



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:20.04.2021

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CORAM:
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.2688 of 2012

Sabha Srinivaasan @ S.Kanaga Sabapathy

...Petitioner

Vs.

1. The Director of Town and Country Planning,
Office of the Director of Town and Country Planning
No.807, Anna Salai, Madras 600 002.
2. The Town Planning Officer, Thanjavur Municipal Officer,
Gandhiji Road, Thanjavur 613 001.
3. The Commissioner, Thanjavur Municipality,
Thanjavur District, Thanjavur 613 001.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the first respondent made in Na Ka No.20042/2011 LA1 dated 28.11.2011 and quash the same as illegal, arbitrary and ultra virus and direct the respondents to issue permission to the petitioner for conversion of plots earmarked as public purposes into residential plots in the layout No.LP(TT) No.111/79 and LP/R (TT) No.44/84 in respect of RS Nos. 359,358/1 and 366/1, Neelagiri Therku Thottam Village, Medical College Road, Thanjavur.

For petitioner : Mr.G.Vijayalakshmi

For respondents: Mr.R.Vijayakumar,

Addl. Gov. Pleader for R1 & R2

Mr.P.Srinivas for R3

O R D E R

The petitioner has filed the present writ petition to quash the order dated 28.11.2011 passed by the first respondent and also for direction to the respondents to issue permission to the petitioner for conversion of plots earmarked as public purposes into residential plots in the layout No.LP(TT) No.111/79 and LP/R (TT) No.44/84 in respect of RS Nos. 359,358/1 and 366/1, Neelagiri Therku Thottam Village, Medical College Road, Thanjavur.



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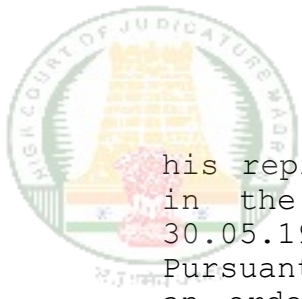
2. The brief facts of the writ petition is as follows:

The father of the petitioner had obtained approval of layout in the year 1979 in respect of the properties situate in S.No.358/Part and 359, Neelagiri Therku Thottam Village, Medical College Road, Thanjavur in the name of Ram Nagar and in the year 1984, the petitioner had obtained approval of house sites in S.No.366/1, Neelagiri Therku Thotam Village, Medical College Road, Thanjavur in the name of Nethaji Subbash Chandra Bose Nagar.

2.1. At the time of approval of layout in Ram nagar in the year 1979, three plots each measuring to an extent of 2400 sq.ft. were earmarked as 'public purpose' and at the time of approval of lay out in Nethaji Subash Chandra Bose Nagar in the year 1984, a land to an extent of 10,036 sq.ft. was earmarked for the purpose of 'Playground and Park.'

2.2. After the death of his father in the year 1991, the writ petitioner continued to sell the approved plots, obtained by his father. The plots reserved and earmarked for the purpose of Playground and Park in the approved layout continue to remain vacant and the same was not effectively used. Therefore, the petitioner submitted a representation on 13.08.2011 to the respondents to permit the petitioner to convert the plots earmarked for public purposes under the approved layout LP (TT) No.111/79 and LP/R (TT) No.44/84 in respect of RS Nos.359, 358/1 and 366/1, Neelagiri Therku Thottam Village, Medical College Road, Thanjavur into salable residential plots. The petitioner also undertook to handover 10% of the space to the localbody authority by way of gift deed as required under the circular dated 30.05.1991 issued by the Director of Town and Country Planning, Chennai-2, wherein, it was decided that, if there is no demand from the public for conversion of such salable plots into public purposes like Kalyana Mandapam Community Hall, School, Shop etc. for 5 years from the date of layout, the layout owners may be permitted to seek conversion of such reserved plots earmarked for public purposes into residential plots and the requests from the land owners may be considered favourable by the Director of Town and Country Planning provided 10% of the space has to be handed over to the localbody authority by way of gift deed.

2.3. The petitioner submitted several documents along with his representation dated 13.8.2011, however his representation was not considered. The respondents are bound to consider the representation of the petitioner dated 14.11.2011 in the light of the Circular, dated 30.05.1991 issued by the Director of Town and Country Planning, Chennai. Hence, he filed a writ petition in W.P.No.10613 of 2011 before the Madurai Bench of this court to consider his representation and the court vide order dated 14.11.2011, directed the 2nd respondent to consider



his representation after giving an opportunity to the petitioner in the light of the circular in ROC No.2165/91/DD1 dated 30.05.1991 issued by the Town and Country Planning, Chennai. Pursuant to the order of this court, the first respondent passed an order dated 28.11.2011, rejecting the representation of the petitioner. Hence, he filed the present writ petition.

3. Heard the learned counsel appearing for the petitioner and the learned counsels appearing for the respondents.

4. The brief contentions raised by the third respondent in the counter affidavit is as follows:

The Circular dated 30.05.1991 is totally irrelevant to the case of the petitioner and the said Circular applies only to the 'saleable' plots that are reserved for the purpose of Kalyanamandapam, School, Hospital etc, within a layout, that is not a public amenities. But the Park and Playground that are reserved in a layout are public amenities that are open to all and such reserved lands do not fall within the definition of salable lands in a layout.

4.1. The fact that the lands are reserved for either salable purpose or non saleable purposes is crucial in applying the Circular dated 30.05.1991. The purpose of the said circular is only to enable the developers of land to have the plots that are reserved for saleable purposes to be changed from one purpose to another. In the case of plots reserved for usage of Kalyanamandapams/Community halls, the said plots can be used only for the said purposes and they can be sold from one person to another and the restrictive covenant will continue. But in case, there is no takers for the said purposes, the said plots can be released for the purpose of conversion into residential plots in order to ensure that the developer does not suffer any loss due to the restrictive covenant. But in the case of parks and play spaces which are amenities provided to the residents of the layout and also to the general public without any restriction for entry that cannot be converted as saleable plots. The usage of such plots will be restricted to the public use, but no one can claim exclusive right or title over the said land including the developer/owner of the layout. Further, the value of the plots in question that are reserved for public purpose viz., parks, play spaces etc. are naturally fixed on the price of the individual plots and all the residents of the layout are the common owners of the land and therefore, the claim of the petitioner is totally illegal.

5. To substantiate his contentions, the learned counsel appearing for the third respondent relied upon a decision of the Honourble Supreme Court in PT. Chet Ram Vashist Vs. Municipal



Corporation of Delhi reported in 1995 SC (1) 47, wherein the Honourable Supreme Court has held that the Corporation shall have a right to manage the land which was earmarked for school, park etc. and they shall not have any right to convert it as saleable plots which shall be for the benefit of the residents of the colony. The Honourable Supreme Court further observed that, it is left open to the Corporation to get the land transferred in its favour after paying the market price as prevalent on the date when the sanction to the layout plan was accorded.

6. Further a Division Bench of this court in its decision in Kirubakaran Vs. The Commissioner (East), Corporation of Coimbatore reported in 2013(6) CTC 441, by following the earlier decisions of the Honourable Supreme Court as well as this court, has rejected the contention of the appellant for granting remedy to use the land for construction of a private hospital by holding as follows.

"Even as per the affidavit filed by the second appellant on behalf of other appellants also, it is stated that after establishing a private hospital, 50% of the patients will be treated free of cost, which means only 50% of the hospital will serve public purpose and the remaining 50% of the hospital will be for the benefit of the appellants. Thus, it is manifest that not for public purpose alone or public interest alone the hospital is proposed to be established. Therefore, we are not inclined to accept the contention raised by the learned Senior Counsel appearing for the appellants that if permission to use the land is given for constructing a private hospital, it will serve public purpose." and finally dismissed the appeal by confirming the Order passed by a Single Judge of this court."

7. He also relied upon a decision of the Division Bench of this court in SIDCO Nagar Welfare Association Vs. Chennai Metropolitan Development Authority reported in 2018(5) CTC 857, wherein, it is held as follows:

"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-saleable area and not under Rule 19(a)(vii). The claim of the appellant-Association has been rejected by the



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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 Layout 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 Vs. S.Muddappa and others, IR 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:

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."

After observing so, the Hon'ble Supreme Court concluded that the entire proceedings before the State Government relating to the conversion



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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, 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 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)(ii) of



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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, 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.

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. "



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32. A Division Bench of this Court in Sri Devi Nagar Residents Welfare Association v. Subbathal and others reported in 2007 (3) LW 259, after referring to the judgments of the Hon'ble Supreme Court, cited supra, had observed as follows:

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

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

13. Good parks expansively laid out are not only for aesthetic appreciation, but in the fast developing towns having conglomeration of buildings, they are a necessity. In crowded towns where a resident does not get anything but atmosphere polluted by smoke and fumes emitted by endless vehicular traffic and the factories,



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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 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



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'use' of such land would be impermissible under law and would be against public interest."

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

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

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

8. In the aforesaid decision, the Division Bench of this court has held that the Government has no power to re-classify a land which was reserved for communal and recreational purposes (park-cum-play ground and consequently, quashed the Government Order in G.O.3D No.8 dated 24.08.2004 and consequently allowed the writ appeals.

9. In the instant case, it is the contention of the petitioner that as per the approved lay out in Ram Nagar in the year 1979, three plots each measuring to an extent of 2400 sq.ft. of land were earmarked for public purpose and as per the



approved lay out in Nethaji Subash Chandra Bose Nagar in the year 1984, an extent of 10,036 sq.ft. land was earmarked for the public purpose as play ground and park.

10. The contention of the third respondent/ Commissioner of Thanjavur Municipality is that a residential lay out in R.S.No.358 part and 359 of Thanjavur Town was approved by the Deputy Director of Town and Country Planning, Trichy in L.P. (TT) No.111/79 (Ram Nagar) Reservation: 1. Shops-1, 2. Shops-2, 3. Children's play space, 4) park, 5) school and another residential layout in Rs.No.366/1 in Neelagiri Therkku Thottam Village in Thanjavur Town was also approved by the Deputy Director of Town and Country Planning in L.P. (TT) No.44/84 (NSC Bose nagar) reservation: A) shop-2400 sq.ft. (2.17%), B) Play Ground park-10,000 sq.ft. (9.07%), Total 12.436 sq.ft. (11.24%).

11. The learned counsel for the third respondent further submitted that, as per the requirement, the layout reservation of roads, Children Play Space and park sites were gifted to the Municipality by way of gift deed in document No.1093/83 and the site for school reservation was not handed over to localbody. It is the specific contention that the school space should be used only for running school that can be sold only for the said purpose, but the lands earmarked as playground and park, by the Sanctioned authority in the lay out, cannot be reclassified as residential plots. Further, it is contended by him that that the plots "reserved for salable purpose" are Kalyanamandabam, school and shops, but in so far as the lands " reserved for park and playground " are concerned, the same cannot be sold as the public also utilised the said lands without any restrictions.

12. In the light of the decision of the Division Bench of this court in SIDCO Nagar Welfare Association, rep. by its Secretary Vs. Chennai Metropolitan Development Authority, rep. by its Member Secretary and others reported in 2018 (5) CTC 857, the land reserved for park-cum-play ground cannot be reclassified or converted even by the Government, as neither the Government nor the owner have any title over the same and it handed over to the localbody authority by way of gift deed for the public purpose at the time of approval of the layout and the actual right vests in the residents of the locality. Therefore, the relief sought for by the petitioner for conversion of plots earmarked as children play school and park into residential plots cannot be granted as it has no merits. Therefore, there is no need to interfere with the impugned order passed by the first respondent and the writ petition is liable to be dismissed.



13. In view of the facts and circumstances of the case and the decision cited supra, the writ petition is dismissed.
No costs.

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s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Director of Town and Country Planning,
Office of the Director of Town and Country Planning
No.807, Anna Salai, Madras 600 002.
2. The Town Planning Officer, Thanjavur Municipal Officer,
Gandhiji Road, Thanjavur 613 001.
3. The Commissioner, Thanjavur Municipality,
Thanjavur District, Thanjavur 613 001.

+1 CC to Mr.D. Rajagopal, Advocate sr 24389.

+1 CC to The Government Pleader sr 24676.

W.P.No.2688 of 2012

JPL (CO)
SP(26/07/2021)