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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NOS.29911 AND 29912 OF 2012

AND

M.P.NOS.1 AND 1 OF 2012

P.Kaliappan

... Petitioner in W.P.No.29911 of 2012

P.Ponni

... Petitioner in W.P.No.29912 of 2012

.Vs.

1. The Tahsildar,
Taluk Office,
Sulur,
Coimbatore District.

2. The Executive Officer,
Irugur Town Panchayat,
Sulur, Taluk,
Coimbatore District.

3. Soundaram,
The Executive Officer,
Irugur Town Panchayat,
Sulur,
Coimbatore District.

4. The President,
Irugur Town Panchayat,
Sulur Taluk,
Coimbatore District.

... Respondents in both W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the respondents herein to restore the possession of the Lands in S.F.No.345/1 measuring 27 cents each situated at Irugur Village, Sulur Taluk, Coimbatore District, back to the petitioners forthwith for putting up a Community Hall in the said lands.

For Petitioners

in both W.Ps : Mr.V.Ayyadurai
Senior Counsel for
Mr.K.Govi Ganesan



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For Respondents: Mr.M.R.Gokul Krishnan
in both W.Ps Government Advocate (for R-1)
: Mr.K.Sarveswar for
M/s.P.V.S.Giridhar & Associates
(for R2 & R3)

COMMON ORDER

Both the Writ Petitions have been filed seeking to direct the respondents herein to restore the possession of the Lands in S.F.No.345/1 measuring 27 cents each situated at Irugur Village, Sulur Taluk, Coimbatore District, back to the petitioners forthwith for putting up a Community Hall in the said lands.

2. The case of the petitioners is that they purchased the lands comprised in S.F.No.345/1 ad-measuring to an extent of 27 cents each situated at Irugur Village, Sulur Taluk, Coimbatore District by the registered sale deeds dated 11.09.1985 and 31.05.1993, vide Document Nos.2219/1985 and 2619/1993. From the date of their purchase, they were in possession and enjoyment of their respective lands. In furtherance to the said sale deeds, all the revenue records were mutated and patta also issued in their favour. In fact, they also obtained electricity service connections. The petitioners purchased the said lands with intention to construct a community hall. The said lands form part of a layout approved by the Deputy Director of Town and Country Planning, vide his letter No.10048/84 Ko.Pe.N1.Ma.5 dated 29.01.1985. In the said approval, 1.55 acres was earmarked for park, play field and open spaces, 0.54 acres was earmarked for community hall and 0.22 acres was earmarked for shops. The lands which were earmarked for park, play field and open spaces and road areas were handed over to the local authority by the developer as per the layout condition by execution of gift deed dated 11.09.1985. As per the approval of layout, there is no prohibition for the sale of the lands meant for community hall and shops by the developer. Therefore, the petitioners approached the second respondent with the application for permission to construct community hall. Before that, the petitioners constructed a small farm house and also obtained electricity service connection. At that juncture, the respondents forcibly dispossessed the petitioners and also demolished their small farm house and destroyed the Coconut trees, which were planted in the subject lands. Hence, both the Writ Petitions.

3. The second respondent filed counter stating that the original owner viz., R.Govindarajulu and six others have formed a layout in Survey Nos.341, 342, 343, 342/2 part, 344/1, 344/2, 345/1 & 351/1 situated at Irugur Town Panchayat ad-measuring to



an extent of 20.80 acres. It was approved by the Senior Deputy Director of Town and Country Planning, Coimbatore, vide Roc.No.10048/84 (CPN), dated 29.01.1985 and LPR.No.12/85 dated 29.01.1985. The approved layout plan was sanctioned on condition that the land owner shall execute gift deed for play ground, park, community hall, OHT and open area. While that being so, the petitioners knowing fully and wantonly purchased the lands which were reserved for community hall and other purposes with ulterior motive and it is highly illegal and irregular and also violative of layout conditions prescribed by the Senior Deputy Director of Town and Country Planning, Coimbatore. Later, the petitioner in W.P.No.29911 of 2012 also sold the sites bearing Nos.118 and 123 in the approved layout plan to the third parties. Therefore, the very purchase is illegal and contrary to the conditions imposed while granting approval. The said land was already gifted by the land owner in favour of the second respondent by the gift deed. The law mandates that the lands reserved for public purpose in a layout plan or in a development plan or master plan approved by the local body cannot be used for any other purpose than the one specified therein by the layout promoter. The lands meant for community hall and other lands allocated for public purpose are well within 10% of the total extent of the land submitted for approval. Therefore, the lands allocated in the approved layout plan should not be altered in any manner and in any form and by any persons including the petitioners herein. However, the original land owners have not handed over the said lands which were earmarked as community hall, play ground and OHT to the second respondent. The petitioners never applied for any permission to construct community hall in the subject lands. Therefore, the second respondent had taken action for evicting the encroachments made by the petitioners in the subject lands reserved for public purpose of constructing community hall with the help of Revenue Officials and Police personnels. Thereafter, the coconut crops found in the subject lands have been leased out for a period of one year to the tune of Rs.15,500/-. However, the work order of constructing Compound Wall in the community hall was allotted to the contractor and therefore, prayed for dismissal of these Writ Petitions.

4. Mr.V.Ayyadurai, learned Senior Counsel appearing for the petitioners submitted that the conduct and action of the respondents are highly illegal, violative of principles of natural justice, arbitrary, malafide and without recouring to due process of law. The petitioners were dispossessed from their respective properties. They are absolute owners of the subject properties having been purchased by the registered sale deeds 11.09.1985 and 31.05.1993 and they were been in open and continuous possession from the date of their purchase. In fact, they were issued patta and all the revenue records were mutated



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in their name and they constructed small farm house and also obtained electricity service connections. All of a sudden, the respondents with the rowdy elements trespassed into their properties and dispossessed them from the subject properties. Admittedly, the subject lands were earmarked for community hall to an extent of 54 cents. As per the condition for approval, the lands earmarked for play ground, park, open area and roads would have to be gifted in favour of the second respondent. The Tamil Nadu Town and Country Planning Act or the District Municipalities Act never prohibit the sale of community hall or shops by the developer for the said purposes. Whereas, the only condition is that the said lands are meant for putting up community hall and it cannot be differently used for other purposes. In fact, the petitioners purchased the subject lands only to construct community hall. When they applied for planning permission to construct community hall, the respondents demanded huge bribe. When the petitioners refused to oblige the demand, on 03.02.2012, they came with all rowdy elements and forcibly dispossessed the petitioners. They also demolished the farm house and destroyed the coconut trees. Therefore, their right under Article 300 A of the Constitution of India has been violated and they are liable to be re-possessioned in their subject lands. He further submitted that both the Writ Petitions are very much maintainable when they are forcibly dispossessed from their peaceful possession and enjoyment of their own properties. In support of his contentions, the learned Senior Counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court of India reported in (2020) 9 SCC 356 (Hari Krishna Mandir Trust -vs- State of Maharashtra and others) and also relied upon the judgment of this Court reported in 2021 (4) CTC 839 (Sabha Srinivasan -vs- Director of Town and Country Planning).

5. Mr.K.Sarveswar, learned counsel appearing for the second and fourth respondents submitted that the lands reserved for any street, open space, park, school etc., in a layout or plan is normally for 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 the legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. Therefore, the original owner ceases to have any right over the properties which were earmarked for community hall and as such, the purchase of the subject lands itself illegal. Therefore, the main Writ Petitions itself are not maintainable and it is liable to be dismissed. The lands meant for Community Hall is not saleable. The original land owner applied for layout approval and the layout was approved and the lands ad-measuring 43 cents was earmarked for play ground, the land ad-measuring 75 cents was earmarked for park, the land ad-measuring 54 cents was earmarked for community hall, the land ad-measuring 0.25.25



acres was earmarked for OHT and the land ad-measuring 0.12.15 acres was earmarked for open area in the total area of 20.80 acres. In fact, the said lands were duly gifted in favour of the second respondent by the original owner and as such, the original owner has no right or title over the said properties to execute sale deed in favour of the petitioners. In support of his contentions, the learned counsel appearing for the second and fourth respondents relied upon the judgments reported in MANU/TN/7520/2007 (T.Gnanamani Ammal -vs- The Avaniappuram Town Panchayat), 2007-3L.W.259 (Sri Devi Nagar Residences Welfare Association -vs- Subbathal) and MANU/SC/0563/1995 (Chet Ram Vashist (Dead) by Lrs -vs- Municipal Corporation of Delhi).

6. Heard Mr.V.Ayyadurai, learned Senior Counsel appearing for the petitioners, M.R.Gokul Krishnan, learned Government Advocate appearing for the first respondent and Mr.K.Sarveswar, learned counsel appearing for the second and third respondents.

7. The lands ad-measuring 20.80 acres was originally owned by one R.Govindarajulu and six others, he applied for approval of layout in S.Nos.341, 342, 343, 342/2 part, 344/1, 344/2, 345/1 & 351/1 situated at Irugur Town Panchayat. The layout plan was approved by the Senior Deputy Director of Town and Country Planning, Coimbatore, vide Roc.No.10048/84 (CPN), dated 29.01.1985 and LPR.No.12/85, dated 29.01.1985. While approving the layout, following the lands were allocated for public purpose:

"1. For Play Ground	-	0.43 Acres
2. For Park	-	0.75 Acres
3. For Community Hall	-	0.54 Acres
4. For OHT	-	0.25.25 Acres
5. For Open Area	-	0.12.15 Acres"

8. Accordingly, the original owner of the lands executed gift deed dated 11.09.1985 in favour of the second respondent. As per the gift deed, the land ad-measuring 6165 sq.ft and the land ad-measuring 10650 sq.ft for road and the land ad-measuring 25 cents for park were gifted in favour of the second respondent. By another un-registered gift deed in the September 1986, the lands for play ground ad-measuring 42 cents was gifted in favour of the second respondent by the original owner. The recitals of the said gift deed reveals that already the original owner gifted the lands for park, play ground, open space for public purpose as per the condition imposed while approving the layout. Therefore, the subject lands which were purchased by the



petitioners never gifted in favour of the second respondent. The said lands were earmarked for putting up construction of community hall and there is no impediment for purchasing the same. While granting approval neither the Tamil Nadu Town and Country Planning Act nor the District Municipalities Act prohibits the sale of community hall and shops by the developer for the said purposes. The only condition is that the said properties are meant for community hall and as such, the purchaser should not use it for any other purpose. If they use it for other purposes then on the ground of different uses, the respondents can initiate action in accordance with law. The petitioners were forcibly dispossessed as it is evident from the counter filed by the respondents. Since the said land was leased out to private parties to put up a compound wall in around the said place, the work was allotted to the contractor.

9. The case of the petitioners is that they intended to put up a community hall and only for the purpose that they have purchased the subject lands. In fact, they applied for planning permission to construct community hall, the respondents denied the same and forcibly dispossessed the petitioners.

10. The learned counsel for the respondents raised the objections with regard to maintainability of the Writ Petition. In this regard, the learned Senior Counsel appearing for the petitioners relied upon the judgment of the Hon'ble Supreme Court of India reported in (2020) 9 SCC 356 (Hari Krishna Mandir Trust -vs- State of Maharashtra), where it has been held that though the right to property may not be a fundamental right any longer, but it is still a constitutional right under Article 300-A of the Constitution of India. In view of the mandate under Article 300-A of the Constitution of India, no person is to be deprived of his right save by the authority of law. Therefore, the petitioners cannot be deprived of their property save in accordance with law. Further held that in case of dispossession, except under the authority of law, the owner might obtain restoration of possession by a proceeding for mandamus against the Government. The High Court exercising its jurisdiction under Article 226 of the Constitution of India, not only have the power to issue a writ of mandamus or in the nature of mandamus, but are duty-bound to exercise such power, where the Government or a public authority has failed to exercise or has wrongly exercised discretion conferred upon it by a statute, or a rule, or a policy decision of the Government or has exercised such discretion malafide, or on irrelevant consideration. In all such cases, the High Court must issue a writ of mandamus and give directions to compel performance in an appropriate and lawful manner of the discretion conferred upon the Government or a public authority. Further held that the Court is duty-bound to issue a writ of mandamus for enforcement of a public duty. There



can be no doubt that an important requisite for issue of mandamus is that mandamus lies to enforce a legal duty. This duty must be shown to exist towards the applicant. A statutory duty must exist before it can be enforced through mandamus. Unless a statutory duty or right can be read in the provision, mandamus cannot be issued to enforce the same.

11. In view of the above, the present Writ Petitions are very much maintainable and this Court is duty-bound to issue mandamus for enforcement of a public duty.

12. Admittedly, the land which was earmarked for play ground to an extent of 43 cents and the land which was earmarked for community hall to an extent of 54 cents and the land which was earmarked for OHT to an extent of 0.25.25 acres were not handed over by the layout promoters to the second respondent. Therefore, the second respondent has not acquired any right and title or interest thereof. Even assuming that the said lands have been handed over, when any site is reserved for any public purpose, corporation only gets rights as a custodian to manage the same, but it cannot acquire any right title or interest thereof.

13. Further, the learned Senior Counsel for the petitioners relied upon the judgment of this Court reported in 2021 (4) CTC 839 (Sabha Srinivaasan -vs- Director of Town and Country Planning), dealing with regard to the land earmarked for community hall, in which it has been held as follows:-

"4.1. The fact that the lands are reserved for either saleable 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



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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."

14. In the above case, it has been held that the plots reserved for usage for marriage halls/community halls can be used only for the said purposes and they can be sold from one person to another and the restrictive covenant will continue.

15. In the case on hand, admittedly the lands purchased by the petitioners were earmarked for community hall. The petitioners also purchased the said lands only with intention to construct the community hall. In fact, they applied for planning permission to construct the community hall with the respondents. Therefore, the above judgments are squarely applicable to the case on hand. The subject lands are never vested with the second respondent and as such, the second respondent has no semblance of any right over the subject lands to dispossess the petitioners from their valid possession and enjoyment over the subject lands. If at all the petitioners violates any covenant as envisaged in the approved layout, the respondents can very well take appropriate action as against the petitioners in the manner known to law. They cannot take forcible possession of the subject lands from the petitioners.

16. As rightly pointed by the learned Senior Counsel appearing for the petitioners, the subject lands have been earmarked for community hall and never vested with the second respondent. If at all the said lands used for other purposes, the respondents can very well take action on the ground of different use. If at all any violation, the second respondent can very well proceed under Section 56 of the Tamil Nadu Town and Country Planning Act, 1971. It is relevant to extract Section 56 (1) (b) and (d) and (2-A) of the said Act, which reads as follows:-

"56. Power to require removal of unauthorised development-

(b) in contravention of any permission granted or of any condition subject to which permission has been granted; or

....

(d) in contravention of any permission which has been duly modified, the appropriate planning authority may, serve on the owner, a notice requiring him within such period, being not less



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than one month, as may be specified therein after the service of the notice, to take such steps as may be specified in the notice.

(2-A) If the owner or occupier, as the case may be, of land or building has not discontinued, the use of such land or building as required in the notice served under sub-section (1), within the time specified therein, the appropriate planning authority if prima facie satisfied, may take action to discontinue the use of such land or building by locking and sealing the premises in such manner as may be prescribed irrespective of pendency of any application under Section 49 or appeal under Section 79 or any litigation before a Court. The owner or occupier, as the case may be, of such land or building shall provide security for such sealed premises.

17. As per the above provisions before taking action, notice has to be served on the occupier and thereafter, lock and seal the premises to take appropriate action. Admittedly, in the case on hand, the petitioners were never served any notice and they were forcibly dispossessed from their lawful possession.

18. Further, the learned Senior Counsel appearing for the petitioners has brought to notice of this Court that with regard to maintenance of parks and play fields etc., he relied upon the Tamil Nadu Parks, Play-Fields and Open Spaces (Preservation and Regulation) Act, 1959. It is relevant to extract Section 9 of the said Act, which reads as follows:-

"9. Obligation of owner of parks, play-fields, etc.

(1) In the case of parks and play-fields not vested in the local authority, but included in the list published under Section 4 or 5, the executive authority may, by notice, require the owner or the person or authority in occupation of such park or play-field.

(i) to maintain such park or play-field in a clean and property condition, or

(ii) to remove or alter any projection, encroachment or obstruction in or over any such park or play-field or to execute such repairs to any building in such park or play-field as the executive authority may consider necessary, within a date specified in the notice.

(2) If the owner or the person or authority in occupation fails to comply with the notice under sub-section (1), the executive authority shall



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himself arrange to.

(i) maintain such park or play-field in a clean and property condition, or

(ii) remove or later the projection, encroachment or obstruction, or

(iii) execute such repairs as he may consider necessary and the cost of such maintenance, removal, alteration or repairs shall be recoverable from the owner or the person or authority in occupation in such manner as may be prescribed."

19. As per the above provision, the Executive Authority may, by notice, require the owner or the person or authority in occupation of such park or play-field to maintain such park and play-field in a clean and proper condition. If they failed to comply, the authority shall arrange for action to maintain such park or to remove or alter the projection, encroachment or obstruction if any. Even assuming that the subject lands were earmarked for park and play-field, the second respondent ought to have followed the above procedure to remove the encroachments. Whereas, the subject lands were earmarked for community hall and admittedly not yet handed over to the second respondent. There is no prohibition to sell the same. Therefore, at any cost, the second respondent has no authority to dispossess the petitioners from the subject lands.

20. The learned counsel for the second and fourth respondents relied upon the judgment of this Court (Madurai Bench) reported in MANU/TN/7520/2007 (T.Gnanamani Ammal -vs- The Avaniappuram Town Panchayat), in which it has been held as follows:-

"9. In order to buttress his argument, the learned counsel appearing for the respondent/defendant has befittingly drawn the attention of the Court to the decision reported in MANU/TN/0192/2004 : 2004(2) LW 112 (Ammani v. The Tiruchengode Municipality rep.by its Commissioner Tiruchengode Municipality, Tiruchengode Town, Nammakkal District), wherein this Court has held as follows:-

Reserving any site for any street, open space, park, school etc., in a lay out or 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 ceased to be the 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."

21. Further, the learned counsel for the second and fourth respondents relied upon the judgment of the Division Bench of this Court reported in 2007-3L.W.259 (Sri Devi Nagar Residences Welfare Association -vs- Subbathal), in which it has been held as follows:-

"7. In G.N. Khajuria (Dr) v. Delhi Development Authority, (1995) 5 SCC 762 = AIR 1996 SC 253, where in a land reserved for public park in the approved layout plan of a residential colony, when an unauthorised allotment was given to the school, the Apex Court heavily came down against the Officer, who by misusing his power made unauthorised allotment and permitted unauthorised construction, and held that such reallocation is not only illegal but also unlawful.

8. In Bangalore Medical Trust v. B.S. Muddappa, 1991 (4) SCC 54, Justice R.M. Sahai, held 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 motto but earning is the objective. Its utility may not be undermined but a park is a 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 the B.D. Act itself provided for reservation of not less than 15 per cent of the total area of the layout in a development scheme for public parks and playgrounds 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



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large scale and congested areas are coming up rapidly, may give rise to health hazard. May be 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 park into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility.

9. Again in Pt. Chet Ram Vashist v. Municipal Corporation of Delhi 1995 (1) SCC 47, the Apex Court while dealing with the portion of the land which was reserved for public purpose has clearly laid down the law as hereunder:

"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.



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8. For these reasons even though the judgment and decree of the High Court are liable to be set aside but we refrain from doing so. Yet in order to protect interests of the owners of house and residents of the colony it is directed that the order of the High Court shall stand modified to the following effect:

(1) The Corporation shall have right to manage the land which was earmarked for school, park etc.

(2) The Corporation shall not have any right to change the user of land which shall be for beneficial enjoyment of the residents of the colony.

(3) 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."

22. The learned counsel for the second and fourth respondents relied upon the judgment of the Hon'ble Supreme Court of India reported in MANU/SC/0563/1995 (Chet Ram Vashist (Dead) by Lrs -vs- Municipal Corporation of Delhi, in which it has been held as follows:-

"6. Reserving any site for any street, open space, park, school etc. in a lay-out 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 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 lay-out 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



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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 in the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for parks and school was an order for transfer without there being any sanction for the same in law."

23. In all the above cases, it has been held that any site reserved for street, open space, park and school etc., in a layout plan is normally for public purpose as it is inherent in such reservation that it shall be used by the public in general. Such a reservation has ceased the title of the owner to execute any sale deed. Whereas, in the case on hand, the subject properties were earmarked for community hall and as such, there is no bar under the Tamil Nadu Town and Country Planning Act to sell the same. However, the purpose for which the same was allotted shall not be used for other purposes. The petitioners applied for planning permission to construct community hall. Therefore, the above judgments are not helpful to the case on hand.

24. That apart, while granting layout approval, amenities are provided such as road, play ground, park and common space. At the same time, some facilities also allotted such as community hall and shops etc. Therefore, the subject lands were earmarked for community hall and shops which is coming under the facilities. Hence, the lands were earmarked for community hall and shops can be saleable on condition that the purpose shall not be changed viz., the community hall and shops. The amenities which were provided in the approved layout shall be gifted in favour of the second respondent. Accordingly, the gift deed dated 11.09.1985 was executed by the original land owner in favour of the second respondent. Therefore, the action of the second respondent is highly condemnable, since they have forcibly evicted the petitioners from their lawful possession and enjoyment of their properties.

25. In view of the above discussion, both the Writ Petitions are allowed. The respondents are directed to restore the possession of the lands in S.F.No.345/1 to the petitioners forthwith on condition that the petitioners shall construct community hall in the said lands. After the possession is restored, the petitioners are directed to apply for planning permission to construct the community hall to the authorities concerned. On receipt of the same, the authorities concerned are



directed to consider the same and grant planning permission, if it is otherwise in order. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

kv

To

1. The Tahsildar,
Taluk Office,
Sulur,
Coimbatore District.
2. The Executive Officer,
Irugur Town Panchayat,
Sulur, Taluk,
Coimbatore District.
3. Soundaram,
The Executive Officer,
Irugur Town Panchayat,
Sulur,
Coimbatore District.
4. The President,
Irugur Town Panchayat,
Sulur Taluk,
Coimbatore District.

+1cc to Mr.Giridhar & Sai, Advocate, S.R.No.47136
+2ccs to Mr.K.Govi Ganesan, Advocate, S.R.No.47321,47322
+1cc to the Government Pleader, S.R.No.47490

W.P.Nos.29911 and 29912 of 2012

PVS (CO)
PM/27/10/2021