

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.12.2018

PRONOUNCED ON :03.01.2019

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL
And

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

W.P.No.9245 of 2017

Prikrithi Foundations Limited
Represented by its Authorised
Power of Attorney Agent
Heritage Property Development Company Ltd.,
Represented by its Chairman and Managing Director
V.Krishnaprasadh
"MAHABUBANI TOWES"
Flat No.B1, Ground Floor
No.48, Dr.B.Narasimhan Road,
T.Nagar, Chennai - 600 017. .. Petitioner

Vs.

- 1.The Secretary to the Government,
Municipal Administration and Rural
Development Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.
- 2.The Member Secretary
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Thalamuthu - Natarajan Building,
Egmore, Chennai - 600 008.
- 3.The Commissioner,
Sembakkam Municipality
No.178, Velachery Main Road,
Adi Nagar, East Tambaram,
Sembakkam, Chennai - 600 073.
- 4.The District Collector, Kancheepuram
Office of the District Collector of Kancheepuram
Vandavasi Road, Gandhi Nagar,
Thaiyar Kullam
Kancheepuram - 631 501

5.The Taluk Tahsildar of Tambaram
Office of the Tahsildar of Tambaram
GST Road, Tambaram (Near MEPZ)
Chennai - 600 045.

6.Dr.K.R.Natarajan

.. Respondents

[RR 6 impleaded as per order dt.30.10.2017
in WMP.No.28098/2017]

Prayer : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 3rd Respondent to restore the original development as handed over on 04.04.2009, which was carried out by the Petitioner Company in accordance with development control rules in the Open Space Recreational Areas in the approved layout bearing No.PPD/LO No.35/2003, dated 25.04.2003 in a time frame as fixed by this Court.

For Petitioner : Mr.O.L.V.Ganesan
For M/s.Ganesh and Ganesh
For RR 1, 3 to 5 : Mr.J.Pothiraj
Special Government Pleader
For 2nd Respondent : Mr.Karthick Rajan
For 6th Respondent : Mr.G.Masilamani
Senior Counsel
Mr.T.Sathyamurthy

ORDER

M.VENUGOPAL, J.

Heard both sides.

2.The Germane Writ Facts:

2.1.The Petitioner/Developer, with a view to develop 'Heritage Jayendra Nagar' at Sembakkam Village, Tambaram Taluk, Kancheepuram District measuring an extent of about 19 Acres and 52 cents, had purchased the property through an 'Auction Sale' as per Sale Certificate executed by the Recovery Officer of the Debts Recovery Tribunal, pursuant to a Recovery Certificate issued in O.A.No.408 of 1998 on 24.12.2002, which was registered on 21.04.2003 in the office of the Sub Registrar, Tambaram.

2.2.As a matter of fact, the property originally belonged to the Company 'INCA Cables Private Limited'. The Petitioner/Company submitted Applications before the 2nd Respondent/Chennai Metropolitan Development Authority, with duly marked sketch for a Layout of Housing Plots along with earmarked areas for 'Open Space Recreational purposes', Roads, Streets etc., which was scrutinised and approved by the 2nd Respondent as per Planning Permit issued on 25.04.2003. The said Planning Permit was also approved by the Executive Officer, Sembakkam Town Panchayat, now upgraded into a Municipality on 13.05.2003. The Planning Permit issued by the 2nd Respondent/Chennai Metropolitan Development Authority clearly mentions various conditions for developing the 'Layout' in accordance with 'Development Control Rules' and one of the conditions of the Layout approval was that the Petitioner had to transfer through a Gift Deed and Free of Cost the space which was set apart for streets and communal and recreational purposes to the 3rd Respondent/Local Authority. The Petitioner executed a registered Gift Deed on 22.04.2003 in favour of the then Sembakkam Town Panchayat/3rd Respondent on the file of Sub Registrar, Tambaram.

2.3.In view of the Gift Deed an extent of 25642 square meters was reserved for roads and an extent of 5624 square meters was reserved for 'Parks/Open Spaces' and 'Recreational purposes' and they were transferred in favour of the 3rd Respondent. The Petitioner on 26.04.2003 wrote and gave an undertaking before the 3rd Respondent that they will develop and lay proper bitumen topped roads, install street lights after obtaining necessary permission from the Tamil Nadu Electricity Board through the 3rd Respondent and also provide an underground cabling for power Lines, water and sewer Lines, Telephone cables, Cable Television, pillar Boxes, Distribution Boards. Also, an undertaking was furnished by the Petitioner/Company that in the event of a long term lease being given to it by the 3rd Respondent for a rental consideration of the Open Space and Recreational Areas which was gifted, then the Petitioner agreed to develop in the superstructure which was already situated thereon and it was originally built by 'INCA Cables Private Limited' as a Community Hall, Prayer Hall along with few rooms for shops, cafeteria, indoor games, office for association etc. to cater to the requirements of the public and people of the Colony. The same was envisaged by the Petitioner/Company only after confirming itself that it was permitted under the Layout Development conditions issued by the 3rd Respondent. Indeed, Clause 12 of the condition stipulates that Developments in the areas earmarked for the Park/Playground in the approved plan shall be regulated in conformity with the Open Space and Recreational Land Use Zone in 'Development Control Rules'.

2.4. By means of proceedings of the then Executive Officer, Sembakkam Special Village Panchayat, Kancheepuram District, on 31.12.2004, the Open Space Reservation Land comprised in Survey field numbers 149 and 150 at Sembakkam Village and measuring about 5624 square meters in the approved layout of Heritage Jayendra Nagar was granted on 'Lease' to the Petitioner on a monthly Rental Basis. The Lease period was fixed from May 2003 to a mutually acceptable date for a monthly Rent of Rs.5000/-. The Lease conditions were that it was on 'as is where is condition' and that the usage, maintenance and utilization of OSR land shall be determined by the Petitioner and that the nature and classification of OSR land should not be altered, the Land ought not to be misused and that the Petitioner should abide by the letter of commitment dated 26.04.2003. Further, the 3rd Respondent will have all Rights of Access, Visitation, Inspection and Supervision of the usage in the Leased out OSR Land. Also, it was mentioned that the Petitioner shall handover the Leased Land back at the end of the Lease period in a proper usable condition.

2.5. Furthermore, the Lease Agreement was entered between the Petitioner and the 3rd Respondent on 07.01.2005 and the Lease 'Rental Charges' of Rs.95,000/- payable from May 2003 to the date of Lease was paid to the 3rd Respondent and that the Petitioner was put into possession of the Leased out Land by the 3rd Respondent.

2.6. After receipt of a communication from the 3rd Respondent on 06.10.2004 the Petitioner addressed a letter to the 3rd Respondent on 11.10.2004 mentioning that they will duly and diligently follow their undertaking dated 26.04.2003 and that they will develop a Community Hall, Prayer Hall, Crèche for children, rooms for indoor games, visiting physician, cafeteria, gym, library, room for association, kitchen, dinning halls for the requirements of the people proposed to be occupying in that Location in the old factory building which was already standing in the OSR area. Moreover, the Petitioner committed that two wells which were situated in the other two OSR area stands developed as a drinking water source to the occupants of the colony. The Letter further communicated the landscaping work carried out by it around the two wells for its maintenance and usage of the general public of the colony. In fact, in the said letter, it was mentioned that the 'Sewerage Treatment Plant' connecting all the Houses and other social welfare measures carried out by it such as laying tar topped roads, building of Overhead Water Tank, laying of underground cabling and wire lines, telephone lines, water lines and sewer lines, installation of Electrical posts for Lighting of streets and Roads and the Letter also explained that all such works would

only lead to an increase in the price of property which would invariably generate more 'Tax, Revenue' to the 3rd Respondent.

2.7.Only after considering the aforesaid aspects, the 3rd Respondent was ready to provide the 'OSR Area' on Lease (Monthly Rent) basis to the Petitioner and that the Petitioner as a developer was continuously paying the monthly Lease Rent to the 3rd Respondent. The Petitioner, after the completion of Project, wanted to take over the 'Jayendra Nagar facilities' and maintain the same. However, the Association was not interested to maintain the said facilities and pay the Lease Rent and that the Petitioner, through a communication dated 04.04.2009, had surrendered the Lease with all keys and Locks of all the facilities developed in the said OSR area which was Leased to it in 2004. The handing over of the Lease was also accepted by the 3rd Respondent. Hence, the 'Developments' which took place in Open Space Recreational Area that in conformity with the condition No.12 of the Planning Permit read with Rule 14 of the Development Control Rules of the Chennai Metropolitan Development Authority are Legal.

2.8.The Petitioner, in conformity with the Rule 14 of the Development Control Rules of the 2nd Respondent/CMDA and also in conformity with Clause 12 of the Layout sanction conditions issued by the 3rd Respondent, developed the children play area, crèche etc. which was certified by the 3rd Respondent through its Completion Certificate on 16.12.2011. The said Completion Certificate also confirms that the facilities (including the Sewerage Treatment Plant) was developed by the Petitioner at its cost in their patta Land and also it mentioned that the 3rd Respondent are the Lawful owners of the said facilities and that it is open to all the 'Residents of the Sembakkam Town Panchayat'.

3.Petitioner's Submissions:

3.1.At this stage, the Learned Counsel for the Petitioner submits that the 4th Respondent/District Collector, Kancheepuram, without properly ascertaining the facts from the 3rd Respondent through his letter dated 03.11.2008, had addressed a communication to the 5th Respondent/Tahsildar, Tambaram stating that structures were put up in the Park space in question in the 'Approved Layout' developed by the Petitioner/Company at Sembakkam are unauthorised and that expeditious steps had to be taken for removing the same and this conclusion arrived at by the 4th Respondent is bad in Law, in as much as the same was passed without ascertaining the facts from the 3rd Respondent or without verifying the records.

3.2.The Learned Counsel for the Petitioner contends that the communication dated 03.11.2008 of the 4th Respondent/District Collector had originated only after several representations were sent by the Heritage Jayendra Nagar House Owners Association, represented by the 6th Respondent, who had developed personal animosity against the Petitioner and its management wanted to take revenge, as a consequence of which, he had instigated a minuscule percentage of the total House owners, against the Petitioner/ Company and started making false allegations and wrote to various authorities to remove all the facilities which were developed by the Petitioner in an appropriate legal manner from the Open Space Recreational Area and that too which was in conformity with the Development Control Rules and Layout conditions.

3.3.The Learned Counsel for the Petitioner brings it to the notice of this Court that the 6th Respondent, through 'Heritage Jayendra Nagar House Owners Association', filed a Consumer Complaint against the Petitioner/Company and others before the National Consumer Disputes Redressal Commission, New Delhi in C.C.No.52 of 2010. He filed O.P.No.54 of 2012 through 32 owners , based on similar cause of action before the National Consumer Disputes Redressal Commission, New Delhi and the same is contested by the Company.

3.4.The Learned Counsel for the Petitioner submits that the 6th Respondent, under the Right to Information Act, sought for information on all his complaints before the concerned Authorities, made in respect of removing the structures which he alleged to be 'unauthorised in Open Space Recreational Areas' of the Layout which was developed by the Petitioner. An order dated 12.08.2014 in Case No.6152/Enquiry/A/2011(48376/A/2012) was passed by the Tamil Nadu Information Commission directing the 3rd Respondent to file a Compliance Report within one month. The Petitioner/Company after coming to know of the same, had preferred an Appeal on 09.08.2016 assailing the said order and the same was not taken on file and it was rejected. Apart from that, the Petitioner/Company wrote to the 3rd Respondent as early as on 24.02.2016 setting out the true facts and circumstances about the developments which took place in the Open Space Recreational Area at Sembakkam Heritage Jayendra Nagar etc.

3.5.The Learned Counsel for the Petitioner emphatically takes a plea that the Petitioner/Company ought to have been put on notice to explain the Developments in the 'Open Space Recreational', which were made after obtaining necessary permission from the 3rd Respondent. The two Completion Certificates dated 12.11.2008 and 16.12.2011 of the 3rd Respondent establish that there was no violation in the

Development which took place at 'Heritage Jayendra Nagar', Sembakkam, Chennai which include the 'Open Space Recreational Area'.

3.6. In this connection, the Learned Counsel for the Petitioner proceeds to point out that without taking into account of the aforesaid 'Documents' and 'Approvals' which were in place and also the Legal position, the 3rd Respondent had demolished the 'Structures' in the Open Space Recreational Area on 24.02.2016, an improper and legally tenable one. Therefore, the Petitioner has filed the present Writ Petition praying for passing of an order by this Court in directing the 3rd Respondent to restore the 'Original Development' as handed over on 04.04.2009, which was carried out by the Petitioner/Company in accordance with Development Control Rules in the Open Space Recreational Areas in 'Approved Layout' No.PPD/LO No.35/2003, dated 25.04.2003 within a time frame to be determined by this Court.

4. Contentions of Respondents 1, 3 to 5:

4.1. Conversely, it is the submission of the Learned Special Government Pleader for the Respondents 1, 3 to 5 that since the Petitioner/Company had utilised the Open Space and public purposes space without any permission of the Sembakkam Special Village Panchayat, the Special Village Panchayat issued a notice dated 06.10.2004 to the Petitioner/Company to vacate from the premises. The Petitioner/Company, soon after receipt of the said notice, had requested the Sembakkam Special Village Panchayat to permit it to utilise the above space on 'Rental Basis' and that the Sembakkam Special Village Panchayat Council, through its Resolution No.76 of 2004, had resolved to lease out the said open spaces on monthly rental of Rs.5000/- and later, on administrative grounds, the lease was cancelled by the then Executive Officer, Sembakkam Town Panchayat as per proceedings No.655/2002, dated 28.04.2009 which was approved by the Sembakkam Town Panchayat Council vide Resolution No.279, dated 07.09.2009 and further resolved to maintain the buildings in the Park site by the Town Panchayat.

4.2. The Learned Special Government Pleader for the Respondents 1, 3 to 5 submits that on receipt of information, the Petitioner/Company had stopped paying the 'Lease Amount' and hence, it has no right in regard to the utilisation of open spaces which were already handed over to the Panchayat through Gift Deed.

4.3. At this juncture, the Learned Special Government Pleader for Respondents 1, 3 to 5 points out that as the 'Buildings' in the Park-1 site were in dilapidated condition, the occupants in the said layout had requested to demolish the old buildings and

develop it as a Park for public use. It is further represented that the Right to Information Commission, based on the Appeal preferred by the 6th Respondent, had directed the 4th Respondent/District Collector, Kancheepuram to ensure to demolish the old buildings in the aforesaid park site and to submit a Report. Therefore, the 4th Respondent/District Collector, Kancheepuram, through Letter dated 09.08.2014, had directed the Municipal Commissioner, Sembakkam to demolish the buildings and to send a detailed Report.

4.4.The Learned Special Government Pleader for Respondents 1, 3 to 5 contends that during the 'Field Inspection' made by the Municipal Officials, three buildings viz., 1. Building 1 - 5100 sq.ft.; 2. Building 2 - 1488.75 Sq.ft. (Ground Floor); 3. Building 3 - 2700 sq.ft. and Compound Wall - 195 sq.ft. on eastern side in the above open space were found and on a detailed study, it was decided to demolish the Buildings No.(1) and (3) and Compound Wall and to retain the Building No.2. Hence, the Municipal Council, through Resolution No.87, dated 24.11.2014 had resolved to demolish the 'Buildings' and 'Compound Wall'. An auction was conducted on 23.02.2016 for demolishing the above said Buildings and Compound wall. By means of a Municipal Council Resolution No.45, dated 04.03.2016 the highest auctioner Thiru Pandian's bid was resolved to be accepted and the Municipal Commissioner, Sembakkam had issued work order dated 04.03.2016 to the approved auctioner and the work was completed.

4.5.The substratum of the plea of the Respondents 1, 3 to 5 is that there is no loss to the Petitioner/Company in demolishing the aforesaid buildings and compound wall because of the reason that the Petitioner/Company has no right over the property and they only used the buildings in the above open space during the lease period. Moreover, the Petitioner/Company has no legal right on the above space since the same was handed over to the Sembakkam Municipality (erstwhile Sembakkam Special Village Panchayat) by means of Gift Deed.

4.6.The Learned Special Government Pleader for the Respondents 1, 3 to 5 projects a plea that the Petitioner/Company is facing a case in C.C.No.2012 before the National Consumer Disputes Redressal Commission, New Delhi for failing to provide the amenities as promised by it and only to escape from the liability, the Petitioner/Company has filed the present Writ Petition without any legal ownership of the open space in question.

4.7.The Learned Special Government Pleader for the Respondents 1, 3 to 5 comes out a stand that after cancellation

of the lease which was terminated in April 2009, the issuance of Completion Certificate dated 16.12.2011 by the Town Panchayat is of no relevance. That apart, during the Lease period, the Petitioner had not obtained any permission from the Sembakkam Special Village Panchayat for making changes. Since the Petitioner/ Company was permitted to utilise the open space on Lease rental basis on as is where is condition only. Further, the Petitioner/ Company as Lessee shall not change the nature and purpose of leased OSR land without prior approval from the Lessor viz., Sembakkam Special Village Panchayat.

4.8.Lastly, the Learned Special Government Pleader for the Respondents 1, 3 to 5 advances an argument that action was taken by the Sembakkam Municipality to establish a modern park with open space duly obtaining financial assistance from the CMDA for the benefit of public.

Decision Relied on by Respondents 1, 3 to 5:

4.9.The Learned Special Government Pleader for Respondents 1, 3 to 5 cites the decision of this Court in SIDCO Nagar Welfare Association, Chennai V. Chennai Metropolitan Development Authority and others, 2018-2-Writ L.R. 645 at special page 662 & 663 wherein at paragraphs 36 & 37, it is observed as under:

"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 Tamilnadu 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 appellants 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 Trusts case, cited supra, the action of the State Government suffers from absence of jurisdiction."

5.Contentions of the 6th Respondent:

5.1.The Learned Senior Counsel for the 6th Respondent contends that the Petitioner had surrendered the 'OSR Lands' to the Local Authority and that it was misusing the OSR area even after transfer of the land. Further, it is represented on behalf of the 6th Respondent that the Local Authority at the request of the Petitioner/Company handed over the OSR lands to it for 'Maintenance' under a Lease Deed and that the Petitioner started claiming the public utility as his own and started using the same for his private use viz., for storage of goods etc. leading to the objection raised by the owners and residents of 'Heritage Jayendra Nagar'. Moreover, the 3rd Respondent cancelled the lease and that the Petitioner surrendered possession to the 3rd Respondent on 04.04.2009. As a matter of fact, the 3rd Respondent had resolved to maintain the 'OSR Land' reserved for a Park, had demolished the old building thereon with a view to keep the OSR land as open space and to develop it into good Park for the local people.

5.2.The Learned Senior Counsel for the 6th Respondent submits that the Local Authorities had demolished the building and restored the OSR Land as open space pending development of the same into a big park and as on date, the Petitioner/Company has no right whatsoever on the OSR land reserved for a Park. Therefore, it is the plea of the 6th Respondent that the Local Authority, being the owner and in possession of the OSR Land, has every right to develop the said land for a Park in the Approved Plan as a 'Park'. Also that, the Petitioner has no legal right in the OSR Land and in short, it has no right to file the present Writ Petition.

5.3.Expatiating his argument, the Learned Senior Counsel for the 6th Respondent takes an emphatic plea that it is the legal duty of a Local Authority who has obtained the OSR Land reserved for a Park by means of a Gift Deed to maintain it as a public park.

5.4.The Learned Senior Counsel for the 6th Respondent brings it to the notice of this Court that the undertaking purported to have been given by the Petitioner/Company that it may be permitted to OSR area on long term Lease to utilise the said area for putting up construction such as Compound Wall, Prayer Hall etc. cannot be permitted against the object of 'Open Space Reservation' and that apart, the Lease transaction is of no relevance now since the same was cancelled by the Local Authority and all the more, when the Petitioner/Company surrendered it's possession in OSR Land as early as on 11.04.2009 which was taken possession by the Local Authority on the very same day and that the old buildings were demolished for the purpose of maintaining the OSR Land as Park.

5.5.The Learned Senior Counsel for the 6th Respondent submits that out of 78,994 square meters, 5624 square meters of OSR land in the said Layout was gifted by the Petitioner/Company as required by the Law and earmarked and reserved for 'Parks' in the Approved Layout Plan and that the area of the Park-1 in the said layout is about 4,420 sq.m.; the measurement of the Park-2 is about 452 sq.mts.; and the Park-3 measures about 742 sq.mts. and in fact, the two small parks are utilised by the children to play and for other purposes.

5.6.The Learned Senior Counsel for the 6th Respondent contends that Park-1, measuring an extent of 4,420 sq.mts. is the subject matter of dispute in the instant case and the said Park-1 is the only Open Space available for utilisation and enjoyment of the residence in the locality and therefore, the old constructions in the said Park-1 caused serious prejudice and inconvenience to the residents and therefore, they were demolished by the Local Authority. In reality, the Petitioner has no locus to compel the Local Authority to utilise the OSR Land to any other purpose and that the Petitioner/Company has no legal right in this regard and added further, the Local Authority has no statutory duty to perform the act prayed for by the Petitioner in the Writ Petition.

5.7.It is the stand of the 6th Respondent that the 3rd Respondent issued a notice dated 06.10.2004 to the Petitioner, since he was misusing the OSR Park-1 (4,420 sq.mts.), requiring it to vacate the OSR premises and the Petitioner inter alia replied as under:

"7. There was a dilapidated factory building structure in the OSR area which was repaired, repainted, without any alterations and we have been using this dilapidated structure as site office for supervising the project execution.

8. Though we had received final sanction and paid the Layout Approval Fees, we have not received any communication from you, as requested in our undertaking, with regard to the monthly/annual lease rental charges payable by us to Sembakkam Town Panchayat for using the OSR Area. On intimation from you, we are prepared to pay the same to Sembakkam Town Panchayat right even from May, 2003 onwards and continue to do so for ever in future also.

12. In the light of the above facts, we earnestly request you, only to encourage professional people like us by allowing us to continue to use the OSR Area with the old structure and go ahead with this kind of state-of-the art township development without any hindrance for which we are prepared to enter into a Long Term Permanent Lease Arrangement with Sembakkam Township Panchayat on a mutually agreed monthly/annual lease rental charges.

13. On completion of the construction of all the homes, this will be used for community purposes such as community hall, prayer hall with few essential shops, departmental stores to cater to the day to day requirements of the people who are living in that location. This will generate a good revenue to Sembakkam Town Panchayat."

5.8. The Learned Senior Counsel for the 6th Respondent contends that the 3rd Respondent had granted the Lease on OSR Land and the old buildings to the Petitioner as per Lease Deed dated 07.01.2005, which was cancelled and that the Petitioner surrendered possession on 11.04.2009 and further that the old buildings were also demolished by the Local Authority. It is the categorical stand of the 6th Respondent that Rule 19 of the Development Control Rules for Chennai Metropolitan Areas (presently replaced by Development Regulation for CMA, 2026), governing the layout and that a Developer/Promoter has a statutory obligation under the Development Control Rules to

compulsorily reserve 10% of the layout area and transfer it free of cost to the Local Authority, if the area is more than 10,000 sq.mts. (78,994 sq.mts.).

5.9.The Learned Senior Counsel for the 6th Respondent submits that no building shall be permitted in the OSR Land reserved for Park as per Approved Layout Plan and it shall be maintained as open to sky (vacant) and in the Approved Layout Plan, the OSR Land in issue had shown only as a Park and as such, the Petitioner/Company cannot put up a building in the Park that too by the Local Authority using public funds.

5.10.Yet another contention advanced on behalf of the 6th Respondent is that Rule 14 of the Development Control Rules under the caption 'Use Zones' relates to classifications of Chennai Metropolitan Areas (CMA) into different zones such as Residential Zones, Commercial Zone, Recreational Zone, etc. In fact, Rule 14 mentions the permissible activity in open and the recreational space, which will not entitle a developer of the layout governed by Rule 19 of the Development Control Rules to use or to carry out the activities specified in Rule 14 without the special sanction of the CMDA/2nd Respondent.

5.11.The Learned Senior Counsel for the 6th Respondent proceeds to point out that the 6th Respondent, as the First President of the Residential Association has a Law abiding Citizen, had lodged complaints and addressed representations to the concerned authorities in regard to the violations and breaches committed by the Petitioner in execution of the project as approved, especially in OSR land. Furthermore, the Petitioner, after vesting of the OSR Land for Park with the Local Authority, has no legal right to claim restoration of old buildings in the Park area especially when the Local Authority had demolished the legal construction over which no one can stake a claim much less the Petitioner.

5.12.The Learned Senior Counsel for the 6th Respondent refers to C.C.No.54 of 2012 filed by the 6th Respondent along with other owners on behalf of the Heritage Jayendra Nagar against M/s.Heritage Property Development Company Limited on the file of NCDRC, New Delhi and the present Writ Petition is filed by the Petitioner/Company to protract the pending proceedings before the National Consumer Forum, New Delhi. Moreover, the Petitioner was imposed with a fine of Rs.25,000/- for seeking repeated frequent adjournments in C.C.No.54 of 2012.

5.13.The Learned Senior Counsel for the 6th Respondent submits that the Petitioner after lapse of 13 months from the date of demolition has filed the present Writ Petition on

11.04.2017 seeking to reconstruct the old buildings in the land reserved for Park and when the OSR lands were transferred in favour of the Local Authority, the Developer is divested of the status of ownership and lose all his ownership on the property and subsequently, the Petitioner/Developer will be treated as a just Trespasser/third Party in the event of dealing with such divested lands. In any event, the Petitioner is seeking the remedy in the Writ Petition without any recognised legal right.

5.14.The Learned Senior Counsel for the 6th Respondent contends that the Petitioner/Company after executing the Gift Deed dated 22.04.2003 has no right in respect of the lands, it had gifted to and in favour of the Sembakkam Town Panchayat, Sembakkam, Chennai and that the Open Space Recreational Area cannot be leased out and further that, the Park cannot be leased out. Apart from that, it is represented on behalf of the 6th Respondent that the Panchayat cannot put up a building in a park and a place wants earmarked for a Park cannot be de-reserved.

5.15.Added further, it is the stand of the 6th Respondent that the Petitioner/Company had not assailed the Municipal Council No.87 dated 24.11.2014 to demolish the building Nos.1 and 3 and the compound wall and later the Sembakkam Municipality had issued a work order to and in favour of the highest auctioneer Pandian and the works in respect of demolishing the buildings and compound wall were completed.

5.16.The Learned Senior Counsel for the 6th Respondent refers to the letter of the 6th Respondent dated 21.08.2018 addressed to the Personal Assistant to the District Collector, Kancheepuram and others wherein the progress made in providing Park facility in Heritage Jayendra Nagar which is long pending was sought for and that the present Commissioner of the 3rd Respondent, Sembakkam Municipality had addressed a Reply letter dated 10.09.2018 wherein it was mentioned that a sum of Rs.3,30,000/- as lease monthly rent was paid by the Developer for the period from May 2003 to October, 2008. As per the Lease Agreement dated 07.01.2005 entered into between the Petitioner and the 3rd Respondent. Further, in the said Reply, the Commissioner of the 3rd Respondent/Municipality, in paragraph 6, had stated that in the space of 5624 square metres allotted for recreational purpose, only in 11% i.e. 607 sq.mts. (6531 sq.ft.), there are constructions and in the remaining 89% space viz., 5017 sq.mts.(53983 sq.ft.) the open space remains 'vacant'. Besides these, in para 10 of the Reply letter dated 10.09.2018 of the present Commissioner of 3rd Respondent/Municipality, it was mentioned that at least per year a sum of Rs.12 lakhs could have been received as rent at the rate of Rs.1,00,000/- per month, if the Municipality had kept the buildings intact without demolishing the same.

5.17. In short, it is represented on behalf of the 6th Respondent that the present Commissioner of the 3rd Respondent/Municipality had tendered his opinion and the said opinion is contrary to the averments made in the counter of the 3rd Respondent filed before this Court. Furthermore, it is the plea of the 6th Respondent that the Commissioner of the 3rd Respondent/Municipality cannot go against the Resolution No.87 of the Municipal Council dated 24.11.2014.

5.18. By means of Rejoinder, the 6th Respondent had addressed a communication dated 12.10.2018 to the Commissioner of 3rd Respondent/Municipality, among other things, mentioning that Public at large and HJN residents in particular were deprived of PARK facility from 2003 due to the fact that the Executive Authorities of local body remained mute spectators of all violations committed by the Developer etc.

The 6th Respondent's Citations:

5.19. The Learned Senior Counsel for the 6th Respondent relies on the decision of the Hon'ble Supreme Court in Virender Gaur and others V. State of Haryana and others, (1995) 2 Supreme Court Cases 577 at special page 578, wherein it is observed and held as under:

"The land is vested in the Municipality and the Government has no right and title or interest therein. They have no power to give either by lease to PSS or deal with the property as if the land vested in it. Therefore, the grant of lease by the Government in favour of PSS was clearly without authority of law and jurisdiction. The open lands, vested in the Municipality, were meant for the public amenity to the residents of the locality to maintain ecology, sanitation, recreation, playground and ventilation purposes. The buildings directed to be constructed necessarily affect the health and the environment adversely, sanitation and other effects on the residents in the locality. Therefore, the order passed by the Government and the action taken pursuant thereto by the Municipality would clearly defeat the purpose of the scheme. It is not possible to accept the contention that for non-user of open land by the Municipality for more than two decades, the land stood divested from the Municipality and vested in them. Yet the Municipality has to use the land for the purposes envisaged in the Scheme

read with those found in Section 61 unless unavoidable compelling public purpose require change of user. Acceptance of the argument encourages pre-emptive action and conduct, deliberately chartered out to frustrate the proceedings and to make the result fait accompli. The land having been taken from the citizens for a public purpose, the Municipality is required to use the land for the protection or preservation of hygienic conditions of the local residents in particular and the people in general and not for any other purpose."

5.20. The Learned Senior Counsel for the 6th Respondent cites the decision in Sri Devi Nagar Residences Welfare Association V. Subbathal, (2007) 3 MLJ 990 wherein at paragraphs 12 to 17, it is observed as follows:

"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.

14. We are therefore, of the firm opinion, that the statutes in force in India and abroad reserving open spaces for parks and play grounds are the legislative attempt to eliminate the misery of disreputably housing condition caused by urbanisation. Crowded urban areas tend to spread disease, crime and immorality. Reservation of one space for parks and play ground 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 and the Apex Court decisions referred supra, fully support the view that the area set apart for park as per the approved lay out plan, cannot be used or transferred for any other purpose.

15. Mr.M.Venkatachalapathy, learned senior counsel appearing for respondents 1 to 3, however, agreed that the area reserved for public purpose would not be used for any other purpose and has come forward to maintain a park in the said place.

16. In view of the above undertaking by Mr.M.Venkatachalapathy, learned senior counsel appearing for respondents 1 to 3, we pass the following directions:

(i) respondents 1 to 3 shall utilise the entire area reserved for public purpose within a maximum period of six months from the date of receipt of copy of this order;

(ii) if respondents 1 to 3 could not maintain the park within the time stipulated above, the Corporation, as a custodian of public interest, shall develop the area as a Park with the cooperation of respondents 1 to 3, with whom the title and possession would continue to remain;

(iii) the Corporation shall not collect any property tax;

(iv) the Corporation shall give access to the general public including the residents of the locality; and

(v) the Corporation is at liberty to collect necessary funds from the plot owners, who purchased the plots in the impugned layout for maintenance of the park.

17. We also direct the Chief Secretary, Local Administration Department, State of Tamil Nadu to communicate the copy of this order to all the local bodies to scrupulously apply and follow the above directions to all the layouts sanctioned or to be sanctioned. If there is any change or deviation in the purpose by the land owners or by any third party, the same shall be objected to and action shall be initiated as indicated above by the local body concerned."

5.21. The Learned Senior Counsel for the 6th Respondent seeks in aid of the decision in R.Chandran V. State of Tamil Nadu, 2010 (4) CTC 737 at special pages 747 & 748 wherein at paragraphs 12 & 16, it is observed and held as under:

"12. It has not been disputed by the 2nd respondent-Corporation that the land in question has been used as park and playground for the last several decades. There is a basket ball ground in the said park, which is said to be an historical ground for many aspiring basketball players of the country. Many basketball training sessions and tournaments have been conducted there, and several high dignitaries visited the place and distributed prizes to the winners of such tournaments. Similarly, public at large had been using the park since several decades. Learned counsel for the petitioner drawn our attention to Section 2(34) of the Tamil Nadu Town and Country Planning Act inter alia

defines public open space, which 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. Therefore, evidently the playground and the park could not be brought within the definition of public open space. It has also not been disputed that the playground at Venkata Narayana Road, T.Nagar has been listed as the playground both under the Tamil Nadu Parks, Play Fields and Open Spaces (Preservation and Regulation) Act, 1959 and the Development Control Rules. Rule 4(a) of the Development Control Rules provides that where the use of the site or the premises is specifically designated as open space, it shall be used only for that purpose for which it has been so designated.

16. As noticed above, the land in question has been used by the public as park and playground for the last more than five decades and this is only the place of enjoyment for the public of that locality. It is well settled that right to life is not only fundamental right but also right to lead a decent life and to enjoy fresh air and water by using parks and greeneries, which is meant for the public at large."

5.22. In the decision K.Rajamani V. Alamunagar Residents' Welfare Association, 2011(1) CTC 257 at special page 266 & 267 wherein at paragraph 17, it is laid down as follows:

"17. For our purpose, the extent of land in a new town development area owned by a private person shall be used only in conformity with such development as provided under Section 47 of the Act. For such use, such person should apply to the appropriate planning authority for permission to erect any building or make or extend any excavation or carry out any mining or other operation, make any material change in the use of the land or construct, form or lay out any work. For that purpose, one should

make an application for permission under Section 49. In terms of sub-section (2) of Section 49, the appropriate planning authority is required to consider the purpose for which the permission is required, the suitability of the place for such purpose and the future development and maintenance of the planning area. In terms of sub-section (3) of Section 49, the appropriate planning authority may also refuse to grant permission to any person, but by giving reasons thereof. Once the planning permission is granted, the appropriate planning authority would have power to either revoke or modify the permission granted in terms of Section 54 of the Act. Of course, there is a general power conferred on the Government under Section 90 of the Act to call for records, examine the same and pass orders after satisfying themselves as to the regularity of such proceedings or correctness, legality or propriety or any decision passed or made therein. This power would be available to the Government only in respect of either the permission granted or refused by the appropriate planning authority for a land to be put into use in a developed area. This power cannot be extended to the permission accorded by the Government for the purpose of approval granted by it in terms of Section 28 for regional plan, master plan or the new town development plan, as those plans could be varied, revoked or modified only under Section 32. In our considered view, such power cannot be extended to alter, revoke or modify the conditions imposed in the layout plan. In that view of the matter, we hold that once such permission is accorded and in that permission if a specified area is earmarked for public purpose, even the planning authority shall not have power to exempt that land for being put to use for any other purpose. In that context, the State Government also cannot have any jurisdiction to alter the conditions imposed in the layout, whereby certain lands are earmarked as open space to be used for public purposes."

5.23. In the decision Manonmani and another V. District Collector, Vellore District, Vellore and another, (2017) 7 MLJ 4202 wherein at paragraph 10, it is observed as follows:

"10. The Apex Court, has time and again cautioned that no person has a right to encroach upon public/Government property by erecting a structure or otherwise, on footpaths, pavements or any other place reserved or earmarked for a public purpose, like for example, a garden, playground, school, hospital, etc...."

6. Reply of the Petitioner:

6.1. By way of Reply, the Learned Counsel for the Petitioner submits that the 'Open Space Recreational Area' gifted to Local Body Authority need not necessarily be only for Park or Playground and further that, it is permitted, allowed and approved under Condition No.12 of Planning Permit read with Rule 14 of Development Control Rules to have Buildings or Premises so long as it is for recreational uses or purposes for public and semi public.

6.2. The Learned Counsel for the Petitioner contends that the Petitioner/Company had never ever used the Open Space use either for itself or for commercial gains or never ever altered or changed it's use for which it was given.

6.3. It is represented on behalf of the Petitioner that the 6th Respondent, who was the then President of the Association in connivance with the 3rd Respondent/Commissioner, Sembakkam Municipality illegally and unauthorisedly, got the buildings demolished without following Due Process of Law, when the matter is sub judice before the National Consumer Disputes Redressal Commission. Furthermore, the 4th Respondent/District Collector has no power or authority or jurisdiction to pass any orders for Demolition and that the appropriate Authority is only the Member Secretary of the CMDA/2nd Respondent. Hence, the 3rd Respondent/Sembakkam Municipality cannot demolish without proper Demolition Order from the 2nd Respondent/CMDA who is the Competent Authority for issuing notices for Demolition or Demolition Order, if found any unauthorised construction is found.

6.4. The Learned Counsel for the Petitioner points out that the Petitioner/Company had spent Rs.1 Crore to develop, renovate, repair and refurbish the old buildings and premises, to make those premises usable not for the Petitioner/Company but for the incumbents (semi-public) exclusively for recreational purposes and uses as permitted by the Planning Permit Condition No.12 read with Rule 14 of the Development Control Rules.

6.5.The Learned Counsel for the Petitioner comes out with a stand that during the Project implementation period, the Site Officers, staff members were staying in two of the rooms provided for Project purposes and this is in accordance with the Rule 14(b)(ii) of the Development Control Rules and that the Petitioner/Company was utilised the space as 'Lessees' for rightful and lawful purposes. Besides this, only when the Association refused, the OSR Area with all facilities and features etc. were all handed over to Sembakkam Town Panchayat for them to use for the same recreational activities uses and purposes for General Public of the said Panchayat and in fact, the ownership right was never claimed by the Petitioner/ Company.

6.6.The Learned Counsel for the Petitioner projects an argument that there is no hard and fast rule that there shall be only Park/Playground and that the Commissioner, Sembakkam connived with the Complainants and obtained unauthorised and illegal order from the unauthorised authorities with an ulterior motives and ahead with the demolition when the matter is sub judice in which the 3rd Respondent is also a party to the case.

An Appraisal:

7.At the outset, this Court points out that the 5th Respondent/ Taluk Tahsildar, Tambaram had issued a Certificate dated 10.04.1998 to and in favour of M/s.INCA CABLES Pvt. Limited located at S.No.149 & 150 of Sembakkam Village Taluk stating that it is enjoying the Survey No.148 which is classified as "Gracing Ground Poramboke" being used as 'Link Road' for their factory since 1964 and that they have no objection to use the aforesaid Land for their 'Company way purpose'. The said Certificate was issued by the Tahsildar, Tambaram for the purpose of obtaining an approval from the CMDA, (from primary residential Zone to Industrial Zone).

8.The Petitioner/Company as Purchaser was issued with a Sale Certificate dated 24.12.2002 by the Recovery Officer of the DRT-I, Chennai in respect of land and building situated at No.149 & 150 measuring 14 acres and 15 cents and 5 acres & 37 cents respectively totalling in all 19 acres and 52 cents covered by Patta No.70 in Saidapet Taluk, included in the St. Thomas Mount Panchayat Union, Sembakkam, Chingalpet District with its easement and enjoyable rights. The Petitioner/Company had remitted a sale price of Rs.2,25,00,000/- to the Canara Bank, Guindy, Chennai (Applicant in O.A.No.400 of 1998 on the file of the Debts Recovery Tribunal - I, Chennai) which sum was appropriated by the Bank towards the suit claim.

9.It transpires that the Petitioner/Company had executed a registered General Power of Attorney on 21.04.2003 to and in favour of M/s.Heritage Property Development Company Limited, by

appointing the said Development Company as it's lawful Attorney to do and execute all or any of the acts and things mentioned in the said document in respect of the Schedule A and Schedule B properties, mentioned therein.

10.It cannot be gainsaid that the Petitioner/Company as Donor had executed a registered Gift Deed dated 23.04.2003 to and in favour of Sembakkam Town Panchayat represented by its Executive Officer (as Donee) by granting, conveying and assigning in the interest of Public and all that lands for roads, parks and other open space situated in S.Nos.149 & 150 of Sembakkam Village, which is used for Public comprised in layout sketch enclosed, within the Sub-Registration District of Tambaram and Registration District of Chennai South and more particularly described in the Schedule, which runs as under:

"All that piece and parcel of lands measuring 25642 Square Metres reserved for roads in the layout sketch enclosed herein situated in S.Nos.149& 150 of Sembakkam Village of Tambaram Taluk, Kancheepuram District and within the Sub-Registration District of Tambaram and Registration District of Chennai South.
All that piece and parcel of lands measuring 5624 Square Metres reserved for Parks/Open Spaces and marked in Green Colour of the layout sketch enclosed herein situated S.Nos.149 & 150 of Sembakkam Village of Tambaram Taluk, Kancheepuram District and within the Sub Registration District of Tambaram and Registration District of Chennai South."

11.It is to be pointed out that the Petitioner/Company was issued with a Planning Permit PPD/L.O.No.35/2003 dated 25.04.2003 in respect of Survey No.149 & 150 of Sembakkam Village by the 2nd Respondent/CMDA. As a matter of fact, the date of expiry of the permit was 24.04.2006. The Layout Condition No.12 of the Layout Condition accompanying sub division of lands in Survey No.149 & 150 of Sembakkam Village is as under:

"12.Developments in the area reserved for the following uses as indicated in the Plan approved above shall be regulated as per the Development Control Rules.

- 1.Residential Plots .. Primary Residential
use zone
- 2.Shops .. Mixed Residential
use zone

3.Park/Playground .. Open Space &
Recreational use zone

4.Public purpose .. Institutional use
zone.

Further, the Condition No.14 of the layout urns as under:

"14.The area earmarked for public purpose, I to xxxx (viz. Post and Telegraph office, Police Station etc.) would remain reserved for a specific period of one year from the date of approval to enable the Government Dept. concerned to negotiate with the owner and acquire the reserved land if required for them after the said period of one year, and if none of the agencies purchase the reserved land full/part, the layout owner/Developer is free to dispose of the site reserved for public purpose to anybody for residential use only."

12.In fact, the Petitioner/Company furnished an undertaking to the Executive Officer of the Sembakkam Town Panchayat dated 26.04.2003 pursuant to the CMDA Planning Permit dated 25.04.2003. The Sembakkam Special Village Panchayat, Sembakkam, Chennai represented by its Executive Officer (as Lessor) had executed a Lease Agreement on rental basis on 07.01.2005 to and in favour of the Petitioner/Company in respect of all the piece and parcel of the land classified as Open Space and Recreational Zone in S.Nos.149 and 150 in Sembakkam Village, admeasuring about 47787 sq.ft. subject to the payment of lease amount of Rs.5,000/-, payable every month by the Petitioner/ Company (as Lessee) on or before 5th day of the every succeeding English Calender month etc. Later, as per proceedings of the Executive Officer, Sembakkam Town Panchayat dated 28.04.2009, the lease was cancelled on administrative grounds, which in turn was approved by the Sembakkam Town Panchayat Council vide Resolution dated 07.09.2009. Further, it was resolved to maintain the buildings in the park site by the Town Panchayat, which was duly intimated to the Petitioner/Company. Thereafter, the Petitioner/ Company had stopped payment of the lease amount.

13.Moreover, the Executive Officer of the Sembakkam Town Panchayat on 12.11.2008 had issued a Project Completion Certificate in favour of Heritage Property Development Company Private Limited, Chennai - 33 confirming that the entire project including all the facilities and features like Sewer Treatment Plant, Water Treatment Plant, Overhead Head Tank, Water Distribution System, Internal Roads, Saucer Type Storm Water Drains, Platforms, Street Lights, Under Ground Service Lines for

Power, Water, Sewer, Telephone Lines, Cable TV, Community Centre, Auditorium, Children Play Area with Equipments etc., that was undertaken to be provided by the Company through its letter dated 26.04.2003 were all completed by 31.03.2008. Further, the said certificate had also confirmed and certified that there are no commercial establishments in the aforesaid project developed. On 04.04.2009 the Heritage Property Development Company had addressed a communication to the Executive Officer of Sembakkam Town Panchayat inter alia stating that the Heritage Jayendra Nagar Association had not evinced interest in harnessing the facilities offered to its members and surrendered the lease with all keys and locks with all the facilities developed in the OSR areas with effect from 11.04.2009.

14. It is to be noted that the Executive Officer of the Sembakkam Town Panchayat had issued a Deed dated 16.12.2011 in favour of the Heritage Property Development Company Private Limited Company, Chennai - 14 among other things mentioning that the Sembakkam Town Panchayat is the lawful owners of the OSR Land with the Building earmarked with above facilities mentioned in the Certificate and it is open to all the residents of the Sembakkam Town Panchayat. Further, it was clarified and confirmed that these were not in the ownership of the inmates of Heritage Jayendra Nagar or the prospective buyers of the Heritage Jayendra Nagar, Sembakkam.

15. Before the Tamil Nadu Information Commission, Chennai, the 6th Respondent figured as an Appellant in Case No.6152/Enquiry/A/2011 (48376/A/2012) and the Commission on 26.06.2014 at paragraphs 6 & 7, it is observed as under:

"6. This Commission by its earlier orders dated 16.12.2011 and 02.08.2012 in Case No.6152/C/2011 had directed the Public Authority to furnish information and report compliance to this Commission, but so far no information worthwhile have been furnished to the appellant. This is indeed a sorry state of affairs. As already pointed out, there is a spectacle of an order passed by the District Collector way back in the year 2008 calling upon the Tahsildar, Tambaram to cause removal of the unauthorised construction which direction remains unexecuted so far. If this is to be the factual matrix, this Commission is of the considered view that the District Collector, Kancheepuram has got to have regard to the attendant facts and circumstances of this case and ensure that the orders passed by the then District

Collector are given effect to, for after all administrative discipline would require that the orders passed after due consideration do not continue to remain on paper for all times to come. The order has necessarily to work itself out in order that the administrative wheel keeps moving and justice done to the public at large.

7.This Commission in exercise of its powers under section 18(2), 18(3)(b) of the RTI Act, 2005 and Rule 5(viii) of the Tamil Nadu Information Commission (Appeal Procedures) Rule, 2012 feels impelled to order an enquiry in this behalf. Accordingly, the District Collector, Kancheepuram shall look into the matter and cause appropriate steps to be taken to resolve the issue according to law as early as practicable and file a report to the Commission in one month. Action taken Report shall be filed by the Public Authority before this Commission during the next hearing. Needless to point out that the replies to the queries raised by the appellant in his petitions filed under Section 6(1) of the RTI Act would by and large depend on such report which the Collector may file as stated supra."

and directed the Appellant (6th Respondent), P.A.(General) to Collector, Additional P.A. to Collector (Lands), Assistant Director of Town Panchayats, Kancheepuram, Executive Officer, Sembakkam Town Panchayat, Tahsildar, Tamabaram, Headquarters Deputy Tahsildar, Tamabaram to attend the enquiry with all the relevant records on 12.08.2014 at 11.00 a.m.

16.Further, on 12.08.2014, the Tamil Nadu Information Commission in Case No.6152/Enquiry/A/ 2011 (48376/A/2012) at paragraph 4, had observed the following:

"4.It may be pointed out that the plan approval granted by the CMDA does not provide for retention of any such structure in the land in question. The order of the District Collector passed way back in the year 2008 also does not provide for retention. In this state of affairs, it is up to the authorities concerned to move the appropriate forum for orders enabling them to retain the portion of the building which otherwise per force, has got to be demolished. The Sembakkam Municipal Commissioner states that steps have been

initiated to demolish the offending construction and as regards that portion of the building which they want to retain, they will move the CMDA for appropriate orders. This statement of the Commissioner, Sembakkam Municipality is also recorded. The Commissioner, Sembakkam Municipality has written on 08.08.2014 to the Tambaram Tahsildar to the effect that a portion of the building which they want to retain will be retained and the rest of the building would be demolished after obtaining the resolution of the Municipal Council. This is not in consonance with the orders passed by the Collector, Kancheepuram."

and ultimately, directed the Commissioner, Sembakkam Municipality is directed to send a Compliance Report to the Commission in one month and since the information was furnished, the appeal preferred by the 6th Respondent as Appellant before the Commission was closed.

17.The Petitioner/Company filed an Appeal before the Tamil Nadu State Information Commission on 09.08.2016 assailing the orders dated 26.06.2014 and 12.08.2014 passed by the State Information Commissioner, Tamil Nadu in Case No.6152/Enquiry/A/2011 (48376/A/2012) along with an Application praying to condone the delay, but the same was not taken on file and rejected.

18.A mere running of the eye of the relevant provisions of the Tamil Nadu Town and Country Planning Act, 1971 indicates that Section 2(2) of the Act defines 'Amenities' as under:

"2(2) 'amenities' includes streets, open spaces, parks, recreational grounds, playgrounds, water and electric supply, street lighting, sewerage, drainage, public works and other utilities, services and convenience." सत्यमेव जयते

19.Likewise, the ingredients of Section 2(1) of the Act, 1971 defines 'Development' as below:

"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."

20. More importantly, Section 2(34) of the Act, 1971 defines 'Public Open Space' meaning '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'. Similarly, the term 'Public Purpose' is defined as per Section 2(36) of the Act, 1971 meaning 'any purpose which is useful to the public or any class or section of the public'.

21. Section 48 of the Tamil Nadu Town and Country Planning Act, 1971 speaks of 'Restrictions on buildings and lands in the area of the planning authority'. Section 48 of the Act, 1971, in reality, curtails 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 in accordance with the conditions if any, specified therein. Section 49 of the Act deals with 'Procedure for securing such Permission'.

22. It is to be remembered that any 'Development' made contrary to Section 48 without obtaining permission from the Planning Authority is undoubtedly an illegal one. Section 122 of the Act, 1971 enjoins the Government to make Rules to carry out the purposes of the Tamil Nadu Town and Country Planning Act, 1971. In reality, the 'Development Control Rules' were framed by the State Government based on the powers conferred upon it under Section 122 of the Act, 1971.

23. Section 56 of the Act, 1971 deals with 'Power to require removal of unauthorised development'. The notice visualised in Section 56 of the Act, 1971 is undoubtedly a 'Decision' and that the jurisdiction of Civil Court is expressly barred in terms of Section 101 read with Sections 49, 56 and 80 of the Tamil Nadu Town and Country Planning Act, 1971. In fact, the plan as per the Act, 1971 pertains to the 'Development' and it does not deal with an Acquisition of Property, as opined by this Court. Section 57 of the Act, 1971 empowers an 'Appropriate Planning Authority' to stop an 'unauthorised development'.

Issuance of Writ of Mandamus:

24. The object of 'Mandamus' is to compel performance of a legal duty on the part of some individual or body who is interested by Law with that duty. After all, Mandamus is a discretionary remedy and not to be issued as a matter of right. In a proceedings for 'Mandamus', a 'Court of Law' will never sit

as a 'Court of Appeal' so as to examine facts or substitute it's own wisdom for the decision vested by Law in the Person or Body against whom Writ is sought for.

25.It is to be pointed out that a 'Mandamus' cannot be issued to violate the Law or to act against Law. To issue a 'Mandamus', the concerned Petitioner is to satisfy the subjective conscience of the concerned Court that he has a Legal right to the performance of a Legal duty by the party against whom the 'Mandamus' is prayed for and further that, such a right subsists on the date of Petition.

26.A 'Writ of Mandamus' is not issued in anticipation of an injury except in case of threat to a fundamental right. Further, a 'Writ of Mandamus' is only granted to compel the performance of duties of a 'Public Nature' and does not issue against a Private Person unless he was acting in collusion with a 'Public Authority'.

Rule of Law:

27.It is to be pointed out that 'Adherence to and Obedience' of Law ought to be obvious and very much necessary in a system governed by 'Rule of Law'.

Right to Live:

28.The term 'Right to Live' includes Right to knowledge, fresh air and water by using parks and playground which are meant for the welfare of the public/society at large.

Glimpse of Decisions:

29.At this juncture, this Court points out the decision of the Hon'ble Supreme Court in Bangalore Medical Trust V. B.S.Muddappa and others, AIR 1991 Supreme Court 1902 at special page 1913 wherein at paragraphs 24 & 25, it is observed as under:

"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. See *Kharak Singh v. The State of U.P. & Others*, [1964] 1 SCR 332; *Municipal Council, Ratlam v. Shri Vardhichand & Ors.*, [1981] 1 SCR 97; *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & Ors.*, [1981] 2 SCR 516; *Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors.*, [1985] 3 SCC 545; *State of Himachal Pradesh & Anr. v. Umed Ram Sharma & Ors.*, AIR 1986 SC 847 and *Vikram Deo Singh Tomar v. State of Bihar*, AIR 1988 SC 1782.

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. See for e.g: *Karnataka Town and Country Planning Act, 1961*; *Maharashtra Regional and Town Planning Act, 1966*; *Bombay Town Planning Act, 1954*; *The Travancore Town and Country Planning Act, 1120*; *The Madras Town Planning Act, 1920*; and the Rules framed under these Statutes; *Town & Country Planning Act, 1971 (England & Wales)*; *Encyclopaedia Americana, Volume 22, page 240*; *Encyclopaedia of the Social Sciences, Volume XII at page 161*; *Town Improvement Trusts' in India, 1945* by Rai Sahib Om Prakash Aggarawala, p. 35; et. seq., 'Halsburys Statutes, Fourth Edition, p. 17 et. seq. and *Journal of Planning & Environment Law, 1973, p. 130 et. seq.* See also: *Penn Central Transportation Company v. City of New York*, 57 L.Ed. 2d 631 [438 US 104 (1978)]; *Village of Belle Terre v. Bruce Bora as*, 39 L.Ed. 2d 797 [416 US 1 (1974)]; *Village of Euclid v. Ambler Realty Company*, 272 US 365 (1926) and *Halsey v. Esso Petroleum Co. Ltd.*, [1961] 1 WLR 683.

Also, in the aforesaid decision at page 1915, at para 36, it is observed as follows:

"36.Locus standi to approach by way of writ petition and refusal to grant relief in equity jurisdiction are two different aspects, may be with same result. One relates to maintainability of the petition and other to exercise of discretion. Law on the former has marched much ahead. Many milestones have been covered. The restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of broad and wide construction in wake of public interest litigation. Even in private challenge to executive or administrative action having extensive fall out the dividing line between personal injury or loss and injury of a public nature is fast vanishing. Law has veered round from genuine grievance against order affecting prejudicially to sufficient interest in the matter. The rise in exercise of power by the executive and comparative decline in proper and effective administrative guidance is forcing citizens to espouse challenges with public interest flavour. It is too late in the day, therefore, to claim that petition filed by inhabitants of a locality whose park was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact public spirited citizens having faith in rule of law are rendering great social and legal service by espousing cause of public nature. They cannot be ignored or overlooked on technical or conservative yardstick of the rule of locus standi or absence of personal loss or injury. Present day development of this branch of jurisprudence is towards freer movement both in nature of litigation and approach of the courts. Residents of locality seeking protection and maintenance of environment of their locality cannot be said to be busy bodies or interlopers S.P. Gupta v. Union of India, [1982] 2 SCR 985--AIR 1982 SC 149; Akhil Bhartiya Soshit Kararnchari Sangh v. U.O.I., [1981] 1 SCC 246--AIR 1981 SC 293 and Fertilizer Corporation Karngar Union v.U.O.I., AIR 1981 SC 364. Even

otherwise physical or personal or economic injury may give rise to civil or criminal action but violation of rule of law either by ignoring or affronting individual or action of the executive in disregard of the provisions of law raises substantial issue of accountability of those entrusted with responsibility of the administration. It furnishes enough cause of action either for individual or community in general to approach by way of writ petition and the authorities cannot be permitted to seek shelter under cover of technicalities of locus standi nor they can be heard to plead for restraint in exercise of discretion as grave issues of public concern outweigh such considerations."

30. In the decision *Dr. G.N. Khajuria and others V. Delhi Development Authority and others*, (1995) 5 Supreme Court Cases 762, at special page 766, wherein at paragraph 10, it is observed and held as under:

"10. Before parting, we have an observation to make. The same is that a feeling is gathering ground that where unauthorised constructions are demolished on the force of the order of courts, the illegality is not taken care of fully inasmuch as the officers of the statutory body who had allowed the unauthorised construction to be made or make illegal allotments go scot free. This should not, however, have happened for two reasons. First, it is the illegal action/order of the officer which lies at the root of the unlawful act of the concerned citizen, because of which the officer is more to be blamed than the recipient of the illegal benefit. It is thus imperative, according to us, that while undoing the mischief which would require the demolition of the unauthorised construction, the delinquent officer has also to be punished in accordance with law. This, however, seldom happens. Secondly, to take care of the injustice completely, the officer who had misused his power has also to be properly punished. Otherwise, what happens is that the officer, who made the hay when the sun shined, retains the hay, which tempts other

to do the same. This really gives fillip to the commission of tainted acts, whereas the aim should be opposite."

31. It is worth to recollect and recall the decision of the Hon'ble Supreme Court in PT. Chet Ram Vashist V. Municipal Corporation of Delhi, (1995) 1 Supreme Court Cases 47 at special page 54 wherein at paragraph 6, it is 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."

32. Moreover, in the decision of the Hon'ble Supreme Court in Lal Bahadur V. State of Uttar Pradesh and others, AIR 2018 Supreme Court 220, at special pages 223 to 225, wherein at paragraph 12(25) (26) (36), it is observed as follows:

"12. 25. Reservation of open spaces for parks and playgrounds 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.

26. In Agins V. City of Tiburon [447 us 255 (1980)], the Supreme Court of the United States upheld a zoning ordinance which provided '.....it is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant impacts, such as pollution, destruction of scenic beauty. Disturbance of the ecology and the environment, hazards related geology, fire and flood and other demonstrated consequences of urban sprawl' Upholding the ordinance, the Court said:

".... The State of California has determined that the development of local open - space plans will discourage the "premature and unnecessary conversion of open-space land to urban uses". The specific zoning regulations at issue are exercises of the city's police power to protect the residents of Tiburon from the ill-effects of urbanization. Such governmental purposes long have been recognized as legitimate.

The zoning ordinances benefit the appellants as well public by serving the city's interest in assuring careful and orderly development of residential property with provision for open-space areas.

36. Public park as a place reserved for beauty and recreation was developed in 19th and 20th Century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of

few. But now it is a 'gift from people to themselves'. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development, it occupies an important place in social ecology. A private nursing home, on the other hand, is essentially a commercial venture, a profit-oriented industry. Service may be its morn but earning is the objective. Its utility may not be undermined but a park is necessity, not a mere amenity. A private nursing home cannot be a substitute for a public park. No town planner would prepare a blueprint without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development acts of different States require even private house-owners to leave open space in front and back for lawn and fresh air. In 1984 and BD Act itself provided for reservation of not less than fifteen percent of the total area of the layout in a development scheme for public parks and play grounds the sale and disposition of which is prohibited under Section 38-A of the Act. Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may given rise to health hazard. Maybe that it may be taken care of by a nursing home. But it is axiomatic that prevention is better than cure. What is lost by removal of a park cannot be gained by establishment of a nursing home? To say, therefore, that by conversion of a site reserved for low-lying into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility."

33. Besides the above, this Court refers to the decision of the Hon'ble Supreme Court in P.A.Rani V. K.G.Krishnan and others, AIR 1994 Madras 323 at special page 327, wherein at paragraph 11, it is observed as follows:

11. The next point for consideration is, whether the appellant in W.A. No. 425 of 1994, who claims to be the lessee, should be permitted to occupy the first, second and third floors of the building, pending

decision on the application filed for permission by the owner. We have recorded a finding on point No. (i) that the building is an unauthorised one. Of course, the penal provisions of the Act for contravention of Sections 48, 49 and 56 do provide for penalty. The question to be decided is as to whether the fact that there is a penal provision for contravention of some of the provisions of the Act, by itself be a ground for the court to permit the unauthorised construction to be used as though it is constructed with authority. One of the objects of the Act is to ensure development of the city in accordance with the Master Plan, therefore, Section 48 specifically provides that no construction activity whatsoever shall be taken up in the area covered by the Master Plan from the date of its publication without the written permission of the appropriate planning authority. If the object of the Act is to be achieved and a proper implementation of the same is to be ensured, permitting the owner/lessee to occupy the unauthorised construction cannot be considered to be consistent or in conformity with the object and ensuring proper implementation of the provisions of the Act. If such an unauthorised construction is permitted to be occupied, every owner of a land would with impunity put up construction without obtaining permission and whenever action is taken, he would apply for permission with the result, the very object of the provisions contained in Section 48 of the Act would be defeated. Any such interpretation which gives rise to such a situation and thereby defeats the very purpose of the Act, should be avoided as it would undermine the provisions, and the object, of the Act. In these circumstances, we are of the view that the unauthorised construction should not be permitted to be occupied, pending consideration application for permission re-submitted by the owner. This will at least deter owners of lands not to take up any development activity on the land without the written permission from the Planning Authority. Normally, in such

enactments, there will be a provision that, if the result of such an application is not communicated within the prescribed period, the permission sought for must be deemed to have been granted, but the Act in question does not contain any such provision. It only shows that the Legislature intended that the provisions of the Act should be strictly adhered to and no construction should be put up without the written permission. The intendment and the object of the Act can be ensured only by directing that the unauthorised construction should not be occupied until the application seeking permission filed for permission is considered."

34.Also, this Court aptly points out the decision V. Gopinath V. Member Secretary, CMDA reported in 2008 (2) CTC 42 at special pages 48 to 50, wherein at paragraphs 14, 18 & 20, it is, inter alia, observed and held as follows:

"14..... it is clear that all streets shall become public. Therefore, in no uncertain terms, it could be held that CMDA is the absolute owner of the land assigned to it by the original owners by way of the gift deed in the interest of public, but definitely not for the sole interest of the Vasanth Apartment occupants. Therefore, the entire Writ Petition filed by the Association of the Vasanth Apartment Owners under the assumption and presumption that the OSR land belongs to them, it completely a misconceived one and should have been dismissed at its threshold, since pursuant to the Gift Deed, the OSR land solely and wholly vests only with the CMDA and therefore, writ petitioner has no right to claim over the said OSR land.

18.It has also been alleged that under similar circumstances, the CMDA has permitted all the residents associations in Velachery to maintain the open spaces as recreational parks in the nearby area viz. K.G. Apartments, Sai Sarovar, etc. Each case has to be viewed and decided on its own merits and since the case on hand, in the interest of thousands of general public residing in and around the area, the authorities have taken a wise decision to

lay a road to have easy and immediate access to the 100 ft. road, the same cannot be found fault with.

20. Once the lay out is sanctioned and 10% of the total extent is excluded development of the communal purpose for recreation and when the land is transferred in favour of the Corporation, the Corporation should have taken immediate steps to develop the land. But, in spite of that, it has come forward with a programme to lay permanent road, which was katcha road was already in existence in the land and if the pucca road is laid, it will benefit more than 75,000 people of the surrounding areas. Considering the facts and circumstances, when they already contacted the Endowment people to acquire the land of the temple to lay the road on principle, the Endowment Department has agreed to acquire the land is used for laying the road and only part of the land is used and given an undertaking to develop the land for public purpose."

Binding character of Apex Court Decision:

35. In the decision of the Hon'ble Supreme Court in Suga Ram @ Chhuga Ram V. State of Rajasthan and others, (2007) 1 MLJ (Cr1) 232 at special pages 235 & 236, wherein at paragraph 6, it is, among other things, observed as under:

"6..... Judicial discipline to abide by declaration of law by this Court, cannot be forsaken, under any pretext by any authority or Court, be it even the Highest Court in a State, oblivious to Article 141 of the Constitution of India, 1950 (in short the 'Constitution')".

Conclusion:

36. Be that as it may, on a careful consideration of respective contentions and in the light of foregoing discussions and also this Court, taking into consideration of the surrounding facts and circumstances of the present case in a conspectus fashion, comes to an inescapable resultant conclusion that in terms of the Approved Layout Plan, the Land was allocated by the Developer only for a Park and there being no mention of Buildings thereon and for that purpose only, it should be utilised. Furthermore, the illegal structures in the OSR Land reserved for Park were demolished by the concerned Authority on 24.02.2016 resting on the report of the Commissioner of the 3rd Respondent/Municipality. The Petitioner/

Company, after gifting the OSR Land to the Local Authority, cannot be said to be a person who is interested in the Land allotted for Park. The clear-cut legal position is that after vesting of the 'OSR Land for Park' with the Local Authority, the said Authority is empowered to remove the old buildings therein and the Petitioner has no legal right to stake a claim for restoration of old buildings in the Park area, especially when the fact of the matter is that the old buildings were demolished as 'illegal Developments'. Moreover, after divesting the ownership by means of transferring the OSR Lands in favour of the Local Authority, a Person/Developer loses all his rights in the said property. To put it succinctly, the Petitioner has sought the relief of Mandamus in the present Writ Petition (filed after more than a year from the date of demolition on 24.02.2016) without making an averment as to the legal duty enjoined upon the 3rd Respondent/Municipality to perform/carry out the relief prayed for. Even the relief sought for in the Writ Petition is not cemented on any 'Enforceable Legal Right'. In any event, after termination of the Lease in respect of OSR Area in April 2009 and the possession of the Land and Building were surrendered by the Petitioner on 04.04.2009 and the same were taken over by the 3rd Respondent/ Local Authority on 11.04.2009 and the resultant action of the 3rd Respondent in demolishing the Structures in 'Open Space Recreational Area' on 24.02.2016 cannot be found fault with and the same is free from any legal flaw. Viewed in that perspective, the Writ Petition sans merits.

37. In fine, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

Sgl
To

1. The Secretary to the Government,
Municipal Administration and Rural
Development Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

WEB COPY

- 2.The Member Secretary
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Thalamuthu - Natarajan Building,
Egmore, Chennai - 600 008.
- 3.The Commissioner,
Sembakkam Municipality
No.178, Velachery Main Road,
Adi Nagar, East Tambaram,
Sembakkam, Chennai - 600 073.
- 4.The District Collector, Kancherpuram
Office of the District Collector of Kancheepuram
Vandavasi Road, Gandhi Nagar,
Thaiyar Kullam
Kancheepuram - 631 501
- 5.The Taluk Tahsildar of Tambaram
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- 6.The Government Advocate,
High Court, Madras.
- +1cc to the Government Pleader Sr.1028
+2cc to Mr.T.Sathiyamoorthy, Advocate Sr.320
+2cc to M/S.Ganesh & Ganesh, Advocate Sr.376

W.P.No.9245 of 2017

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srg 30/01/2019

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