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W.P.No. 27956 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

And

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No. 27956 of 2022

and

WMP.Nos.27248 and 27250 of 2022

- 1.S. Suresh
- 2.R. Viswanathan
- 3.Mohamed Riyaz
- 4.M.Refayudeen

...Petitioners

Versus

1. The District Collector
Mayiladuthurai District, Mayiladuthurai.
2. The Joint Director
Tamil Nadu Town and Country Planning Department
Thanjavur.
3. The Revenue Divisional Officer
Mayiladuthurai, Mayiladuthurai District.
4. The Tahsildar
Mayiladuthurai, Mayiladuthurai District.
5. Mayiladuthurai Municipality
Represented by its Commissioner
Mayiladuthurai,
Mayiladuthurai District.
6. Mayuram Co-operative Building Society,
Represented by its Secretary L. Ramesh,



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Having office at Ganapathy Nagar,
Koranad, Mayiladuthurai Town Mayiladuthurai District.

(R6 impleaded vide order dated 30.01.2023
made in WMP.No. 2457/2023 in WP.No. 27956/2022) ...Respondents

Writ Petition is filed under Article 226 of the Constitution of India prays to issue a Writ of Mandamus, to forbear the respondents and their sub-ordinates from putting up any construction or converting the children's park situated in Town Survey No. 100, (Old S.Nos. 806/4 part and 807/1 part) in Ganapathy Nagar, approved layout abutted Ganapathy Nagar Main Road, Ganapathy Nagar, Ward No. 3, Block No.20, Mayiladuthurai Town.

For Petitioners	:	Ms.P.Srividhya
For RR1 to 4	:	Mrs.S. Anitha
		Special Government Pleader
For R5	:	Mr.P. Srinivasan
For R6	:	Mr.P. Anbarasan

ORDER

[Order of the Court was made by **S.S.SUNDAR, J**]

This Writ Petition is filed for issuance of a Writ of Mandamus to forbear the respondents and their subordinates from putting up any construction or converting the children's park situated in Town Survey No. 100, (Old S.Nos. 806/4 part and 807/1 part) in Ganapathy Nagar, approved layout, abutting Ganapathy Nagar Main Road, Ganapathy Nagar, Ward No. 3, Block No.20, Mayiladuthurai Town.



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2. Brief facts necessary for disposal of the writ petition are as follows:-

The petitioners are the residents of Ganapathy Nagar, which is admittedly an approved layout. It is the case of the petitioner that at the time of permission, an area is reserved for children's park, which is abutting the main road, which has a width of 40 feet. It is also the case of the petitioners that the children's park was maintained by the promoter, namely, The Mayuram Go-operative Building Society Limited. Since the promoter of layout is the Co-operative Society, it is unable to maintain the children's park, and the Residents' Welfare Association of Ganapathy Nagar is maintaining the children's park, according to the petitioners. The petitioners state that the Residents' Association have spent substantial amount towards maintenance of children's park, apart from putting up wire fencing on all four sides of the park. From the case narrated by the petitioner, it is reiterated that the children's park is being maintained by the Residents' Welfare Association itself and that they have developed as an amusement park to the children in the locality.

3. The further case of the petitioners is that the 5th respondent has planned to put up some construction in the area, which is reserved for children's park. Stating that the open space reserved for public can not be altered by the local body and the local body is not the owner of the open area, to claim any proprietary right over the land reserved for



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the public purpose, the petitioner has come forward with the writ petition.

4. On the apprehension that the 5th respondent is likely to put up constructions in the approved children's park at Ganapathy Nagar, abutting the residences of the members residing in the layout, the petitioners have stated that open area reserved for park cannot be converted into any other use and there cannot be any construction by the local body which has no power to dereserve or exercise of any right as owner.

5. The 5th respondent has filed counter affidavit which discloses certain basic facts and details about the layout. Paragraph Nos.8 to 14 of counter affidavit of 5th respondent are relevant and hence, extracted as follows:-

"8. In regard to the park site in the Ganapathy Nagar, the work of developing the Park into a proper play facility has been mooted and the First respondent made a joint inspection for the purpose of planning the development of a Park for the use of the public including the residents of the layout. It has been proposed to develop the play facilities apart from walking path and educative equipment's apart from play equipment's for the use of the public in the park site. It is also proposed to install Traffic signals and mandatory sign boards for the educational purposes of the Children to impart knowledge on the road traffic and safety. The project is aimed at installing play equipment's and maintain the Green cover of the park besides developing walking path in the park with the



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play equipment's for the children.

9. This respondent has identified the said park site that is lying neglected and has proposed to develop the same into a Park for the educational and recreational purposes. The averments in para 4 of the affidavit are without any application of mind and without ascertaining the true nature of the development activity being undertaken by this Respondent under the directions of the first respondent.

10. The funds for development of the Park as a childrens park is being undertaken under the Road Safety Fund under the control of the Transport Commissioner/Road Safety Commissioner, Chennai - 5 in the Proceedings in Roc.No.15587/C2/2022, dated 25.08.2022. The said work of development of the Traffic Park is being carried out with the funds provided under the above project to the tune of Rs.19.57 Lakhs and the estimates have been prepared and the work is in the stage of publication of the Tender for the carrying out of the works.

11. It is submitted that the development of the presently unused and wasted public site is aimed at benefiting the public by use of the play facilities and greenery, lighting facility and the Traffic sign boards aimed at educating children in the road safety aspects. This apart, the work will ensure that the site is preserved for the use of the future generations. There is no intention for putting up any construction in the park intended for any other purpose. The park is proposed to developed as a park with play materials and entertainment facilities apart from exercise facility, greenery and fountains.

12. The averments in para no.5 are not applicable in the present case, for the reason that the respondent herein is not intending to use the park site for any other purpose. It is proposed to develop the unused lands that are kept locked for the use of the public as a useful facility for the public to undertake walking and the Children can use the play facilities and also benefit from the educative equipment such as working Traffic signals and sign boards apart from the



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fountains and greenery. After its development, the park site will be an important landmark of the area and also serve as a lung space for the residents and public alike. At present, the site is kept fenced and locked without any use to anyone and is filled with the strewn garbage thrown by the residents as it is lying as a waster land.

13. The averments in para 5 to 9 are all false and made without proper verification with the respondents herein. If only the petitioners had cared to find out as to what is the work that is being undertaken, the petitioners would have known the real purpose instead presuming that the park site is being diverted for other uses. It is humbly submitted that the Estimates prepared and the project report are submitted herewith for the perusal of the same would show the nature of the work that is proposed and also that there is no truth in the allegations of the petitioners.

14. It is submitted that the respondent herein on 01.09.2022 has addressed the Co-operative Society to convey the title of the lands of the park so that the park can be maintained for the use of the public and also informed that the park was proposed to be developed for the use of the general public including the residents of the layout. It was informed in the said letter regarding the dangerous structure of the office building and requested to demolish the same in order to avoid any danger to the safety of the public. Only thereafter the structure was demolished and the same was cleared from the park site".

6. The learned counsel for the 5th respondent states that, after filing of counter, the 5th respondent has dropped the proposal of constructing a traffic park, as they have shifted the project to some other place. It is in the said circumstances, the learned counsel submitted that the prayer in the writ petition has become infructuous as the 5th



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respondent has dropped the proposal of developing the park in the area or to put up any construction in the area reserved for children's park from the above layout.

7. According to the statement of the learned standing counsel appearing for the 5th respondent, this Court finds that the prayer in the writ petition has become infructuous. The petitioner has filed this writ petition merely on the apprehension. Having regard to the statement of the learned counsel appearing for the 5th respondent across the bar, this Court is of the view that the writ petition can be closed as infructuous.

8. Recording the above facts, the writ petition is closed as infructuous. However, the respondents may maintain the children's park in the Ganapathy Nagar approved layout as it is, without any modification or alteration of land use for the benefit of public as per law. But neither the local body nor the promoter including the Residents' Association can not claim ownership. No costs.

[S.S.S.R., J] [N.S., J]
10.01.2024

Index: Yes/No
Speaking order: Yes/No



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Neutral Citation: Yes/No
MSM

To

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Mayiladuthurai District,
Mayiladuthurai.
2. The Joint Director
Tamil Nadu Town and Country Planning Department
Thanjavur.
3. The Revenue Divisional Officer
Mayiladuthurai, Mayiladuthurai District.
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