



W.P.No.25440 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2023

PRONOUNCED ON : 18.10.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.25440 of 2015

D.S.Madhavan

... Petitioner

vs.

- 1.The District Collector,
Kancheepuram District,
Kancheepuram.
- 2.The Revenue Divisional Officer,
Tambaram,
Kancheepuram District.
- 3.The Thasildar,
Tambaram,
Kancheepuram District.
- 4.The Commissioner,
Tambaram Municipality,
Tambaram, Chennai 600 045.
- 5.Sri Sri Ravi Shankar Trust,
Rep.by its Trustee Ajay Bagga



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6.Suvasini Apartments Owners,
Association, Tambaram
(R5 impleaded vide Order dated 03.08.2022
made in WMP.No.8769/2021)

(R6 impleaded vide Order dated 14.10.2022
made in WMP.No.24336 of 2019)

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the 4th respondent Commissioner to pass orders on the petitioner's representation dated 07.06.2014 on the basis of the proceedings of the second respondent dated 02.03.2015 and the 3rd respondent dated 02.04.2015 by producing/issuing a copy of the order of de-reservation said to have been passed in the year 1969 with regard to the public lands measuring an extent of 29.9 grounds in Sundaram Colony, East Tambaram, Chennai 600 059.

For Petitioner : Mr.T.Ramesh
For R1 to R3 : No Appearance
For R4 : Mr.P.Srinivas
For R5 : Mr.K.Ravi Anantha Padmanaban
For R6 : M/s.T.S.Baskar



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ORDER

This writ petition has been filed to issue a Writ of Mandamus directing the 4th respondent Commissioner to pass orders on the petitioner's representation dated 07.06.2014 on the basis of the proceedings of the second respondent dated 02.03.2015 and the 3rd respondent dated 02.04.2015 by producing/issuing a copy of the order of de-reservation that is said to have been passed in the year 1969 with regard to the public lands measuring an extent of 29.9 grounds in Sundaram Colony, East Tambaram, Chennai 600 059.

2. The present writ petition viz., W.P.No.25440 of 2015 was earlier heard partly on 28.07.2022. It was informed that there are two connected writ petitions in W.P.Nos.26255 and 11367 of 2013. At the request of the learned counsel for the petitioner, these two cases were directed to be listed for common disposal.

3. Details of the writ petitions filed by the petitioners herein apart from this writ petition are detailed as below:-



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W.P.No/Date of disposal	Petitioner	Respondent	Prayer
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No.28856 of Sundaram Colony 2012 dated Association represented 15.10.2012 by D.S.Madhavan		a)State of Tamilnadu b)Tambaram Municipality c) CMDA\ d) The Director of Town and Country Planning	Writ of Mandamus directing the third respondent (CMDA) to consider the petitioner's representation dated 26.09.2012 regarding land usage in Sundaram Colony
No.28857 of Sundaram Colony 2012 dated Association represented 15.10.2012 by D.S.Madhavan		a)State of Tamilnadu b)Tambaram Municipality c) CMDA d)The Director of Town and Country Planning. Anna Salai, Chennai 600 002.	Writ of Mandamus directing the second respondent (Tambaram Municipality) to consider the petitioner's representation dated 29.08.2012 regarding land usage in Sundaram Colony
No.11367 of a) D.S.Madhavan 2012 Dated b) B. R.Rajamani 16.04.2013 c)S.V.Balasubramanian d)D.O.R.Venkatraman		1)State of Tamilnadu 2)Tambaram Municipality 3) CMDA 4)Director of Town Planning and Country Planning 5)V.Krishnamoorthy 6)S.Usha 7) T.Usha	i) Writ of Mandamus directing 2 nd and 3 rd respondents to consider representation dated 07.04.2013 regarding land usage in Sundaram Colony



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		8) A.M.Thangam	
		9) T.P.Rangachari	
		10)S.Sathiyamurthy	

4. However, it was later informed that the said two writ petitions were specially ordered and were to be listed before the then Honb'le Mr.Justice (who later retired as the Hon'ble Acting Chief Justice Mr.T.Raja). However, no further orders have been passed in W.P.Nos.26255 and 11367 of 2023. They are said to be still pending.

5. After hearing the learned counsel for the petitioner, the learned Government Advocate for the first to third respondent, learned counsel for the fourth respondent and the learned counsel for the fifth respondents, this writ petition was earlier disposed on 02.09.2022 by directing the fourth respondent to consider the representation of the petitioner and pass orders on merits.

6. After the aforesaid order was passed, there was a mention and it was brought to the knowledge of the Court that an application was filed



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by 6th respondent for impleading the 6th respondent in W.P.M.No.24336 of 2019. However, same was not listed on 02.09.2022 when orders were passed disposing the present writ petition.

7. Under these circumstances, order dated 02.09.2022 disposing the present writ petition was recalled. Therefore, the present writ petition was thereafter listed on 07.09.2022. Since the portfolio changed, the same could not be taken up for hearing earlier. W.P.No.24336 of 2019 filed by the 6th respondent was allowed. Therefore, this case was listed on 02.12.2022 for arguments.

8. Elaborate argument was advanced by the learned Senior Counsel for the sixth respondent/ who had filed WMP.No.24336 of 2019 on 14.10.2022 to implead itself in the present writ petition.

9. It was argued that under the Scheme of Madras Town and Country Planning Act, 1920, the land which was earmarked for open space was allowed to be sold to a private person in the year 1969 under the provisions of the said Town and Country Planning Act, 1920 (Madras



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Act No.VI of 1920). Thus, there has been new development and therefore there is no merits in the present writ petition.

10. The learned counsel for the fifth respondent would submit that the crux of the issue is that prior to the coming into force of the new Town & Country Planning Act, 1971, there was no mandatory provision to leave the open space for providing the lay out. If the public authority wanted such open space, the same area should be purchased by it from the land owner. Hence, the fourth respondent – Tambaram Municipality passed a resolution that due to non-availability of funds, it was returning those 29.9 acres to the builder, thus resulting in automatic de-reservation or de-reservation by default.

11. The learned counsel further submits that in the writ appeals and SLPs, this position was culled out and a clean chit has been given for granting the planning permission by holding that prior to the new Town and Country Planning Act, 1971, it was not mandatory to allot an open space by the builder or lay-out promoter. Also, G.O.Ms.No.743 dated 10.05.1975 exempts 10% reservation of open space reserved area as on



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mandatory condition. In fact, one of the SLPs filed by the pre-predecessor Association member of the petitioner, the donor o the 5th respondent's property, namely Mr.Balaji was impleaded as one of the respondents in the SLP Civil No.2881 of 2002 and the entire issue has been settled by the Supreme Court, which is binding on the petitioner. In the same place, their apartment has also been built and several buildings have been built in and around the vacant property of the 5th respondent.

12. The learned counsel further submitted that in W.A.Nos.407 & 723 of 1996, the Hon'ble Division Bench of this Court has observed as follows:-

5. As already stated, the lay out was sanctioned in the year 1981. In 1989, the Municipality passed a resolution that they are not willing to take over the land left by the promoter as open space for paucity of funds. Subsequently, the lay out was revised. Then, there is no further dispute that the open space reserved had been de-reserved. When once the de-reservation had been made automatically, it vests with the land owner and the local Authority has no control over the same. Hence, the promoter had dealt with the lands after the de-reservation. When that be the case, the order of the Chennai Metropolitan Development Authority rejecting the application



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for the planning sanction on the ground that the space falls within the reserved 'open space' cannot be sustained. Consequently, the Government has taken into consideration of all these facts and granted exemption under the impugned proceedings on the ground that the appellant in W.A.No.407 is a bonafide purchaser for value and the fact remains that the land left for open space had been de-reserved. When these facts are not disputed by the respondents 1 to 6, we are of the view that there is no need to interfere with the impugned proceedings in the writ petition.

6.Though the learned Single Judge of this Court has elaborately discussed the provisions of the Act, he has over looked the facts pertaining of the writ petition. Hence, we are not inclined to deal with the order of the learned Single Judge elaborately as we find that the Government Order granting exemption to the appellant in W.A.No.407 of 1996 is on the basis of the de-reservation of the open space ear-marked under the original sanctioned lay out in 1961 and especially the de-reservation is in 1969, it is not open to the Authorities to deal with the land or to insist the land owner to leave it as the open space. Further, the new Town and Country Planning Act that was enacted in the year 1971 came into force in 1975. As the land under dispute was de-reserved much earlier to the new Act came into force, the new Act has no application for deciding the issue involved in this case. If at all, the new Act is applicable, it can be applicable only to the sanctioning of the building plan and it cannot be taken that the open space already de-reserved has to be



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maintained as open space which will, in turn, amount to contrary to the decision already taken by the local Authority.”

13. The learned counsel for the fifth respondent further submitted that the SLPs preferred against these writ appeal orders also got dismissed. As stated above since the donor to the fifth respondent was made a party resulting in affirming the above order of the Division Bench, the present writ petition has no legs to stand and it has to be dismissed. Subsequently, another bench order was passed relying upon and following the above order passed in W.A.No.407 of 1996. Therefore the present writ petition is liable to be dismissed with a further direction to the official respondents to grant planning permission to the fifth respondent trust, who only wants to build a mediation centre for the good of the public in that area for carrying out bhajans and its allied acts only .

14. In other words, the act of passing the resolution amounts to de-reservation, W.P.No.2771 of 1986 was filed by six persons namely K.S.Venkatramani, K.P.Suryanarayanan, G.Srinivasarangan,



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T.S.Sundararajan, M.V.Natarajan and S.Goindarajan. In W.P.No.2771 of 1986, these persons had challenged G.O.Ms.No.69 dated 10.01.1986 issued by the Housing and Urban Development Department.

15. There is a long history to this Litigation. Facts indicate that Sundaram Colony in Tambaram was approved by the then Tambaram Municipal Council in the year 1961 vide D.Dis.No.16981/61 dated 28.12.1961. It was promoted by one Sundaram Ayyangar .

16. On 25.04.1969, Tambaram Municipal Corporation is said to have passed a resolution to the effect that due to insufficient fund, it was not possible to purchase the land meant for public purpose and therefore it was decided to grant permission for construction of a Marriage Hall. A clean copy of the aforesaid resolution dated 25.04.1969 was filed before this Court. It reads as under:-

“நிதிப்பற்றாக் குறையினால் மேற்படி இடத்தை வாங்குவதற்கு இயலவில்லை என்று தீர்மானிப்பதோடு கல்யாண மண்டபம் கட்ட அங்கீகரிக்கப்பட்டது. நிபந்தனையை நீக்கி விடவும் தீர்மானிக்கப்பட்டது.”



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17. Whether indeed such a resolution was based or not is debatable.

In any event, the stand of the erstwhile Municipal Council has to be viewed from the perspective of the Tamil Nadu Madras Town and Country Planning Act, 1920 (Madras Act No.VI of 1920) the Madras Town and Country Planning Rules, 1920 as it stood as of 25.04.1469.

18. In this writ petition, this Court is concerned with the land that was meant construction of a marriage/community hall which was to be sold to one R.Krishnamoorthy by the promoter Sundaram Ayyangar.

19. The said R.Krishnamoorthy had purchased the land from the said promoters Sundaram Ayyangar and had built a Marriage Hall (Kalyanamandapam).

20. Later, the said R.Krishnamoorthy had later brought down the Marriage Hall and has sold undivided share in the land to members of the 6th respondent association for putting up a multi-storied apartment.

21. Earlier, W.P.No.4426 of 1983. W.P.No.4426 of 1983 was



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filed by K.S.Venkatramani and five others namely K.P.Suryanarayanan, G.Srinivasarangan, T.S.Sundararajan, M.V.Natarajan and S.Govindarajan for a Mandamus to direct the third and fourth respondents therein to enforce the regulation to prevent illegal construction on the land reserved for open space in the layout.

22. It appears that W.P.No.4426 of 1983 filed earlier was dismissed by this Court. Therefore, W.A.No.646 of 1987 was filed before the Hon'ble Division Bench of this Court. The then Director of Town and Country Planning in his communication dated 17.11.1987 addressed to the Government Pleader has described the application DTP.No.21/1974 as follows:-

a) TP/DTP 178/61 :

1. No. of House sites.
2. A piece of land has been reserved for public purpose and another for children play ground and
3. A part of layout area has been reserved for commercial purpose and a piece of land has been reserved for shops.

b) TP/DTP 202/65



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1. No.of House sites.
- 2.The land reserved for public purpose and children play ground has been changed as"Open" with slightly increasing the area.
3. The area reserved for commercial purpose has been retained as it is and one more shopping area has been provided.
4. The width of road DD D1 D1 has been reduced"

23. It has been further stated that approved plan was further revised as follows:-

c) TP/DTP 103/69:-

In the revised layout area reserved for commercial purpose in the original layout has been converted as house sites with reservation for children playground and shops.

d) TP/DTP 174/72:

It appears that the area shown in the layout does not fall within the approved layout area. However, a copy of the same is furnished.

24. Relevant portion of the aforesaid communication further read as under:-

As per Section 176 of Tamilnadu District Municipalities Act, 1920 and local body may



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sanction or refuse the layouts received from the individuals who intends to make or layout a new private street based on the grounds given in that section.

As per G.O.No.1920 dated 26.05.1939 the local body shall consult the Director of Town and Country Planning and obtain his technical opinion on the layouts. The Department taking into consideration the existing circulation pattern and the needs for common amenities such as children pray space, open spaces etc., offer its views on the layouts received or suitably revise the layouts and furnish the same to the local body.

The local body is the final authority to sanction the layout under the provision of the Tamilnadu District Municipalities Act 1920, whenever the applicant has any grievances on the layout approved by the local body, the local body in turn refer such representations to the Director of Town and Country Planning for advise. Based on the merits of the representation and the availability of amenities, the department furnish revised layouts or amended layouts on the local body.

As seen from the layouts approved TP/DTP 178/61 and the revised layout 202/65 it is noted that no reservation was agreed to be deleted and converted into house sites. In the layout approved by the Department in TP/103/69 the area reserved for commercial purpose had been agreed to be converted as house sites with reservation for children play ground and shops and a portion of it is retained for commercial



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purpose.

In this layout also no area reserved for public purpose has been agreed to be converted for house sites by the department.

The connected files relating to the approval of the above layouts were destroyed as the department used to retain it only for 10 years after furnishing the layout to the local body.”

25. The TP-TDP No.178/1961 of the Deputy Director of Town and Country Planning has laid down the following stringent condition at the time of approval of the Sundaram Colony lay out :-

4.அங்கீகரிக்கப்பட்ட வரைபடத்திற்கு காட்டப்பட்டுள்ள எந்த ஒரு மனையையும் பொது வாரியங்களுக்காக தெரிவு செய்யப்பட்ட மனைகளைத் தவிர குடியிருப்பு வீடு கட்டுவதற்கு மட்டுமே பயன்படுத்தப்பட வேண்டுமேயல்லாது கடை பண்டகசாலை மற்றும் குடியிருப்பு அல்லாத அல்லது குடியிருப்பைச் சார்ந்த உபயோகத்திற்கில்லாத கட்டிடம் கட்டுவதற்கு பயன்படுத்தக்கூடாது. பொது வசதிகளுக்காக செய்யப்பட்டுள்ள இடங்கள் யாவும் அங்கீகரிக்கப்பட்ட வரைபடங்களில் குறிப்பிடப்பட்டுள்ள உபயோகங்களுக்காக மட்டுமே பயன்படுத்தப்பட வேண்டும்.

6.அங்கீகரிக்கப்பட்ட வரைபடத்தில் காட்டப்பட்டுள்ள தெருக்களோடு கட்டிட வரம்பு 10 அடிக்குக் குறையாமல் கொடுக்க வேண்டும். மனையில் எல்லைக்கும் கட்டிட வரம்புக்குட்பட்ட நிலப்பகுதியில் தெருவின் உயர்கட்டிடத்திலிருந்து 5 அடி உயரத்திற்கு மேற்படாத சுற்றுச்சுவர் அல்லது வேலி தவிர



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எவ்வித கட்டிடமோ சுவரோ கட்டுதல் கூடாது.

9.மனையின் பரப்பில் 50 சதுரத்துக்கு மேல் கட்டிடம் கட்டப்படக்கூடாது. கட்டாமல் விடப்படும் திறந்த வெளியை தோட்டமாகவோ திறந்த முற்றமாகவோ தனிப்பட்ட உபயோகத்திற்காக சுகாதாரமான நிலையில் துப்புறவாக பராமரித்தல் வேண்டும்.”

26. The above contention was in consonance with Rule 76 of the Madras Town and Country Planning Rules, 1920. The facts on records indicate that rampant unauthorized construction were made in the aforesaid layout based on the sale deed executed by the promoters of the layout namely Sundaram Iyyangar. In the counter filed before this Court in W.P.No.4426 of 1983 by the first respondent therein, the Commissioner, Tambaram Municipality stated as follows:-

“I submit that further actions have been taken by Tambaram Municipality under Section 216 of the Tamilnadu District Municipalities Act against the unauthorized construction vide unauthorized Construction 38A/82, 130/82, 134/82 & 19/1983 and therefore the averments of the petitioner that the unauthorized constructions made with connivance of the first respondent and under the very eyes and active co-operation of the 1st respondent and the constructions are coming up in violation of the statutory provisions winked at by the 1st respondent under the benevolent grace of the



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first respondent are absolutely false and baseless and are hereby specifically denied by me.

27. Para 13, 15 and 16, it was stated that action have been taken against the following persons:-

Name	Date	ROC/UAO	Remarks
Sundaram	12.5.1982	792/82	Charge sheet has been filed before the Judicial Second Class Magistrate Court, Saidapet.
Krishnamoorthy*	12.5.1982	7291/82	Charge sheet has been filed before J.S.O Magistrate Court, Saidapet.
Rangachari	12.4.1982	3B1/82	- do-
K.G.Lakshmi	12.4.1982	92/83	Charge sheet has been filed before the Judicial Sub-Divisional Magistrate Court, Saidapet and Judgment copy is awaited.
T.R.Lakshmi	29.07.1982	130/82	-do
P.R.Mahadevan	-	-	O.S.No.1449/82 and 1124/1982 before the District Munsif Court, Poonamallee and the same is pending.

* The person who had put up illegal construction for the 6th respondent association.



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28. After the case was heard at length and the case was reserved for passing orders, one Mr.James Ponniah filed an application before the Authority to exempt the property purchased by him from the rigor of the Town and Country Planning Act, 1971.

29. The said James Ponniah appears to have purchased the property located in the open space in the layout and wanted exemption from Rule 14 of the Tamil Nadu Development Control Rules relating to open space under Section 113 of the Tamil Nadu Town and Country Planning Act, 1971.

30. By G.O.Ms.No.69 was issued by the Housing and Urban Development Department Notification dated 10.01.1996 in favour of the said James Ponniah. G.O.Ms.No.69 dated 10.01.1996 issued by the Housing and Urban Development Department granted to exemption to the said James Ponniah from Rule 14 of the Tamil Nadu Development Control Rules.



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31. Pursuant to G.O.Ms.No.69 of the Housing and Urban Development Department, the said James Ponniah was allowed to put up construction of a building in S.Nos.96 to 108 in Sundaram Colony, Selaiyur Village, Tambaram in the open area under the provisions of the then existing Development Control Rules.

32. Rule 14 (c) of the then existing of Development Control Rules read as under:-

14. Open Space and Recreational Zone :-

*a) In the open space and recreational zone, buildings or premises shall be **normally permitted** for the following purposes and accessory uses:-*

i) All public and semi-public, recreational uses and open spaces, parks and playgrounds, zoological and botanical garden, nurseries, water front developments, museums and memorials:

ii. Installation of electric motors of not exceeding 5 horsepower may be permitted for pumping water for



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gardening purposes.

(b) The following uses may be permitted with the special sanction of the Authority :-

(i) Transportation terminals, cinemas, theaters and open air theaters, exhibitions, circuses, fairs and festival grounds, public utilities.

(ii) Incidental residential uses for essential staff required to be maintained in the area :

(iii) All activities incidental to recreational use including beach cottages as may be decided by the authority :

(iv) Installations that may be necessary for the uses mentioned above :

(v) All agricultural uses :

(vi) Burial and / or burning grounds or crematoria.

(c) All uses not specifically mentioned under sub-rule (a) and (b) above shall be prohibited.

(d) For buildings in the area same regulations in respect to extent of plot, floor space index etc. shall be applicable in accordance with the table given under respective zones.

33. Thus, there was a prohibition. However, G.O.Ms.No.69, dated



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10.01.1986 issued by the Housing and Urban Development Department granted exemption to James Ponniah. G.O.Ms.No.69, dated 10.01.1986 issued by the Housing and Urban Development Department granting exemption in favour of the said James Ponniah was rightly quashed by this Court vide its order dated 27.02.1996 in W.P.No.2771 of 1986 with the following observations:-

“37. I may state that the State in particular has a duty to protect the environment and therefore, it has to shed its extravagant unbridled sovereign power. In this case, the first respondent-State has failed to do so.

38. In the result, I hold that the Notification dated 10.01.1986 issued by the first respondent is violative of Article 226 of the Constitution of India, and it is arbitrary, and I quash the same accordingly. Taking into consideration the facts and circumstances of the case, I also hold that the petitioners are entitled to their costs, which is quantified at Rs.5,000/- (Rupees five thousand) payable by respondents 1, 2 and 3. The writ petition is allowed with costs as indicated above”.

34. While quashing G.O.Ms.No.69, dated 10.01.1996, learned Single Judge had made the following observation in para 20 of the order dated 27.02.1996 in W.P.No.2771 of 1986:-



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“20. On merits of the case, by exempting the second respondent from Rule 14 of the Development Control Rules, it is for the State to show it has applied its mind and it is not a favoritism shown to him. When a layout and scheme are approved by the third respondent, such reservation is intended for the benefit of the Public. It was held in **T. Chet Ram Vashist v. Municipal Corpn. of Delhi, (1995) 1 SCC 47**

Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it.”

35. Aggrieved by the order dated 27.02.1996, of the learned Single Judge in W.P.No.2771 of 1986, the said James Ponniah, (the second respondent therein) filed W.A.No.4407 of 1998. The State of Tamil Nadu also filed a separate appeal in W.A.No.723 of 1996.

36. These two writ appeals were taken up together and decided by a



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Division Bench of this Court vide common order dated 10.09.2001. The Division Bench allowed W.P.No.4407 of 1998 filed by James Ponniah and dismissed W.A.No.723 of 1996 filed by the State. Relevant portion of the common order dated 10.09.2001 of the Division Bench reads as under:-

4. *As already stated, the layout was sanctioned in the year 1961. In 1969, the Municipality passed a resolution that they are not willing to take over the land left by the promoter as open space for paucity of funds. Subsequently, the layout was revised. **Then, there is no further dispute that the open space reserved had been de-reserved. When once the de-reservation had been made automatically, it vests with the land owner and the local Authority has no control over the same.** Hence, the promoter had dealt with the lands after the de-reservation. When that be the case, the order of the Chennai Metropolitan Development Authority rejecting the application for the planning sanction on the ground that the space falls within the reserved 'open space' cannot be sustained. Consequently, the Government has taken into consideration of all these facts and granted exemption under the impugned proceedings on the ground that the appellant in W.A.No.407 of 1996 is a bonafide purchaser for value and the fact remains that the land left for open space had been de-reserved. When these facts are not*



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disputed by the respondents 1 to 8, we are of the view that there is no need to interfere with the impugned proceedings in the writ petition.

5. Though the learned single Judge has elaborately discussed the provisions of the provisions of the Act, he has over-looked the facts pertaining to the case, which are more relevant for the disposal the writ petition. Hence, we are not inclined to deal with the order of the learned Single Judge elaborately **as we find that the Government Order granting exemption to the appellant in W.A.No.407 of 1996 is on the basis of the de-reservation of the open space earmarked under the original sanctioned layout in 1981 and especially, the de-reservation is in 1969, it is not open to the Authorities to deal with the land or to insist the landowner to leave it as the open space.** Further, the new Town and Country Planning Act that was enacted in the year 1971 came into force in 1975, as the land under dispute was de-reserved much earlier to the new Act came into force, the new Act has no application for deciding the issue involved in this case. If at all, the new Act is applicable, it can be applicable only to the sanctioned of the building plan and it cannot be taken that the open space already de-reserved has to be maintained as open space which will, in turn, amount to contrary to the decision already taken by the local Authority. Consequently, both the writ appeals are allowed. The order of the learned Single Judge is set aside.



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37. Meanwhile, the first respondent in W.A.Nos.407 & 423 of 1996 filed another W.P.No.12386 of 1994 (the original petitioner in W.P.No.2771 of 1996). W.P.No.12386 of 1994 was filed for issuance of a Writ of Mandamus restraining the State from permitting the conversion or sub-dividing the open space. However, W.P.No.12386 of 1994 was also dismissed on 13.09.2001 by this Court. SLP.No.2881 of 2002 filed against the order of this Court in W.P.No.12386 was also dismissed by the Hon'ble Supreme Court on 08.09.2010.

38. Section 36 of the Madras Town and Country Planning Act, 1920 read as under:-

Section 36:-Power of Councils to make any agreement:

A municipal council shall be competent to make any agreement with any person in respect of any matter which is to be provided for a town – planning scheme subject to the powers of the [State Government] to modify or disallow such agreement, and unless it is otherwise expressly provided therein, such agreement shall take effect on and after the day on which the scheme comes into force.

Provided that if the agreement be modified by



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the [State Government], either party shall have the option of avoiding it if he so elects within the prescribed period.”

39. Coming to the provisions of the Madras Town and Country Planning Act, 1920, as per Section 4 of the Madras Town and Country Planning Act, 1920, the Town Planning Schemes may provide for all or any of the following matters:-

- (a) the laying out of land as building sites;*
- (b) the construction, diversion, extension, alteration, improvement or closure of streets, roads and communications;*

40. The power was vested with the Government under Section 44(1) of the Town and Country Planning Act. 1920 to make Rules consistent with the provision of the Act.

41. This provision is similar to Section 128 of the Tamil Nadu Town and Country Planning Act, 1971. Section 9 (2) of the Madras Town-Planning Act, 1920 which reads as under:-



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Section 9(1)*Every municipal council which intends to make a town-planning scheme, in respect of any land within the municipal area or in its vicinity outside such area, or to adopt, with or without modifications, a draft scheme proposed by all or any of the owners of any such land shall, by resolution, declare its intention. The chairman shall then have a plan prepared showing the area proposed to be included in the scheme, the surrounding lands and any existing streets.*

42. Section 10 of the Town and Country Planning Act, 1920, read as under;_

10. (1) *The resolution under section 9 shall be published by notification in the prescribed manner by the chairman; and such notification shall state that a copy of the plan is kept for the inspection of the public at all reasonable hours at the municipal office.*

(2)*If within sixty days from the date of such publication a person likely to be affected by such scheme communicates in writing any objection or suggestion relating thereto the municipal council shall consider such objection or suggestion.*



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(3)The municipal council may then finally resolve upon making or adopting the scheme with or without modifications, and the chairman shall publish the resolution by notification in the prescribed manner.

43. Section 45(1) of the Madras Town-Planning Act, 1920 reads as under:-

45(1) Every resolution passed under section 44 shall be submitted through the district educational council to the Governor in Council

44. Section 50 (2) of the Madras Town-Planning Act, 1920 contemplates Trust. The constitution of Trusts under Chapter IX of the Act, was deemed to be a Local Authority for the purpose of borrowing money under the provisions of that Act and making execution of scheme under the Act shall be deemed with work. Section 50(2) of the Madras Town – Planning Act, 1920 reads as under:-

Section 50(2):-

A trust constituted under this chapter shall be deemed to be a local authority, as defined in the Local Authorities Loans



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Act, 1914, for the purpose of borrowing money under the provisions of that Act, and the making and execution of a scheme under this Act shall be deemed to be a work which a local authority is legally authorized to carry out.”

45. Section 52 deals with vesting with the Municipal Council of streets layout and open space provided by the Trust under the scheme. As per Section 52 of the Madras Town and Country Planning Act, 1920 when any open space for purposes of ventilation or recreation has been provided by the trust in executing any scheme, it shall, on completion, be transferred to the municipal council by resolution of the trust. It shall thereupon vest with the **Municipal Council**. It shall be **maintained at the expense of the Municipal Council**. As per Section 52 of the Madras Town and Country Planning Act, 1920, read as under:-

Section 52 (1): *Whenever the municipal council is satisfied-*

(a) that any street laid out or altered by the trust has been duly levelled, paved, metalled, flagged, channelled, sewered and drained in the manner provided in the scheme sanctioned by the Local Government under this Act and



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(b) *that such lamps, lamp-posts, and other apparatus as the municipal council may consider necessary for the lighting of such street and as ought to be provided by the trust have been so provided, and*

(c) *that water and other sanitary conveniences ordinarily provided in a municipality have been duly provided in such street, the municipal council, after obtaining the assent of the trust, or failing such assent, the assent of the Local Government under sub-section (3), shall, by a written notice affixed in some conspicuous position in such street, declare the street to be a public street; and the street shall thereupon vest in the municipal council, and shall thenceforth be maintained, kept in repair, lighted and cleansed by the municipal council.*

(2) When any open space for purposes of ventilation or recreation has been provided by the trust in executing any scheme, it shall, on completion, be transferred to the municipal council by resolution of the trust and shall thereupon vest in, and be maintained at the expense of, the municipal council;

Provided that the municipal council may require the trust, before any such open space is so transferred, to enclose, level, turf, drain and lay out such space and provide foot-paths therein, and, if necessary, to provide lamps and other apparatus for lighting it

(3) If any difference of opinion arises between the trust and the municipal council in respect of any matter



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referred to in the forgoing provisions of this section, the matter shall be referred to the Local Government, whose decision shall be final.

46. As per Rule 76 of the Madras Town and Country Planning Rules, 1920 framed under sub-section (1)(2) of 44 of the said Act, when any street or other work has been constructed or when any open space for purposes of ventilation or recreation or any site for a public purpose has been provided (or acquired) by the responsible authority, it shall on completion be transferred to the concerned Municipal Council by order of the responsible authority and shall thereafter be maintained by the concerned Municipal Council.”

20. Rule 76 of the Madras Town and Country Planning Rule ,
1920 reads as under:-

“When any street or other work has been constructed or when any open space for purposes of ventilation or recreation or any site for a public purpose has been provided (or acquired) by the responsible authority it shall on completion be transferred to the concerned Municipal Council by order of the responsible authority and shall thereafter be maintained by the concerned Municipal Council.”



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47. Thus, if any open space for purposes of ventilation or recreation or any site for a public purpose has been provided (or acquired), it shall on completion be transferred to the concerned Municipal Council by order of the responsible authority and shall thereafter be maintained by the concerned Municipal Council.” there is no power conferred under the aforesaid Rule on the Tambaram Municipal Corporation represented by itself Council to transfer the rights to a third party to put up the construction .

48. Thus, it emerges that the constructions were made without proper authorization for converting of land ear-marked for public purpose by the promoters of lay out namely T.S.Sundaram Ayyengar. The promoters of lay out namely T.S.Sundaram Ayyengar sold the land to several persons including Krishnamoorthy, who later constructed a Marriage Hall viz. kalayana Mandapam.

49. The said Kalayana Mandapam that was put up by the said V.Krishnamoorthy, was demolished. He later decided to put up as a



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residential apartment by selling into the members of the sixth respondent herein who have been subsequently impleaded.

50. The members of the 6th respondent Association who are the owners of Suvasini Apartments at Plot No.1A, Periyalwar Street, East Tambaram, Chennai-59 have purchased UDS from the said Mr.V.Krishnamurthy and his son Raja K.Moorth contrary to Rule 76 of the Madras Town and Country Planning Act, 1920.

51. They decided to develop the land into a residential complex and had submitted a plan before CMDA and other authorities for approval. The authorities concerned had also approved for construction. After obtaining a planning permit vide B/Spl.Bldg/381 A to C.2012 dated 21.09.2012 by CMDA and also building planning approval 663/12 dated 05.10.2012 issued by the Tambaram Municipality, the said V.Krishnamurthy had developed the property along with a builder.

52. On completion of the said building, CMDA has also issued “



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Completion Certificates” confirming that the flats have been constructed strictly in accordance with the planning permit and planning approval.

53. The local authority and electricity board also provided all amenities. The members of the 6th respondent Association purchased flats in the apartments complex developed by Mr.V.Krishnamurthy. It appears that there are 23 flats who have been constructed over the property, in Plot No.1A.

54. The Court have repeatedly stated that no fresh construction can be permitted in the area meant for public purpose. A part of the property which was earlier ear-marked for public purpose has been developed into a residential apartments. Such construction ought to have been permitted.

55. Thus, there are sufficient reasons for the Court to issue a writ of Mandamus to direct the 4th respondent to consider and pass appropriate orders on the representation of the petitioner and their predecessor's to



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take steps to remove illegal construction that have been put up in layout.

56. The 4th respondent shall pass appropriate orders on merits without getting influenced by any of the observation contained herein and decide the case on merits on the strength of the documents to be filed. The said exercise shall be carried by the respondent, within a period of 8 weeks from the date of receipt of a copy of this order.

57. This writ petition stands allowed with the above observation.

No costs.

18.10.2023

Index : Yes/No

Neutral Citation : Yes/No

kkd

C.SARAVANAN,J.

kkd



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To

- 1.The District Collector,
Kancheepuram District,
Kancheepuram.
- 2.The Revenue Divisional Officer,
Tambaram,
Kancheepuram District.
- 3.The Thasildar,
Tambaram,
Kancheepuram District.
- 4.The Commissioner,
Tambaram Municipality,
Tambaram, Chennai 600 045.

Pre-delivery Order in
W.P.No.25440 of 2015

18.10.2023