



W.A.No.3914 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.08.2023

Delivered on: 26.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.3914 of 2019

and

C.M.P. No.24615 of 2019

Merene Alex W/o. Alex Jeevadhas.

.. Appellant

Vs.

1. The Government of Tamil Nadu,
represented by its Secretary to Government,
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai – 600 059.

2. The Chennai Metropolitan Development Authority,
represented by its Member Secretary,
Thalamuthu Natarjan Buildings,
1, Gandhi Irwin Road, Egmore,
Chennai-600 008.

3. The Corporation of Greater Chennai,
represented by its Commissioner,
Ripon Buildings, Chennai.



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4. The Tamil Nadu Housing Board,
represented by its Managing Director,
Anna Salai, Nandanam, Chennai.

5. The Chennai Metropolitan Water Supply and
Sewerage Board,
represented by its Superintending Engineer [VI (P)],
1, Pumping Station Road, Chintadripet,
Chennai- 600 002.

6. The Commissioner,
Ambattur Municipality,
Chennai Tirutani Road, Chennai.

.. Respondents

Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside
the order passed by this Court in W.P.No.10464 of 2018 dated 13.09.2019.

For Appellants : Mr. Sharath Chandran

For Respondents : Mr. U.M. Ravichandran, Special
Government Pleader [for R1],

Mr. G.T. Subramanian, Senior Counsel for
Corporation [for R3]

Mr. S. Naganathan for Mr. D. Veerasekaran,
Senior Counsel for TNHB [for R4]

Mrs. S. Deepika, Senior Counsel
(CMWSSB) [for R5]

No appearance [for R2 & R6].



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JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The unsuccessful writ petitioner is the appellant before us.

2. The appellant approached the Writ Court seeking issuance of a writ of mandamus to forbear the respondents from altering, alienating and dealing with Open Space Reservation(OSR), earmarked as OSR-II in Survey No. 231 part and 233 part in Padi Village, Ambattur Taluk, as provided for in the approved layout plan issued by the Chennai Metropolitan Development Authority (CMDA).

3. The brief facts which are necessary for deciding the above writ appeal are follows: -

The Writ Petitioner is the owner of a flat in an apartment complex known as Golden Jubilee Apartments. According to the appellant, planning permission was granted by the 2nd respondent, namely the CMDA, subject to specific portions of lands being reserved for OSR area. It was the grievance of the appellant that the Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB) was proposing to construct a sewerage tank in the area earmarked as OSR land. Reference was also



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made to the earlier writ proceedings where this Court disposed of W.P. No. 6240 of 2011 with a direction to the authorities to hear the aggrieved Writ Petitioners, including the appellant herein. According to the appellant pursuant to the said order of the Writ Court, the proposal to build a sewerage tank was dropped. However, an attempt was made by the Tamil Nadu Housing Board to convert OSR land into commercial area. The appellant had filed W.P. No. 8688 of 2014 to forbear the statutory respondents from converting the OSR land into commercial area. Pending the said writ petition, the CMWSSB renewed its attempt to construct a sewerage scheme in the OSR land. The main contention of the petitioner is that even as per Regulation 20 of the Development Regulations framed by the CMDA under the second master plan, even a construction of a sewerage pumping station was prohibited on OSR lands. Further, in the gift deed executed by TNHB to the municipality, the OSR lands have been transferred to the municipality with a specific covenant that the same should be used only by public for the purposes of roads and street light.

4. The statutory respondents filed their counter and according to the Corporation of Chennai, even when the TNHB promoted the layout an



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extent of 138.66 sq. meters was demarcated for utilization of the said area for constructing a pump room and sewerage pumping station, with pumping machineries. Therefore, the CMWSSB was justified in putting up the sewerage pumping station on the OSR land. On behalf of the CMWSSB, it was brought to the notice of the Writ Court that in the site where the proposed sewerage pumping station was to come up, there was already an existing pumping station maintained by Ambattur Municipality which was exclusively catering to Golden Jubilee Flats.

5. It is also seen that in pursuance of the order passed in W.P. No.6240 of 2011, the municipality also fixed a date of hearing and heard the concerned parties. It was found that relocation of pumping station was not feasible and the proposal was only to improve the already existing pumping station.

6. The Writ Court finding that the site in dispute has already been in use as pump room and sewerage pumping station and that in the layout approved by the authorities, out of 5 OSR areas, the offending construction was only in OSR-II and that the implementation of the proposal was only for the benefit of the apartment owners, including the petitioner dismissed



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the writ petition. However, while declining to interfere with the project of CMWSSB, the Writ Court had specifically prohibited the respondents from utilizing the remaining OSR for any other purpose and specifically accorded permission for the construction that was under way by the 5th respondent and further directed that no further construction shall also be put up in OSR -II area.

7. Aggrieved by the said order of the Writ Court, the appellant has preferred the above writ appeal on the grounds that construction of any nature is not permissible on OSR lands and the Writ Court giving a green signal for the implementation of the sewerage treatment plan by the 5th respondent was against the ratio laid down by the Hon'ble Supreme Court and it would amount to an exercise perpetuating and encouraging illegality.

8. We have heard Mr. Sharath Chandran, Counsel for the appellant, Mr. U.M. Ravinchandran, Special Government Pleader for the 1st respondent and Mr.G.T.Subramanian, Standing Counsel for the Corporation of Chennai, 3rd respondent and Mr. S. Naganathan for Mr. D.



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Veerasekaran, Standing Counsel for the TNHB, 4th respondent and Ms. S. Deepika, Standing Counsel for CMWSSB, 5th respondent. We have also perused the records and the order of the Writ Court.

9. After hearing the parties for considerable length of time on an earlier occasion, we directed status reports to be filed by the CMWSSB as well as the TNHB, especially in view of the law laid down by the Hon'ble Supreme Court in a very recent decision in *Association of Vasanth Apartment's Owners vs V. Gopinath & Ors reported in 2023 SCC Online SC 137*. In the status report filed by CMWSSB, it has been stated that the existing pumping stations having been constructed and maintained by CMWSSB for collecting sewage of the 634 residential units well before the pronouncement of Hon'ble Supreme Court in *Association of Vasanth Apartment's Owners case*. Therefore, the ratio laid down by the Hon'ble Supreme Court cannot be applied to the facts of the present case. It is also stated that the association had not been able to provide any alternate lands to CMWSSB and only in the interests of the apartments, numbering 634, the pumping station was necessitated. Reliance is also placed on the *Open Spaces (Preservation and Regulation) Act, 1959 (Tamil Nadu Act 26 of*



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1959) to canvass a proposition that in view of the provisions of the said enactment, it was permissible to use upto 5% of the area for putting up civil structures. Therefore, it is contended that there is no violation of the rule or any law.

10. The TNHB filed a status report stating that the sewage pumping station and pump room were constructed in 1988 and therefore the pronouncement of Hon'ble Supreme Court in 2023 would not apply retrospectively, warranting the issuance of a writ of mandamus to forbear the respondents from utilising the OSR lands for the purposes of sewage pumping station. It is also stated that in terms of definition of open space under *Tamil Nadu Act 26 of 1959*, buildings up to 1/20th of the area can be covered with building and only the whole or the remainder is to be used for the purposes of recreation, air or light. Similar to the stand of the CMWSSB, the TNHB also justified the sewage pumping station being put up in OSR land, seeking shelter under the *Tamil Nadu Act 26 of 1959*.

11. Per contra, meeting these reports of the statutory authorities, the counsel for the appellant would state that once the Hon'ble Supreme Court has laid down the law that construction of any nature is prohibited in OSR



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land, there is no useful purposes in placing reliance on *Tamil Nadu Act 26 of 1959*. Further, according to the counsel for the appellant the Development Control Rules 2004 as well as The Tamil Nadu Combined Development and Building Rules 2019 prohibit any construction in OSR land and therefore the provision of *Tamil Nadu Act 26 of 1959* clearly stand superseded by subsequent special enactments and further, in view of the dictum of the Hon'ble Supreme Court, the stand taken by the statutory respondents cannot be countenanced. The counsel for the appellants would also place reliance on the judgments of Hon'ble Supreme Court in

i. Bangalore Medical Trust Vs. B.S. Mudappa & Ors reported in (1991) 4 SCC 54.

ii. P.T. Chet Ram Vashist Vs. Municipal Corporation of Delhi, reported in (1995) 1 SCC 47.

iii. Lal Bahadur Vs. State of U.P & Ors, reported in (2018) 15 SCC 407.

iv. Association of Vasanth Apartment's Owners vs V. Gopinath & Ors reported in 2023 SCC Online SC 137



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and the Full bench Judgment of this Court

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v. P. Karthikeyan & Ors Vs. Commissioner Coimbatore Corporation & Ors reported in 2021 SCC OnLine Mad 5488

12. It is relevant to take note of the fact that the decision rendered by the Hon'ble Supreme Court in *Association of Vasanth Apartment's Owners case* arose from this Court, where the very same Development Control Rules and other relevant rules and regulations were tested. Ultimately, the Hon'ble Supreme Court held:

"The areas covered by the OSR cannot be diverted for any other purpose. The respondents are duty-bound to ensure that the area set apart as OSR is stringently utilised only for the purpose in the Rule/Regulation. We direct that no area meant for OSR shall be utilised as dumping yards or any other purpose other than as OSR;"

13. We have also noticed that in the very same judgment, at paragraph 184-VII, the Hon'ble Supreme Court has taken note of the fact



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that there was a kachha road existing even at the time of the gift deed being executed and that it was being used as a road by large number of members of the public and held that, if the property gifted was in excess of area used for the roads, then the excess lands shall be used only for the purposes of OSR. Here, in the instant case also, we find that there was an existing pumping station catering to the needs and requirements of the association in which the appellant is a member, owning an apartment. One fact that we have to necessarily take note of is that the association is not a party to the writ petition and they are also not a party before us. It is an admitted position that the existing pumping station as well as the proposed extension to the same are being provided only for the benefit of the association, including the appellant.

14. No doubt, the Hon'ble Supreme Court has, in no uncertain terms laid down the law that OSR lands cannot be used for any other purpose and as already indicated, the said case decided by the Hon'ble Supreme Court emanated from this court and concerning the very same enactments, rules and regulations. Therefore, we are bound to follow the said ratio laid down by the Hon'ble Supreme Court. At the same time, in the absence of



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the association who is certainly an interested party, we do not deem it fit to issue any positive directions, especially considering the special circumstances of the case, namely the existence of a sewage pumping station for the past several years in the OSR land, catering to the 634 flats in the apartment complex and also in the light of a similar concession grant by the Hon'ble Supreme Court, by taking note of the existence of a road that was being used by the public.

15. In so far as the reliance placed on the *Tamil Nadu Parks, Play-fields and Open Spaces (Preservation and Regulation) Act, 1959 (Tamil Nadu Act 26 of 1959)*, we agree with the contentions of the counsel for the appellant that the 5% permissible limit available under the said enactment will not survive to enable the respondents to justify their attempt to put up construction in OSR lands, for the simple reason that the said enactment was of the year 1959 and subsequently legislations, statutory building rules and regulations have come in place, superseding the provisions of the said *Tamil Nadu Act 26 of 1959*. Moreover, testing the vires of the regulations of our State of Tamil Nadu, the Hon'ble Supreme Court in *Association of Vasanth Apartment's Owners case* has categorically held that OSR land



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cannot be used for any other purpose. In the case before the Hon'ble Supreme Court, a dumping yard was the contentious issue and the Hon'ble Supreme Court held that the OSR land cannot be used even for the purpose of a dumping yard. Therefore, the respondents are not justified in referring to the provisions of *Tamil Nadu Act 26 of 1959* to even contend that construction up to 5% of the land area (1/20th) is permissible/protected under the statute.

16. In view of the foregoing discussions, we deem it fit to issue the following directions: -

a) The appellant shall make a representation to the 1st respondent regarding removal / relocation of the sewage pumping station from the OSR lands and on such representation being made by the appellant, within 4 weeks from today, the 1st respondent shall forward the same to 2nd and 5th respondent namely the CMDA and CMWSSB, putting them on notice about the said representation. A copy of the representation shall also be forwarded to the Association of Flat Owners to enable them to put forth their views.



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b) After getting a report from the 2nd and 5th respondent as well as the Association of Flat owners, the 1st respondent shall, if necessary, give an opportunity of personal hearing to the parties concerned and take a decision in accordance with law, keeping in mind the ratio laid down by the Hon'ble Supreme Court in *Association of Vasanth Apartment's Owners case*.

c) The entire exercise shall be completed within a period of 4 months from the receipt of the copy of this judgment.

d) We also make it clear that as the offending constructions pertain only to the construction of sewage pumping station in OSR-II area, the other remaining OSR lands shall be retained and kept only as OSR areas for all times to come and construction of any nature on the remaining OSR lands shall be strictly prohibited.

17. The Writ appeal is disposed of, with the above directions. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(D.K.K.J) & (P.B.B.J)

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Internet : Yes
Index : Yes/No



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Neutral Citation : Yes/No

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D.KRISHNAKUMAR, J.,
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(mjs)

Pre-delivery judgment in
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