

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.33178, 32258, 32309, 33239 & 33307 of 2007

Srinivasa Engineering Works,
Rep.herein by its partner Mr.T.M.Ramanujam,
Old No.234/1, New No.27,
Uthiramerur Road,
Orikkai, Kancheepuram.

..Petitioner in W.P.No.33239 of 2007

L.Ramesh

Proprietor, Southern Gauges and
Fine Components

Old No.26, New No.13,
12th Street, Nanganallur,
Chennai 600 061.

..Petitioner in W.P.No.32258 of 2007

M/s.Shama Primes Articles

Rep.herein by its partner Mr.T.K.Shridhar

No.2-C, Shanthi Nagar,

Korattur, Chennai-600 080.

....Petitioner in W.P.No.32309 of 2007

E.Natarajan

..Petitioner in W.P.No.33178 of 2007

M.Ekambaram

...Petitioner in W.P.No.33307 of 2007
vs.

Tamil Nadu Small Industries Development
Corporation Limited

(A Government of Tamil Nadu Undertaking)

rep.herein by its Managing Director

Paulwels Road, Kathipara Junction,

Chennai-600 016.

... Respondents in all W.Ps

PRAYER IN W.P.No.33239 of 2007: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in Letter Rc.No.20234/Y4/2004 dated 17.09.2007/18.09.2007, quash the same and consequently direct the respondent to allot a plot measuring an extent of 25 cents to the petitioner as per the petitioners application dated 09.11.2004, in Industrial Estate, Kancheepuram belonging and developed by the respondent.

Prayer in W.P.No.32258 of 2007: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ

of Certiorarified Mandamus, to call for the records of the respondent in Letter No.Rc.No.48/Y4/2003 dated 17.09.2007/18.09.2007, quash the same and consequently, direct the respondent to issue the letter of allotment in respect of the plots viz., D.P.Nos.58A, 58B, 58C, 59 and 60 and execute the sale deed in respect of the same in Industrial Estate, Kancheepuram belonging and developed by the respondent to the petitioner.

Prayer in W.P.No.32309 of 2007: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in Letter No.Rc.No.787/Y4/2005 dated 17.09.2007/18.09.2007, quash the same and consequently, direct the respondents to allot D.P.Nos.54 and 55 in Industrial Estate, Kancheepuram belonging and developed by the respondent to the petitioner.

Prayer in W.P.No.33178 of 2007: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in Letter No.Rc.No.4958/Y4/2005 dated 17.09.2007/18.09.2007, quash the same and consequently, direct the respondents to allot a plot measuring an extent of 25 cents to the petitioner as per the petitioners application dated 22.11.2004, in Industrial Estate, Kancheepuram belonging and developed by the respondent.

Prayer in W.P.No.33307 of 2007: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in Letter No.Rc.No.20230/Y4/2004 dated 17.09.2007/18.09.2007, quash the same and consequently, direct the respondents to allot Plot No.52 in Industrial Estate, Kancheepuram belonging and developed by the respondent.

For Petitioner : Mr.T.S.Vijaya Raghavan
in all W.Ps

For Respondents : Mr.S.Yaswanth
in all W.Ps

C O M M O N O R D E R

These writ petitions have been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent in Letter dated 17.09.2007/18.09.2007, quash the same

and consequently, direct the respondent to issue the letter of allotment in respect of the petitioner's plots and execute the sale deed in respect of the same in Industrial Estate, Kancheepuram developed by the respondent to the petitioner.

2. The case of the petitioners is that the petitioners are the allottees of various plots in SIDCO Industrial Estate, Kancheepuram belonging to the respondent and carrying on business.

3. As per the original layout plan, some of the plots were unsold to the allottee. With regard to the plots, the petitioner has filed an application seeking for allotment of Plot Nos.58-A, 58-B,58-C,59 and 60 before the respondent Board. After receipt of the application, the respondent board called the petitioner in W.P.No.32258 of 2007 for price negotiation and the petitioner has also agreed to pay a sum of Rs.6,42,000/-, for including the development charges in respect of Plot Nos.58A, 58B, 58C, 59 & 60. But the respondents have not conducted price negotiation for the remaining petitioners, because their application was still pending. While being so, all of a sudden, the petitioner's application was rejected on the ground that the respondent board was not in a position to allot any plots at Industrial Estate, Kancheepuram for want of approval for the layout. Challenging the same, the present writ petition is filed.

4. The learned counsel for the petitioner would submit that original layout was approved in the year 1995, wherein C.P.No.1, Plot No.320 was allotted as Open Space Reservation Area(OSR area). The said plots were unsold till 2004, for which, the petitioner has made an application before the first respondent and initially, the first respondent has agreed to allot the plots in favour of the petitioner. The first respondent was not in a position to allot any plots at the Industrial Estate, Kancheepuram for want of approval of the layout. After filing of this writ petition, to accommodate some influential persons, Plot No.320, which was originally classified and approved as 'Common Property' to be used for common Development(OSR Purpose), was converted into a plot and was allotted to some other person and Plot Nos.58A, 58B, 58C, 59 and 60, which is the subject matter of the writ petition and allotted to the petitioner, have been converted as OSR area in the revised plan of the SIDCO, with malafide intentions to accommodate certain individuals.

5. The learned counsel for the respondents would submit that the approval plots are in the linear area, for which, the competent authority could take a decision to convert the land

OSR area into the plots, and the low lying areas were converted into OSR area and the conversion has been made in accordance with law. Subsequently, the revised layout was approved by the Town Country Planning Department and the OSR area was converted into a plot, and that has been allotted in public auction, in the manner known to law. At present, only technical approval is granted and the official approval is yet to be granted. The learned counsel further submitted that the application for revised layout has been made only for genuine reasons and certainly not to help anyone. In fact, the Original CP-1 which has now been sought to be converted as plot has not been allotted to any one so far. It is further submitted that mere filing an application does not guarantee any allotment in the Industrial Estate and allotments are done based on the allotment policy followed by SIDCO.

6. The short issue arises for consideration is that whether the respondents have power to convert the OSR area into plot and the linear plot into OSR land.

7. In the present case, the original plots were approved in the year 1995 and the plot Nos.58-A, 58-B, 58-C, 59 and 60 earmarked for plots. The petitioner made an application for allotment of the said plots before the respondent. After receipt of the application, the respondent board called the petitioner for price negotiation and the petitioner has also agreed to pay a sum of Rs.6,42,000/- for including the development charges in respect of the said plots. However, the respondents have not conducted price negotiation for the remaining petitioners, because their application was still pending. Undoubtedly, the original layout was approved before 1995, wherein C.P.No.1, Plot No.320 was allotted as Open Space Reservation Area and further, it was admitted that the above plots were initiated for price negotiation in favour of the petitioners and other persons. The said plots were unsold till 2004, for which, the petitioner has made an application before the first respondent.

8. The respondent in its counter affidavit stating that the said plots are in the low lying area and the Board has been decided to modify the layout of the Industrial Estate, Kancheepuram. The revised layout was prepared and approval has been obtained in DTCP Lr.No.1671/94/L2 dated 11.01.1995. The vacant land & bigger plots in this estate were converted into smaller plots, then the layout was revised accordingly and approval has been obtained in DTCP.Lr.No.45050/96/LA2 dated 05.05.1997. The norm for approval of layout by DTCP is allotment of 10% of the layout area is to be maintained as Open Space Reservation(OSR). Thereafter, the respondent made an application

on 17.12.2013 for revised layout approval. The layout came to be technically approved by the DTCP in Lr.No.809/2010 dated 14.10.2011 and the same is pending for final approval from the Kancheepuram Municipality. The revised approval changes made in the layout are as follows:

"a) EB power lines passing and EB transformers were erected by TNEB abutting western boundary of the Estate, covering the Developed plot Nos.9, 10 & 11 and CP (OSR) Plot Nos.12 & 13. This EB line passing from Vandavasi Main road to nearby private lands. Hence the SIDCO road has been shifted abutting the western boundary of the Estate. The developed Plot Nos.9, 10 & 11 are shifted and clipped with the plot Nos.22 to 26. The CP (OSR) Plot Nos.12 & 13 areas were compensating by converting the saleable plots to OSR on the rear side of the Estate.

b) The rear side of the Estate covering the CP Plot No.61 and Developed plot Nos.58 to 62 is in low lying area. Hence the OSR areas on the road side was converted as saleable area and to compensate the OSR the saleable plot which are located on the rear side of the estate were converted as OSR. "

9. Admittedly, once approval was granted and the plots were earmarked as Common Purpose, that cannot be allotted for any other purposes. In the present case, Plot No.320 of the said plan is measuring an extent of 6725.50, and 1.05 Acres approximately were allotted as OSR land and the same was converted into a plot, which is impermissible. The petitioner was ready to purchase the plot after fixing the price negotiation, but the respondent board did not disclose any reason for canceling the application and the plot has been converted into OSR area.

10. In this regard, this Court also passed an order in W.P.No.7806 of 2009 dated 31.07.2019, the relevant paragraphs are extracted hereunder:

9.The issue put forth in the present case is as to whether the petitioner or promoter entitled to enjoy the land which was allotted for public purpose. The issue started in the year 1976 and immediately after the approval, the duty is cast upon the Authority to permit the petitioner to execute a gift deed in favour of the Corporation. Even the promoter has not executed the deed in favour the Corporation. The place earmarked for public

purpose cannot be alienated either by the promoter or by the Corporation. The very same issue came up for consideration before this Court and a Division Bench of this Court in KIRUBARAKAN V. THE COMMISSIONER (EAST) CORPORATION OF COIMBATORE, reported in 2013 (6) CTC 441, in paragraphs 9 to 14, held as follows:

"9. The Division Bench of this Court in (2007) 3 MLJ 990 (Sri Devi nagar Residents' Welfare Association, rep. by its President, G.P.Godhanavalli, Coimbatore and another v. Subbathal and others, 2007 (3) MLJ 990) considered the earlier decisions of the Supreme Court and held that "public purpose", though cannot be precisely defined, broadly means the general interest of the community as opposed to the interest of an individual. In the Judgment of the Supreme Court reported in AIR 1952 SC 252 (State of Bihar v. Kameshwar Singh) it is held that public purpose will be construed to promote the welfare of the people at large and if there is dispute regarding public purpose, the Courts have jurisdiction, and it is their duty to determine the matter whenever a requisition is made to acquire the land according to the spirit of the times in which particular legislation is enacted. The Supreme Court in the decision reported in AIR 1956 SC 294 (State of Bombay v. R.S.Nanji) also took a similar view. When the use of land earmarked for public purpose was unauthorisedly allotted to a School, the Supreme Court set aside the same and the said decision is reported in AIR 1996 SC 253 : (1995) 5 SCC 762 (G.N.Khajuria (Dr) v. Delhi Development Authority). The Division Bench in the above referred judgment held that, "a portion of land reserved for public purpose in a layout or in a development plan or master plan approved by the Local Body cannot be used for any other purpose, than the one specified therein."

10. In the decision reported in 2010 (4) CTC 737 (R.Chandran v. State of Tamil Nadu) the First Bench of this Court considered the proposal for conversion of public park and play ground into an underground car park by the Corporation of Chennai, under the Tamil Nadu Country Planning Act, 1971 and Section 2(34) of the Development Control Rules, etc., and held that if an area is specified as a open space, the Corporation may at best get a right as a "custodian of public interest" to manage it in the interest of society in general and in breach of this custodianship, any attempt to change the user of such land would be impermissible under law and would be against the public interest and thus restrained Corporation of Chennai from constructing underground car park in the playground in question situated at Venkatnarayana Road, T.Nagar, Chennai-17. The SLP filed against the said order was also dismissed by the Hon'ble Supreme Court.

11. In the decision reported in 2011 (1) CTC 257 (K.Rajamani v. Alamunagar Residents' Welfare Association) similar issue arose and the Division Bench set aside the Government Order granting permission to change the user of the land from public purpose to housing plot in respect of a land in Coimbatore and in paragraph 22 held thus, "22. The contention of Mr.K.M.Vijayan, learned Senior Counsel for the Appellants is that the law relating to open space would be available only in case of apartments, where the purchaser of an apartment would have right to seek for maintenance of public space as such, as he/she has an undivided share in the open land as well and that law is not applicable to a layout. In our opinion, the said contention is totally on a misconception. The purpose for leaving open space is not only to meet the future developmental activity, but also to meet the recreational activity of the inhabitants.

The provision of open space in a development plan is to provide green space as well which is an essential feature in the development of an area. In a layout leaving of certain area of land as open space for use of park is in conformity with the Development Control Rules. Hence, there cannot be a different yardsticks to the de-reservation of land left for open space in the case of an apartment and layout. Only in this context, the provisions of Section 432(10) (b) of the Coimbatore City Municipal Corporation Act relating to the power of the Municipal Corporation to make bye-laws in respect of protection of avenues, trees, grass, other appurtenances of public streets and other places was referred to by the learned Judge which, in our considered view, requires no interference. Hence, the learned Judge has rightly quashed the order of the Government in de-reserving the land earmarked for public purpose in the layout into housing plots and we are not inclined to interfere with the same."

Thus, it is evident that the land earmarked for public purpose cannot be used for private use by any one, including the Local Body restricting the usage of the public.

12. In this case, the contention of the appellants are that they are proposing to construct a hospital in the subject land, which will serve public purpose and an affidavit is also filed in writ appeal stage stating that 50% of the patients in the proposed hospital will be treated free of costs. Whether the establishment of a Private Nursing Home in an open space reserved for public park will serve public purpose was already considered by the Hon'ble Supreme Court in the decision reported in (1991) 4 SCC 54 (Bangalore Medical Trust v. B.S.Muddappa). The argument advanced on similar line that the Hospital with Research Centre and free service being more important from social angle, the

inhabitants in the locality cannot be said to suffer any injury, much less substantial injury, was totally rejected by the Hon'ble Supreme Court.

13. The learned Senior Counsel for the petitioner relied on the Judgment of the Supreme Court reported in AIR 1955 SC 810 : (1955) 2 SCR 867 (The State of Bombay v. Ali Gulshan) to substantiate his contention that acquisition of sites for building hospital or educational institutions by private benefactors will be a public purpose. The said observation made by the Hon'ble Supreme Court cannot be taken advantage of by the petitioner as the issue involved in the said case was as to whether acquisition of land by the then Government of Bombay for housing a member of the staff of a foreign consulate was public purpose or not. The Hon'ble Supreme Court while answering the said issue in favour of the State made only an observation, without going into the types of hospitals or types of the Schools, which are intended to be established for public purpose.

14. "Public purpose", though cannot be given a precise definition, Section 3(f) of the Land Acquisition Act, 1894 gives the meaning of the expression 'public purpose', which is an inclusive definition. Section 3(f) (vi) to (viii) reads as follows:

"3(f) (vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (XXXI of 1860), or under any correspondent law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the

time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government, or, with the prior approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office."

The said provision was interpreted by the Hon'ble Supreme Court in the decision reported in (1996) 6 SCC 464 (Ganapathi National Middle School v. M.Durai Kannan), wherein the question arose as to whether an educational institution aided by the State Government is inclusive of "public purpose". The Hon'ble Supreme Court held that such school receiving aid is an instrumentality of the State, and therefore lands can be acquired for such aided school for "public purpose". In another decision reported in (2011) 6 SCC 125 (Humanity v. State of West Bengal) the Hon'ble Supreme Court while considering the setting up of private school, observed that it may have some element of public interest and may not be a totally business enterprise, but profit motive cannot be ruled out. In paragraph 26 the Hon'ble Supreme Court held thus, "26. The setting up of a private school may have some elements of public interest in it but a Constitution Bench of this Court has held in T.M.A.Pai Foundative v. State of Karnataka ((2002) 8 SCC 481) that the right of a citizen, which is not claiming minority rights to set up a private educational institution is part of its fundamental right to carry on an occupation under Article 19(1) (g). Such an enterprise may not be a totally business enterprise but profit motive cannot be ruled out."

(Emphasis Supplied)

10. On a perusal of the above decision of the Division Bench of this Court, it is seen that the Division Bench has held that if an area is specified as a open space for

public purpose, the respondent Corporation therein may at the best get a right as a 'custodian of public interest' to manage it in the interest of society in general and in breach of this custodianship, any attempt to change the user of such land would be impermissible under law and would be against the public interest.

11. In view of the above discussions and decisions cited, it is clear that the land once earmarked for public purpose, cannot be earmarked for any other purpose and particularly to de-reserve or put to use as plots. But, in the present case on hand, the plots from the allottee were converted into OSR area and the OSR land was converted into a plot and in order to allot other persons, which is illegal and unjustifiable. The present writ petitions are filed by the petitioners challenging the cancellation of allotment and considering the paucity of time, the prayer sought for in these writ petitions for allotment of plots in favour of the petitioners cannot be granted. Hence, attempt for converting OSR land into plots is legally un-sustainable one. However, this order will not stand on the way of the respondents to allot plots which were approved in original layout by way of auction or in any other procedure in the manner known to law. I am inclined to grant permission to the petitioners to participate in the public auction, if any. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To
Tamil Nadu Small Industries Development
Corporation Limited
(A Government of Tamil Nadu Undertaking)
rep.herein by its Managing Director
Paulwels Road, Kathipara Junction,
Chennai-600 016.

+5cc to Mr.T.S.Vijaya Raghavan, Advocate sr.73111, 73114, 73112,
73110, 73113
+1cc to Mr.S.Yaswanth, Advocate sr.74432
+1cc to V.P.Sengottuvel, Advocate sr.74202

W.P.Nos.33178, 32258, 32309, 33239 & 33307 of 2007
nr 27/01/2020

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