
(2012) 06 MAD CK 0121

In the Madras High Court

Case No : Writ Petition No. 9866 of 2007 and M.P. No. 1 of 2007

S. Amudha

APPELLANT

Vs

District Collector, Cuddalore and Others

RESPONDENT

Date of Decision : 07-06-2012

Acts Referred:

Citation : (2012) 5 MLJ 131

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : T. Mohan, for the Appellant; M. Dig Vijaya Pandian, Additional Government Pleader and V.S. Sivasundaram, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner is the resident of Neyveli. In this writ petition, she sought for demolition of all constructions put up in the plots reserved for parks in the Gandhi Gramam Layout ,Gandhi Nagar Post, Panruti Taluk, Cuddalore District as approved by the second respondent Director, Town and Country Planning, vide his proceedings dated 2.3.2001 and to maintain the same as a park. The writ petition was admitted on 16.3.2007. Pending the writ petition, an interim injunction was granted. Notwithstanding the notice being served, there was no counter affidavit filed on the side of the third respondent Panchayat. Even when this Court found that the District Collector, Cuddalore and the Director of Town and Country Planning was not taking steps to file an appropriate counter, this Court gave a direction on 16.4.2012 to the second respondent to file a counter affidavit. Accordingly, a counter affidavit dated Nil (April, 2012) was filed by the second respondent. In the counter affidavit, in paragraphs 3 and 4, it was averred as follows:

3.....I would bring to the notice of this Honourable Court that the order of the third respondent that the promotees had executed a Gift Deed of the plot reserved for park and the road area. The 3rd respondent/President of Vadakuthu Panchayat should have been taken steps to improve the park to maintain as open

space which has to be utilized by the residents of 184 plots approved by the Special Commissioner of Town and Country Planning, Chennai on 2.3.2001. It is pertinent to note that approved layout for parks-site are having an extent of 73584 sq.ft. by DTCP No. 45 of 2001 dated 2.3.2001. The park site has been allotted in three locations in the layout and the details are furnished below:

Park

Dimension

Area

I

231'-0" x 196'-0"

45276 sq.ft.

II

Length 216'-0" Width 116'-0" x 97'-0"

23718 sq.ft.

III

153'-0" x 34'-0", 36'-0"

4590 sq.ft.

Total

73584 sq.ft.

The above mentioned extend for the purpose of park to be utilized by the residents of 184 plots approved by Dy. Director of Town and Country Planning.

4. It is submitted that with regards para 4, 5, 6 and 7 there are no remarks. It is necessary to state that the present status of the Park. I that on the northern side of the park. I basement for petty shops had been constructed for a height of 1 ft. Three blocks measuring 30 m x 6 m with height of 0.6 m(2 ft.) constructed using hollow blocks exist on ground. There is no superstructure or any other roof on the above blocks. This construction is in damaged condition in which automatically entire structure will be demolished within 2 years. On the western side of the park, there is a Wall made of Hollow blocks measuring 9 m x 0.23 m x 1.4 m in damaged condition. There is no encroachment on the park site other than mentioned above. It is further stated that the park. II is being maintained as park. The park has been developed with an estimate of Rs. 42,000/- under the Anaithu Grama Anna Marumalarchi Thittam (AGAMT 2010-2011) Vadakuthu village Panchayat, Kurinchipadi Panchayat Union, Cuddalore District. It is further stated that the Park. III is being maintained as Park. There is no encroachment in the park. III which is still vacant.

2. Therefore, the contention of the petitioner that some constructions have come up in the open space reserved under the Open Space Regulation is clearly stands proved. Since the third respondent has not filed any counter to explain their stand, this Court will have to proceed on the basis of the averment made by the petitioner and agreed to by the second respondent. Once it is held that the space has to be kept as an open space under the Open Space Regulations, then necessarily even if there are any structures which are in damaged condition, that will have to be demolished, so that the space shall be kept as an open space.

3. Hence the writ petition will stand allowed. The third respondent panchayat is hereby directed to demolish all damaged structures as set out in paragraph 4 of the counter affidavit filed by the second respondent within a period of eight weeks from the date of receipt of copy of this order and report compliance to this Court. Subsequent to the demolition, the space will have to be kept as an open space and shall not be allowed to encroach by any person including by the third respondent. However, the parties are allowed to bear their own costs. Consequently, connected miscellaneous petition stands closed.