

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.22714 of 2009

Wood Creek Residents Welfare Association
rep. by its President Dr.Sree Vidya,
Reg. No.342/2001,
Phase IV, II Cross Street,
Nandambakkam,
Chennai-600 016.

... Petitioner

Vs

1. The Chairman-cum-Managing Director,
Chennai Metropolitan Development Authority,
Chennai.

2. The Executive Officer,
Nandambakkam Town Panchayat,
Nandambakkam.

3. Macro Marvel Projects
rep. by its Proprietor
Mr.Ravi Raghu,
Club House, II Cross Street,
Wood Creek Country,
Nandambakkam, Chennai-600 016.

4. The Commissioner,
Corporation of Chennai,
Chennai-600 002.

... Respondents

(R4 impleaded as per order dated 5.4.2013
made in M.P.No.1/13)

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 and 2 to declare Marvel Club House at Phase II Wood Creek County, Nandambakkam as Open Space Reserved Land and direct the 3rd respondent to register the same to the 2nd respondent and further direct the 2nd respondent to hand over the possession of the same for communal and recreational purposes as per the provision Rule 19 (iii)(b) of the Development Control Rules framed under Section 17 of the Tamil Nadu Town and Country Planning Act, 1956.

For Petitioner : Ms.P.Bagyalakshmi
For Respondents : Mrs.P.Veena Suresh,
Standing Counsel for R1
Mr.G.Sankaran for R2
Mr.S.R.Raghunathan for R3
Mr.A.Nagarajan,
Standing Counsel for R4

O R D E R

The present Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the respondents 1 and 2 to declare Marvel Club House at Phase II Wood Creek County, Nandambakkam, as Open Space Reserved Land and for further direction, directing the 3rd respondent to register the same to the 2nd respondent with a further direction, directing the 2nd respondent to hand over the possession of the same for communal and recreational purposes as per Rule 19 (iii)(b) of the Development Control Rules framed under Section 17 of the Tamil Nadu Town and Country Planning Act, 1956.

2. Learned Counsel appearing for the petitioner submitted that the petitioner is a President of Wood Creek Residents Welfare Association with Registration No.342/01 which is formed with an object of promoting welfare measures of the residents in the colony to take care of the development of the colony by improving the sanitation facility inside the colony. The petitioner Association is also governed by its own by-laws. The 3rd respondent being a builder and promoter, purchasing lands, laying it out and promoting the same by putting up group development projects in and around Chennai at various places. Accordingly, after purchasing the lands in various Survey Numbers from 143/2 to 144/1B and 100/6A within Nandambakkam Town Panchayat, the 3rd respondent further proceeded in promoting the said lands by developing and constructing individual houses. They have decided to put up more than 150 houses in the entire extent which is more than 8 acres. The 3rd respondent has also obtained a layout approval in PPD.No.50/98 from the Executive Officer, Nandambakkam Town Panchayat. While so, for the entire extent of 8 acres, at least 16 grounds are to be reserved as open space as per the rule prevailing at the time of moving application seeking approval from the 2nd respondent, namely, the Chennai Metropolitan Development Authority (hereinafter referred to as, 'the CMDA'), even asking the 3rd respondent to leave sufficient open space

under the Development Control Rules 19(b)(11) for communal and recreational purposes, the approval has been wrongly granted by the 2nd respondent.

3. The learned Counsel for the petitioner further submitted that the 3rd respondent has notified the Club House as open space reservation area and from all the residential owners, the 3rd respondent received a sum of Rs.50,000/-. When all the members of the petitioner's Association are entitled to use the said premises for its office purpose from 2001 onwards, the 1st respondent, while considering the request of the 3rd respondent for grant of approval, the respondents 1 and 2 have wrongly given layout approval in PPD.No.LD/50/98 to an extent of 2.199 acres of land only and not for 8 acres of land which is against Rule 19(b) II of Development Control Rules. According to the said Rule for the first 3000 sq.m., although there is no requirement for open space reservation, between 3000 sq.m. and 10000 sq.m., 10% of the area excluding roads or in the alternative, the 3rd respondent shall pay the market value of the equivalent land excluding the first 3000 sq.m. as per the valuation of the Registration Department, only where it is not possible to provide open space due to physical constraints.

4. The learned Counsel for the petitioner also submitted that in the present case, the respondents 1 and 2 without there being any physical constraints in not leaving the OSR land, they have wrongly given layout approval and it is opposed by the 3rd respondent stating that the same is being illegal, unauthorised construction in the land meant for Open Space Reservation, as a result, all the members of the petitioner's Association are deprived of enjoying the open space reservation that should be left for the benefit of the residents of the Wood Creek Residents Welfare Association. Therefore, a Writ of Mandamus be issued directing the respondents 1 and 2 to declare Marvel Club House at Phase II Wood Creek County, Nandambakkam as Open Space Reserved Land and for further direction, directing the 3rd respondent to register the same to the 2nd respondent with a further direction, directing the 2nd respondent to hand over the possession of the same for communal and recreational purposes as per Rule 19 (iii)(b) of the Development Control Rules framed under Section 17 of the Tamil Nadu Town and Country Planning Act, 1956.

5. A detailed counter affidavit has been filed by the 3rd respondent.

6. Mr.S.R.Raghunathan, learned Counsel appearing for the 3rd respondent raising a preliminary objection with regard to the maintainability of the writ petition submitted that the present writ petition is a mere reproduction of an earlier Writ Petition in W.P.No.12460/2008 that was filed by one Pari and dismissed by this Court by order dated 10.8.2009 for the similar relief sought for in the present Writ Petition. Again after dismissal of the same, the said Pari has also preferred W.A.No.2002/2010, that was also dismissed by order dated 30.03.2011. Explaining further, the learned Counsel for the 3rd respondent submitted that paragraph Nos.3 to 7 in the present Writ Petition are the ditto reproduction of paragraph Nos.2 to 6 in the affidavit filed in support of the W.P.No.12460/2008. Moreover the grounds taken by the petitioner's Association in the present Writ Petition running from 8 to 13 are borrowed from the Ground Nos.1 to 6 of the earlier W.P.No.124680/2008. Further, when both the learned Single and Division Bench have dismissed the case of one Pari, one of the members of the petitioner's Association in the same issue, the petitioner's Association cannot come back to this court with a similar prayer or with any modified prayer. He has also submitted that when the 3rd respondent has purchased the land for putting up of 42 independent houses in the I Phase and thereafter approached the 1st respondent seeking a layout approval, they have given approval in respect of 8900 square metres of land.

7. The learned Counsel for the 3rd respondent further submitted that the 3rd respondent was only a promoter and not even purchased any land to build more houses for making more money from the consumers. They have deliberately left out open space area. Therefore, when the 3rd respondent has approached the CMDA seeking approval, the 1st respondent has also granted lay out approval in PPD/LO No.50/98 related to Phase I in respect of 2.199 acres of land and as this layout consisted between 3000 and 10000 sq.mtrs. it attracts only the equivalent land cost as per the prevailing market value. Therefore, the 3rd respondent was asked to remit equivalent OSR Charges of Rs.4,67,500/-. Accordingly, the said amount was remitted to the CMDA. Thereafter, all the roads in the above said layout have been approved as per the Development Control Rules and it was also in order. When the 3rd respondent is, therefore, a builder and the promoter in and around Chennai and only on the application made out for approval of a lay out to an extent of 2.19 acres of land only not for 8 acres, the same was granted and this has already been questioned unsuccessfully before this Court in the earlier Writ Petition filed by one Pari, who is one of the members of the petitioner's Association, in W.P.No.12460/2008 and this Court for the reasons mentioned

therein rejected the same by order dated 10.08.2009 and thereafter, Mr.Pari took up the matter before the Division Bench and after hearing the parties, the same was also dismissed by confirming the order of the learned Single Judge on 30.03.2011. When individual houses have been constructed with due approval granted by the CMDA which was also unsuccessfully challenged before this court, it is not open to the petitioner Association to come to this Court.

8. Continuing his argument, the learned Counsel for the 3rd respondent would submit that if for any reason if the case of the petitioner is to be accepted, then for the purpose of maintaining the Open Space Reservation Area, some of the built up houses should be demolished, it may be the petitioner's house or the Secretary's house or any office bearers house. Therefore, it is too late on the part of the petitioner to come to this Court for the same relief refused by this Court in W.P.No.12460/2008 dated 10.08.2009 which was confirmed by the Division Bench of this Court in W.A.No.2002/2010 dated 30.03.2011.

9. I am in full agreement with the submission made by the learned Counsel for the 3rd respondent.

10. When the 3rd respondent has sought for a layout approval from the CMDA, the CMDA has also given the layout approval in PPD/LO No.50/98 related to Phase I in respect of 2.199 acres of land as per the prevailing Development Control Rules. Even the Counter Affidavit filed by the CMDA in W.P.No.12460/2008 also shows as follows:

''5. Regarding para 2 of the affidavit it is respectfully submitted that the 3rd respondent herein is a builder and promoter in and around Chennai. The 3rd respondent applied for layout to an extent of 2.199 acres of land only and not for 8 acres as alleged by the petitioner and to the said layout approval was made in P.P.D.No.LD/50/98 as per the Development Control Rules. According to the Development Control Rules 19(b)(II) deals with Group Development for the first 3000 sq.m. No open space reservation is required and 19(b) II (VI) deals with Open Space Reservation of Land for communal and recreational purposes shall be as follows:

	Extent of Site	Reservation
a	For the first 3000 sq.m.	Nil
b	Between 3000 sq.m. and 10000 sq.m.	10 percent of the area excluding roads or in the alternative he shall pay the market value of the equivalent land excluding the first 3000 sq.m. as per the valuation of the Registration Department, only where it is not possible to provide open space due to physical constraints. No such area reserved shall measure less than 100 sq.m. with a minimum dimension of 10 metres.

The 3rd respondent had deposited a sum of Rs.4,67,500/- as to the Open Space Reservation Charges to the CMDA.'

11. Therefore, when the 3rd respondent as a promoter and builder has approached the Chennai Metropolitan Development Authority and obtained layout approval in P.P.D.No.LD/50/98 dated that was challenged by one of the members of the petitioner's Association in W.P.No.12460 of 2008 and this Court by order dated 10.08.2009 after elaborately considering the various arguments advanced by both sides had rejected the prayer in the Writ Petition and the same was also confirmed in W.A.No.2002/2010 dated 30.03.2011 and when the petitioner's Association through his member Mr.Pari has failed to challenge the same, it is also bound by the same. Moreover, the petitioner's Association has sold all the apartments in Phase I and allowed the 3rd respondent to put up construction in respect of Phase II and Phase III and their constructions have come up. Further, at no point of time, the petitioner's Association has thought of challenging the subsequent layout approval granted by the CMDA. Therefore, I find no merit in the Writ Petition.

12. In the result, the writ petition fails and the same is accordingly dismissed. No costs.

Sd/-

Assistant Registrar (CS)

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Sub Assistant Registrar

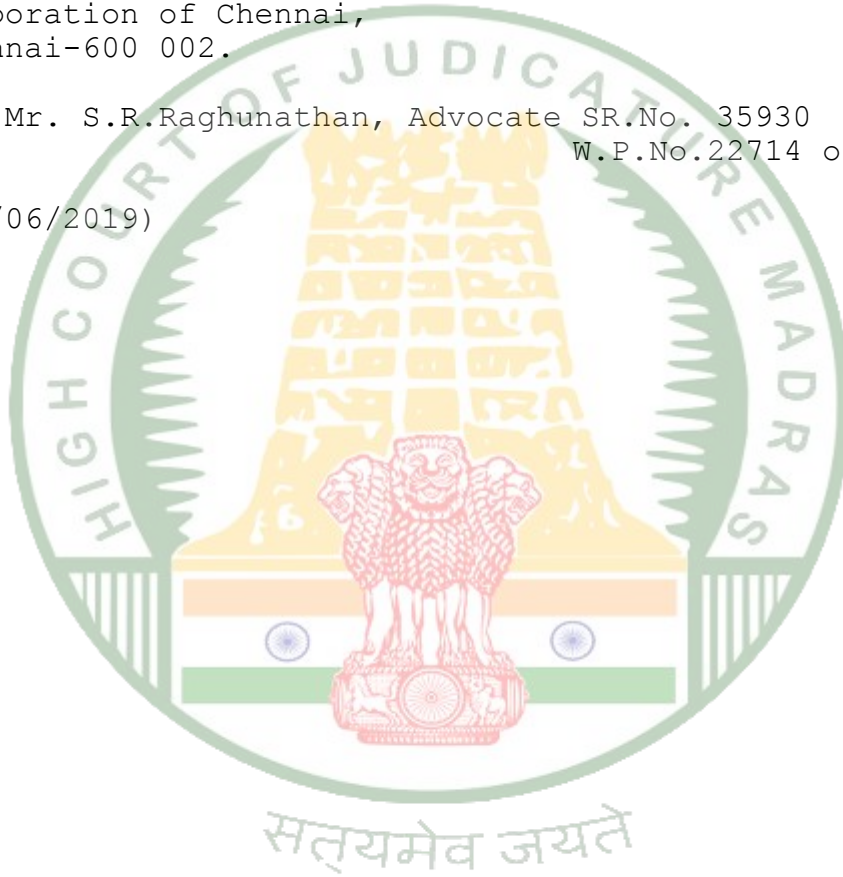
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To

1. The Chairman-cum-Managing Director,
Chennai Metropolitan Development Authority,
Chennai.
2. The Executive Officer,
Nandambakkam Town Panchayat,
Nandambakkam.
3. The Commissioner,
Corporation of Chennai,
Chennai-600 002.

+1cc to Mr. S.R.Raghunathan, Advocate SR.No. 35930
W.P.No.22714 of 2009

A.SK(10/06/2019)



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