



W.P(MD)No.6156 of 2009.

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2024

CORAM:

**THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P(MD)No.6156 of 2009
and
M.P(MD)No.1 of 2009 & W.M.P(MD)No.2718 of 2024**

Kannadesan Thery Kudiyiruppor Nalasangam,
Represented by its Secretary,
Chitrachakkaravarthi.

... Petitioner

VS.

1.The Commissioner,
Madurai Municipal Corporation,
Anna Maligai,
Madurai – 2.

2.K.Renganathan

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the first respondent to establish a full fledged park at R.S.No.43/1B, Ward No.28, Kannadesan Main Road in furtherance of estimate prepared in File No.M.Poo7/Est1267/08-09 and consequently to forbear the second respondent from interfering with the peaceful possession and enjoyment of the park by the members of the petitioner's association in any manner.



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For Petitioner : No appearance
For Respondent No.1 : Mr.K.K.Kannan
For Respondent No.2 : Mr.T.Cibi Chakraborty

ORDER

(Order of the Court was made by D. KRISHNAKUMAR, J.)

The petitioner has filed the present Writ Petition, to direct the first respondent to establish a full fledged park at R.S.No.43/1B, Ward No.28, Kannadesan Main Road in furtherance of estimate prepared in File No.M.Poo7/Est1267/08-09 and consequently to forbear the second respondent from interfering with the peaceful possession and enjoyment of the park by the members of the petitioner's association in any manner.

2.According to the petitioner, public residing at Kannadesan Main Street, 1st and 2nd Street have formed an Association and they are members of the same. Originally, the vacant land situated in R.S.No.43/1B, Ponmeni Village was converted into housing plots and a layout was formed for the purpose. While forming the layout, as mandated under the relevant provisions of law, a space was earmarked in Kannadesan Main Street for



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establishment of a community hall. Further, a place was also earmarked for establishing a park for the benefit of residents of the area. Based on the earmarking of space for community hall and park, layout was approved by the first respondent, dated 16.02.1983. While so, the second respondent has purchased the property in an auction, which is earmarked as community hall and park. According to the petitioner, already the place is being used by the residents of the area and members of the petitioner's association as well as public are using the same as a park for physical workouts, playing games and also for other purposes. Since the second respondent has divested the property in question meant for public purpose, the petitioner has filed the present Writ Petition.

3.The first respondent has filed a counter-affidavit, wherein it is stated that as per Town survey register, there is no mention about either park or community hall. The disputed property in the petition is T.S.No. 43/1B is mentioned in Town survey records as vacant space under the caption of 'Andavanar Manibam – Sagayam'. However, as per the layout, the property is mentioned as community hall. Further, it is stated that the second respondent has purchased the said vacant land at the time of his purchase on 24.01.2008. A small park was established in the disputed



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property, but the second respondent failed to object the same in the manner known to law and the second respondent failed to file an application for delivery of property after sale and possession was not delivered to him through the Court since the dispute is civil in nature.

4.It is further stated in the counter-affidavit that as per the Town survey records, there is no mention about community hall. Since the park has already been in existence from the year 2008, without any protest, the first respondent Corporation developed the existing park. Further the property earmarked for the park is registered in the name of M.Jeya Balachandran and a building was constructed by him. The petitioner has not impleaded the said Jeya Balachandran, who is a necessary party in this Writ Petition. Further, the first respondent issued a notice to the occupant under Section 135(1) & 135(6) of the Tamil Nadu Urban Local Bodies Act, 1998, dated 29.12.2023. Further, the park exists from the year 2008 and the park was developed only by the MLA fund by constructing the compound wall as per the request of the public and for the welfare of the public. The said park has been utilized by the public.



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5.The only point raised by this Court is as to whether there is any record to show that the said park is earmarked as a community hall. To that extent, the learned counsel appearing for the second respondent has produced the approved layout, which clearly indicates that the property in question is earmarked for community hall.

6.In the counter-affidavit filed by the first respondent, there is no specific indication of the fact that the said property in question is earmarked for community hall, which has been marked in the approved layout. These are all disputed question of facts, which cannot be decided in this Writ Petition. Accordingly, we are inclined to pass the following order:

(i) The first respondent is directed to issue notice to the petitioner as well as second respondent to appear for enquiry within a specified time.

(ii) On receipt of the same, the petitioner as well as second respondent shall produce documents before the authority concerned to establish the fact that the aforesaid property is earmarked as community hall or park.



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WEB COPY (iii) Based on the records submitted by the parties as well as records available in the first respondent Corporation, the first respondent is directed to pass a reasoned order and communicate the same to the parties concerned.

(iv) The said exercise shall be completed within a period of four months from the date of receipt of a copy of this order.

7. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

[D.K.K.,J.] [R.V.,J.]
27.02.2024

NCC : Yes / No
Index : Yes / No
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To

The Commissioner,
Madurai Municipal Corporation,
Anna Maligai,
Madurai – 2.



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D. KRISHNAKUMAR,J.
and
R.VIJAYAKUMAR,J.

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ORDER MADE IN
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DATED : 27.02.2024