



W.P.(MD) No.2746 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2025

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.2746 of 2025
and
W.M.P.(MD) No.1918 of 2025

T.Raja Usha Rani

... Petitioner

Vs.

1.The Director of Municipal Administration,
75, Urban Utility Building,
M.R.C. Nagar, Santhome High Road,
R.A.Puram,
Chennai-600 028.

2.The Commissioner,
Sivakasi Municipal Corporation,
Sivakasi, Virudhunagar District,
Pin 626 123.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the 2nd respondent from converting the entire open space covered in Ward A; Block 19, T.S.No.60/2 and Ward A; Block 17, T.S.No.3 of Sivakasi Municipal Corporation, Virudhunagar District



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as Miyawaki Forest and laying fence encircling the said property against Tamil Nadu Parks, Play Field and Open Spaces (Reservation and Regulation) Act, 1959.

For Petitioner	:	Mr.S.Meenakshi Sundaram Senior Counsel assisted by Mr.R.T.Arivukumar
For R1	:	Mr.A.Baskaran Additional Government Pleader
For R2	:	Mr.S.Devasena Standing Counsel

ORDER

This writ petition has been filed seeking a Writ of Mandamus forbearing the second respondent from converting the subject open space situated in Sivakasi Municipal Corporation, Virudhunagar District as Miyawaki Forest and laying fence encircling the said property.

2. It is the case of the petitioner that she acquired certain property adjacent to the subject open space area by virtue of a gift deed said to have been executed by her husband and the subject open space is being used to for



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ingress and egress for the land belonging to her and her predecessors in title to reach the nearby pathway for the past about 50 years. It is her further case that though the subject open space was earmarked for park purpose, the same was not developed into park by the respondent-Corporation for all these years and recently, at the instance of the local politicians, the subject open space is sought to be encircled by erecting a fence and to develop a Miyawaki Forest in the said open space area thereby depriving the petitioner to have access to the nearby pathway through the subject open space.

3. In nutshell, it is the case of the petitioner that the subject open space is being used to by the petitioner and her predecessor in title for the purpose of ingress and egress for her plot from the nearby pathway and by virtue of the action of the respondent-Corporation in taking steps to fence the said open area, the right of the petitioner to use the said property as dominant user to reach the nearby pathway is being deprived. Further, it is also contended that the subject open space, which is earmarked for park, cannot be used for the purpose of developing the Miyawaki Forest and in support of the said contention, the learned counsel for the petitioner placed reliance on the



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definition of “park” as defined under clause (d) of Section 2 of the Tamil Nadu Parks, Play-Fields and Open Spaces (Preservation and Regulation) Act, 1959.

4. A perusal of the said definition of “park” would disclose that the park would consists of gardens with trees, plants or flower beds etc. Therefore, if the respondent-Corporation intends to plant certain trees in the park area, it cannot be said to be in violation of any of the provisions of the said Act, 1959, nor it would amount to converting the said park area to that of forest.

5. Further, the petitioner has raised the very same grievance before the respondent-Corporation by submitting various representations from time to time. All such representations were addressed to by the second respondent by issuing a communication bearing Na.Ka.No.8911/2024/F1, dated 08.01.2025. In spite of the said communication of the respondent-Corporation, the petitioner without taking any steps to question the said proceedings, approached this Court seeking writ of mandamus to forebear the



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second respondent from converting the subject open space as a Miyawaki Forest. However, in support of the allegation that the respondent-Corporation is taking steps to convert the subject open space to that of Miyawaki Forest, no material is placed before this Court.

6. On the other hand, the learned Standing Counsel appearing for the respondent-Corporation submitted that the respondents are taking steps to plant certain trees in the subject open space, but not with a view to convert the same as a Miyawaki Forest.

7. In the light of the above, this Court is of the considered view that in case, if the petitioner has got any easementary right to use the subject open space as a dominant user, it is always open for the petitioner to approach the competent civil Court and establish her easementary right and claim appropriate relief. Infringement of easementary right cannot be complained of before this Court, that too under Article 226 of the Constitution of India. Further, the contention that the respondents are taking steps to convert the nature of open space being park to that of Miyawaki Forest is found to be



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totally baseless and unsupported by any material and in the considered view of this Court, such a contention is being raised by the petitioner only to prevent the respondent-Corporation from developing and protecting the open space area earmarked for park. Further, the petitioner is also not entitled to seek the relief as sought for in the writ petition without challenging the proceedings dated 08.01.2025 passed by the second respondent.

8. In the light of the above, this Court does not find any merit in this Writ Petition and the same is accordingly, dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

03.02.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes

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MUMMINENI SUDHEER KUMAR, J.

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