



W.A(MD)No.594 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2024

CORAM :

**THE HONOURABLE MR.JUSTICE R.SURESHKUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

W.A(MD)No.594 of 2024

K.R.A.Veerappan

... Appellant

vs.

1. The District Collector,
Collectorate – Pudukkottai District,
Pudukkottai.

2. The Municipal Commissioner,
Office of the Pudukkottai Municipality,
Pudukkottai District.

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent, against the common order dated 11.07.2022 made in W.P(MD)No.12348 of 2022.

For Appellant	: Mr.R.Paranjothi
For R1	: Mr.S.Shaji Bino, Special Government Pleader
For R2	: Mr.S.Kameswaran, Standing Counsel

JUDGMENT

(Judgment of the Court was made by **R.SURESHKUMAR, J.**)

This writ appeal has been directed against the order passed by the

Writ Court, dated 11.07.2022, made in W.P(MD)No.12348 of 2022.



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2. The appellant herein was the writ petitioner. The issue was, there has been a Park adjacent to the Housing Board at Pudukottai Town, which belongs to the 2nd respondent Municipality. Twenty years back, in the year 2003, a request had been made by the petitioner/appellant to the Municipality to permit him to maintain the Park, since the same according to him, had not been maintained by the Municipality. The said request of the petitioner/appellant having been considered, the Municipality, by resolution dated 29.04.2003, had permitted the petitioner/appellant to maintain the Park at his own costs without making any claim or right over it. Accordingly, the petitioner/appellant had been maintaining the Park for several years.

3. At one point of time, since the Municipality decided to maintain the Park, before which, they wanted to renovate and develop the Park enabling the children to take it as a playing area. The Municipality having allotted funds for the said scheme, had developed the Park recently and after development, the Park has been continuously maintained by the Municipality.

4. When that being so, at this juncture, the petitioner/appellant had moved the said writ petition, seeking a Writ of Mandamus, to forbear the



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respondents i.e., District Collector and the Municipality from interfering with the maintenance rights of the petitioner/appellant over the Park.

5. The said writ petition was rejected by the learned Judge through the impugned order.

6. Assailing the same, an attempt has been made by Mr.R.Paranjothi, learned counsel appearing for the appellant that, when the petitioner/appellant had come forward to maintain the Park voluntarily, by resolution dated 29.04.2003, the Municipality had given such permission. Therefore, it is a right conferred on him to maintain the Park.

7. Once such right of maintaining the Park having been conferred on the petitioner/appellant by passing a resolution dated 29.04.2003, by the 2nd respondent Municipality, if at all such a right is to be revoked or taken away from the petitioner, a equal resolution must have been placed before the forum i.e., the Municipal Council, and after making any such decision only, that right can be taken away from the petitioner/appellant. Without having undergone any such procedure, since all of a sudden, the 2nd respondent Municipality through their officials and men had come and taken over the Park stating that



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they want to continue to maintain the same, is against the earlier decision taken by them dated 29.04.2003, by thus, the vested right of the petitioner/appellant to have the maintenance right over the Park is getting affected and therefore, on that ground, when a prayer was sought for, it was not considered by the learned Judge in proper perspective. Hence, the order impugned is liable to be interfered with, he contended.

8. On the other hand, Mr.S.Shaji Bino, learned Special Government Pleader appearing for the 1st respondent and Mr.S.Kameswaran, learned standing counsel appearing for the 2nd respondent would contend that it is an admitted case that the Park belongs to the 2nd respondent Municipality and it has been permitted the petitioner/appellant to maintain the Park for sometime by resolution dated 29.04.2003, that does not mean that there has been a vested right created in him.

9. Moreover, the prayer sought for in the writ petition is only seeking for a Mandamus to forbear the respondents, that means, the Collector and the Municipal Commissioner, as they are the owners of the Park. Therefore, against the owners, such kind of prohibitory orders cannot be asked for.



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10. Moreover, the Municipality has invested huge amount for developing the Park and after having developed the Park, now it is put to use for the general public, especially, the children who take the Park as a playing area. After having developed the same, now the petitioner/appellant has come forward to seek such a right to be continued as a vested right, which is impermissible, he contended.

11. We have considered the said rival submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.

12. As has been rightly pointed out by the learned counsels appearing for the respondents, the 2nd respondent Municipality is the owner of the Park and the maintaining right even though had been given by resolution dated 29.04.2003 to the petitioner/appellant, there is no vested right in him to continue to maintain the Park, as a matter of right. Once the owner of the Park has come forward to maintain it, and a huge sum has already been invested by the 2nd respondent Municipality in developing the Park and the Park also having been developed, it has been put to use for the general public.



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13. When that being so, absolutely, the petitioner/appellant has no right to seek for any such claim over the Park including the right of maintaining the same.

14. When that being so, the prayer sought for in the writ petition cannot be considered. Accordingly, the same was rejected by the learned Judge, through the impugned order, of course, rightly. Hence, the said order does not warrant any interference at the hands of this Division Bench.

15. Therefore, the Writ Appeal fails. Accordingly, it is dismissed. No costs.

(R.S.K., J.)

(G.A.M., J.)

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Index : Yes / No
Neutral Citation : Yes / No
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