



W.P.(MD) Nos.7406 and 6297 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.04.2025

CORAM:

THE HONOURABLE MR.K.R.SHRIRAM, CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.(MD) Nos.7406 and 6297 of 2016
and
W.M.P.(MD) Nos.6236, 6237, 6238 and 5521 of 2016

W.P.(MD) Nos.7406 of 2016:

Dr.R.S.Lal Mohan (died)

...

Petitioner

P2. C.Shoba

P3. A.Vins Anto

(P2 & P3 are substituted *vide*
Court order dated 17.03.2025 in
W.M.P.(MD) No.16870 of 2024.

-VS-

1.The State of Tamilnadu
represented by its Secretary
Housing Board Department
Fort St.George
Chennai



W.P.(MD) Nos.7406 and 6297 of 2016

WEB COPY

2.The Managing Director
Tamilnadu Housing Board Department
Nandanam
Chennai

3.The Executive Engineer Cum
Administrative Officer
Trinulveli Housing Board Unit
Kamarajar Salai
Anbu Nagar
Palayankottai Taluk
Trinulveli District

4.The Director of Town and
Country Planning
Chennai

5.The Local Planning Authority
Town & Country Planning Authority
Collectorate
Nagercoil

6.District Collector
Kanyakumari District
Nagercoil-1

7.The Commissioner
Nagercoil Municipality
Nagercoil

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records relating to the impugned layout plan approval vide Lay Out Plan Approval Number 57 of 2002 granted by



W.P.(MD) Nos.7406 and 6297 of 2016

WEB COURT

the fifth respondent insofar as the lay out plan approval relates to shifting of the public utility area earmarked as Park, Nursery School and Play Field comprised in Survey Nos.L5 2/2, L5 2/5 and L5 2/4 of Vadiveesvaram Village to Resurvey numbers L5 3/1 and L5 2/6 of Vadiveesvaram Village abutting the cremation ground comprised in Resurvey number L5 3/3, quash the same and consequently forbearing the respondents from making any constructions in Resurvey numbers L5 2/2, L5 2/5 and L5 2/4 of Vadiveesvaram Village, earmarked as Park, Play Field and Nursery School in violation of layout plan approval number 79 of 2000 and to restore status quo ante and to demolish any constructions put up in the public utility service area comprised in Resurvey Numbers L5 2/2, L5 2/5 and L5 2/4 of Vadiveesvaram Village in violation of layout plan approval number 79 of 2000.

For Petitioners : Mr.T.Arul

For Respondents : Mr.P.Thilakkumar
Government Pleader for R1, R4 to R6
Mr.S.Velmurugan for R2 & R3
Mr.P.Athimoolapandian
Standing Counsel for R7

W.P.(MD) Nos.6297 of 2016:

T.Manikandan

... Petitioner

-VS-

1.The Managing Director
Tamil Nadu Housing Board
Kamarajar Salai
Nathanam, Chennai

2.The District Collector
Kanyakumari District
Nagercoil



W.P.(MD) Nos.7406 and 6297 of 2016

WEB COPY

3.The Executive Engineer
Tamil Nadu Housing Board
Anbu Nagar, Tirunelveli

4.The Commissioner
Nagercoil Municipality
Nagercoil
Kanyakumari District

5.The Thasildar
Agateeswaram Taluk
Vadiveeswaram Village
Nagercoil
Kanyakumari District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondents not to alter the nature and character of the land allotted for nursery school play ground and park as per the approved layout plan located at situated at Vallankumaranvilai, Vadiveeswaram Village, Agastheeswaram Taluk, Nagercoil, Kanyakumari District, either by making any construction or any manner.

For Petitioners : No appearance

For Respondents : Mr.P.Thilakkumar
Government Pleader for R1, R2 & R5
Mr.S.Velmurugan for R3
Mr.P.Athimoolapandian
Standing Counsel for R4

COMMON ORDER

[Order of the Court was made by The Hon'ble CHIEF JUSTICE]

W.P. (MD) No.7406 of 2016



W.P.(MD) Nos.7406 and 6297 of 2016

WEB COPY

Petition was originally filed by one Dr.R.S.Lal Mohan, former Principal Scientist, Government of India. The original petitioner died on or about 13th May, 2024, and has been now substituted by the present petitioners, C.Shoba and A.Vins Anto.

2. This public interest litigation has been filed to challenge the decision of the Tamil Nadu Housing Board Department to move a park from the location mentioned in the plan of 2000 to a place approximately a kilometre away, which is close to a crematorium.

3. Counsel for petitioners was candid to state that the petitioners did not and do not reside in the layout. Therefore, at the outset, we need to note that none of the residents of the layout or those who have been allotted land or housing site have come forward to challenge the shifting.

4. For the purpose of construction of houses, a layout was prepared as per law and approval was granted by the Local Planning Authority, namely, respondent No.5, in the year 1994. It was subsequently



W.P.(MD) Nos.7406 and 6297 of 2016

WEB COPY revised on three occasions in 1996, 1997 and 2000.

5. It is stated in the petition that the Housing Board Colony is a huge residential complex with about 2500 residents, and four parks, one playground and a nursery school were earmarked. Out of the four parks earmarked in the layout plan, a park admeasuring 30 cents was in Survey No.L5 2/2. There was also a nursery school admeasuring 24 cents in Re-Survey No.L5 2/5 and a play field admeasuring 26 Cents was comprised in Re-Survey No.L5 2/4.

6. Shri T.Arul stated that the prayer as regards the nursery school and play field have become infructuous and what remains to be considered in the petition is only the park in Re- Survey No.L5 2/2.

7. Counsel for petitioners submitted that respondent No.3, namely, Tirunelveli Housing Board Unit, is trying to put up constructions for building houses inside the park area of Re-Survey No.L5 2/2 and the said action was objected by the residents. Notwithstanding the objections and



W.P.(MD) Nos.7406 and 6297 of 2016

WEB COPY protests, respondent No.3 has surreptitiously and clandestinely revised the layout plan in the 2002 by restricting the area of park in Re-Survey No.L5 2/2 and shifting the same to a place abutting a cremation ground in Survey No.L5-3/3. According to petitioner, it is not permissible to shift the park, because the park was necessary for the betterment of the layout and park is a public utility area in the layout plan and by shifting, the entire purpose of earmarking public utility area is defeated. According to petitioners, no ordinary man of common prudence could have taken this decision in an inhuman manner and when human bodies are burnt, it emits highly polluting Carbon-di-oxide, Carbon-monoxide, Hydrogen Sulfide and Methane, which gases are highly injurious to small children.

8. According to petitioners, the respondents are precluded under law from utilizing the area reserved for public utility service, such as, parks, play fields, schools, open space, etc., for any other purpose and the action is contrary to public interest, legal requirements and safety norms and standards.



W.P.(MD) Nos.7406 and 6297 of 2016

WEB COPY

9. Shri T.Arul also, relying on a judgment of the Apex Court in ***Bangalore Medical Trust vs. B.S.Muddappa and others***¹, submitted that the public park is a place reserved for beauty and recreation and the scheme, such as the present layout scheme, is a statutory instrument and the alteration of the scheme can be only with a view to conferring a benefit or with regard to the general good of the public at large, otherwise, a scheme once approved cannot be altered. It was also submitted that the petitioners have filed various public interest litigations.

10. In the affidavit in reply filed on behalf of respondent No.3, through N.Moorthy, affirmed on 2nd April, 2016, it is stated that the park in question has been gifted over to the Local Body, namely, the Corporation. It is also stated that as per the rules and norms of the layout, the open space should be 10% of the total extent of the layout, whereas in the case at hand 10.05% in the revised layout is being allotted.

11. It was also submitted by counsel for respondents that, admittedly, in 1996, 1997 and in 2000 the layout was modified and

¹ (1991) 4 SCC 54



W.P.(MD) Nos.7406 and 6297 of 2016

petitioners had no problem earlier. It is also submitted that the land comprised in Survey No.L5-3/5, which is adjacent to the approved layout, was used by a private land owner as unauthorized burial ground and as per the rules and norms of the layout, residential plots should not lie at a radius of 90 metres from the burial ground. Accordingly, in the year 2002, the layout has been subsequently revised and in the revised approved layout, reservations are also given as per the norms of the Directorate of Town and Country Planning. The parks and play spaces are provided in the layout approved in four locations having a total extent of 6536 Sq.metres and for nursery school an extent of 832 Sq.metres. In the revised approved layout of 2002, park and play space approval in five locations as against four earlier and the nursery school is to an extent of 960 Sq.metres as against 832 Sq.metres earlier.

12. It is also submitted by respondents that the entire layout is pursuant to a self-financing scheme and stage-wise payments were being paid by the allottees. The period of construction has been fixed as nine months to the Contractor. It was submitted that the plot, where the park is



W.P.(MD) Nos.7406 and 6297 of 2016

WEB COPY being shifted, nobody was buying, because that was close to the crematorium and, hence, it was decided after following due process to shift the park from where it was originally planned to the revised area. Respondents submitted that the petition should be dismissed.

13. At the outset, we have to note that none of the residents have come forward challenging this modification. At this stage, Shri T.Arul stated that Mr.Manikandan, who is petitioner in W.P.(MD) No.6297 of 2016, was a resident of the locality. This is not correct. In the affidavit filed by Manikandan, he has stated that he is a Councillor of 19th Ward, Nagercoil Municipality and has not stated that he is residing in the layout. In any event, Manikandan has not appeared today.

14. The judgment in the case of *Muddappa and others* (supra) does not help petitioners. This is because that petition was also filed by the residents of the locality. In Paragraph No.29 of the judgment, it is recorded “.... The residents of the locality, such as the writ petitioners, are naturally aggrieved by the impugned orders and they have, therefore, the necessary



W.P.(MD) Nos.7406 and 6297 of 2016

WEB COPY

locus standi.” Petitioners herein are not the residents and, therefore, in our view, they have no *locus standi* to maintain this public interest litigation. If at all anybody was aggrieved, it would have been the residents of the locality and they seem to be quite happy with the proposed shift.

15. Moreover, the fact that the park is required in a residential area cannot be disputed. The public park concept, as a place reserved for beauty and recreation, was developed in 19th and 20th Century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But, now it is a gift from people to themselves.

In *Muddappa and others* (supra), a private nursing home was being constructed in the place reserved for park and, hence, the court gave a finding that the private nursing home cannot be substituted for a public park. In the case at hand, the park is not being done away with, but is being moved



W.P.(MD) Nos.7406 and 6297 of 2016

WEB COPY

to a place, which, according to petitioners, is just a kilometre away from where it was. In fact, as noted in the counter affidavit by third respondent, the area being given is bigger.

17. Coming to the reservation expressed by petitioners that when human bodies are burnt it emits highly polluting Carbon-di-oxide, etc., first of all, human bodies are not burnt 24x7. Moreover, in many of the cities, including in Chennai, there are crematoriums within residential areas. This concern of petitioners could be taken care of by directing the Corporation, which will be running the crematoriums, to put in place certain mechanisms, by which the emission of pollutants is restricted. Ordered accordingly.

18. In view thereof, the petition is disposed. There shall be no order as to costs. Consequently, interim applications stand dismissed.

W.P.(MD) No.6297 of 2016:

20. None for petitioner. Petition is dismissed. There shall be no order as to costs. Consequently, interim application stands dismissed.



W.P.(MD) Nos.7406 and 6297 of 2016

WEB COPY

[K.R.SHRIRAM., C.J.]

[P.B.BALAJI, J.]

07.04.2025

NCC : Yes / No
Index : Yes / No

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W.P.(MD) Nos.7406 and 6297 of 2016

WEB COPY

To:

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Housing Board Department,
State of Tamilnadu,
Fort St.George,
Chennai.
- 2.The Director of Town and
Country Planning,
Chennai.
- 3.The Local Planning Authority,
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- 4.The District Collector,
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- 5.The Managing Director,
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THE HON'BLE CHIEF JUSTICE



WEB COPY



W.P.(MD) Nos.7406 and 6297 of 2016

and
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krk

W.P.(MD) Nos.7406 and 6297 of
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W.M.P.(MD) Nos.6236, 6237, 6238
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