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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.5779 of 2024
and W.M.P.Nos.6411 & 6414 of 2024

Anna Nagar Western Extension Association,
Rep. by its Secretary Mr.P.Vadivel,
having office at:
R13B, Park Road, Anna Nagar West Extension,
Chennai – 600 101.

... Petitioner

/vs/

1. Zonal Officer,
Zone – 7,
Greater Chennai Corporation,
MTH Road, Ambattur,
Chennai – 600 053
2. The Commissioner,
Greater Chennai Corporation,
Ripon Building No.1131,
EVR Periyar Salai, Park Town,
Chennai – 600 003.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records of the impugned order issued by the first respondent vide Z.O.VII.C.No.8253/2023 dated 21.02.2024 and quash the same and



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consequently direct the respondents to permit the petitioner to utilize the said area for library and other purposes as per the existing practice.

For Petitioner ... Mr.Naveen Kumar Murthi
for Ms.S.Varsha

For Respondents ... Mr.A.S.Ragul Adhithya
for Mrs.P.T.Ramadevi
Standing Counsel for R1 & R2

ORDER

Heard Mr. Naveen Kumar Murthi, learned counsel for the petitioner and Mr. A.S.Ragul Adhithya, learned counsel for the respondents and perused the materials available on record.

2. This Writ Petition has been filed challenging the order of the first respondent issued by the first respondent dated 21.02.2024 in Z.O.VII.C.No.8253/2023 and consequently direct the respondents to permit the petitioner to utilize the said area for library and other purposes as per the existing practice.

3. The petitioner is an association represented by its Secretary. The



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Association is founded for the welfare of the residents of the Anna Nagar Western Extension and registered as a Society under the Society registration Act in Reg.No.69 of 1976. At the time the Housing Board developed Anna Nagar Housing Board, Plot No.13-B of the lay-out was ear-marked for Municipal Park for public purpose. However, through a letter dated 01.07.1991, the then Ambattur Municipal Commissioner has given permission to the petitioner association to utilize an extent of 801 sq.ft. in the plot reserved for Municipal Park for the purpose of building a public library and reading room with its own funds and maintain the same.

4. Accordingly, the building was raised and it was used for library and reading purpose. The petitioner's association has raised the ground floor and first floor in the said plot for keeping a library along with reading room.

5. The library was taken up by the District Library Office and is being maintained properly. There is no issue with regard to the usage of library. However, the objection from the first respondent is in connection with the



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usage of the first floor. It is alleged by the first respondent that the petitioner association has made a temporary extension by putting up a shed and it was being used for the purpose of conducting Yoga, music and dance classes for the children of the neighbourhood and for holding small functions of the residents.

6. This was being objected by the first respondent and a notice has been issued on 08.04.2022. The same was challenged by the petitioner's association by way of filing a writ petition in W.P.No.1107 of 2022. In the said writ petition, an order has been passed by giving a direction to the first respondent to consider the representation of the petitioner and pass orders. Subsequently, the first respondent has passed an order on 11.10.2023 stating that the place is required for setting up a Health and Wellness Centre and that the petitioner's association had violated the conditions imposed in the proceedings in Na.Ka.No.9959/95/F2 dated 30.08.1995.

7. It is further stated in the order that the municipality has taken possession of the building. When the authorities are directed to pass an



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order on the representation of the petitioner in the light of the earlier notice dated 08.04.2022, the scope of the order ought to have been restricted only to that notice. But the first respondent has passed an order that he had taken possession of the property.

8. In the earlier notice dated 08.04.2022 a demand has been made by the first respondent to hand over possession but in the order dated 30.08.1995, which was passed in response to the representation made by the petitioner, the first respondent has taken an unusual leap and passed an order that the process of taking possession has also been completed. It is learnt that the premises has been kept under lock and seal by the first respondent, even while things of the petitioner's association are inside.

9. Now an eviction order has been issued on 21.02.2024 by directing the petitioner to remove the belongings kept inside the building. It is difficult to comprehend an eviction following the alleged taking over possession. Recovery of possession through legal means would only follow eviction and it will not precede eviction. Even for an order for lock and seal due to



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any violations of conditions the authority concerned is expected to follow the mandamus issued by the court to dispose the representation of the petitioner by reconsidering the same. If an authority passes a chance order for possession even before the representation given by the petitioner for seeking a relief is disposed as per the direction of the court, there is a possibility for bias.

10. When the second respondent has given permission to utilize the portion of the building for library and reading purposes the first respondent did not fix any rent to be paid by the petitioner. It is obviously because the library is for public use and dedicated for the said purpose. In Black's Law Dictionary, the term public purpose is said to have the objectives of promotion of the public health, safety, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division. So in every layout plan a certain area is reserved for public use. Provisions are made in every scheme and policy including layout approvals for house development with a concern for the overall development of the public. In fact, that is the core value of a welfare State.



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11. The petitioner's association comprises of the residents of Anna Nagar West Extension and they had volunteered to take the responsibility of maintaining the building and that has been welcomed by the second respondent corporation, by appreciating public participation in maintaining the properties meant for public use. Encouraging such self-maintenance can save the time and resources of the municipality/corporation. However, such liberty for management given to the public should not be allowed to be converted into individual bounty through any misuse. As a check and balance measure the Corporation retains the larger control to ensure the public use. However, neither in the object of public use nor in the stages of such usage there should not be any scope for egoistic interplay between the public and the corporation authorities.

12. In the impugned order it is stated that the petitioner had failed to pay any rent to the building. In fact, the first notice which was given on 08.04.2022 does not state anything about the rent. The only allegation that was made in the earlier notice is that the petitioner's association refused to



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permit any other public other than their members of the association for playing in the Tennis court. In the said notice itself it has been stated that the petitioner's association had sought permanent lease of the vacant site for establishing a Tennis court in the park area. However, permission has been granted for establishing a tennis court in the park area in the measurement of 190' x 70' but without any lease holding right. It is also stated that the petitioner's association has to maintain the same with a condition that the public should be allowed to make use of the same and the land should be handed over as and when it is required by the local body.

13. Had the then municipality come forward to maintain the tennis court by establishing the same with its own fund, the petitioner's association would not have spent its funds or assumed any role in maintaining the same. Since the petitioner's association had established the tennis ground, they also tended to assume the charge of maintaining the same, however with the permission of the second respondent.

14. Admittedly, the corporation has not appointed any of its paid staff



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or left any other resource at the disposal of the petitioner for the maintenance of the tennis court. In such a situation, there could have been a only public sharing in the form of public contribution towards maintenance. Such funds would have been generated by collecting some nominal subscription fee to the association. If any other public, without being conscious of such little commitment uses the tennis court that would have caused confusion. It can not be the question of not allowing any other public, but it is a question of whether the complaining public user is also a resident of the same neighborhood or even irrespective of the said fact, whether he/she shares the value, concern and sense of responsibility of maintaining the designated public space with others.

15. But the problem that has now arisen through the impugned order is not with regard to the Tennis court but only in respect of the building built for housing the library. The notice initially issued on 08.04.2022 stated that the building has been used for business purposes. It is alleged that some of the small functions of the residents were being celebrated in an extended shed attached to the building and for which the association is



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collecting charges. So it is alleged that the conditions were violated and hence the building has to be handed over.

16. Mr.Naveen Kumar Murthi, the learned counsel for the petitioner, submitted that the petitioner's association has put up a temporary shed and in which Yoga, Bharatanatyam and other Dance classes for the children of the residents were being conducted and the place was also utilized by some of the residents for celebrating small functions like birthday parties, etc. But for such activities no prior permission from the corporation is obtained.

17. It is learnt that there was no community hall dedicated to public use in any nearby area. Every household may not find it convenient to convene small functions or celebrations like birthday or any communal gathering by paying huge rent to private halls. The petitioner's Association seems to be using the extended shed space for the said purposes. When the demand of the public is realized by the petitioner, they could have approached the respondent authorities to have such a hall in place as how it was materialized for the tennis court and made it authenticated.



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18. It would have been a better approach if the respondent corporation also held talks with the petitioner's association which represents the larger number of residents of the area for erecting a community hall instead of resorting to any punitive steps like lock and seal, especially in the absence of any complaint from any member of the association.

19. During the course of the hearing, it is stated that the petitioner's association itself will try to cover the expenses of construction of the public hall provision in case permission is accorded by the respondents. Such constructive measures are not possible unless there is any conversation is initiated between the petitioner and the persons in charge of the affair.

20. The ward counsellors and other representatives from the public are elected by the local residents with the hope that those persons being their own neighbours will reflect their sentiments without playing any power politics by losing their identity in the race for power. So, the



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interaction with the public and their representatives at every level is possible.

21. If a public scheme or plan is brought after understanding the needs and sentiments of the public, that can serve their interest better. If the respondent municipality feels that the association is making money by converting the public utility areas for business activities, but realizes that there is need for the public hall, a reasonable fee for utilizing the said space can be fixed by the Corporation. In such cases, the maintenance shall also be done by the Corporation.

22. No records are available to show that the public or the resident of the neighbourhood had raised any allegation against the petitioner's association that they are misusing the liberty given to them. The action taken by the respondents by keeping the premises under lock and seal has only deprived the children's entertainment and the resident's convenience of celebrating small functions at a cheaper cost and hence there need not be a rush to resort to a lock and seal step.



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23. If the respondents intend to bring a Health and Wellness centre in the premises it is a welcome measure. As the road abetting the premises is 100 ft. wide, it is feasible to extend the floors of the building to accommodate both the community hall and Health and Wellness center. So actions can be initiated by the respondents towards promoting and regulating good works without stalling the humble activities of the public.

24.In fact the petitioner's association has filed a writ petition challenging the orders of the first respondent dated 11.10.2023. Hence the reconsideration at the direction of the court could have been done by the second respondent. In fact it is the second respondent who is said to be the appellate authority.

25. No doubt the library and Tennis court are housed in common area. But the petitioner is an association of residents which is maintaining the above features in the best interest of the residents and public. If the respondents really require any regularization for preventing any misuse by



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any individual members or by any association that can be done in a constructive manner. The corporation which owns the title to the lands in question, undoubtedly has the right to regulate the usage by imposing conditions. But even those conditions should be reasonable and public friendly.

26. If an individual occupies a public land illegally, no doubt severe action should be taken by keeping the public interest in mind. But, when the public indulge in some essential activities in public space, but without strict adherence to rules, there is no necessity to show immediate hostility or harshness. Instead the authorities can appraise the ground realities and try to resolve the issue with better balance by keeping the severe action like lock and seal as a last option. As the impugned order has been passed without considering the public convenience, it is liable to be quashed.

27. Accordingly, the impugned order issued by the first respondent vide Z.O.VII.C.No.8253/2023 dated 21.02.2024 is hereby quashed and the second respondent is directed to consider the appeal filed by the petitioner



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dated 27.10.2023 in the light of the above observations and take steps, pass any orders or suggest any methods in order to resolve the issue smoothly in the best interest of public. If needed, the second respondent can hold discussion with the petitioner's association or any other public representative in this regard and pass orders / regulations / frame any scheme in a constructive and inclusive manner.

With the above relief and directions and observations this writ petition is **disposed**. No costs. Connected miscellaneous petitions are closed.

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Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
bkn

R.N.MANJULA ,J.

bkn/jrs

To:

1. The Zonal Officer,



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