



W.P.(MD) No.19757 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2022

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

**W.P.(MD) No.19757 of 2016
and
W.M.P.(MD) No.14248 of 2016**

Maruthi Nagar Kudiyiruppor Nala
Urimai Sangam,
represented by its President,
Maruthi Nagar,
Kalanivasal,
Karaikudi,
Sivagangai District.

... Petitioner

/vs./

- 1.The Director of Town and Country Planning,
No.807, Anna Salai,
Chennai 600 007.
- 2.The Block Development Officer,
(Village Panchayat),
Sakkottai Panchayat Union,
Karaikudi,
Sivagangai District.
- 3.Sankarapuram Panchayat,
represented by its President,



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Karaikudi,
Sivagangai District.

4.The Joint Sub Registrar No.II,
Karaikudi,
Sivagangai District.

5.Supa.Durairaj @ P.SP.Durai

6.Supa.Jegadeesan

7.Supa.Kumar

8.Meiyyathal

9.Balasubramanian

10.Gnansundari

11.Motherland Real Estate Firm,
represented by its Managing Partner,
N.Periya Karuppan,
S/o.Narayana Chettiar,
Door. No.5, Subbaiah Ambalam Street,
Kannathasan Nagar,
Karaikudi Town,
Karaikudi Taluk,
Sivagangai District.

12.Udhuman Peer Mohammed

13.P.R.Dheivanai

14.N.Periya Karuppan

15.U.Fareehna

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16.M.L.Balan

17.M.Kathiresan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents 1 to 4 not to permit the respondents 5 to 17 or any other person to alter or change the character of two park and playground area situated in S.No.65/4, R.S.No.299 situated at Kalanivasal Village, Karaikudi, Sivagangai Distrit in violation of the approved plan granted by the 1st respondent in T.P/DTCP No.347/93 dated 19.04.1993.

For Petitioner : Mr.R.Subramanian

For R1, R2 & R4 : Mrs.D.Farjana Ghoushia
Special Government Pleader

For R3 : Mr.P.Thiyagarajan

For R5 to R10 : Mr.SMS.Johny Basha

For R14 to R16 : No appearance

ORDER

The instant writ petition is for a Writ of Mandamus directing the respondents 1 to 4 not to permit the respondents 5 to 17 or any other person to alter or damage the character of two parks and playground area situated in S.No.



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65/4, R.S.No.299 at Kalanivasal Village, Karaikudi, Sivagangai District in violation of the approved plan granted by the first respondent in T.P./DTCP No. 347/93 dated 19.04.1993.

2.Heard Mr.R.Subramanian, learned counsel for the petitioner, Mrs.D.Farjana Ghoushia, learned Special Government Pleader for the respondents 1, 2 and 4, Mr.P.Thiyagarajan, learned counsel for the third respondent and Mr.SMS.Johny Basha, learned counsel for the respondents 5 to 10.

3.The case of the petitioner is that the respondents 5 to 10 were the original owners of the property and that they had promoted a layout in their property, for which an approval had also been granted by the office of the first respondent, vide proceedings dated 19.04.1993. In the aforesaid layout, certain areas have been earmarked as park and playground. For making unjust enrichment, the respondents 5 to 10 had given a power of attorney to the respondents 11 and 12 in respect of the area earmarked as park and playground by converting them as residential plots. The respondents 13 to 17 are the purchasers of the plots and they



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were trying to alter the physical features in violation of the planning permit. This was resisted by the third respondent at the instance of the petitioner's association and therefore, the respondents 13 to 16 had filed a suit in O.S.No.74 of 2018 on the file of the District Munsif Court, Karaikudi seeking for declaration that the lands were not earmarked for park and for a consequential prayer of a permanent injunction restraining the third respondent from interfering with their peaceful possession. The third respondent had initiated a civil revision in C.R.P.(MD)(PD) No.1361 of 2016 to strike off the plaint in O.S.No.74 of 2018 on the file of the District Munsif Court, Karaikudi.

4.This Court, by order dated 22.10.2018, after dealing with the entire issue had struck down the plaint in O.S.No.74 of 2018 on the file of the District Munsif Court, Karaikudi. While striking off the plaint, this Court has categorically held that by the approved plan, the said area, which was claimed by the respondents 13 to 17, has been earmarked as a park in the approved plan issued by the first respondent. Hence, he sought for a Mandamus as prayed for.



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5.Mrs.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondents 1, 2 and 4 relying upon the counter affidavit filed by the first respondent would submit that the area, which the petitioner is seeking, has only been earmarked as a park and it will be only maintained as a park and that the purpose could not be changed or altered. It is also specifically averred that if any violation is found out of the approved plan, then the third respondent will initiate action to remove such unauthorized construction as per law.

6.Mr.P.Thiyagarajan, learned counsel for the third respondent would contend that the Panchayat had also constructed a overhead tank in the park area for the maintenance of the park, for public purpose and to supply water to the residence of the area. Since there were disputes pending including this writ petition, they have not taken steps to develop the park and now, they also undertake to develop the park at the earliest. In spite of notice, the private respondents, namely the respondents 6 to 13 had neither appeared in person nor represented through their counsel. This itself would be suffice to hold that they have been trying to usurp the lands, which have been earmarked as park and unjustly enriched themselves.



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7.As it has been admitted by the petitioner as well as the respondents 1 to 3 that the area in dispute has been earmarked only as a park and playground in the plan approved by the office of the Director of Town and Country Planning, Chennai in T.P./D.T.C.P.No.347/93 dated 19.04.1993, there is no doubt in the mind of this Court that the area should be maintained as a park and playground as earmarked in the aforesaid approved plan. Hence, there shall be a direction to the third respondent to maintain the area earmarked for public purposes in the approved plan dated 19.04.1993.

8.With the above directions, the Writ Petition is allowed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
Internet : Yes / No
Index : Yes / No

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To

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K.KUMARESH BABU, J.

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