

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 02.08.2018	Delivered on 04.09.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1030 of 2011
and WA No.1031 of 2011 & MP Nos.1 & 2 of 2011

SIDCO Nagar Welfare Association
rep.by its Secretary, P.K.Chitti Babu
C-3/298, SIDCO Nagar, 38th Street,
Villivakkam, Chennai 600 049. Appellant in both the Appeals
versus

1. Chennai Metropolitan Development Authority,
rep. By its Member Secretary,
Thalamuthu Maligai, Chennai 600 008.
2. Chennai Corporation,
rep by its Commissioner,
Ribbon Buildings, Chennai 600 003.
3. Tamil Nadu Housing Board,
rep. By its Chief Executive Officer,
Nandanam, Chennai 600 035. Respondents in WA 1030/11
& Respondents 2 to 3 in WA
1031/11
State of Tamil Nadu
rep by Secretary to Government,
Housing and Urban Development,
(UD-1)Department,
Fort St. George, Chennai 600 009.1st Respondent in WA 1031/11

Appeals filed against the common order passed by this Court
dated 28.02.2011 passed in W.P.Nos.8867 and 32896 of 2007.

Prayer in W.P.No.8867 of 2007 : Writ Petitions filed under
Article 225 of the constitution of India praying to issue a writ
of mandamus (I) to direct the direct the 2nd respondent to
maintain the approved park and play ground situated near
government Girls Higher Secondary School 4th Main Road Ward
No.63 Corporation zone IV Villivakkam, Chennai city which is
handed over by the 3rd respondent to the 2nd respondent and (II)
to issue directions to the 3rd respondent to hand over park and
play ground situated near government Girls Higher School, 4th

main Road Ward No.63 Corporation zone IV Villivakkam, Chennai city if the 2nd respondent took a stand that the same is not handed over by 3rd respondent till date, so as to enable the 2nd respondent to implement the directions prayed for in the prayer above and (III) to grant such further orders.

Prayer in W.P.No.32896 of 2007 : Writ Petition filed under Article 226 of the constitution of India praying to issue a writ of certiorari to call for the records in G.O.3 (D) No.8 Housing and Urban Development (UD-i) Department, dated 24.8.2004 on the file of the 1st respondent and quash the same and pass such further orders.

For appellant : Mrs.R.J.Radhika
for M/s.M.Ganesh Babu
(in both the appeals)

For Respondents : Mr.Vijay Narayan, Advocate General
Asst. by Mr.V.Anandhamurthy, AGP
for R3 in WA 1030/11 &
for RR 1 & 4 in WA 1031/2011

Mrs.P.Veena, for R1 in WA 1030/11
& for R2 in WA 1031/11

Mrs.Karthika Ashok, for R2 in WA 1030/11
& for R3 in WA 1031/11

C O M M O N J U D G M E N T

The challenge in these intra Court Appeals is to the common order of the learned Single Judge made in WP Nos.8867 and 32896 of 2007, in and by which, the said Writ Petitions were dismissed on the premise that the appellant has not established that the land in question was classified as a park-cum-play field in the approved plan and thereby upholding the action of the respondents to convert the land in question as a mixed residential zone to enable the 3rd respondent to develop a commercial complex in the said land.

2. The prayer in WP No.8867 of 2007 reads as follows:

"To issue a Writ of Mandamus (i) to direct the 2nd respondent to maintain the approved park-cum-play ground situated near Government Girls Higher Secondary School, 4th Main Road, Ward No.63, Corporation Zone IV, Villivallam, Chennai City, which

is handed over by the 3rd respondent to the 2nd respondent and (ii) to issue direction to the 3rd respondent to hand over park-cum-play ground situated near Government Girls Higher School, 4th Main Road, Ward No.63 Corporation Zone IV, Villivakkam, Chennai City, if the 2nd respondent took a stand that the same is not handed over by the 3rd respondent till date, so as to enable the 2nd respondent to implement the directions prayed for in the prayer above and (iii) to grant such further orders."

The prayer in WP No.32896 of 2007 reads as follows:

"To issue a writ of certiorari to call for the records in G.O.3(D) No.8, Housing and Urban Development (UD-I) Department, dated 24.08.2004 on the file of the 1st respondent and quash the same."

3. The claim of the appellant/Writ petitioner which is a registered association of the residents of SIDCO Nagar, Villivakkam in the Writ Petition is as follows:

A Master plan for development of an area of 3,20,430 sq.mts was formulated by the Tamil Nadu Housing Board and the same was approved by the Planning Authorities in MMDA/WB/S&S No.4/77. Under the said development plan, a site situate almost in the middle of the area measuring about 59 grounds equivalent to 1,41,600 sq.feet (13160 Sq.mts) was classified as park-cum-play field. In the course of time, a School building came to be constructed in the said area and a water tank was also put up by the Chennai Metropolitan Water Supply and Sewerage Board in the southwestern corner of the land. The remaining area is lying vacant. Claiming that the Housing Board is now attempting to put up a multi storied commercial complex in the said land, the association had made various representations to the Authorities seeking to preserve the remaining land as a park or a play field as per the original sanctioned plan, referred to supra.

4. Since the Authority attempted to convert the same despite objections from the appellant association, the appellant was forced to seek a Mandamus as stated supra in WP No.8867 of 2007.

It appears that during the course of the hearing of the Writ Petition in WP No.8867 of 2007, it was brought to the notice of this Court as well as the appellant Association that the Government had, by a Government Order in G.O.3D No.8, Housing and Urban Development (UD I) Department dated 24.08.2004 issued by the Housing and Urban Department, approved the request for reclassification of the land made by the Member Secretary of the

Chennai Metropolitan Development Authority, namely the 1st respondent herein as a mixed residential site. Therefore, the association came forward with the second Writ Petition in WP No.32869 of 2007, challenging the said Government Order.

5. The sole ground on which the Government order came to be challenged was that as per the Original Plan approved in the year 1977, the site in question was earmarked for a park or a play ground, therefore, the Authorities did not have the power to reclassify into mixed residential site and put it to commercial use. It is also the claim of the appellant association that in view of the further development of the area in question, the entire SIDCO Nagar has become very congested and there is lack of open space in the area, therefore, if this available open space is also converted into a commercial/residential complex, the residents of the area would be deprived of the minimum lung space that is available.

6. The Writ Petition was resisted by the 3rd respondent Tamil Nadu Housing Board contending that as per the approved lay-out, the land under reference was earmarked for store-cum-site office. This store-cum-site office portion has been converted into convenience shops and bus stand, due to want of bus terminal in the area. The Transport Department, however, did not take over the site and it had informed the Executive Engineer of the Tamil Nadu Housing Board, by its letter dated 05.02.1997 that the said site is not required for developing the same as a bus terminus. Thereafter, the said site was converted into a mixed residential site under G.O.3D No.8, dated 24.08.2004. The said proposal has been accepted by the Government. Therefore, the Writ Petition filed on a misconception that the site in question was earmarked for park-cum-play ground is not maintainable.

7. It is the further contention of the 3rd respondent Tamil Nadu Housing Board that an extent of about 3 grounds and 702 sq.ft., has already been handed over to the Chennai Metropolitan Water Supply and Sewerage Board. An extent of about 47 grounds out of the total extent of 59 grounds has been used by the School. The remaining area of 16 grounds, which was allotted to the Transport Corporation to be used as a bus terminus is now sought to be converted into a mixed residential zone, so as to enable the Housing Board to construct a commercial/residential complex in the said area. On the above contentions, the respondents sought for dismissal of the Writ Petitions.

8. Reference was also made to the proceedings in WP

Nos.8112 to 8114 of 1997 which were filed by some of the successful bidders, who had participated in an auction conducted by the Tamil Nadu Housing Board, with reference to Plot Nos.4, 1 and 2 of an extent of 62 sq.mts., challenging the cancellation of the auction by the Tamil Nadu Housing Board. The order in the said writ petitions was also projected to buttress the claim of the respondents that the area in question was never earmarked as a park cum play ground.

9. The learned Single Judge, who heard the Writ Petitions dismissed the same on the conclusion that the appellant has not shown that the land in question was at any point of time earmarked as a park-cum-play ground. And therefore, it will not vest in the local body for the benefit of the residents of the area. The learned Single Judge also relied upon the decision of this Court in WP Nos.8112 to 8114 of 1997, wherein, according to him, the right of the Housing Board to auction the property was acknowledged. Having found that the site in question was never earmarked as park-cum-play ground, the learned Single Judge dismissed the Writ Petition holding that the respondents are entitled to reclassify the sites which were earmarked for public utilities. Aggrieved by the dismissal of the Writ Petitions the appellant is before us by way of these intra Court Appeals.

10. We have heard Mrs.R.J.Radhika, learned counsel appearing for the appellant, Mr.Vijaya Narayan, learned Advocate General assisted by Mr.V.Anandamurthy, learned Additional Government Pleader for the 3rd respondent in WA No.1030 of 2011 and respondents 1 & 4 in WA No.1031 of 2011, Mrs. P.Veena, learned counsel for the 1st respondent in WA No.1030 of 2011 and 2nd respondent in WA No.1031 of 2011 and Mrs.Karthika Ashok, learned counsel appearing for the 2nd respondent in WA No.1030 of 2011 and the 3rd respondent in WA No.1031 of 2011.

11. Mrs.R.J.Radhika, learned counsel appearing for the appellant would strenuously contend that the site in question was earmarked as park-cum-play field in the original plan that was sanctioned by the CMDA (then MMDA) in the year 1977. She would submit that the Xerox copy of the plan which was made available to some of the residents, has been annexed to the type set. Contending that as per the said plan which is approved in MMDA/WB/S&S Nos.4/77 on 28.12.1977, the site in question was earmarked as park-cum-play field. Thereafter, in the year 1984 a portion of the site in question was allotted to the School by the proceedings of the Commissioner and Secretary to Government, Revenue Department in G.O.Ms.No.1759 dated 25.10.1984. Another

portion of the land measuring about 3 grounds and 702 sq.ft. was handed over to the Chennai Metropolitan Water Supply and Sewerage Board. The remaining land was allotted to the Dr.Ambedkar Transport Corporation at the request of the residents in the year 1996 and on 05.02.1997, the operation had expressed its unwillingness to take over the land and the same was informed to the Executive Engineer of the Tamil Nadu Housing Board, vide its letter dated 05.02.1997. Thereafter, the authorities had by the impugned G.O. dated 24.08.2004, converted the land which was classified as park-cum-play field by claiming that it was actually classified as bus stand site and reserved for store-cum-site office without disclosing that the same was classified as a park-cum-play ground in the original plan that was sanctioned in the year 1977.

12. She would also draw our attention to the following judgments of the Hon'ble Supreme Court as well as this Court, which laid down that the land that is reserved for a public purpose, viz. park-cum-play field cannot be reclassified and put to any other use.

(i) Bangalore Medical Trust v. S.Muddappa and others, reported in AIR 1991 SCC 1902;

(ii) Dr. G.N.Khajuria and others v. Delhi Development Authority and others, reported in 1995 (5) SCC 762;

(iii) Sri Devi Nagar Residences Welfare Association v. Subbathal and others reported in 2007 (3) LW 259;

(iv) R.Chandran v. State of Tamil Nadu, reported in 2010 (4) CTC 737 and

(v) Kirubkaran and others v. The Commissioner (East), Corporation of Coimbatore, Coimbatore, reported in 2013 (6) CTC 441.

13. Contending contra the learned Advocate General Mr. Vijaya Narayan, would submit that no doubt true under the original sanctioned plan an area of 59 grounds was earmarked as park-cum-play ground. An area of about 47 grounds was utilised for the purposes of construction of School building and an area of about 3 grounds and 702 sq.ft. was allotted to CMWSSB for the purpose

of putting up the water tank, the remaining area that was allotted to the Transport Corporation. Since the Transport Corporation expressed its dis-inclination to have a bus terminus in the said area, the Sites and Services Committee of the Tamil Nadu Housing Board in its meeting held on 10.02.1998 resolved to convert the site earmarked for the bus stand into the commercial area for constructing a commercial cum residential complex. The said resolution paved way for filing of the Writ Petitions by certain individuals, who claimed themselves to be the highest bidders in auction held by the Tamil Nadu Housing Board in WP Nos. 8112 to 8114 of 1997. Those Writ Petitions came to be dismissed with a direction that in the event of construction of commercial cum residential complex, the petitioners in the Writ Petitions are to be given preference. Thereafter, the impugned the Government Order in G.O.3D No.8 dated 24.08.2004 came to be passed by the Government permitting the conversion of the land into a mixed residential area to enable the Housing Board to put up a commercial complex. Therefore, according to Mr.Vijaya Narayan, learned Advocate General, the land that was originally classified as park-cum-play ground has undergone several changes and therefore, the Sites and Services Committee of the Housing Board had the right to convert the same into a mixed residential area, so as to enable it to put up construction.

14. Mrs.V.Veena, learned counsel appearing for the Chennai Metropolitan Development Authority as well as Mrs.Karthika Ashok, learned counsel appearing for Chennai Corporation would substantially adopt the arguments of the learned Advocate General.

15. We have considered the rival submissions. From the arguments of the counsel appearing for the parties, the following points arise for determination in these intra Court Appeals.

- 1) What is the nature of the land that is reserved for a public purpose under the Development Control Rules by the owner or developer while obtaining sanction for a lay-out?
- 2) Whether the owner or the developer (the 3rd respondent) has got any right over the land so reserved for public purpose while obtaining sanction for laying out the land into residential plots?
- 3) What is the power of the Government to reclassify such lands?
- 4) Whether the Government Order impugned in WP No.32896 of 2007 viz. G.O.3D No.8 dated 24.08.2004 is valid?

Point Nos.1 & 2:

16. A peep into the provisions of the relevant enactment which relates the development of land, namely the Tamil Nadu Town and Country Planning Act, 1971, would be necessary in order to determine the controversy. The preamble of the Act, viz. Tamil Nadu Town and Country Planning Act, 1971 (hereinafter referred to as "the Act, 1971"), shows that it is an Act to provide for planning the development and use of rural and urban land in the State of Tamil Nadu and for purposes connected therewith.

Section 2(2) of the Act defines a 'amenities', which reads as follows:

"2 (2) 'amenities' includes streets, open spaces, parks, recreational grounds, play-grounds, water and electric supply, street lighting, sewerage, drainage, public works and other utilities, services and conveniences;

Section 2(13) of the Act defines a 'Development', which reads as follows:

"2 (13) 'development' means the carrying out of all or any of the works contemplated in a regional plan, master plan, detailed development plan or a new town development plan prepared under this Act, and shall include the carrying out of building, engineering, mining or other operations in, or over or under land, or the making of any material change in the use of any building or land.

Section 2(34) of the Act defines a 'Public Open Space' which reads as follows:

(34) "public open space" means any land whether enclosed or not belonging to the Central or any State Government or any local authority or any body corporate, owned or controlled by the Central or any State Government on which there is no building or of which not more than one-twentieth part is covered with buildings, and the whole or the remainder of which is used for purpose of recreation, air or light;

Section 2(36) defines a 'Public Purpose' which reads as follows:

(36) "public purpose" means any purpose which is useful to the public or any class or section of the public

Sections 48 & 49 of the Act read as follows:

Section 48. Restrictions on buildings and lands, in the area of the planning authority- On or after the date of the publication of the resolution under sub-section (2) of section 19 or of the notice in the Tamil Nadu Government Gazette under section 26, no person other than any State Government or the Central Government or any local authority, shall, erect any building or make or extend any excavation or carry out any mining or other operation, in, on, over or under any land or make any material change in the use of land or construct, form or layout any work except with the written permission of the appropriate planning authority and in accordance with the conditions, if any, specified therein.

Section 49. Application for permission.- (1) Except as otherwise provided by rules made in this behalf, any person not being any State Government or the Central Government or any local authority intending to carry out any development on any land or building on or after the date of the publication of the resolution under sub-section (2) of section 19 or of the notice in the Tamil Nadu Government Gazette under section 26, shall make an application in writing to the appropriate planning authority for permission in such form and containing such particulars and accompanied by such documents as may be prescribed.

(2) The appropriate planning authority shall, in deciding whether to grant or refuse such permission, have regard to the following matters, namely:-

- (a) the purpose for which the permission is required;
- (b) the suitability of the place for such purpose;
- (c) the future development and maintenance of the planning area

(3) When the appropriate planning authority refuses to grant a permission to any person, it shall record in writing the reasons for such refusal and furnish to that person, on demand, a

brief statement of the same."

17. The effect of the above provisions is as follows:

Section 48 restricts the right of any person intending to develop his or her land from doing so except with the written permission of the appropriate Planning Authority (the 1st respondent in this case) in accordance with the conditions specified in the Act or the Rules made there under. Section 49 provides for the procedure for obtaining such permission. Any development contrary to Section 48 without obtaining permission of the Planning Authority would be illegal. Section 122 of the Act empowers the Government to make Rules with regard to the development and the power conferred under Section 122 would take in the power to regulate such development.

18. Pursuant to the powers conferred under Section 122 the Development Control Rules were framed by the Government and they have been amended from time to time. The Development Control Rules that were in force at the relevant point of time, namely August 2004 would apply to the case on hand, inasmuch as, the Government order reclassifying the land as a mixed residential plot came to be passed on 24.08.2004. Rule 19 of the Development Control Rules as it stood at the relevant point of time reads as follows:

"19. Layout and sub-division :- (a) The laying out and sub-division of land for building purposes shall be carried out only in accordance with the provisions specified below.

(i) The width of the streets and roads in the layouts shall conform to the minimum requirements given below and be in conformity with the development plan, if any, for the area except in group housing, flats or in area reserved for Economically Weaker Sections."

(ii) No plot in a layout shall be sub-divided or utilized for any purpose other than the purpose for which the site is approved except with the prior approval of the authority.

(iii) Reservation of land for communal and recreational purposes in a layout or sub-division for residential, commercial, industrial or combination of such uses shall be as follows.

Extent of layout (1)	Reservation (2)
For the first 3000 square metres	Nil
Between 3000 square metres and 10,000 square metres	10 percent of the area excluding roads or in the alternative he shall pay the market value of equivalent land excluding the first 3000 square metres as per the valuation of the registration department. "No such area reserved shall measure less than 100 square metres with a minimum dimension of 10 metres". 'The space so reserved shall be transferred to the Authority or to the Local body designated by it, free of cost, through a deed, and in turn the Authority or the Local body may permit the residents Association or Flat owners Association for maintaining such reserved space as park. In such cases public access for the area as earmarked shall not be insisted upon.
Above 10,000 square metres	10 percent of the area excluding roads shall be reserved and this space shall be maintained as communal and recreational open space to the satisfaction of the authority or transferred to the authority for maintenance. It is obligatory to reserve 10 percent of the layout area.

(iv) The space set apart for roads and the 10% area reserved for communal and recreational purposes under item (iii) above shall be deemed to zoned for institutional open space and recreational use zone as the case may be. The land so registered shall be transferred to the Authority or Agency or the Local body designated by the

Authority through a registered deed before the actual approval of the layout under the provisions of T&CP Act.

The exact mode of conveyance should be consistent with the relevant enactment and regulations.

(v) The building and use of land shall conform to the conditions that may be imposed while sanctioning the layout. The space set apart for commercial, institutional, industrial or other uses shall be deemed to be zoned for commercial, Institutional, Industrial corresponding uses under the Master Plan.

(vi) The land for communal and recreational purposes shall be restricted to ground level, in a shape and location to be specified by the Chennai Metropolitan Development Authority. The land so reserved shall be free from any construction by the layout owner, developer or promoter.

(vii) 10 percent of layout area, additionally, shall be reserved for "Public Purpose" in those layouts which are more than 10000 sq.m. in extent. Interested departments shall be given intimation of layout approval by the CMDA and requested to purchase the land from the owner or developer or promoter, on paying the cost of plots so reserved. The owner or developer or promoter has every right to sell the lands for residential purpose if no demand from any public departments is received within one year.

19. A cursory reading of Rule 19(a) would show it is obligatory for the owner/developer to reserve 10% of the area excluding the roads, which shall be maintained as communal and recreational open space to the satisfaction of the Authority.

Rule 19(a) (vii) provides for an additional reservation of another 10% for public purpose in lay-out which is more than 10000 sq. m. in extent. This additional 10% can be purchased by any department which intends to establish its facilities in the lay-out from the owner, if none of the departments exercise their option within a period of one year then the land reverts back to the owner.

20. From the above, it could be seen that there are two distinct clauses of land reserved for public purpose. The first one is under Rule 19(a)(iii) for communal and recreational purpose. Insofar as the lands which are reserved under Rule 19(a)(iii) are concerned, there is a statutory obligation that these lands should be maintained as communal and recreational

open space and the following words which appear in the table would show that these lands can never be reclassified or transferred for consideration or otherwise.

"It is obligatory to reserve 10% of the lay-out area"

21. The second being the reservation of 10% in the lay-out area contemplated under Rule 19(a)(vii) which reverts in the owner or developer if it is not acquired within a period of one year. These two distinct clauses of land can be categorized as non-salable reservation and salable reservation. While the reservation to 10% made under Rule 19(a)(iii) for communal and recreational purpose falls under the category of non-salable land, the reservation made under Rule 19(a)(vii) would be land reserved for public purpose which falls under salable category.

22. Quite often this distinction is not maintained leading to indiscriminate reclassification of lands which are reserved under 19(a)(iii). In the case on hand, it is admitted at the bar that the original lay-out of the year 1977 was not placed before the learned Single Judge, thereby, the original purpose for which the land in question was reserved was suppressed and the subsequent documents which proceeded on the footing that the Original classification was for store-cum-site office were placed before the learned Single Judge, which led him to believe that the original classification was not under Rule 19(a)(iii) of the Rules.

23. Even the impugned G.O. i.e., G.O.3D.No.8, Housing and Urban Development Department (UD I) Department, dated 24.08.2004 proceeds on the footing that the site in question was reserved for store-cum-site-office. A specific reference is made in the impugned Government order that the site in question was reserved for store-cum-site office. The relevant portion of the Government Order dated 24.08.2004 reads as follows:

"In the approved lay-out an extent measuring 12 grounds 0839 sq.ft. was earmarked for store-cum-site office out of which an extent measuring 3 grounds 0702 sq.ft, has been handed over to Chennai Metropolitan Water Supply and Sewerage Board and the balance land measuring 9 grounds 0137 sq. ft. has been converted from store-cum-site Office into bus stand and shops sites which is only now requested for conversion as mixed residential use. As stated by the Tamil Nadu Housing Board Development Association, no such vacant land measuring about 2.5 acre was reserved for park-cum-play field in the approved lay-out."

"As the area mentioned by the association was originally earmarked as store-cum-site office, the

request of the Tamil Nadu Housing Board that the site earmarked for bus stand and 4 convenient Shop site which is saleable (not play ground) may therefore be converted as mixed residential zone so as to enable to construct the residential-cum-commercial complex in the site."

24. It is on this premise that the Government had approved the proposal for conversion of the site in question as a mixed residential zone. It is therefore, evident that the Government was not apprised of the actual reservation made while the plan was approved in the year 1977 by the 1st respondent in MMDA/WB/S&S No.4/77.

25. The original plan which was approved on 28.12.1977 has been produced before us. A perusal of the said plan shows that the area in question has been classified as park-cum-play field.

Therefore, it is clear that the original reservation of the site in question was under Rule 19(a)(iii) which is a non salable area and not under Rule 19(a)(vii). The claim of the appellant association has been rejected by the Government on the premise that the land in question was never classified as park-cum-play field. This basis itself is erroneous. Once it is found that the land is classified as a park-cum-play ground in the original sanctioned plan, the question that would beg our attention is as to whether the Government has the power to reclassify the said land. Neither the Act nor the Rules permit such reclassification.

26. The various judicial pronouncements of the Hon'ble Supreme Court as well as this Court have also declared that such lands which are reserved for communal and recreational purposes cannot be converted or reclassified into residential or commercial use zones. In the light of the above factual scenario, the answer to the first question framed by us should be that the land in question was in fact reserved and shown as a park-cum-play ground which is for communal and recreational purposes, under Rule 19(a)(iii) of the Development Control Rules that were then in force. We must at once point out that there is not much of a difference between the then Development Control Rules and the present Development Regulations, Development Regulation No.29, which deals with the lay-out Sub Division in-pari-materia with the then existing Rule 19 of the Development Control Rules.

27. The second question is as to whether the Government has the power to reclassify such lands. The said question was considered by the Hon'ble Supreme Court in Bangalore Medical Trust v. S.Muddappa and others, reported in AIR 1991 SCC 1902, while considering whether it is open to the Government to convert a open space which is reserved for a park for the general good of the public into a site for the construction of a

privately owned and managed hospital for private gains, the Hon'ble Supreme Court held as follows:

"22.Conversion of the open space reserved for a park for the general good of the public into a site for the construction of a privately owned and managed hospital for private gains is not an alteration for improvement of the scheme as contemplated by Section 19, and the impugned orders in that behalf are a flagrant violation of the legislative intent and a colourable exercise of power. In the circumstances, it has to be concluded that no valid decision has been taken to alter the scheme. The scheme provides for a public park and the land in question remains dedicated to the public and reserved for that purpose. It is not disputed that the only available space which can be utilised as a public park or play ground and which has been reserved for that purpose is the space under consideration.

23.The very purpose of the BDA, as a statutory authority, is to promote the healthy growth and development of the City of Bangalore and the area adjacent thereto. The legislative intent has always been the promotion and enhancement of the quality of life by preservation of the character and desirable aesthetic features of the city. The subsequent amendments are not a deviation from or alteration of the original legislative intent, but only an elucidation or affirmation of the same.

24. Protection of the environment, open spaces for recreation and fresh air, play grounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and play grounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes

the guaranteed rights a reality for all the citizens.

25. Reservation of open spaces for parks and play grounds is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill-effects of urbanisation."

After observing so, the Hon'ble Supreme Court concluded that the entire proceedings before the State Government relating to the conversion suffered from absence of jurisdiction even the exercise of powers was vitiated and ultra virus.

28. A similar question arose again before the Hon'ble Supreme Court in PT.Chet Ram Vashist (dead) by Lrs. v. Municipal Corporation of Delhi, reported in 1995 (1) SCC 47, wherein, the Hon'ble Supreme Court considered the right of the Delhi Municipal Corporation to permit reclassification of the lands which were originally shown as park and School. After considering the provisions of the Delhi Municipal Corporation Act, the Hon'ble Supreme Court had observed as follows:

"6. 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. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in

whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law."

29. From the above observations of the Hon'ble Supreme Court, it is very clear that the effect of a reservation under Rule 19(a)(iii) of the Development Control Rules is that the owner or the developer ceases to be the legal owner of the land and he holds the land for the benefit of the society or public in general. The Hon'ble Supreme Court further went on to observe that the Corporation or the owner cannot claim that they continue to possess an interest in the land despite such reservation having been made.

30. In Dr. G.N.Khajuria and others v. Delhi Development Authority and others, reported in 1995 (5) SCC 762, the action of the Delhi Development Authority in allotting a land reserved for park in a residential colony for a nursery school was held to be bad and the Hon'ble Supreme Court concluded that such allotment amounted to misuse of power and is illegal, hence liable to be cancelled. In the Course of the Judgment, the Hon'ble Supreme Court observed as follows:

"7. We also do not entertain any doubt that at the site at which the school was allowed to be opened, there was a park. This is apparent from the report submitted by Director (Monitoring) to the Vice-Chairman of the Development Authority pursuant to his order dated 26.10.1992 which he came to pass on a reference being made to him by the Chief Secretary on 23.10.1992. The Chief Secretary had passed the order on a representation made by some residents of Sarita Vihar, Pocket 'A', complaining about unauthorised construction in Park No.6. The Director (Monitoring) visited the site on 2.11.1992 and found that a part of the park located in Pocket 'A' had actually been enclosed with a boundary wall by an institution named Rattanatrya Educational Research Institute, which body is none else than respondent 2. The report further says that the Institute was running a nursery school in a few temporary barracks constructed along with one of the boundary walls. On discussion with some office-bearers of the Institute it was informed that the land in question measuring 800 sq. metres had been allotted to the Institute by the DDA in July 1988 for the purpose of running a nursery school. The Director (Monitoring) reported that the residents

of surrounding areas started making objections when this Institute took up the construction of a regular school building after getting the plan duly sanctioned from the Building Department of the DDA. The report has categorically mentioned that in the original layout (which we understood to be of 1984) there was no provision for a nursery school in the park in question. Subsequently, however, some portion of the park was carved out for the nursery school. That such a park exists was sought to be proved by Shri Rao by producing certain photographs as well, one of which contains a sign board mentioning about "D.D.A. Park".

8. We, therefore, hold that the land which was allotted to respondent No.2 was part of a park. We further hold that it was not open to the DDA to carve out any space meant for park for a nursery school. We are of the considered view that the allotment in favour of respondent 2 was misuse of power, for reasons which need not be adverted. It is, therefore, a fit case, according to us, where the allotment in favour of respondent 2 should be cancelled and we order accordingly. The fact that respondent 2 has put up some structure stated to be permanent by his counsel is not relevant, as the same has been done on a plot of land allotted to it in contravention of law. As to the submission that dislocation from the present site would cause difficulty to the tiny tots, we would observe that the same has been advanced only to get sympathy from the Court inasmuch as children, for whom the nursery school is meant, would travel to any other nearby place where such a school would be set up either by respondent No.2 or by any other body.

9. The appeal is, therefore, allowed by ordering the cancellation of allotment made in favour of respondent 2. It would be open to this respondent to continue to run the school at this site for a period of six months to enable it to make such alternative arrangements as it thinks fit to shift the school, so that the children are not put to any disadvantageous position suddenly."

31. In a more recent pronouncement of the Hon'ble Supreme Court in Lal Bahadur v. The State of Uttar Pradesh, reported in AIR 2018 SCC 220, while dealing with the power of the Government to reclassify a land which was shown as green belt in the Master Plan into a residential zone set aside such conversion though

legislative powers were invoked in the said case after referring to the judgment in Bangalore Medical Trust v. S.Muddappa and others, cited supra. While doing so the Hon'ble Supreme Court observed as follows:

"14. This Court had clearly laid down that such spaces could not be changed from green belt to residential or commercial one. It is not permissible to the State Government to change the parks and playgrounds contrary to legislative intent having constitutional mandate, as that would be an abuse of statutory powers vested in the authorities. No doubt, in the instant case, the legislative process had been undertaken. The Master Plan had been prepared under the Act of 1973. Ultimately, the respondents have realized the importance of such spaces. It was, therefore, their bounden duty not to change its very purpose when they knew very well that this is a low-lying area and this area is otherwise thickly populated and provides an outlet for water to prevent flood like situation. In fact, the flood-like situation occurred in the area in question. This Court has permitted the protection by raising Bandh. "

32. A Division Bench of this Court in Sri Devi Nagar Residents Welfare Association v. Subbathal and others reported in 2007 (3) LW 259, had considered a similar case where the Writ Petition preferred by the Residences Welfare Association seeking a writ of Mandamus, forbearing the 4th respondent, namely The Commissioner, Coimbatore City Municipal Corporation, from any way interfering with the peaceful possession and enjoyment of the land which were reserved for public purpose by the residents of the locality. The Division Bench after referring to the judgments of the Hon'ble Supreme Court, cited supra, had observed as follows:

"11. The open space in a residential area or in busy townships is treated as lung space of the area. It provides fresh air and refreshment to the persons in the neighbourhood. Its presence ameliorates the hazards of pollution and it has to be preserved and protected for the sustenance of the men around. It is for the health and well-being of the inhabitants of the residential area. The same cannot be bartered for any other purpose. Apart from that, in view of the conditions imposed by the fifth respondent, by his proceedings dated 17.7.1974 addressed to the Executive Officer, Ganapathy Town Panchayat, which remain unchallenged by the owners of the layout land for all these years, the fourth respondent is

estopped from using the area set apart as open space, for any other purpose.

12. Where open space for construction of public park is preserved and earmarked in the Plan for Development of a planned town, the Authorities cannot ignore or neglect to develop that open space into a public park within reasonable time. Unless an open space reserved for a public park is developed as such, the execution of the plan will remain incomplete. Buildings, as proposed in the plan, may have come up, amenities and civic amenities may have been provided and the people may have started living in the colony, yet the plan cannot be said to have been fully executed, if an open space meant for a park is not developed as such. The duty of the authorities is to implement the plan in entirety making the area beautiful with attractive public parks. Their job is not over when the area becomes habitable.

13. Good parks expansively laid out are not only for aesthetic appreciation, but in the fast developing towns having conglomeration of buildings, they are a necessity. In crowded towns where a resident does not get anything but atmosphere polluted by smoke and fumes emitted by endless vehicular traffic and the factories, the efficacy of beautifully laid out parks is no less than that of lungs to human beings. It is the verdant cover provided by public parks and greenbelts in a town, which renders considerable relief to the restless public. Hence the importance of public parks cannot be under-estimated. Private lawns or public parks are not a luxury, as they were considered in the past. A public park is a gift of modern civilization, and is a significant factor for the improvement of the quality of life. Open space for a public park is an essential feature of modern planning and development, as it greatly contributes to the improvement of social ecology."

33. Another Division Bench of this Court in R.Chandran v. State of Tamil Nadu, reported in 2010 (4) CTC 737, had an occasion to consider whether the Corporation of Chennai has the power to convert a play ground into a underground parking lot and a commercial complex. The Division Bench held that such a conversion cannot be permitted and while doing so observed as follows:

17. Significantly, even in the notice issued for public hearing no such proposal was projected.

Thus it appears that the impugned proposal includes commercial venture; which is impermissible in a site which has been reserved for recreational purpose. An attempt was made by the second respondent to justify their proposal by drawing an analogy to that of the Metro Rail Project, at New Delhi, the Palika Bazaar at New Delhi etc. In our view the submission is misconceived. The sole determinative factor in a case like the present one, shall be classification of the land in question. It is not in dispute that the land in question has been classified as "play ground", notified as such in Annexure III of the Development Control Rules, which lists out the areas included in open space and recreational use zone. As observed by their Lordships of the Supreme Court in the Case Pt. Chet Ram Vashist, (supra) by virtue of the law, if an area is specified as open space the Corporation may at best get a right as a "custodian of public interest" to manage it in the interest of the society in general. Any breach of this custodianship and any attempt to change the 'use' of such land would be impermissible under law and would be against public interest."

34. Yet another Division Bench of this Court in Kirubkaran and others v. The Commissioner (East), Corporation of Coimbatore, Coimbatore, reported in 2013 (6) CTC 441, had considered whether the Corporation has the power to permit construction of a private hospital in the area, which is reserved for a public purpose. After referring to Bangalore Medical Trust's case as well as Sri Devi Nagar Residences Welfare Association's case, cited supra, the Division Bench rejected the contention that even though an offer was made by the Hospital to treat 50% of the patients free, the same cannot be held to be in public interest and rejected the appeal upholding the order of the learned Single Judge.

35. In the light of the above settled position of law, wherein, the Hon'ble Supreme Court and this Court had held that the land which is reserved for public purpose, particularly, under Rule 19(a)(iii) for communal and recreational purposes cannot be converted even by the Government, as neither the Government nor the owner, have any title over the same and it actually vests in the purchasers of the residential plot in the locality. Therefore, the second question is answered to the effect that the land which is reserved for communal or recreational purposes in a lay-out under Rule 19(a)(iii) actually belongs to the purchasers of the plots in the residential lay-out as an amenity defined under Section 2(2) of the Act.

Points 3 and 4:

36. Once it is held that the land which is reserved for a communal and recreational purposes in a lay-out, does not vest in the Government or in the owner or developer and the ownership actually vests with the purchasers of the plots as an amenity under Section 2(2) of the Tamil Nadu Town and Country Planning Act, 1971, the Government is denuded of the powers to reclassify the same. Probably, the 2nd respondent Chennai Metropolitan Development Authority as well as the 4th respondent Tamil Nadu Housing Board, were aware of the legal position, but however, they chose to project a false picture before the Government, as if the land was reserved for store-cum-site office in the original plan and thereby, persuaded the Government to approve the re-classification. This conclusion of ours emanates from the reading of the impugned G.O. dated 24.08.2004, wherein, the Government specifically adverts to the claim of the residents' association, the appellant herein and holds that the appellant's claim cannot be accepted, because the land in question was not classified as play ground or park, but as store-cum-site office.

37. We are therefore of the considered opinion that the Government has no power to re-classify a land which was reserved for communal and recreational purposes (park-cum-play ground) under Rule 19(a)(iii) of the Development Control Rules. Once we conclude that the Government has no power, the impugned G.O., namely G.O.3D.No.8 dated 24.08.2004, issued by the Government would be invalid and per se illegal and hence liable to be quashed. As pointed out by the Hon'ble Supreme Court in the Bangalore Medical Trust's case, cited supra, the action of the State Government suffers from absence of jurisdiction.

38. In view of the foregoing reasons, we are of the considered view that the action of the Government in converting the land that was reserved for park-cum-play field into a mixed residential zone has to be set aside and both the Writ Appeals will stand allowed and the Writ Petitions in WP Nos.8867 of 2007 and 32896 of 2007 will stand allowed.

39. The 2nd respondent, namely the Corporation of Chennai is directed to take possession of the entire vacant land available and develop it as a park within a period of 6 months from the date of receipt of a copy of this judgment. The Commissioner, Chennai Corporation is also directed to file a compliance report along with proper documentary proof for having complied with the above directions into the Registry without fail within a month thereafter.

40. In the normal circumstances, we would have not hesitated to impose heavy costs on the respondents for the unreasonable stand they took and for burking facts before the learned Single Judge, however we desist from doing so, in view

of very fair stand adopted by the learned Advocate General before us. Hence the appeals are disposed of as above without costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

jv

To

1. The Secretary to Government,
Government of Tamil Nadu
Housing and Urban Development,
(UD-1) Department,
Fort St. George, Chennai 600 009.
 2. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Maligai, Chennai 600 008.
 3. The Commissioner,
Chennai Corportion,
Ribbon Buildings, Chennai 600 003.
 4. The Chief Executive Officer,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035.
- +3cc to Mr.R.J. Radhika, Advocate SR.No. 60725 and 61059

+1cc to Mr.A.Karthik Ashok, Advocate SR.No.60784

+2cc to Mr.V.Anandhamurthy , Advocate SR.No.61093

W.A.No.1030 of 2011
and WA No.1031 of 2011
& MP Nos.1 & 2 of 2011

GMV (14/09/2018)