition is to issue a writ of mandamus, directing the respondents to maintain existing parks under the control of Madurai Corporation in Madurai City by appointing sufficient staff and by providing sufficient water supply, bench and other infrastructure to maintain them and consequently, ensure one park in one ward by considering the petitioner's representation dated 23.05.2014, within a time frame to be stipulated by this Court.

2. According to the petitioner, earlier, there were only 72 wards and pursuant to G.O.(Ms)No.220 Municipal Administration and Water Supply (Election) Department, dated 28.09.2010, the Madurai Corporation has now, 100 wards. Similarly, the population of Madurai Corporation was nearly 12,300,15 as on 28.09.2010 and it has increased in view of urbanization. Consequently, due to rise in number of vehicles, industries and climate change, the whole ecosystem is now getting polluted.



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3. It is also stated by the petitioner that the parks are considered to be a factory that produce oxygen and with a view to keep stability in the ecosystem in cities, separate places have been earmarked for creating and maintaining parks. In the Financial statement of Madurai Corporation for the year 2014-15, it was proposed to establish one park in one ward in Madurai Corporation and hence, there should be 100 parks, as the Madurai corporation has hundred wards. However, there are only 53 parks existing and the same are also not properly maintained. The petitioner further received information through RTI, to the effect that out of 53, only 25 parks are functioning; 5 parks are non-functioning; 21 parks remain as vacant sites; one park has been classified as corporation; and another one has been classified as Road side park. Therefore, the petitioner made a representation dated 23.05.2014 to the respondents requesting to take steps to maintain all the parks properly. Since the said representation has not been considered, he has preferred this Writ Petition as a public interest litigation.

4. Upon notice, the third respondent filed a counter affidavit *inter alia* stating that there are 73 parks in Zone I, 62 parks in Zone II, 15 parks in Zone III and 49 parks in Zone IV, thereby totalling 199 parks available within the limit of Madurai Corporation. The additional counter affidavit filed by the third respondent further proceeds to state that under AMRUT Scheme framed by the Central Government, 16



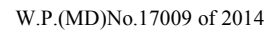
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parks have been taken for development, out of which, 10 parks have already been developed and the work in respect of the remaining 6 parks, is under progress. It is further stated that 80 parks have been properly fenced in order to avoid encroachments; 34 parks have proper compound walls; and only 33 parks are yet to be fenced. It is also stated that under the smart city project, 19 parks have been identified for development with an estimate of 20 crores. Thus, according to the third respondent, they are taking all effective steps in developing and maintaining the public parks for the welfare of people.

5. This court heard the submissions made by the learned counsel appearing for both sides and perused the documents enclosed in the typed set of papers.

6. It is no doubt true that urbanization has been spiraling since years, as a result of which, green spaces in urban areas have dwindled and it has become a luxury for the urban middle class and poor to connect with nature. Perhaps, public parks created and maintained by the government are the only spaces available for common man. Thus, the idea that parks are merely spaces for recreation is long gone and they are valued for the social and ecosystem services, they provide.

7. Socially, public parks are spaces characterized by non-exclusivity, that the common men have provided for themselves. In urbanized landscapes, they are



8. It is to be pointed out that the right to life as defined under Article 21 of the Constitution, includes right to health. As per Article 47 of the Constitution, it is the duty of the State to maintain public health. Further, the Tamil Nadu Parks, Play-fields and Open space (Preservation and Regulation) Act, 1959 has been enacted in the interest of public to preserve and regulate parks, play-fields and open spaces in the State. Section 7 of the said Act, casts the duty upon the Government / local authorities to maintain parks in clean and proper condition. In respect of notified parks and play fields, which are not vested with the Government / local authorities, the authorities may direct the owners of such parks to maintain the same.

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a hospital. Such action was found to be invalid in the light of unauthorized deviation and the ecosystem services provided by the green spaces in urban areas, Justice R.M. Sahai, as his Lordship then was, remarked as follows:

“36. Public park as a place reserved for beauty and recreation was developed in 19th and 20th Century and is associated with the growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a, 'gift from people to themselves'. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology. A private nursing home on the other hand is essentially a commercial venture, a profit oriented industry. Service may be its moto but earning is the objective. Its utility may not be undermined but a park is a necessity not a mere amenity. A private nursing home cannot be a substitute for a public park. No town planner would prepare a blue print without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development acts of different States require even private house-owners to leave open space in front and back for lawn and fresh air. In 1984 the BD Act itself provided for reservation of not less than fifteen per cent of the total area of the lay out in a development scheme for public parks and playgrounds the sale and disposition of which is prohibited under Section 38A of the Act. Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may given rise to health hazard. May be that it may be taken care of by a nursing home. But it is axiomatic that prevention is better than cure. What is lost by removal of a park cannot be gained by establishment of a nursing home. To say, therefore, that by conversion of a site reserved for low lying into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility.



10. In **P.Karthikeyan and Others v. The Commissioner, Coimbatore Corporation and others (MANU/TN/7305/2021)**, a Full Bench of this court, in which, one of us (RMDJ) was a member, had to deal with a new dimension in issues related to public parks, which were hitherto restricted to conversion of parks for other purposes. In the said case, the establishment of a waste disposal incinerator for solid waste management within an area earmarked for public parks was questioned. The Bench had to harmonize the necessity of solid waste management and public parks, both stemming from environmental considerations. After elaborate discussion, it was held that implementation of Solid Waste Management Rules, 2016 which were framed for environmental protection, amounts to ‘permissible deviation’ and it cannot be construed as development to warrant prohibition. For the purpose of the instant case, the discussion on importance of public parks, is usefully extracted below:

“107. The right to have lung space, unpolluted air, open space for recreational use, is intrinsic and implicit under Article 21 of the Constitution of India. The enactment of the Environment [Protection] Act, 1986 became a constitutional imperative to protect environment from degradation and provide pollution free, clean, healthy and robust living condition to the citizens of this country. Such guarantee being enshrined as part of the fundamental rights to be enjoyed by every citizen under Article 21 of the Constitution, is inalienable and not negotiable. This Bench cannot have any reservation on the lofty constitutional goal and mandate. In fact, Articles 47 and 48-A of the



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Directive Principles cast duty upon the State for improvement of public health and protection and improvement of environment and safeguarding of forests and wildlife. In fact, in all the important decisions of the Hon'ble Supreme Court of India, which had been cited on behalf of the appellants/writ petitioners, the Hon'ble Supreme Court has laid great emphasis on the protection of the environment and towards guaranteeing the citizens aesthetic enjoyment of use of park/play area for their all round well being.”

11. It is vivid from the foregoing paragraphs that citizens are constitutionally entitled to have an unhindered and uninterrupted enjoyment of lung space reserved for them. Therefore, this court is of the view that realising the value and utility of public parks, the state has to create and maintain the same, for the public welfare.

12. In the present case, the grievance expressed by the petitioner is that according to the provisions of the Madurai City Municipal Corporation Act, the third respondent / Commissioner, Madurai Corporation, is responsible for maintaining the public parks in each ward of the Corporation, but they failed to do so. Though the third respondent in their counter and additional counter affidavit, explained in detail about the steps taken by them in developing and maintaining the public parks for the welfare of the people, the learned counsel for the petitioner stoutly refuted the same and sought permission of this court to file a report with regard to non-maintenance of the public parks in and around Madurai Municipal Corporation and also the encroachments made therein. Accordingly, a survey report relating to 116



parks existing in the Madurai Coporation, was filed on the side of the petitioner on 20.09.2022, which highlights the shortcomings in maintenance of parks in Madurai based on the parameters, such as, cleanliness, basic amenities, safety and security. It further indicates that only a meager percentage of public parks are being maintained well in all these aspects. Even basic facilities such as toilets, walking tracks and dustbins have been found to be unavailable in several public parks surveyed. Thus, it is apparent that only a few parks are properly maintained and hence, immediate steps have to be taken to maintain and develop all the parks in Madurai, failing which, there is a threat of encroachment of those undeveloped open landscapes by third parties for some other purposes.

13. The learned counsel appearing for the third respondent / Madurai Corporation has not raised any serious objection as regards the survey report so filed by the learned counsel for the petitioner. However, he fairly submitted that the authorities are taking all earnest steps to develop and maintain the Parks in the Madurai Municipal Corporation, in accordance with the Tamil Nadu Parks, Play-Fields and Open Spaces (Preservation and Regulation) Act, 1959, for public welfare.

14. Recording the submission so made by the learned counsel for the third respondent, the Writ Petition is disposed of, with a direction to the respondent concerned to maintain the parks in the Madurai Corporation by providing all the



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necessary facilities as highlighted in the survey report filed on the side of the petitioner, and take immediate steps for creation of new parks, if necessary.

15. Post the matter after twelve weeks for reporting compliance.

[R.M.D., J.] [J.S.N.P., J.]
14.11.2022

Internet : Yes.

Index : Yes /No

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To

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Water Supply Department,
Government of Tamil Nadu,
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