



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.12.2020
PRONOUNCED ON : 09.12.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

WP NOS.10725, 10607, 10617, 10738, 10621, 11436, 10736 OF 2020
WMP.NOS.12895,13043, 13044, 12897, 12900, 12890, 13034, 12903,
13022, 12888, 13949, 14050, 13041, 13038 OF 2020

WP No.10725 of 2020

1.Pallavi (a) Pallavi M Majithia	...Petitioner in WP	10725/20
2.G.Ravikumar	...Petitioner in WP	10607/20
3.D.S.Ravikumar	...Petitioner in WP	10617/20
4.K.A.Ramathan	...Petitioner in WP	10738/20
5.R.Narasimhan	...Petitioner in WP	10621/20
6.P.Santhanam	...Petitioner in WP	11436/20
7.P.Selvabalaji	...Petitioner in WP	10736/20

Vs.

1. The Commissioner,
Corporation of Coimbatore,
Big Bazaar Street,

Coimbatore - 641 001
2. The Deputy Director,
Directorate of Town and Country Planning,
Office of the Regional Director,
Coimbatore Region,
Corporation Shopping Complex,
Dr. Nanjappa Road, ATT Colony,
Gopalapuram, Coimbatore - 641018 ...Respondents in all WPs

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus forbearing the respondents from interfering with the peaceful possession and enjoyment of the petitioner's land admeasuring 204.39 Sq.mts in WP No.10725/20, 185.80 Sq.mts in WP No.10607/20, 135.91 Sq.mts in WP No.10617/20, 204.39 Sq.mts in WP No.10738/20, 204.39 Sq.mts in WP No.10621/20, 173.73 Sq.mts in WP No.11436/20, 68.46 Sq.mts at Plot No.1(Part) and 68.46 sq.mts

at Plot No.2(Part) in WP No.10736/20 comprised in S.F.No.233/2 of Veerakeralam Village, Coimbatore Taluk, by removing the wall surrounding the petitioner's property .

For Petitioners : Mr.R.N.Amarnath
in all Wps

For Respondents : Mr.R.Sivakumar
Standing Counsel
for 1st respondent in all WPs
Mr.A. Arul Doss
Government Advocate
for 2nd respondent in all Wps

COMMON ORDER

The issue involved in all these writ petitions are common and hence, they are taken up together, heard and disposed of through this common order.

2.The petitioners have sought for issue of a writ of mandamus forbearing the respondents from interfering with the peaceful possession and enjoyment of the subject property belonging to the petitioners and further directing the respondents to remove the wall surrounding the property of the petitioners.

3.The case of the petitioners is that originally there was a large extent of land measuring 4.492 hectares and this property was sought to be converted as a layout by one Mr. Ramasamy Gounder and this was called as "Maharani Avenue IV". An application was made by the said Ramasamy Gounder along with some of the adjacent land owners and the formation of layout was approved by the Deputy Director of Town and Country Planning, Coimbatore, in his proceedings dated 20.01.1987. It is seen from the layout approval that the total extent of the land is 4.492 hectares and the approval was given for putting up 108 plots. It is also seen from the approval that an extent of 2301 m² was earmarked for a park and an extent of 2225 m² was earmarked for community hall and the total reservation towards earmarking the common area is to an extent of 4526 m² .

4.Subsequent to the approval granted by the Town and Country Planning Authority, the Director of Town and Country Planning, Chennai, by letter dated 17.08.1987 issued a general

clarification to the effect that the common area that is gifted to the local authorities will include park, children playing space and playing space and the other areas designated as common areas in the planning approval, can be sold as plots.

5. This property originally fell within the jurisdiction of Veerakeralam town panchayat. The Executive officer of the town panchayat by relying upon the above clarification dated 17.08.1987, permitted the owner of the property to convert the area designated as community hall in the layout approval to be converted into housing plots. Consequently, an extent of 2225 m² which fell under the head community hall, was plotted out and 12 plots were formed and it was sold to various parties. It must be mentioned here that this town panchayat got merged with the Coimbatore Corporation on 07.07.2011 and the subject property now falls within the Jurisdiction of Coimbatore Corporation.

6. The petitioners who have filed these writ petitions have purchased plot Nos. 1,2,3,7,8,9 and 11. The further case of the petitioners is that owners of plot Nos. 4 and 12 have already put up construction and they are residing in the property for the past several years.

7. During the year 2017, the Coimbatore Corporation started the process of putting up a wire mesh surrounding the property, which was earmarked as community hall in the approved plan. This was objected by the petitioners and there was no development thereafter. Once again, the 1st respondent Corporation started constructing a wall during the month of July 2020 and the petitioners again made an objection. The petitioners apprehended that the 1st respondent corporation will put up the wall surrounding the entire property and thereby, prevent access to the property belonging to the petitioners. Hence, the present writ petitions have been filed seeking for appropriate directions.

8. The 1st respondent has filed a separate counter affidavit in each writ petition. For the purpose of convenience, it will be enough if this Court takes into consideration the counter affidavit filed in WP No. 10607 of 2020, since common grounds has been taken in all the counter affidavits. For proper appreciation, the relevant portions are extracted hereunder:

3. Regarding the averments in Para 3, it is submitted the extent of land which was approved by the

2nd respondent, as a layout by his proceedings in LP/R (CPN) No.1/87, was 11.10 acres. As per the guidelines, the Promoter ought to have reserved the land to the extent of 10% of the layout area for common purposes in addition to the area provided for laying out streets and roads. Considering the extent of land as 11.10 acres the area reserved for common purpose ought not to be less than 1.10 acres i.e 4,452 Sq. Mts. Accordingly the 2nd respondent while approving the layout had reserved land to an extent of 4,526 Sq.mts. (i.e) 2,301 Sq.mts towards park Area and 2,225 Sq.mts. As a land meant for community purpose.

4. The averments in Para 4 that the present plot forms part of the saleable area as per the approved plan is incorrect. The alleged proceedings of the Executive Officer of Veerakeralam Town Panchayat permitting the conversion of land as housing plots is totally invalid. In fact, the Executive Officer of the Town Panchayat have no power or authority to modify the layout plan as it was approved by the 2nd respondent. While granting approval one of the condition laid down by the 2nd respondent. While granting approval one of the condition laid down by the 2nd respondent was that any change to be made in the approved plan shall be done only with their written permission. Therefore, the further averment that the vendor of the petitioner had plotted out the area into 12 plots and sold the same to various parties was not illegal and it was in violation of the layout conditions.

5. The averments in Para 5 are denied. The averment that the owners of the so called plot Nos.4 & 12 have also put up construction and residing therein for the past several years is misleading. Infact, the residential building at Plot No.4 was construed without any approval from the local body. Hence, it is an unauthorised construction. Regarding the Plot No.12, the alleged approval from the erstwhile veerakeralam Town Panchayat is invalid and the concern Town Panchayat have no authority to issue the building license considering the fact that the said plot is a site reserved for common purpose. The further averment that the owner of the Plot No.4 obtained loan from the bank by depositing the title deed is irrelevant to the issue involved in the present writ petition.

6. The averments in Para 6 are misleading hence the same was denied. After the merger of the erstwhile Veerakeralam, Town Panchayat along with this respondent Corporation, a survey was done to identify the lands reserved for common purposes. Thus the present reserved site also noticed in the year 2017. After due information to the concerned owners including the petitioner herein sign board was erected in the said place, specifically stating that the same belongs to this respondent corporation and a wire mesh was erected around the entire area. Thus from the year 2017 the present site along with the connected areas are in the possession of the respondent Corporation. The residence of the area are insisting that the said area may be maintained as park for the public benefit. Therefore it is planned to develop the park hence it is proposed to construct pakka compound wall and the construction is half way through.

7. The averments in Para 7 are stoutly denied. His averment that at this time of pandemic this respondent has again trespassed into his property is stoutly denied. As above stated the entire land including the petitioner plot are in the possession of this respondent corporation from the year 2017.

8. The averments in Para 8 are denied as incorrect. His averment that this respondent without taking necessary steps to identify and demarking the land earmarked for park proceeded to trespass and encroached upon his property is stoutly denied as incorrect. The entire land to the extent of as 4,526 Sq.mts. which was reserved by the 2nd respondent as park and for common purposes ought to have handed over by the promoter to the local body. Since the promoter failed to do so, this respondent corporation have no other option than to take over possession after due notice. His further averment that the land to the extent of 2,225 Sq.mts earmarked for community hall has been converted as house sites is denied as misleading. As already stated the Executive Officer of the Veerakeralam Town Panchayat has no authority or power to convert the land usage, which is reserved for common purpose.

9. Heard the learned counsel appearing for the petitioners, Mr. R. Sivakumar, learned standing counsel for the 1st respondent and Mr. A. Aruldoss, learned Government advocate for 3rd respondent.

10. The records filed along with the writ petitions clearly reveals the fact that the original layout approval dated 02.01.1987 shows the total reservation area to be 4526 m². This included both the park as well as the community hall. As per the Development Control Rules, 10% of the total area must be earmarked as a public space and it must be gifted to the local authority. In the present case, the total area of the property was 4.492 hectares and if 10% is gifted to the local authority, an extent of 4492 m² should have been conveyed by means of a gift deed. Unfortunately, in this case, till today, no gift deed has been executed in favour of the local authority. The planning approval itself was granted with a pre-condition that 10% of the land area earmarked for public purposes must be conveyed by way of a gift deed to the local authority. Since, this has not been done, there is absolutely no clarity as to which portion is treated as the common area and which will vest with the local authority, who thereafter in their capacity as trustees will maintain the reserved area for the purpose for which it was reserved.

11. The Special Officer of the Veerakeralam town panchayat had relied upon the clarification issued by the Director of town and Country planning, Chennai, and permitted the original owner to convert the area designated as community hall in the layout approval into housing plots. Thereby, the original owner has converted this space into 12 plots and sold it to various third parties. The petitioners have also purchased various plots.

12. The Town panchayat gets merged with the Coimbatore Corporation in the year 2011 and the Corporation while conducting the inspection, found that the area designated as common area and shown as the area reserved in the layout approval, is being put to use as housing plots. Therefore, in order to secure this space, the Corporation undertook the exercise of fencing the property and taking control of the area designated as community hall.

13. The 1st respondent has taken a stand that the area which has been reserved in the approved plan belongs to the Corporation and it has to be maintained and therefore, steps were taken to secure this portion by fencing it. The learned Standing counsel appearing on behalf of Corporation heavily relied upon the Division bench judgement of this Court in [Sidco nagar Welfare Association Vs. Chennai Metropolitan Development Authority and others] 2018 5 CTC 857. The relevant portions relied upon by the learned standing counsel are extracted hereunder :-

25 The original plan which was approved on 28.12.1977 has been produced before us. A perusal of the said plan shows that the area in question has been classified as park-cum-play field. Therefore, it is clear that the original reservation of the site in question was under Rule 19(a)(iii) which is a non salable area and not under Rule 19(a)(vii). The claim of the appellant association has been rejected by the Government on the premise that the land in question was never classified as park cum-play field. This basis itself is erroneous. Once it is found that the land is classified as a park-cum-play ground in the original sanctioned plan, the question that would beg our attention is as to whether the Government has the power to reclassify the said land. Neither the Act nor the Rules permit such reclassification.

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

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

"22.Conversion of the open space reserved for a park for the general good of the public into a site for the construction of a privately owned and managed hospital for private gains is not an alteration for improvement of the scheme

as contemplated by Section 19, and the impugned orders in that behalf are a flagrant violation of the legislative intent and a colourable exercise of power. In the circumstances, it has to be concluded that no valid decision has been taken to alter the scheme. The scheme provides for a public park and the land in question remains dedicated to the public and reserved for that purpose. It is not disputed that the only available space which can be utilised as a public park or play ground and which has been reserved for that purpose is the space under consideration.

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

24 Protection of the environment, open spaces for recreation and fresh air, play grounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA.

The public interest in the reservation and preservation of open spaces for parks and play grounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes

the guaranteed rights a reality for all the citizens.

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

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

28 A similar question arose again before the Hon'ble Supreme Court in PT. Chet Ram Vashist (dead) by Lrs. v. Municipal Corporation of Delhi, reported in MANU/SC/0563/1995 : 1995 (1) SCC 47, wherein, the Hon'ble Supreme Court considered the right of the Delhi Municipal Corporation to permit reclassification of the lands which were originally shown as park and School. After considering the provisions of the Delhi Municipal Corporation Act, the Hon'ble Supreme Court had observed as follows:

"6. Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right

as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law."

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

30 In *Dr. G.N. Khajuria and others v. Delhi Development Authority and others*, reported in MANU/SC/0064/1996 : 1995 (5) SCC 762, the action of the Delhi Development Authority in allotting a land reserved for park in a residential colony for a nursery school was held to be bad and the Hon'ble Supreme Court concluded that such allotment amounted to misuse of power and is illegal, hence liable to be cancelled. In the Course of the Judgment, the Hon'ble Supreme Court observed as follows:

"7. We also do not entertain any doubt that at the site at which the school was allowed to be opened, there was a park. This is apparent from the report submitted by Director (Monitoring) to the Vice-Chairman of the Development Authority pursuant to his order dated 26.10.1992 which he came to pass on a reference being made to him by the Chief Secretary on 23.10.1992. The Chief Secretary had passed the order on a representation made by some residents of Sarita Vihar, Pocket 'A', complaining about unauthorised construction in Park No. 6. The Director (Monitoring) visited the site on 2.11.1992 and found that a part of the park located in Pocket 'A' had actually been enclosed with a boundary wall by an institution named

Rattanatrya Educational Research Institute, which body is none else than respondent 2. The report further says that the Institute was running a nursery school in a few temporary barracks constructed along with one of the boundary walls. On discussion with some office-bearers of the Institute it was informed that the land in question measuring 800 sq. metres had been allotted to the Institute by the DDA in July 1988 for the purpose of running a nursery school. The Director (Monitoring) reported that the residents of surrounding areas started making objections when this Institute took up the construction of a regular school building after getting the plan duly sanctioned from the Building Department of the DDA. The report has categorically mentioned that in the original layout (which we understood to be of 1984) there was no provision for a nursery school in the park in question. Subsequently, however, some portion of the park was carved out for the nursery school. That such a park exists was sought to be proved by Shri Rao by producing certain photographs as well, one of which contains a sign board mentioning about "D.D.A. Park".

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

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

31 In a more recent pronouncement of the Hon'ble Supreme Court in *Lal Bahadur v. The State of Uttar Pradesh*, reported in AIR 2018 SCC 220, while dealing with the power of the Government to reclassify a land which was shown as green belt in the Master Plan into a residential zone set aside such conversion though legislative powers were invoked in the said case after referring to the judgment in *Bangalore Medical Trust v. S. Muddappa and others*, cited supra. While doing so the Hon'ble Supreme Court observed as follows:

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

32 A Division Bench of this Court in *Sri Devi Nagar Residents Welfare Association v. Subbathal and others* reported in 2007 (3) LW 259, had considered a similar case where the Writ Petition preferred by the Residences Welfare Association seeking a writ of Mandamus, forbearing the 4th respondent, namely The Commissioner, Coimbatore City Municipal Corporation, from any way interfering with the peaceful possession and enjoyment of the land which were reserved for

public purpose by the residents of the locality. The Division Bench after referring to the judgments of the Hon'ble Supreme Court, cited supra, had observed as follows:

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

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

13 Good parks expansively laid out are not only for aesthetic appreciation, but in the fast developing towns having conglomeration of buildings, they are a necessity. In crowded towns where a resident does not get anything but atmosphere polluted by smoke and fumes emitted by endless vehicular traffic and the factories, the efficacy of beautifully laid out parks is no less than that of lungs to human beings. It is

the verdant cover provided by public parks and greenbelts in a town, which renders considerable relief to the restless public. Hence the importance of public parks cannot be underestimated. Private lawns or public parks are not a luxury, as they were considered in the past. A public park is a gift of modern civilization, and is a significant factor for the improvement of the quality of life. Open space for a public park is an essential feature of modern planning and development, as it greatly contributes to the improvement of social ecology."

33 Another Division Bench of this Court in *R. Chandran v. State of Tamil Nadu*, reported in MANU/TN/1357/2010 : 2010 (4) CTC 737, had an occasion to consider whether the Corporation of Chennai has the power to convert a play ground into a underground parking lot and a commercial complex. The Division Bench held that such a conversion cannot be permitted and while doing so observed as follows:

17. Significantly, even in the notice issued for public hearing no such proposal was projected. Thus it appears that the impugned proposal includes commercial venture; which is impermissible in a site which has been reserved for recreational purpose. An attempt was made by the second respondent to justify their proposal by drawing an analogy to that of the Metro Rail Project, at New Delhi, the Palika Bazaar at New Delhi etc. In our view the submission is misconceived. The sole determinative factor in a case like the present one, shall be classification of the land in question. It is not in dispute that the land in question has been classified as "play ground", notified as such in Annexure III of the Development Control Rules, which lists out the areas included in open space and recreational use zone. As observed by their Lordships of the Supreme Court in the Case *Pt. Chet Ram Vashist*, (supra) by virtue of the law, if an area is specified as open space the Corporation may at best get a right as a "custodian of public interest" to manage it in the interest of the society in general. Any breach of this custodianship and any attempt to change the 'use' of such land would be impermissible under law and would be against public interest."

34 Yet another Division Bench of this Court in *Kirubkaran and others v. The Commissioner (East), Corporation of Coimbatore*, Coimbatore, reported in

MANU/TN/2483/2013 : 2013 (6) CTC 441, had considered whether the Corporation has the power to permit construction of a private hospital in the area, which is reserved for a public purpose. After referring to Bangalore Medical Trust's case as well as Sri Devi Nagar Residences Welfare Association's case, cited supra, the Division Bench rejected the contention that even though an offer was made by the Hospital to treat 50% of the patients free, the same cannot be held to be in public interest and rejected the appeal upholding the order of the learned Single Judge.

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

14. The learned standing counsel while relying upon the above judgement submitted that the land which is reserved for public purpose in a layout actually belongs to the purchaser of the plots in the residential layout as an amenity and neither the Government nor the original owner can claim any right or title over the same. The learned counsel submitted that the original planning approval specifically earmarks both the park as well as the community hall as reserved areas and the entire 4526 m² will have to be maintained by the corporation for public purpose and the petitioners cannot claim any right over this portion of the property.

15. As stated above, admittedly no gift deed has been executed in favour of the local authority. To confound to the existing confusion, the erstwhile town panchayat had permitted the owner of the property to convert the area designated for community hall, into housing plots. The owner of the property has also sold all these plots and he is not in the scene now. The purchasers of the property are now caught in between and there is an uncertainty with regard to the property, which they have purchased subsequently.

16. The Special Officer of the town panchayat at the time of granting the permission through proceedings dated 02.09.1991, did not care to get a gift deed executed in favour of the local authority for 10% out of the total area. By permitting the conversion of the place designated as community hall, into housing plots, the total area that was reserved for public purpose came down to only 2301 m². There should have been a total area of 4492 m², which should have been gifted in favour of the local authority and which represents 10% of the total area viz., 4.492 hectares.

17. In the considered view of this Court, the development activities that took place for the entire Maharani Avenue IV layout is illegal since the gift deed has not been executed in favour of the local authority till date and that is a precondition for the approval granted by the town and country planning authority. Therefore, it would have been more appropriate for the 1st respondent Corporation to have issued notice to all the owners and called upon them to ensure that the 10% open space reservation (OSR) is conveyed to the corporation by means of a gift deed. This is a mandatory condition that has to be fulfilled under Rule 19(A) of the Development Control Rules.

18. The 1st respondent Corporation is assuming that the original planning approval granted by the concerned authority has reserved 4526 m² towards OSR. However, the town panchayat passes an order relying upon the clarification issued by the Director of town and country planning and permits the owner of the property to convert the area designated as community hall as housing plots. The subsequent action that is now taken by the corporation goes against the earlier permission granted by the Special officer of the town panchayat. The 1st respondent corporation has entered into the scene in the year 2011 and the corporation cannot disown the earlier order passed by the Special Officer of the Town Panchayat on 02.09.1991. This order has been acted upon and the area has been converted into housing plots and the 3rd party rights have now come into play and therefore, there is a vested right on all those persons, who have acted upon the earlier approval granted by the Special Officer of the Town Panchayat and the same cannot be taken away by the 1st respondent corporation.

19. This case is a clear illustration as to how development activities takes place in such a haphazard manner. Ultimately, some innocent purchasers get caught and the original owner

escapes from the scene. This Court has to now strike a balance between the rights of the owners of the plots on the one hand and the responsibility of the 1st respondent corporation to maintain the lands designated for public purpose, on the other.

20. In view of the above discussion, these writ petitions are disposed of with the following directions:-

a. The 1st respondent corporation shall immediately stop the process of putting up the compound wall surrounding the property.

b. The 1st respondent corporation shall issue a notice to all the owners of the Maharani Avenue IV layout and ask them to immediately take steps and ensure that a gift deed is executed towards 10% OSR in favour of the corporation from the total layout area.

c. The 1st respondent corporation shall also issue notice to the original owner or to his legal heirs to ensure that a gift deed is executed in favour of the corporation towards Open Space Reservation.

d. If the original owner or the legal heirs fail to execute the gift deed in favour of the corporation, inspite of receiving the notice, proceedings shall be initiated against them in accordance with law. If the original owner is alive and refuses to execute the gift deed in favour of the local authority, it shall be construed as an offense of cheating.

e. The 1st respondent corporation shall specifically mention in the notice that if the OSR land is not gifted to the corporation, the original approval itself will stand cancelled and the entire layout will be construed as an unapproved layout.

f. If the notice is not complied with and the entire layout is declared as an unapproved layout, the same shall be informed to the concerned registration authorities, within whose jurisdiction this property falls. and

g. This process shall be completed by the 1st respondent corporation within a period of 6 months from the date of receipt of a copy of this order.

No costs. Consequently, all the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rka

To

1. The Commissioner,
Corporation of Coimbatore,
Big Bazaar Street,
Coimbatore - 641 001
2. The Deputy Director,
Directorate of Town and Country Planning,
Office of the Regional Director,
Coimbatore Region,
Corporation Shopping Complex,
Dr. Nanjappa Road, ATT Colony,
Gopalapuram, Coimbatore - 641018

+1cc to M/s.R.Sivakumar, Advocate, S.R.No.39705
+1cc to M/s.R.N.Amarnath, Advocate, S.R.No.39713
+1cc to the Government Pleader, S.R.No.40108

Pre-delivery Order in
WP Nos.10725, 10607, 10617, 10738, 10621, 11436, 10736 of 2020
WMP.Nos.12895,13043, 13044, 12897, 12900, 12890, 13034, 12903,
13022, 12888, 13949, 14050, 13041, 13038 of 2020

BP (CO)
KKV/05/01/2021

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