



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Thursday, the Seventh day of October Two Thousand Twenty One

PRESENT

THE HON`BLE MR.JUSTICE R.MAHADEVAN

AND

THE HON`BLE MR.JUSTICE V.PARTHIBAN

AND

THE HON`BLE MS.JUSTICE P.T.ASHA

WA.NO.4078 OF 2019

AND CMP.NO.25523 OF 2019

1 P.KARTHIKEYAN

[APPELLANTS/PETITIONERS]

2 K.PALANISAMY

3 N.C.ANAND

4 M.RAJAGOPAL

5 N.SHYLAJA

Vs

1 THE COMMISSIONER
COIMBATORE CORPORATION,
COIMBATORE-641001

[RESPONDENTS/RESPONDENTS]

**2 THE SECRETARY TO GOVERNMENT,
MUNICIPAL ADMINISTRATION AND WATER SUPPLY
DEPARTMENT, FORT ST.GEORGE, CHENNAI-600 009.**

**3 THE CHAIRMAN,
TAMIL NADU POLLUTION CONTROL BOARD,
GUINDY, CHENNAI-32.**

**[RR2 AND 3 SUO MOTU IMPEADED VIDE ORDER OF COURT DATED
24.02.2020 MADE IN WA.NO.4078/2019 AND CMP.NO.25523/2019
(RMDJ, VPNJ AND PTAJ)]**



Appeal under Clause 15 of the letters Patent against the order of THE HON'BLE MR.JUSTICE G.JEYACHANDRAN, dated 30.08.2019 and made in the exercise of the Special Original Jurisdiction of the High Court in the Writ Petition No.23765 OF 2019 (In WA.NO.4078/2019)

Order: These Appeals coming on this day for hearing upon perusing the Grounds of appeal, the order of the THE HON'BLE MR.JUSTICE G.JEYACHANDRAN, dated 30.08.2019 and made in the exercise of the Special Original Jurisdiction of the High Court in the Writ Petition No.23765 OF 2019 and all other papers material to this case and upon hearing the arguments of MR.YASHODH VARDHAN, SENIOR COUNSEL for M/S.V.SRIKANTH, Advocate for the Appellants/Petitioners and of MR.VIJAYANARAYANAN, ADVOCATE GENERAL assisted by MR.R.SIVAKUMAR, ADVOCATE for the 1st Respondent and of MR.V.JAYAPRAKASH NARAYANAN, GOVERNMENT PLEADER for the 2nd Respondent and of MR.N.PONRAJ, ADVOCATE for the 3rd Respondent, the court made the following order:-

JUDGMENT

V.PARTHIBAN, J.

GENESIS FOR THIS REFERENCE:-

The genesis of the present Reference before this Specially constituted Full Bench could be traced to the recent decision of the Hon'ble First Division Bench of this Court dated 07.02.2020 made in WA.No.4078 of 2019, wherein an issue was raised for adjudication in regard to utilisation of a portion of an area earmarked as playground, for installation of a Micro Bio Disposable Unit [Composting Centre] by the 1st respondent Corporation. The Hon'ble First Division Bench, while dealing with the issue, found that there were conflicting and divergent views expressed by the Division Benches of this Court and decided to refer the matter before a Larger Bench for an authoritative pronouncement in the matter as the uniform dispensation of justice is the hallmark of the justice delivery system.

2 While dealing with the reference, it was brought to the knowledge of this Bench that a Division Bench of this Court, vide it's order dated 14.03.2018 made in WP.No.32938 of 2017 [***T.G.Ruthramani, Secretary, Poonamallee Nanbargal Nagar Veettu Manai Urimaiyalargal Nalasangam, Poonamallee Vs. Member Secretary, CMDA and others***] has taken a view that location of Compost Centre in an area earmarked for playground/park, is permissible as such Centre being located for a larger public interest. Another Division Bench has taken similar views in WP.No.18569 of 2018 dated 10.12.2018 [***N.Shanmugham Vs. The District Collector, Tiruvallur District***] and in WP.No.8048 of 2018 dated 11.12.2018 [***E.S.Aadhithyan Vs. The District Collector, Kancheepuram***].



3 On the other side of the spectrum, yet another Division Bench of this Court on 04.09.2018 has expressed a different view in a case reported in **2018 [5] CTC 857 [SIDCO Nagar Welfare Association represented by its Secretary Vs. CMDA and others]**. All the decisions referred to above, have been rendered during the contemporaneous period in the year 2018.

4 In the above decisions of the learned Division Benches, several judgments have been relied upon in support of the respective views taken, with reference to various decisions of the Hon'ble Supreme Court of India and other High Courts. The Hon'ble First Division Bench, noticing the conflicting legal standards laid down by the Division Benches and for resolving the divergent views, to bring about a certainty in the ruling of the Court in the subject matter, has placed the matter before the Hon'ble Chief Justice on the Administrative side for a Reference before a Larger Bench.

5 Pursuant thereto, this Bench has been constituted and a Reference has been made before this Bench for answering the reference as under:

'whether the layout plan finalised as per the provisions of the Tamil Nadu Town and Country Planning Act, 1971, read with the Development Control Rules framed thereunder, permits certain permissible deviations therefrom in larger public interest or not?'

6 The brief facts which gave rise to the filing of the present writ appeal, which triggered the larger controversy necessitating the present Reference before this Bench are stated hereunder.

7 Some residents of Thiru.Vi.Ka. Nagar, Vadavelli, Coimbatore, approached this Court in WP.No.23765 of 2019 questioning the Coimbatore Corporation from constructing the Compost Yard in the place earmarked for park/children's play area. The writ petition was filed for issuance of a writ of mandamus to forbear the Coimbatore Corporation from establishing the Compost Yard in the place earmarked for the park/children's play space. The learned Single Judge, who dealt with the rival contentions of the parties, dismissed the writ petition on 30.08.2019, by following the Division Bench order dated 14.03.2019 rendered in WP.No.32938 of 2017 **[T.G.Ruthramani, Secretary, Poonamallee Nanbargal Nagar Veettu Manai Urimaiyalargal Nalasangam, Poonamallee Vs. Member Secretary, CMDA and others]**. The said Division Bench order is one of the decisions which came up for consideration before the Hon'ble First Division Bench and was also the reasons for the present Reference before this Court.

8 As against the dismissal of the writ petition, the present writ appeal has been filed wherein it was contended on behalf of the writ petitioners/appellants that the decision of the above Division Bench relied upon by the learned Single Judge did not take into consideration certain provisions of the Tamil Nadu



Town and Country Planning Act, 1971 [hereinafter referred to as 'the Act, 1971'] and other governing rules and regulations. In the above factual backdrop, arguments are advanced by the parties to this Reference.

SUBMISSIONS:-

9 The learned counsel Mr.V.Srikanth, appearing for the appellants / writ petitioners, made the following submissions:-

[a]At the outset, the learned counsel for the appellants would refer to the observations of the Hon'ble First Division as contained in paragraphs No.2, 5 to 8 of the order dated 07.02.2020. The same are extracted hereunder:-

'2. The issue raised is about the utilization of a portion of area earmarked as playground for installation of a Micro Bio-disposable Unit (Composting Centre) by the respondent Corporation. The challenge raised before the learned Single Judge failed, where reliance was placed heavily by the learned Single Judge on the Division Bench judgment dated 14.3.2018 in the case of T.G.Ruthramani, Secretary, Poonamallee Nanbargal Nagar Veettu Manai Urimaiyalargal Nalasangam, Poonamallee v. Member Secretary, CMDA and others (W.P.No.32938 of 2017) .

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5.The reliance on this issue has been placed by learned counsel for the appellants in a subsequent Division Bench judgment in the case of SIDCO Nagar Welfare Association, rep. by its Secretary v. CMDA and others, reported in 2018 (5) CTC 857, to contend that any development attempted by the Corporation contrary to the layout plan would be subverting the interest of the members of the locality and would be contrary to law. It is, therefore, urged that an appropriate action be taken in the matter, keeping in view the urgency of the problem and also the fact that the respondent Corporation has virtually encroached over the playground which deserves removal.

6.We further find that there are other judgments on the issue relating to the permissible limits within which such utilization has been kept out of judicial reviewability looking to the larger public interest. The said judgments are as follows:
(i)W.P.No.18569 of 2018, decided on 10.12.2018 (N.Shanmugham v. The District Collector, Thiruvallur District, Thiruvallur-602 001 and others) ;



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(ii)W.P.No.8048 of 2018, decided on 11.12.2018 (E.S.Aadithiyan v. The District Collector of Kancheepuram District and another).

7.A perusal of these judgments, therefore, indicates that different opinions have been expressed keeping in view the peculiar facts of each case and therefore, the issue that crops up for consideration is as to whether in view of the legal provisions in place in terms of the 1971 Act and the Development Control Rules framed thereunder, can such constructions be permitted in larger public interest. Therefore, there is a conflict of interest arising out of strict compliance with law and the concessional breach whereby certain constructions are permissible.

8.In view of the larger public purpose involved, the issue deserves to be resolved by an authoritative pronouncement and consequently, in view of the divergent opinions indicated in the two sets of judgments referred to above, we find that an authoritative pronouncement is warranted by a Larger Bench on issue as to whether the layout plan finalized as per the provisions of the Tamil Nadu Town and Country Planning Act, 1971 read with the Development Control Rules framed thereunder, permits certain permissible deviations therefrom in larger public interest or not?''

[b]The learned counsel would straight away draw the attention of this Court to the Division Bench order dated 14.03.2018 made in WP.No.32938 of 2017 **[T.G.Ruthramani, Secretary, Poonamallee Nanbargal Nagar Veettu Manai Urimaiyalargal Nalasangam, Poonamallee v. Member Secretary, CMDA and others]**. According to the learned counsel, the decisions holding that deviations are permissible for larger public interest, could be cited first and relied upon for the purpose of demonstrating how those decisions did not lay down the correct position of law. The relevant Paragraphs No.3 to 6, 10, 19, 22, to 28 of **T.G.Ruthramani's case** are extracted hereunder:-

''3.The stand taken by the petitioner is that the the authorized layout was divided into house site plots and as per the Rules and Regulations in force and in accordance with the conditions of the first respondent/Chennai Metropolitan Development Authority (the then Madras Metropolitan Development Authority), an adequate area of about 1 acre and 33 cents was set apart for public purposes namely for public park, construction of school, community hall, etc. As a matter of fact, all 126 members of



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the petitioner/ Nala Sangam jointly executed a gift deed in regard to the extent of 1 acre and 33 cents (approximately 57,934 sq.ft.) to and in favour of the then Executive Officer, Town Panchayat, Poonamallee - the predecessor in office of the present Commissioner of Municipality, Poonamallee, Thiruvallur District/ fourth respondent vide Doc.No.5877 of 1992 registered on the file of the Sub-Registrar, Poonamallee on 27.10.1992.

4. To put it more pin-pointedly, the said gift deed pertains to an area of 4,125 sq.ft., situated in S.No.443/1 of Poonamallee Village, exclusively earmarked for the purpose of park in the aforesaid layout. The learned counsel for the petitioner projects an argument that the aforesaid area, approved by the first respondent/Chennai Metropolitan Development Authority for the purpose of setting up a park in the layout, is being used as a park with proper compound for several years ever since the Nanbargal Nagar Neighbourhood came up in this area. Now, the residents of Nanbargal Nagar, Poonamallee and the general public of the area are utilizing the park for various recreational purposes and health activities and the children are using the play materials in the park, which is helpful for the development of children. Apart from that, the park is useful for youngsters, aged persons, housewives, etc., for taking a walk in the morning or in the evening and for holding recreational and family meetings. Besides this, they are in possession and enjoyment of the park without any interruption from any source from the year 1992 onwards.

5. According to the petitioner, on 05.12.2017, the respondent/ Municipality officials came to the park and caused an inspection to put up a garbage dumping yard in the park. To the shock and surprise of the petitioner, the fourth respondent/Municipality started demolishing the compound wall and constructing spacious buildings in the park, which had affected elderly persons, children, women, etc., of Nanbargal Nagar and the public are not able to use the park gifted by the petitioner/Sangam to the fourth respondent. In short, the members of the petitioner/association are undergoing extreme difficulties in using the park because of the sudden and shocking activities of the construction undertaken by the fourth respondent.



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6. At this juncture, the learned counsel for the petitioner brings to the notice of this Court that the petitioner/association came to know, based on the discreet enquiry, that the fourth respondent/Municipality had secretly planned to put up a garbage dumping yard in the park and immediately, they made a representation to the fourth respondent to stop the construction activities in the park and not to put up any garbage dumping yard, since it is interfering with the rights of the residents of the area to enjoy the benefits of the park. However, the fourth respondent/Municipality had turned deaf ears to the petitioner's genuine and reasonable request and the fourth respondent/Municipality is carrying on the construction activities without any let up.

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10. Per contra, it is the submission of the fourth respondent/ Municipality that the petitioner/Sangam had purchased house plots in Layout Approval No.PPD/LO.No.149/1992 dated 13.11.1992 and as per the said layout, streets and park site have been marked out. Out of 147 plots, less than 50 sites are now occupied by houses. The school site is also vacant and there is no development in the same.

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19. The total area available as a park site, according to the fourth respondent, measures an extent of 1.01 acres or 44,403 sq.ft. The micro compost yard is only of an extent of 1,500 sq.ft., which is less than 3% of the total area. Further, over the rest of the park site, the fourth respondent/ Municipality had already undertaken the development of the park with compound wall, walking path, green cover, children's play equipment. In short, the micro composting facility is to occupy only meagre portion of the playground. The micro composting facility will consist of public convenience for the residents as well as the workers engaged in the composting facilities to prevent any open defecation in the area. Apart from that, there will be a small storage room for the safe storage of the packaged manure before disposal.

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22. Apart from the above decision, One of us (SVNJ), while sitting singly, in the decision in the case of M.S.Rangarajan Vs. Pammal Municipality [WP.No.26581 of 2017 dated 22.1.2018], held as follows :



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"16. Though the petitioner has raised genuine issues as regards pollution of all sorts due to the setting up of Micro Compost Plan in the Playground, this Court opines that the garbage that is dumped in and around the layout and playground, will be collected by the workers of Micro Compost Yard and segregated into bio-gradable wastes and non-bio-degradable wastes, to ensure that the place is neat. As regards pollution, the 1st respondent/Municipality, in paragraph 9 of its counter affidavit, has clearly stated that the composting will be carried out in hermetically constructed tubs using bricks and concrete of proper specifications for water proofing and will be self-contained to prevent any spread of decaying matter or leachate into the surrounding environment.

17. Private lawns or public parks are not a luxury, as they were considered in the past. Public Park is a gift of modern civilization and that reservation of vacant land as an open land is in conformity with the rules and regulations for formation of the layout and is meant for public use and enjoyment and it cannot be disputed that Open Space Reserve is treated as lung space.

18. The Apex Court has categorically held that where open space is preserved and earmarked in the plan for development of a planned town, the authorities cannot ignore the public interest and allot the same for construction of godowns, thereby causing environmental hazards. Ecology has been completely destroyed by human beings by encroaching OSR, playgrounds, river bunds, lakes, etc. But the official respondents must ensure that the waste has to be disposed of in a scientific manner. In a developing country, technicalities should not be a bar for development.

19. When a public park is a gift of modern civilization, Open Space Reserve is the lung space and setbacks are for the purpose of rain harvest, Micro Compost Yards are essential for disposal of the waste, so that it will not endanger the health of the citizens, more particularly, children, who are likely to be affected on account of mosquitoes, flies, etc, which cause air borne and water-borne diseases. When citizens want development, certainly, they will have to co-operate for the betterment of the environment and ensure that no pollution is caused on



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account of their attitude in disposing of the waste from their respective residence. Though, strictly speaking, Development Rules have come into effect in 1975 and that the layout in question was approved in 1972, there is no hard and fast rule that there cannot be any development at all.

20. Residents/citizens cannot expect the authorities to identify a different place far away from the place of residence to have a Compost Yard and that there is a possibility of the residents of that area to object for setting up of a Compost Yard for disposal of the waste which are not generated from their residence.

21. Now that the Government has come up with effective policies in segregation of wastes of all kinds, people are expected to welcome such measures and must co-operate with the authorities in maintaining a healthy environment. Even though garbage bins are set up in every street, it is painful to see people throw garbage near the bin and not into the bin. From stone-age, we have come to the modern era. Certainly development is required for our betterment and hence, technicalities should not come in the way that may be detrimental to the development of the Society.

22. In view of the above and taking into account the submissions of the 1st respondent/ Municipality that the Micro Compost Yard, that is to be set up in the Playground in question, will be neatly maintained without any pollution and that only a meagre portion of the Playground is required for setting up of Micro Compost Yard, this Court finds no reason to interfere with the impugned tender notice published by the 1st respondent/Municipality.

23. It is made clear that if the Micro Compost Yard that is to be set up in the Playground in question is not maintained properly, the officials, who are in-charge of that place during the relevant period shall be dismissed from service, on the ground that the Officer has failed to maintain absolute integrity, devotion to duty and that he has done the work of unbecoming of a member of his service."



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23. The aforesaid order dated 22.1.2018 in W.P.No.26581 of 2017 is referred to in the order in W.P.No.34061 of 2018 dated 06.3.2018 [G.Raja Vs. State of Tamil Nadu & others].

24. Further, the Division Bench judgment dated 12.4.2007 of this Court made in W.A.Nos.156 of 2000 and 45 of 2003, relied on by the learned counsel for the petitioner, does not support the case of the petitioner; instead, it is against him. As per the said decision, public purpose is paramount. Public interest means general interest of the public, at large. Setting up of a Micro Compost Yard is of public importance. If the public place is converted into a hospital, the same is bad, as has been held in the case of Bangalore Medical Trust Vs. B.S.Muddappa [reported in 1991 (4) SCC 54].

25. In modern days, construction of Micro Compost Yard in a small portion of the public place cannot be said to be against public interest, when vegetable waste and garbage are thrown on the roads and vacant sites of private property. In the 21st Century, if setting up of Compost Yard is opposed, when admittedly the same is not against public interest, the persons, who are opposing these welfare/good activities, are certainly doing disservice to the community at large. When the Government comes forward with these kinds of benevolent acts, they are to be whole heartedly welcomed by the Homo sapiens.

26. On a careful consideration of the respective contentions and in view of the fact that the construction work had been fully completed even before the filing this writ petition and what remains now is only establishment of the attendant structures of the compost pits and in view of the fact that the processing shed is to be completed, this Court is of the considered view that the relief as sought for by the petitioner from this Court to restrain the respondents from interfering in any manner by way of putting up any construction of building or any structure in order to put up a garbage dumping yard in the Open Space Reservation area (OSR) situated in S.No. 443/1 of Poonamallee Village, which was gifted to the 4th respondent by the Poonamallee Nanbargal Nagar Veettu Manai Urimaiyalargal Nalasangam and consequently the further relief sought for to direct the 4th respondent herein to preserve the park as it is, cannot be acceded to by this Court to meet the ends of justice. One cannot ignore a primordial fact



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that interests of individuals/sangam/society may not come in the way of the interest and welfare of the public. To put it succinctly, the interest and welfare of the society is paramount. This Court, also taking note of the detailed counter affidavit filed by the fourth respondent/Municipality and also the contentions projected on either side, holds that the present writ petition filed by the petitioner/ Sangam sans merit.

27. In fine, the writ petition is dismissed. No costs. Consequently, the connected WMP is also dismissed.

28. It is made clear that if the micro compost yard that is to be set up in the playground in question is not maintained properly, against the erring officials,/delinquents/deviants (who are in charge of that place during the relevant period), appropriate departmental action shall be initiated for their failure to maintain their absolute integrity coupled with devotion to duty and thereby rendering themselves of unbecoming of members of the services.''

[c]The learned counsel would refer to the decision of the Division Bench dated 10.12.2018 rendered in WP.No.18569 of 2018 **[N.Shanmugham Vs. The District Collector, Tiruvallur District]**. In this case also, the Division Bench has held that deviation is permissible. The reasoning of the Division Bench before coming to the conclusion are set out in paragraphs No.5, 6, 8 to 10, which read thus:-

'5.Having a proper waste management is one of the biggest challenges which is being faced by any Municipality. Courts can take judicial notice of the increase in the industrial, commercial and residential waste. Due to rapid urbanization, virtually no space is available for dumping waste. Similar issues have been raised before this Court in Writ Petitions challenging conversion of the park to micro compost yard. This Court, by its order dated 08.11.2017 in W.P.No.26704, 25653 and 26720 of 2017 in the case of Janakar Vs. The Commissioner, Hosur Municipality, Hosur, has observed as under:

12. The relief sought for in these Writ Petitions is to remove the encroachment made in the area earmarked for park as per the site plan of the Tamil Nadu Housing Board, Phase VIII New ASTC HUDCO, Hosur, approved by the Director of Town and Country Planning. In the above said case, the learned Judge has categorically observed that no one can encroach the public place earmarked and the residents



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have to maintain the public amenities such as street, park or road earmarked at the time of approving the plan. When once the land has been developed into housing plots, it is the duty of the Commissioner of the Municipality to maintain the street, road, or park and such other public amenities without any encroachment. What has been stated is

that private parties are not supposed to encroach on the land. It is true that whenever an Open Space Reserve (OSR) place is identified as a park, no construction can be made in it, but however, it cannot be stated that a portion of the area cannot be used as a compost yard. When the citizens want the Government to remove the garbage, there should be a place for dumping the garbage and clearing it.

13. The compost yard in a small portion of the park, cannot be said to be an encroachment, as the Municipality has not encroached upon any private property. It is pointed out by the learned counsel for the petitioners that there is no alternative site identified for compost yard. It is made clear that whenever a site is identified, the people will raise objections and in that process, good efforts to clear the garbage is being stalled as contended by the first respondent Municipality. The contention that the respondents can take the garbage to some other place, cannot be accepted, as the Municipality efforts to dump the garbage in another place, may be objected to by the residents in that area. As pointed out by the respondents, if the petitioners want to maintain healthy atmosphere, and if they should not face any health hazard, then they must come forward to use the compost yard for removing the garbage and other waste. The contention that the compost yard should be removed and taken to some other place, cannot be accepted in the facts and circumstances of the case. However, at the best, the petitioners can do so without preventing the compost yard being constructed in a portion of the park and they should ensure that the area is litter free zone and regular fogging operations and other measures are being taken care of by the Municipality. If there is no activity for a



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day on account of any other reason, there is possibility of infectious and contagious diseases being spread.

14. Though the relief sought for by the petitioners cannot be granted, when the compost yard comes, the respondents shall ensure that it is cleaned twice a day and fogging the zone is also done, more particularly during sunset to avoid mosquito breed. That apart, the residents in the area shall also cooperate in keeping with the wastage in different forms, namely degradable and bio degradable forms of segregation of waste. Though this Court would suggest that the Corporation/Municipality concerned shall provide degradable wastage disposal bags to each and every house, as there is possibility of scam in that process, this Court is avoiding such observation. The respondents must also be aware that the provisions of the Tamil Nadu Public Health Act are not only applicable to the residents, but also applicable to the Municipal authorities. If any defects are pointed out by means of videograph or photograph by the residents with regard to the improper maintenance of the compost yard, the officers will be liable to pay costs and face prosecution as per law.

6. Similarly, a Division Bench of this Court, by its order dated 14.03.2018 in W.P.No.32938 of 2017 in the case of T.G.Ruthramani, Secretary, Poonamallee Nanbargal Nagar, Veettu Manai Urimaiyalargal Nalasangam, Poonamallee, Thiruvallur District, Chennai, Vs. The Member Secretary, Chennai Metropolitan Development Authority, Thalamuthu Natarajan Maligal, Egmore, Chennai, has observed as under:

?One cannot ignore a primordial fact that interests of individuals/sangam/society may not come in the way of the interest and welfare of the public. To put it succinctly, the interest and welfare of the society is paramount. This Court, also taking note of the detailed counter affidavit filed by the fourth respondent/Municipality and also the contentions projected on either side, holds that the present writ petition filed by the petitioner/Sangam sans merit.?



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8. The cause of construction of the compost yard is for a valid public purpose. It is for the Municipality to decide where the compost yard should be situated. There is nothing on record to indicate that it is on the tank bed. There is nothing to show that Aeri Uluvai is classified as a part of tank bed and therefore, no construction is permitted. The Counter specifically stated that even railway bridges and railway lines have been constructed on the area. The area, therefore, cannot be classified as tank bed. The Court cannot run the Government.

9. The issue of disposal of the solid waste and garbage is taking enormous proportions. The available land is shrinking fast and no land is available. The Municipality cannot dump garbage into another Municipality. In view of the shrinking space, it is for the Municipality to earmark/locate proper area for the purposes for establishing such places for dumping. The Court cannot close its eyes to the fact that wherever there is no proposal to establish Solid Waste Management Plant, residents of the area raised disputes. The construction of the Solid Waste Management Plant is for a public purpose. It is for the benefit of the locality. The Counter quoted supra categorically brings out the scientific method, which is being put to use for construction of such plants. The Solid Waste Management Rules, 2016, in detail explain as to how areas are demarcated and how this Plants have to be maintained. The Pollution Control Board monitors the functioning of such plant. It is not for the Court to decide as to which area should be used or not, for the purpose of establishing Plants, if there is no violation. The facts stated in the counter that the proposed Plant is not on the tank bed, are not controverted in the rejoinder.

10. In the Public Interest Litigation, we are not inclined to interfere with the establishment of the Solid Waste Management Plant, which is for public purpose. In the result, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.''

[d]The very same Division Bench, on the next day, i.e., on 11.12.2018, rendered another decision on the same subject matter in WP.No.8048 of 2018 [cited supra], **[E.S.Aadhithyan Vs. The District Collector, Kancheepuram]**. The relevant observations in paragraphs No.6 to 10 are extracted as under:-



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'6. Having a proper waste management program is one of the biggest challenges which is being faced by any Municipality. Courts can take judicial notice of the increase in the industrial, commercial and residential waste. Due to rapid urbanization, virtually no space is available for dumping waste. The Municipalities have therefore to balance the competing interests of having parks/lung space on one hand and dumping yards on the other hand. The Municipalities therefore cannot be found fault with for converting portions of parks in to dumping yard. It is also the duty of the Municipality to ensure that the parks are maintained properly and that the entire park is not converted into dumping yard. The majority of the park is being kept intact and only a small portion of the park is being utilized for the compost yard. Similar issues have been raised before this Court in the Writ Petitions challenging conversion of the park to micro compost yard. This Court, by its order dated 08.11.2017 in W.P.No.26704, 25653 and 26720 of 2017 in the case of Janakar Vs. The Commissioner, Hosur Municipality, Hosur, has observed as under:

12. The relief sought for in these Writ Petitions is to remove the encroachment made in the area earmarked for park as per the site plan of the Tamil Nadu Housing Board, Phase VIII New ASTC HUDCO, Hosur, approved by the Director of Town and Country Planning. In the above said case, the learned Judge has categorically observed that no one can encroach the public place earmarked and the residents have to maintain the public amenities such as street, park or road earmarked at the time of approving the plan. When once the land has been developed into housing plots, it is the duty of the Commissioner of the Municipality to maintain the street, road, or park and such other public amenities without any encroachment. What has been stated is that private parties are not supposed to encroach on the land. It is true that whenever an Open Space Reserve (OSR) place is identified as a park, no construction can be made in it, but however, it cannot be stated that a portion of the area cannot be used as a compost yard. When the citizens want the Government to remove the garbage, there should be a place for dumping the garbage and clearing



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13. The compost yard in a small portion of the park, cannot be said to be an encroachment, as the Municipality has not encroached upon any private property. It is pointed out by the learned counsel for the petitioners that there is no alternative site identified for compost yard. It is made clear that whenever a site is identified, the people will raise objections and in that process, good efforts to clear the garbage is being stalled as contended by the first respondent Municipality. The contention that the respondents can take the garbage to some other place, cannot be accepted, as the Municipality's efforts to dump the garbage in another place, may be objected to by the residents in that area. As pointed out by the respondents, if the petitioners want to maintain healthy atmosphere, and if they should not face any health hazard, then they must come forward to use the compost yard for removing the garbage and other waste. The contention that the compost yard should be removed and taken to some other place, cannot be accepted in the facts and circumstances of the case. However, at the best, the petitioners can do so without preventing the compost yard being constructed in a portion of the park and they should ensure that the area is litter free zone and regular fogging operations and other measures are being taken care of by the Municipality. If there is no activity for a day on account of any other reason, there is possibility of infectious and contagious diseases being spread.

14. Though the relief sought for by the petitioners cannot be granted, when the compost yard comes, the respondents shall ensure that it is cleaned twice a day and fogging the zone is also done, more particularly during sunset to avoid mosquito breed. That apart, the residents in the area shall also cooperate in keeping with the wastage in different forms, namely degradable and bio degradable forms of segregation of waste. Though this Court would suggest that the Corporation/Municipality concerned shall provide degradable wastage disposal bags to



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each and every house, as there is possibility of scam in that process, this Court is avoiding such observation. The respondents must also be aware that the provisions of the Tamil Nadu Public Health Act are not only applicable to the residents, but also applicable to the Municipal authorities. If any defects are pointed out by means of videograph or photograph by the residents with regard to the improper maintenance of the compost yard, the officers will be liable to pay costs and face prosecution as per law.

7. Similarly, the Division Bench of this Court by its order dated 14.03.2018 in W.P.No.32938 of 2017 in the case of T.G.Ruthramani, Secretary, Poonamallee Nanbargal Nagar, Veettu Manai Urimaiyalargal Nalasangam, Poonamallee, Thiruvallur District, Chennai, Vs. The Member Secretary, Chennai Metropolitan Development Authority, Thalamuthu Natarajan Maligal, Egmore, Chennai, has observed as under:

One cannot ignore a primordial fact that interests of individuals / sangam / society may not come in the way of the interest and welfare of the public. To put it succinctly, the interest and welfare of the society is paramount. This Court, also taking note of the detailed counter affidavit filed by the fourth respondent/Municipality and also the contentions projected on either side, holds that the present writ petition filed by the petitioner/Sangam sans merit.

8. This Court, by its order dated 22.01.2018 in the case of M.S.Rangarajan Vs. The Pammal Municipality, Pammal, Chennai, has observed as under:

14. According to the 1st respondent/ Municipality, the playground in question was not maintained properly. As per the Municipal Solid Waste Rules, 2016, the local body is required to set up Municipal Solid Waste handling facility as well as Micro Composting Facility within a small geographical area, so that the highly bio degradable wastes, such as vegetables, fruits and food waste can be reused by means of micro composting, where, the end product viz. manure can be effectively used for gardening and agriculture. It is the



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further case of the 1st respondent/Municipality that the Micro Composting facility is to occupy only a meagre portion of the playground with a Toilet for the workers engaged in the composting facilities to prevent open defecation in the area, apart from a small storage room for the safe storage of the packaged manure meant for disposal.

15.While making a layout, it is now mandatory to reserve 10% of the total land for public purpose excluding the land for streets and roads within the layout. But, the same has not been done in the case on hand, as the layout was approved earlier to the Development Rules. Though the petitioner contends that the setting up of Micro Compost Plant in the playground in question is bound to create irreparable and non-reversible pollution of air, land, ground water, besides emanating unbearable, filthy and dangerous odour, it is the case of the 1st respondent/Municipality that the waste generated by the residents of the petitioner's layout and the immediately surrounding areas, are being dumped by them in and around the Playground space itself.

16.Though the petitioner has raised genuine issues as regards pollution of all sorts due to the setting up of Micro Compost Plan in the Playground, this Court opines that the garbage that is dumped in and around the layout and playground, will be collected by the workers of Micro Compost Yard and segregated into biodegradable wastes and non bio degradable wastes, to ensure that the place is neat. As regards pollution, the 1st respondent/Municipality, in paragraph 9 of its counter affidavit, has clearly stated that the composting will be carried out in hermetically constructed tubs using bricks and concrete of proper specifications for water proofing and will be self contained to prevent any spread of decaying matter or leachate into the surrounding environment.

17.Private lawns or public parks are not a luxury, as they were considered in the past. Public Park is a gift of modern civilization and that reservation of vacant land as an open land is in conformity with



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the rules and regulations for formation of the layout and is meant for public use and enjoyment and it cannot be disputed that Open Space Reserve is treated as lung space.

18.The Apex Court has categorically held that where open space is preserved and earmarked in the plan for development of a planned town, the authorities cannot ignore the public interest and allot the same for construction of godowns, thereby causing environmental hazards. Ecology has been completely destroyed by human beings by encroaching OSR, playgrounds, river bunds, lakes, etc. But the official respondents must ensure that the waste has to be disposed of in a scientific manner. In a developing country, technicalities should not be a bar for development.

19.When a public park is a gift of modern civilization, Open Space Reserve is the lung space and setbacks are for the purpose of rain harvest, Micro Compost Yards are essential for disposal of the waste, so that it will not endanger the health of the citizens, more particularly, children, who are likely to be affected on account of mosquitoes, flies, etc, which cause air borne and water borne diseases. When citizens want development, certainly, they will have to cooperate for the betterment of the environment and ensure that no pollution is caused on account of their attitude in disposing of the waste from their respective residence. Though, strictly speaking, Development Rules have come into effect in 1975 and that the layout in question was approved in 1972, there is no hard and fast rule that there cannot be any development at all.

20.Residents/citizens cannot expect the authorities to identify a different place far away from the place of residence to have a Compost Yard and that there is a possibility of the residents of that area to object for setting up of a Compost Yard for disposal of the waste which are not generated from their residence.



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21. Now that the Government has come up with effective policies in segregation of wastes of all kinds, people are expected to welcome such measures and must cooperate with the authorities in maintaining a healthy environment. Even though garbage bins are set up in every street, it is painful to see people throw garbage near the bin and not into the bin. From stoneage, we have come to the modern era. Certainly development is required for our betterment and hence, technicalities should not come in the way that may be detrimental to the development of the Society.

22. In view of the above and taking into account the submissions of the 1st respondent/Municipality that the Micro Compost Yard, that is to be set up in the Playground in question, will be neatly maintained without any pollution and that only a meagre portion of the Playground is required for setting up of Micro Compost Yard, this Court finds no reason to interfere with the impugned tender notice published by the 1st respondent/Municipality.

23. It is made clear that if the Micro Compost Yard that is to be set up in the Playground in question is not maintained properly, the officials, who are incharge of that place during the relevant period shall be dismissed from service, on the ground that the Officer has failed to maintain absolute integrity, devotion to duty and that he has done the work of unbecoming of a member of his service.

9. As noticed in the above said judgments, it is the duty of the Municipal authorities to ensure that there is no nuisance created to the residents. The authorities shall ensure that the Municipal Solid Waste Management Plant/Transfer Station is to be cleaned twice a day and is to be done very regularly to avoid mosquitoes breeding in the portion of park. It is the duty of the authorities to ensure the park to maintain properly. If the park is not maintained, it will be taken as contempt of the orders of this Court.



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10. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.''

[e]The above decision followed earlier orders of this Court including **T.G.Ruthramani's case [cited supra]** dated 14.03.2018 made in WP.No.32938 of 2018.

[f]The learned counsel would submit that if all the decisions of the Division Benches referred to above, are cumulatively read, it could be deduced that the decisions have been rendered on the assumed supposition that setting up of compost yard in the play area earmarked serves larger public interest. According to the learned counsel, no statutory regulations, Rules have been referred to at all in support of the conclusion. The views expressed therein, may not hence be taken to be an expression of the correct legal principles on the present controversy.

[g]The learned counsel then proceeded to refer to a decision rendered by another Division Bench of this Court, during the same time, is reported in **2018 [5] CTC 857 [SIDCO Nagar Welfare Association represented by its Secretary Vs. CMDA and others]**. This decision dated 04.09.2018 on the other hand, has taken a contrary view that led to the present reference. According to the learned counsel, this decision has considered all the vital provisions of the Act, 1971, read with Development Control Rules framed thereunder and has referred to and relied upon several statutory provisions, Rules comprehensively, applicable case laws, in support of its well considered conclusion. According to the learned counsel, the decision of this Division Bench is most crucial and could be considered as a guidance for this Bench in its present endeavour for an authoritative answer. He has referred to paragraphs No.3 to 6 in order to highlight the facts involved in that case:-

3. The claim of the appellant/Writ petitioner which is a registered association of the residents of SIDCO Nagar, Villivakkam in the Writ Petition is as follows:

A Master plan for development of an area of 3,20,430 sq.mts was formulated by the Tamil Nadu Housing Board and the same was approved by the Planning Authorities in MMDA/WB/S&S No.4/77. Under the said development plan, a site situate almost in the middle of the area measuring about 59 grounds equivalent to 1,41,600 sq.feet (13160 Sq.mts) was classified as park-cum-play field. In the course of time, a School building came to be constructed in the said area and a water tank was also put up by the Chennai Metropolitan Water Supply and Sewerage Board in the southwestern corner of the land. The remaining area is lying vacant. Claiming that the Housing Board is now attempting to put up a multi



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storied commercial complex in the said land, the association had made various representations to the Authorities seeking to preserve the remaining land as a park or a play field as per the original sanctioned plan, referred to supra.

4. Since the Authority attempted to convert the same despite objections from the appellant association, the appellant was forced to seek a Mandamus as stated supra in WP No.8867 of 2007. It appears that during the course of the hearing of the Writ Petition in WP No.8867 of 2007, it was brought to the notice of this Court as well as the appellant Association that the Government had, by a Government Order in G.O.3D No.8, Housing and Urban Development (UD I) Department dated 24.08.2004 issued by the Housing and Urban Department, approved the request for reclassification of the land made by the Member Secretary of the Chennai Metropolitan Development Authority, namely the 1st respondent herein as a mixed residential site. Therefore, the association came forward with the second Writ Petition in WP No.32869 of 2007, challenging the said Government Order.

5. The sole ground on which the Government order came to be challenged was that as per the Original Plan approved in the year 1977, the site in question was earmarked for a park or a play ground, therefore, the Authorities did not have the power to reclassify into mixed residential site and put it to commercial use. It is also the claim of the appellant association that in view of the further development of the area in question, the entire SIDCO Nagar has become very congested and there is lack of open space in the area, therefore, if this available open space is also converted into a commercial/residential complex, the residents of the area would be deprived of the minimum lung space that is available.

6. The Writ Petition was resisted by the 3rd respondent Tamil Nadu Housing Board contending that as per the approved lay-out, the land under reference was earmarked for store-cum-site office. This store-cum-site office portion has been converted into convenience shops and bus stand, due to want of bus terminal in the area. The Transport Department, however, did not take over the site and it had informed the Executive Engineer of the Tamil Nadu Housing Board, by its letter dated 05.02.1997 that the said site is not required for developing the same as a bus terminus. Thereafter, the said site was converted into a mixed residential site under G.O.3D No.8, dated 24.08.2004. The said proposal has been accepted by the Government.



Therefore, the Writ Petition filed on a misconception that the site in question was earmarked for park-cum-play ground is not maintainable.''

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15. We have considered the rival submissions. From the arguments of the counsel appearing for the parties, the following points arise for determination in these intra Court Appeals.

- 1) What is the nature of the land that is reserved for a public purpose under the Development Control Rules by the owner or developer while obtaining sanction for a lay-out?
- 2) Whether the owner or the developer (the 3rd respondent) has got any right over the land so reserved for public purpose while obtaining sanction for laying out the land into residential plots?
- 3) What is the power of the Government to reclassify such lands?
- 4) Whether the Government Order impugned in WP No.32896 of 2007 viz. G.O.3D No.8 dated 24.08.2004 is valid?

Point Nos.1 & 2:

16. A peep into the provisions of the relevant enactment which relates the development of land, namely the Tamil Nadu Town and Country Planning Act, 1971, would be necessary in order to determine the controversy. The preamble of the Act, viz. Tamil Nadu Town and Country Planning Act, 1971 (hereinafter referred to as the Act, 1971), shows that it is an Act to provide for planning the development and use of rural and urban land in the State of Tamil Nadu and for purposes connected therewith.

Section 2(2) of the Act defines a 'amenities', which reads as follows:

"2(2) 'amenities' includes streets, open spaces, parks, recreational grounds, play-grounds, water and electric supply, street lighting, sewerage, drainage, public works and other utilities, services and conveniences;"

Section 2(13) of the Act defines a Development, which reads as follows:



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"2(13) development means the carrying out of all or any of the works contemplated in a regional plan, master plan, detailed development plan or a new town development plan prepared under this Act, and shall include the carrying out of building, engineering, mining or other operations in, or over or under land, or the making of any material change in the use of any building or land."

Section 2(34) of the Act defines a Public Open Space which reads as follows:

"(34) public open space means any land whether enclosed or not belonging to the Central or any State Government or any local authority or any body corporate, owned or controlled by the Central or any State Government on which there is no building or of which not more than one-twentieth part is covered with buildings, and the whole or the remainder of which is used for purpose of recreation, air or light;"

Section 2(36) defines a Public Purpose which reads as follows:

"(36) public purpose means any purpose which is useful to the public or any class or section of the public"

Sections 48 & 49 of the Act read as follows:

"Section 48. Restrictions on buildings and lands, in the area of the planning authority- On or after the date of the publication of the resolution under sub-section (2) of section 19 or of the notice in the Tamil Nadu Government Gazette under section 26, no person other than any State Government or the Central Government or any local authority, shall, erect any building or make or extend any excavation or carry out any mining or other operation, in, on, over or under any land or make any material change in the use of land or construct, form or layout any work except with the written permission of the appropriate planning authority and in accordance with the conditions, if any, specified therein.

Section 49. Application for permission.- (1) Except as otherwise provided by rules made in this behalf, any person not being any State



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Government or the Central Government or any local authority intending to carry out any development on any land or building on or after the date of the publication of the resolution under sub-section (2) of section 19 or of the notice in the Tamil Nadu Government Gazette under section 26, shall make an application in writing to the appropriate planning authority for permission in such form and containing such particulars and accompanied by such documents as may be prescribed.

(2) The appropriate planning authority shall, in deciding whether to grant or refuse such permission, have regard to the following matters, namely:-

(a) the purpose for which the permission is required;

(b) the suitability of the place for such purpose;

(c) the future development and maintenance of the planning area

(3) When the appropriate planning authority refuses to grant a permission to any person, it shall record in writing the reasons for such refusal and furnish to that person, on demand, a brief statement of the same.

17. The effect of the above provisions is as follows:

Section 48 restricts the right of any person intending to develop his or her land from doing so except with the written permission of the appropriate Planning Authority (the 1st respondent in this case) in accordance with the conditions specified in the Act or the Rules made there under. Section 49

provides for the procedure for obtaining such permission. Any development contrary to Section 48 without obtaining permission of the Planning Authority would be illegal. Section 122 of the Act empowers the Government to make Rules with regard to the development and the power conferred under Section 122 would take in the power to regulate such development.

18. Pursuant to the powers conferred under Section 122 the Development Control Rules were framed by the Government and they have been amended from time to time. The Development Control Rules that were in force at the relevant point of time, namely August 2004 would apply to the case on hand,



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inasmuch as, the Government order reclassifying the land as a mixed residential plot came to be passed on 24.08.2004. Rule 19 of the Development Control Rules as it stood at the relevant point of time reads as follows:

"19. Layout and sub-division :- (a) The laying out and sub-division of land for building purposes shall be carried out only in accordance with the provisions specified below.

(i) The width of the streets and roads in the layouts shall conform to the minimum requirements given below and be in conformity with the development plan, if any, for the area except in group housing, flats or in area reserved for Economically Weaker Sections.

(ii) No plot in a layout shall be sub-divided or utilized for any purpose other than the purpose for which the site is approved except with the prior approval of the authority.

(iii) Reservation of land for communal and recreational purposes in a layout or sub-division for residential, commercial, industrial or combination of such uses shall be as follows. Extent of layout Reservation For the first 3000 square metres Nil Between 3000 square metres and 10,000 square metres 10 percent of the area excluding roads or in the alternative he shall pay the market value of equivalent land excluding the first 3000 square metres as per the valuation of the registration department. No such area reserved shall measure less than 100 square metres with a minimum dimension of 10 metres. The space so reserved shall be transferred to the Authority or to the Local body designated by it, free of cost, through a deed, and in turn the Authority or the Local body may permit the residents Association or Flat owners Association for maintaining such reserved space as park. In such cases public access for the area as earmarked shall not be insisted upon. Above 10,000 square metres 10 percent of the area excluding roads shall be reserved and this space shall be maintained as communal and recreational open space to the satisfaction of the authority or transferred to the authority for maintenance. It is obligatory to reserve 10 percent of the layout area.



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(iv) The space set apart for roads and the 10% area reserved for communal and recreational purposes under item (iii) above shall be deemed to be zoned for institutional open space and recreational use zone as the case may be. The land so registered shall be transferred to the Authority or Agency or the Local body designated by the Authority through a registered deed before the actual approval of the layout under the provisions of T&CP Act.

The exact mode of conveyance should be consistent with the relevant enactment and regulations.

(v) The building and use of land shall conform to the conditions that may be imposed while sanctioning the layout. The space set apart for commercial, institutional, industrial or other uses shall be deemed to be zoned for commercial, Institutional, Industrial corresponding uses under the Master Plan.

(vi) The land for communal and recreational purposes shall be restricted to ground level, in a shape and location to be specified by the Chennai Metropolitan Development Authority. The land so reserved shall be free from any construction by the layout owner, developer or promoter.

(vii) 10 percent of layout area, additionally, shall be reserved for Public Purpose in those layouts which are more than 10000 sq.m. in extent. Interested departments shall be given intimation of layout approval by the CMDA and requested to purchase the land from the owner or developer or promoter, on paying the cost of plots so reserved. The owner or developer or promoter has every right to sell the lands for residential purpose if no demand from any public departments is received within one year."

19. A cursory reading of Rule 19(a) would show it is obligatory for the owner/developer to reserve 10% of the area excluding the roads, which shall be maintained as communal and recreational open space to the satisfaction of the Authority. Rule 19(a)

(vii) provides for an additional reservation of another 10% for public purpose in lay-out which is



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more than 10000 sq. m. in extent. This additional 10% can be purchased by any department which intends to establish its facilities in the lay-out from the owner, if none of the departments exercise their option within a period of one year then the land reverts back to the owner.

20. From the above, it could be seen that there are two distinct clauses of land reserved for public purpose. The first one is under Rule 19(a)(iii) for communal and recreational purpose. Insofar as the lands which are reserved under Rule 19(a)(iii) are concerned, there is a statutory obligation that these lands should be maintained as communal and recreational open space and the following words which appear in the table would show that these lands can never be reclassified or transferred for consideration or otherwise.

"It is obligatory to reserve 10% of the lay-out area"

21. The second being the reservation of 10% in the lay-out area contemplated under Rule 19(a)(vii) which reverts in the owner or developer if it is not acquired within a period of one year. These two distinct clauses of land can be categorized as non-salable reservation and salable reservation. While the reservation to 10% made under Rule 19(a)(iii) for communal and recreational purpose falls under the category of non-salable land, the reservation made under Rule 19(a)(vii) would be land reserved for public purpose which falls under salable category.

22. Quite often this distinction is not maintained leading to indiscriminate reclassification of lands which are reserved under 19(a)(iii). In the case on hand, it is admitted at the bar that the original lay-out of the year 1977 was not placed before the learned Single Judge, thereby, the original purpose for which the land in question was reserved was suppressed and the subsequent documents which proceeded on the footing that the Original classification was for store-cum-site office were placed before the learned Single Judge, which led him to believe that the original classification was not under Rule 19(a)(iii) of the Rules.

23. Even the impugned G.O. i.e., G.O.3D.No.8, Housing and Urban Development Department (UD I) Department, dated 24.08.2004 proceeds on the footing that the site in question was reserved for store-cum-site-office. A specific reference is made in the impugned Government order that the site in question was reserved for store-cum-site office. The relevant portion of the Government Order dated



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24.08.2004 reads as follows:

"In the approved lay-out an extent measuring 12 grounds 0839 sq.ft. was earmarked for store-cum-site office out of which an extent measuring 3 grounds 0702 sq.ft, has been handed over

to Chennai Metropolitan Water Supply and Sewerage Board and the balance land measuring 9 grounds 0137 sq. ft. has been converted from store-cum-site Office into bus stand and shops sites which is only now requested for conversion as mixed residential use. As stated by the Tamil Nadu Housing Board Development Association, no such vacant land measuring about 2.5 acre was reserved for park-cum-play field in the approved lay-out".

"As the area mentioned by the association was originally earmarked as store-cum-site office, the request of the Tamil Nadu Housing Board that the site earmarked for bus stand and 4 convenient Shop site which is saleable (not play ground) may therefore be converted as mixed residential zone so as to enable to construct the residential-cum-commercial complex in the site".

24. It is on this premise that the Government had approved the proposal for conversion of the site in question as a mixed residential zone. It is therefore, evident that the Government was not apprised of the actual reservation made while the plan was approved in the year 1977 by the 1st respondent in MMDA/WB/S&S No.4/77.

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 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.



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26. The various judicial pronouncements of the Honble 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 Honble 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 Honble 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.



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23. ..The 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 Honble 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".



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28. A similar question arose again before the Honble Supreme Court in PT.Chet Ram Vashist (dead) by Lrs. v. Municipal Corporation of Delhi, reported in 1995 (1) SCC 47, wherein, the Honble 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 Honble 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 Honble 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



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and he holds the land for the benefit of the society or public in general. The Honble 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 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 Honble 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 Honble 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



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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



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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 under-estimated. Private lawns or public parks are not a luxury, as they were considered in the past. A public park is a gift of modern civilization, and is a significant factor for the improvement of the quality of life. Open space for a public park is an essential feature of modern planning and development, as it greatly contributes to the improvement of social ecology."

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



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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 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 Trusts case as well as Sri Devi Nagar Residences Welfare Associations 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 Honble Supreme Court and this



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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.

Points 3 and 4:

36. Once it is held that the land which is reserved for a communal and recreational purposes in a lay-out, does not vest in the Government or in the owner or developer and the ownership actually vests with the purchasers of the plots as an amenity under Section 2(2) of the Tamil Nadu Town and Country Planning Act, 1971, the Government is denuded of the powers to reclassify the same. Probably, the 2nd respondent Chennai Metropolitan Development Authority as well as the 4th respondent Tamil Nadu Housing Board, were aware of the legal position, but however, they chose to project a false picture before the Government, as if the land was reserved for store-cum-site office in the original plan and thereby, persuaded the Government to approve the re-classification. This conclusion of ours emanates from the reading of the impugned G.O. dated 24.08.2004, wherein, the Government specifically adverts to the claim of the residents association, the appellant herein and holds that the appellants claim cannot be accepted, because the land in question was not classified as play ground or park, but as store-cum-site office.

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



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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.

39. The 2nd respondent, namely the Corporation of Chennai is directed to take possession of the entire vacant land available and develop it as a park within a period of 6 months from the date of receipt of a copy of this judgment. The Commissioner, Chennai Corporation is also directed to file a compliance report along with proper documentary proof for having complied with the above directions into the Registry without fail within a month thereafter.

40. In the normal circumstances, we would have not hesitated to impose heavy costs on the respondents for the unreasonable stand they took and for burking facts before the learned Single Judge, however we desist from doing so, in view of very fair stand adopted by the learned Advocate General before us. Hence the appeals are disposed of as above without costs. Consequently, the connected miscellaneous petitions are closed."

[h]In the above matter, the Division Bench has made several observations pointedly that the Government has no power to reclassify a land which was reserved for communal or recreational purposes under the provisions of the Act, 1971 read with the Development Control Rules. The Division Bench categorically held that the action of conversion of different user of the land by the Government suffered from absence of jurisdiction. In the run up to the final conclusion, the Division Bench, in extenso, relied upon various decisions of the Hon'ble Apex Court and the decisions of this Court and also took into consideration, various provisions of the Act, 1971 and the Development Control Rules, framed thereunder. According to the learned counsel, unlike the earlier cited Division Bench judgments, the above all encompassing Division Bench judgment laid down the correct law on the subject. The Division Bench has analysed all the statutory provisions incisively unlike the other Division Bench judgments, which proceeded on the basis of general notion and opinion that location of Composting Yard meant to serve public purpose, the same therefore, cannot be objected to. Unfortunately, the Division Benches which held so, have not analysed the relevant provisions of the Act, 1971, Development Control Rules, framed thereunder or the Tamil Nadu Parks, Play Fields and Open Spaces [Preservation and Regulation] Act, 1959, hereinafter referred to as 'the Act, 1959'. The decisions have been rendered outside the legal context of the above



Regulations and Rules which can never be considered to be laying down the correct principles of law. As far as the decision rendered by the Division Bench in **SIDCO Nagar Welfare Association case [cited supra]**, a thorough analysis has been undertaken as to the applicability of the statutory provisions and Rules and the views expressed therein were fortified by sound and concrete legal basis having dominant persuasive value towards consideration of the present reference.

[i]The learned counsel, proceeded to refer to various provisions of the Act, 1971 and the Tamil Nadu Combined Development and Building Rules, 2019, hereinafter referred to as the Rules, 2019 and the Act, 1971, and also the Act, 1959, that come into play in consideration of this Court.

[j]The relevant provisions of the Acts and Rules have been referred to as under:-

[1]The Tamil Nadu Town and Country Planning Act, 1971:-

The learned counsel for the appellants referred to the following Sections in the said Act, 1971:-

[i]Sections 32 and 33 :-

32. Variation, revocation and modification of regional plans, master plans and new town development plan.-

(1) A regional plan, master plan or new town development plan approved under section 28 may, at any time, be varied or revoked by a subsequent regional plan, master plan or new town development plan, as the case may be, prepared and approved under this Act.

(2)(a) Once in every ten years after the date on which the regional plan for an area comes into operation, the regional planning authority may, and if so directed by the Government shall, after carrying out such fresh surveys as may be considered necessary and in consultation with the Director, review the regional plan and make such modifications in such plan wherever necessary and submit the modified regional plan for the approval of the Government.

(b) Once in every five years after the date on which the master plan for an area comes into operation, the local planning authority may, and if so directed by the Government shall, after carrying out such fresh surveys as may be considered necessary and in consultation with the regional planning authority and the local authorities concerned, review the master plan and make such modifications in such plan wherever necessary and submit the modified master plan for the approval of the Government.



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(3) The provisions of section 36, 28 and 30 with such modifications as may be necessary shall apply to such modified regional plan or the master plan, as the case may be.

(4) The Government may, at any time by notification in the Tamil Nadu Government Gazette, vary or revoke the regional plan, a master plan or a new town development plan, as the case may be, prepared and approved under this Act.

33. Variation and revocation of detailed development plan.-

(1) A detailed development plan approved under section 29 may, at any time, be varied or revoked by a subsequent plan prepared and approved under this Act.

(2) The provisions of sections 27, 29 and 31 with such modifications as may be necessary shall apply to such subsequent plan referred to under sub-section (1).

(3) The Government may, at any time, by notification in the Tamil Nadu Government Gazette, vary or revoke the detailed development plan prepared and approved under this Act.

In respect of the above provisions, the learned counsel submitted that a clear procedure has been envisaged in case of any variation, revocation or modification, touching upon the Development Plan. **Sections 48 and 49**, which were relied upon by the Division Bench in **SIDCO's case** read as under:-

48. Restrictions on buildings and lands, in the area of the planning authority.- On or after the date of the publication of the resolution under sub-section (2) of section 19 or of the notice in the Tamil Nadu Government Gazette under section 26, no person other than any State Government or the Central Government or any local authority, shall, erect any building or make or extend any excavation or carry out any mining or other operation, in, on, over or under any land or make any material change in the use of land or construct, form or layout any work except with the written permission of the appropriate planning authority and in accordance with the conditions, if any, specified therein.

49. Application for permission.- (1) Except as otherwise provided by rules made in this behalf, any person not being any State Government or the Central Government or any local authority intending



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to carry out any development on any land or building on or after the date of the publication of the resolution under sub-section (2) of section 19 or of the notice in the Tamil Nadu Government Gazette under section 26, shall make an application in writing to the appropriate planning authority for permission in such form and containing such particulars and accompanied by such documents as may be prescribed.

(2) The appropriate planning authority shall, in deciding whether to grant or refuse such permission, have regard to the following matters, namely:-

(a) the purpose for which the permission is required; (b) the suitability of the place for such purpose;

(c) the future development and maintenance of the planning area.

(3) When the appropriate planning authority refuses to grant a permission to any person, it shall record in writing the reasons for such refusal and furnish to that person, on demand, a brief statement of the same.

The above provisions place restriction on any material change in the use of land or construction etc., after the date of publication of Resolution under section 19[2] of the Act. **Section 19[2]** of the Act, 1971, reads thus:-

19. Declaration of intention to make or adopt a detailed development plan.-

.....

(2) The resolution under sub-section (1) shall be published by the local planning authority in the prescribed manner by notification in the District Gazette concerned and such notification shall contain such particulars as may be prescribed and specify the time and place where a plan of the area may be inspected.

[ii] The learned counsel then referred to **Section 58** which deals with development undertaken by State Government, Central Government or the Local Authority:-

58. Development undertaken on behalf of any State Government or Central Government or local authority.-

(1) When any department of any State Government or the Central Government or any local authority intends to carry out development of any land or building, the officer-in-charge thereof



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shall inform, in writing, the planning authority concerned the intention to do so, giving full particulars thereof, and accompanied by such plans and documents at least thirty days before undertaking such development:

Provided that in case where any local authority is the local planning authority under this Act, it shall inform the fact of any such proposed development to the regional planning authority concerned within whose jurisdiction such local authority is situated.

(2) Where a planning authority concerned or the regional planning authority concerned, as the case may be, raised any objection to the proposed development on the ground that the development is not in conformity with the provisions of any development plan under preparation or for any other material consideration, the officer of the State Government, Central Government or any local authority, as the case may be shall-

(i) either make necessary modifications in the proposals for development to meet the objections raised by the planning authority concerned, or

(ii) submit the proposals for development together with the objections raised by the planning authority concerned to the Government for decision.

(3) The Government, on receipt of the proposal for development together with the objections of the planning authority concerned shall, in consultation with the Director, either approve the proposals with or without modifications or direct the officer to make such modifications in the proposals as they consider necessary in the circumstances and the officer concerned shall be bound to make such modifications as proposed by the Government.

The learned counsel with reference to the above provisions, submitted that no person including the Government or Local Authority is permitted to carry out any development, without informing the proposed development to the planning authority and the proposed development should be in strict conformity with the Development Plan and subject to the provisions of the Act, 1971.

[iii]The learned counsel hence submitted that the provisions of the Act, 1971, clearly prohibit that no person or any authority acting on behalf of the State, can seek to convert the usage of the land for a different purpose that has already been earmarked for parks/children's play area in terms of the planning permission granted by the authorities in terms of the Master Plan or the Development Plan as per the Scheme of the Act, 1971. Even if there is any variation or modification to be made, a procedure is



envisaged in the Act, 1971, viz., permission to be obtained from the Planning Authority subject to the Authority being satisfied that the permission sought is within the framework and the scheme of the Act, 1971. Where a portion of the land is to be converted into a different user, even under the pretext of serving public interest, such conversion requires adherence to the basic and mandatory procedure contemplated in the Act, 1971. In this case, admittedly, no semblance of the procedure contemplated in the Act, 1971, had been followed by the authorities concerned.

[iv]The learned counsel would further refer to **Section 85** which reads thus:-

85. Restoration of property to original state where it is dealt with in contravention of section 47 or 48.-

(1) Where any person -

(a) subject to the proviso to section 47, uses or causes to be used any land or carry out any development in that area otherwise than in conformity with such development plan;

(b) has erected any building or made or extended any excavation or carried out any mining or other operations or made any material change in the use of land or constructed, formed or laid out any work in contravention of section 48 or of any condition specified in any permission referred to in that section;

(c) the appropriate planning authority may, by order, require such person to restore the land or building to its original condition, or to bring the land or building in conformity with any condition specified in such permission within such period as may be specified in the order.

(2) If such person fails to comply with such order within the period specified in the order-

(a) the appropriate planning authority may itself take such measures as appears to it to be necessary to give effect to the order and recover the cost thereof from such person as an arrear of land revenue; and

(b) such person shall, without prejudice to the provisions of clause (a), be punishable-

(i) with fine which shall not be less than twenty-five rupees and not more than five hundred rupees; and

(ii) in the case of continuing failure, with fine which shall not be less than five rupees and not more than one hundred rupees for every day during which such failure continues.



Under the above section, the Planning Authority has been empowered to restore the land or building to its original condition if the authority finds any deviation not in conformity with the development plan. The learned counsel also referred to **Section 111** of the Act, which reads as under:-

111. Effect of other

laws.-

(1) The provisions of this Act shall be read subject to the provisions of the Chennai Metropolitan Water Supply and Sewerage Act, 1978 (Tamil Nadu Act 28 of 1978);

(2) Save as otherwise provided in this Act, the provisions of this Act and the rules and regulations made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law, custom, usage or contract;

(3) Subject to the provisions of sub-section (1) but notwithstanding anything contained in any other law-

(a) when permission for development in respect of any land or building has been obtained under this Act, such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development, has not been obtained;

(b) when permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained.

The above provision has an overriding effect of any other law or Rules governing the subject matter. The learned counsel therefore, submitted that the action of having a Compost Yard even within a limited space carved out of the earmarked park or children's play area, such action amounted to conversion or deviation of the development plan and such conversion is impermissible in terms of the Scheme of the Act, 1971 read with Development Control Rules as held by the learned Division Bench in SIDCO Nagar case.

[2]The Tamil Nadu Combined Development and Building Rules, 2019:-

The learned counsel proceeded to invite the attention of this Court to the above Rules and referred to the following applicable Rules:-



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(4) When any department of the State government or the Central government other than those specified in sub-rule (2), intends to carry out development of any land or building, the officer in charge of the same shall apply in writing in the Form with necessary documents and plan to the competent authority and obtain clearance for the intended development complying with these rules .

[c] **Rules 8[1][f] and 8[2][f]:-**

8. Plan Requirements.-

(1) The applications for planning permit or Building permit shall be accompanied as prescribed below:-

.....

(f) the position of the building and of all other buildings if any which the applicant intends to erect upon his site in relation to,-

(1) the boundaries of the site and in case where the site has been partitioned, the boundaries of the portion owned by the applicant and also of the portions owned by others.

(2) all adjacent street, buildings with number of storied and height and premises within a distance of 15m of the site and of the contiguous land if any referred to in item (a) ; and

(3) if there is no street within a distance of 15m of the site, the nearest existing street.

.....

(2) In case of subdivision or layout or reconstitution or amalgamation of land for building purposes, the application shall be accompanied by the subdivision or layout or reconstitution or amalgamation plan which shall be drawn to a scale of not less than 1:500 containing the following:-

.....

(f) a statement indicating the total area of the site, area utilised under roads, parks and playground, shops and other commercial spaces, schools, public purpose sites etc. along with the percentage.

[d] **Rules 15 and 16[1] and [2]:-**

15. The Developments to be in conformity with these Rules.-

(1) No developments shall be in contravention of these Rules.

(2) No land, premises or building shall be developed, constructed, altered, reconstructed, subdivided, amalgamated, reconstituted, laid-out, changed or put to use which is not in conformity with the provisions of these rules.



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(3) In the case of an area comprised in a Detailed Development Plan approved under the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972) the Developments therein shall be in conformity with that Detailed Development Plan: Provided that where for a road, street alignment is not prescribed in Detailed Development Plan, but it is prescribed in the Master Plan, then street alignment in Master Plan shall apply. Provided further that in cases where an area is declared as Continuous Building Area either in Master Plan or in Detailed Development Plan, the area shall be taken as Continuous Building Area and developments therein shall be regulated accordingly. However, Continuous Building Area parameters shall not apply to plots in approved layout areas unless specifically earmarked for continuous building developments.

(4) All detailed Town Planning Schemes sanctioned under the Town Planning Act 1920 (Tamil Nadu Act VII of 1920) shall stand superseded by the Master Plan or Detailed Development Plan approved for that area. All developments therein shall be regulated with reference to the land use classification indicated in the Master Plan or Detailed Development Plan for that area and development regulations.

16. Designation of use in Master Plan or Detailed Development Plan.-

(1) Where use of a site or premises is specifically designated not broad land use zoning in the Detailed Development Plan or Master Plan, it shall be used only for the specific purpose so designated, unless the land use of the site is varied as provided in the Act.

(2) Where the use of the site or premises is not specifically designated in the Detailed Development Plan or Master Plan, it shall be used for the uses or activities permissible in the land use zone in which the site or premises falls as per the Detailed Development Plan or Master Plan.

The above Rules clearly mandate that there shall be no developments in contravention of the Rules. When development of an area is part of the detailed Development Plan approved under the provisions of the Act, 1971, any development shall be in conformity with the said Development Plan and all developments will be regulated with reference to the land classification indicated in the Master Plan or Detailed Development Plan, in terms of the Development Rules



applicable to that area concerned. In line with the above mandatory Rule position, when an area is earmarked under the Development Plan, viz., park/children play area, the conversion of a portion of that area for treatment of solid waste by locating Micro Composting Centre [MCC] in the neighbourhood or locality, would certainly be in contravention of the Rules contemplated under the consolidated Development Rules, 2019.

[e]The learned counsel also referred to **Rule 17** regarding correlation of land use zones in Master Plan, Detailed Development Plan and Development Rules. He also referred to Use Classification is made in regard to Primary Residential Use, Mixed Residential Use and Open Space and Recreational Use. In respect of open space and recreational use in terms of Detailed Development Plan it is provided for open space and recreational park or play space.

[f]This Court's attention has also been drawn to **Rule 19 along with Rule 22** which read thus:-

19. Development prohibited or restricted areas:-

The regulations for Development prohibited or restricted areas are furnished in Annexure-XVII. The Government may notify modifications to these regulations from time to time and such modifications shall prevail.

22. Illegal Developments:-

If any construction or development is carried out illegally or in deviation to the plan approved, the competent authority shall take action against the constructions or developments as provided in the Act and in these Rules.

With reference to the above Rules, the learned counsel submitted that the Rules, 2019, have exhaustively laid down as to how the development should take place in conformity with the procedure and the Regulations contemplated therein. The Rules are exhaustive and no development or construction is permissible outside the framework of the Rules, 2019. He has particularly drawn reference to Rule 17, whereby a open space and recreational park or play space is earmarked in terms of the Development plan on the basis of the original Master Plan and the question of converting recreational park area into a different use, is in contravention of the Rules and the purported action of the Coimbatore Corporation/1st respondent herein, is contrary to the mandate of the Rules, apart from the same being in contravention of the settled legal principle laid down by the Division Bench of this Court in **SIDCO Nagar's case** and also in terms of the legal principles enunciated by the Hon'ble Apex Court on the subject matter. The learned counsel also referred to **Rule 32**, which is extracted hereunder:-



be in danger of losing its recreational value because of the location of the waste treatment plant within the park area.

[g]The learned counsel also referred to **Rules 69 and 72** wherein the Government has been given power to grant relaxation from any of the requirements prescribed under the Rules and also the power to grant exemption to any specified class of buildings or any building from application of all or any provisions of these Rules. As far as the present issue on hand is concerned, the Government appeared to have not exercised any discretion towards grant of any exemption for the authorities to change the use of the park area for locating a solid waste management plant.

[3]The Tamil Nadu Parks, Play Fields and Open Spaces [Preservation and Regulation] Act, 1959:-

[A]The learned counsel further referred to the above important enactment, which govern the maintenance and upkeep of the notified Parks, which either come under the control of the State authorities or directed to be governed by the private entities. Before referring to the sections, the learned counsel has drawn the attention of this Court to the Statement of Objects and Reasons for enacting the law, which reads as under:-

Statement of Objects and Reasons

Tamil Nadu, Parks, Play-fields and Open Spaces (Preservation and Regulation) Act, 1959 (Tamil Nadu Act 26 of 1959) - Within the last few years, the influx of the population into the towns and cities has led to a great deal of pressure on accommodation and it is noted that, for this purpose, many open spaces and play-fields are being encroached upon. It is also noted that several parks, play-fields and open spaces are not kept in proper sanitary condition and that the Corporation and the municipalities themselves have constructed many buildings for their use and have dumped in many places goods, converting them into sore godowns. If this tendency is allowed to grow, the health of the city population will be seriously affected and the absence of free open spaces, which should act as lungs in urban areas will render the population liable to ill-health, disease or infection. The proposed measure is designed to prevent such a catastrophe.

[B]The learned counsel referred to **Sections 3, 4 and 6 of the Act** which are extracted hereunder:-

'3.[1]:-Preparation and submission of list of parks, play-fields and open spaces by executive authorities:-

The executive authority of every local authority shall not later than six months from the date on which this Act comes into force in



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authority, prepare and submit for the approval of the Government a correct and complete list with plans and maps of all the parks, play fields and open spaces in the area aforesaid containing such particulars as may be prescribed.

[2]The Government shall, as soon as may be, after the receipt of the list and other documents referred to in sub-section [1], publish the list in the prescribed manner and such publication shall state at what place and time the maps, plans and documents aforesaid will be available to the public for inspection.

4.Approval of list by Government:-

[1]Any person interested, may submit his objections or suggestions in writing in respect of anything contained in, or relating to, the list, to the Government within three months from the date of the publication under sub section [2] of section 3.

[2]The Government may, after considering the objections and suggestions, if any, and making such inquiry as they think fit approve the list with or without modifications.

[3]The approval of the Government to a list under sub section [2] shall be published in the prescribed manner and such publication shall contain the list and shall also state at what place and time particulars relating to the matters mentioned in the list will be available to the public for inspection.

6.Prohibition of the use of parks, play-fields and open spaces in certain case:-

No park, play-field or open space specified in the list published under section 4 or 5 shall, except with the previous sanction of the Government, be used for any purpose other than the purpose or purposes for which it was used on the date of the coming into force of this Act under sub-section [3] of Section 1 or on the date with effect from which this Act is extended to the local area concerned under sub-section [4] of section 1, as the case may be.

[C]The learned counsel contended that the Statement of Objects and Reasons of the above Act, 1959, is self explanatory. The cardinal reason for introducing the enactment was that several parks, play-fields meant for public use had not been kept in proper sanitary condition and they had become dumping yards and the Act was conceived to be an effective measure designed to prevent any catastrophic effect on the health of the citizens. Apart from this, it was intended to save the open and lung spaces in urban



areas from encroachment. Section 6 clearly stipulates that no park, play-field be used for any purpose other than the purpose for which it was used except the previous sanction of the plan. However, the leeway granted in the section to the Government must be in conformity with the other Rules and statutory Regulations that govern the subject matter.

[k]The learned counsel, in continuation of his arguments, would submit that today the solid waste management is stated to be governed by the Solid Waste Management Rules, 2016 [in short 'the Rules, 2016']. Earlier to this Rule, there was Solid Waste Management Rules, 2000, which has been replaced by the present Rules, 2016. He referred to Rule **11 [a] and [b]** of the Rules, 2016, which read thus:-

Rule 11. Duties of the Secretary-in-charge, Urban Development in the States and Union territories.---

[1]The Secretary, Urban Development Department in the State or Union Territory through the Commissioner or Director of Municipal Administration or Director of Local Bodies shall-

(a) Prepare a state policy and solid waste management strategy for the state or the union territory in consultation with stakeholders including representative of waste pickers, self help group and similar groups working in the filed of waste management consistent with these rules, national policy on solid waste management and national urban sanitation policy of the ministry of urban development, in a period not later than one year from the date of notification of these rules.

(b) While preparing State policy and strategy on solid waste management, lay emphasis on waste reduction, reuse, recycling, recovery and optimum utilisation of various components of sold waste to ensure minimisation of waste going to the landfill and minimise impact of solid waste on human health and environment.

[1] The learned counsel particularly emphasised that while laying down a State Policy towards the Solid Waste Management and minimisation of solid waste going to the landfill, correspondingly it should be ensured that there is a minimal impact of solid waste on human health and environment. According to him, the policy of the Government or the Corporation authority to locate the Compost yards within the park area will be in direct contravention of the policy envisaged in the above said Rules. When the Rules caution and mandate that there should be a minimal impact of solid waste on human health and environment, then what is sought to be done by the



authorities today is the opposite of such mandate. According to the learned counsel, it is needless to mention that location of the Compost Yard within the park could have deleterious effect on the health of old, young and children of the neighbourhood using the park for their day-to-day recreation. Their right to inhale unpolluted air and enjoy healthy environment in the neighbourhood, would certainly take a severe beating.

[m]The learned counsel also referred to **Rules 15 and 16** of the Rules, 2016, which deal with the duties and responsibilities of the Local Authorities in discharge of their obligation towards the solid waste management. Under Rule 15, multitude of duties and responsibilities are imposed on the authorities for the purpose of regulating and governing the Solid Waste Management. Rule 16 deals with the duties of the State Pollution Control Board or the Pollution Control Committee. The learned counsel further referred to Schedule-I appended to the Rules and has particularly drawn reference to the criteria for site selection:-

Schedule (A) Criteria for site Selection.

(i) - The department in the business allocation of land assignment shall provide suitable site for setting up of the solid waste processing and treatment facilities and notify such sites.

(ix) - A buffer zone of no development shall be maintained around solid waste processing and disposal facility exceeding five Tonnes per day of installed capacity. This will be maintained within the total area of the solid waste processing and disposal facility. The buffer zone shall be prescribed on case to case basis by the local body in consultation with concerned State Pollution Control Board.

[n]The learned counsel submitted that onerous duties are cast on the authorities and the Pollution Control Board in regard to various facets of Solid Waste Management. He particularly laid emphasise on Schedule I appended to the Rules which clearly stipulate setting up of solid waste processing and treatment facilities and notifying the sites and also stipulate that no development shall be maintained around the solid waste processing and disposal facility as contemplated above. When **Rules 15 and 16** itself prohibit any development in and around solid waste processing and disposal facility, the location of solid waste disposal facility in close proximity to the residential complex is nothing but committing violence to the Scheme of the Rules itself.

[o]The learned counsel submitted that in the name of implementing the policy in terms of the Rules, 2016, the authorities in fact, are flouting the rules under the pretext of serving larger public. The provisions of the Act, 1971 and the Rules, 2019 and the Solid Waste Management Rules, 2016, read with



other relevant Rules, if to be conjunctively read and applied, it is legally impermissible for the location of the compost yard within the park or recreational area earmarked and maintained in the neighbourhood.

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[p]In the course of his submission, learned counsel also referred to the counter affidavit filed on behalf of the Coimbatore Corporation - 1st respondent herein. He particularly referred to paragraphs 3, 5 and 6 of the counter which are extracted here under:-

"3. It is further submitted that the issue of managing and handling of this huge quantity of MSW at that centralized plant at Vellalore dumping yard was subject matter of a case before National Green Tribunal, SZ in Application Nos.234 of 2013 and 264 of 2014 filed by V.Eswaran and K.S.Mohan, respectively representing the local residents. These two applications were finally transferred to the NGT, Principal Bench. Before the Hon'ble NGT one of the main issues of contention was that this respondent Corporation could not able to achieve 100% source segregation. Whereas on the part of this Corporation the various steps initiated to achieve 100% segregation was explained.

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5. It is further submitted that in the light of the above Rules, the Government of Tamil Nadu as policy decision decided to promote decentralized processing facilities with a view to minimize the environmental impacts and transportation cost, besides promoting 100% segregation and storage of waste in three separate streams i.e. bio-degradable, non bio-degradable and domestic hazardous waste by the waste generator themselves as per Rule 4 of the SW Rules, 2016. Following the said policy of the State Government, it was decided by this Corporation to establish atleast 65 decentralized Processing Facilities / Micro Composting Centers to manage and handle/ process 278 mt. tones of bio-degradable (wet waste) only. With a risk of repetition, it is submitted that these Micro Composting Centers (MCCs) are meant only for handling a bio-degradable waste collected within that Ward itself. In fact this method of de-centralized Micro Composting Centers are promoted in all local urban bodies, throughout the country. In urban Local Bodies like the Respondent herein availability of land to establish these MCCs is a major challenge. Due diligence is exercised in identifying the site. In all 65 cases utmost care is taken to locate the MCCs without any disturbance to the local residence.

6. It was further submitted that the above proposal of the respondent was submitted before the



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Principal Bench of NGT in pending application Nos. 234 and 264 of 2013. Recording the above statement the Hon'ble Tribunal was pleased to dispose the said application by referring the matter to the Regional Monitoring Committee, Southern Zone headed by Hon'ble Mr. Justice P. Jyothimani, Former Judge of this Hon'ble Court for onward monitoring of the process. The said committee is periodically monitoring and reviewing various action taken by this Corporation which includes the establishment of these Micro Composting Center, which is the subject matter of this Writ Petition."

According to the learned counsel, it was admitted on behalf of the Corporation that the subject matter was in fact pending adjudication before the National Green Tribunal, South Zone and the applications filed before the Tribunal were ultimately disposed of by referring the matter to the Regional Monitoring Committee, Southern Zone, headed by the former Judge of this Court. In the counter affidavit, it is also admitted that the Corporation could not achieve 100% source segregation of the solid waste. That being the case, any assurance or promise on behalf of the State Authority cannot be a foolproof measure intended to be achieved by location of Micro Compost Centres [MCCs], while implementing the policies towards the Solid Waste Management as a matter of Policy initiative, decentralising the process facilities.

[q]The learned counsel referred back to **Section 32** of the Act, 1971, which has already been extracted supra. As far as the Master Plan is concerned, sub-clause [b] of Section 32 can be subjected to variation or revocation once in every five years but such variation or revocation shall happen only after carrying out fresh surveys as may be considered necessary. Therefore, he submitted that strict compliance is required and mandated in case of any concessional breach also. In this case, the procedure as contemplated in the section, has not been adhered to, as it has not been projected so, in the counter affidavit filed on behalf of the Corporation.

[r]In any case, when an action is initiated for conversion of a land reserved for a particular purpose, unless such action is authorised by any Rule or Statutory Regulation, the same is liable to be interfered as being without the authority or law. Merely because the Solid Waste Management serves public interest, that does not mean that governing Rules and Regulations can be given a complete go-by and still the action could be justified by the State Authorities.

[s]The learned counsel for the appellants, after making submissions as above, proceeded to refer to various decisions touching upon the subject matter of reference before this Court.

[t]This Court's attention has been drawn to paragraphs 23 to 29, 36, 46 to 49 and 53 of the off-cited decision of the Honourable Supreme Court reported in **1991 (4) SCC 54 (Bangalore Medical Trust**



Vs. B.S.Muddappa), which are extracted as follows:

"23. The scheme is meant for the reasonable accomplishment of the statutory object which is to promote the orderly development of the city of Bangalore and adjoining areas and to preserve open spaces by reserving public parks and playgrounds with a view to protecting the residents from the ill-effects of urbanisation. It meant for the development of the city in a way that maximum space is provided for the benefit of the public at large for recreation, enjoyment, 'ventilation' and fresh air. This is clear from the Act itself as it originally stood. The amendments inserting Section 16(1)(d), 38-A and other provisions are clarificatory of this object. The very purpose of the BDA, as a statutory authority, is to promote the healthy growth and development of the city of Bangalore and the areas 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, playgrounds 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 playgrounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens.

[See *Kharak Singh v. State of U.P.*, (1964) 1 SCR 332 : AIR 1963 SC 1295 : (1963) 2 Cri LJ 329; *Municipal Council, Ratlam v. Vardhichand*, (1980) 4 SCC 162 : 1980 SCC (Cri) 933 : (1981) 1 SCR 97; *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608 : 1981 SCC (Cri) 212 : (1981) 2 SCR 516; *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545; *State of H.P. v. Umed Ram Sharma*, (1986) 2 SCC 68 : AIR 1986 SC 847 and *Vikram Deo Singh Tomar v. State of Bihar*, 1988 Supp. SCC 734 : 1989 SCC (Cri) 66 : AIR 1988 SC 1782].



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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. [See for e.g : Karnataka Town and Country Planning Act, 1961; Maharashtra Regional and Town Planning Act, 1966; Bombay Town Planning Act, 1954; the Travancore Town and Country Planning Act, 1120; the Madras Town Planning Act, 1920; and the rules framed under these statutes; Town and Country Planning Act, 1971 (England and Wales); Encyclopaedia Americana, Volume 22, page 240; Encyclopaedia of the Social Sciences, Volume XII at page 161; Town Improvement Trusts in India, 1945 by Rai Sahib Om Prakash Aggarawala, p. 35 et seq.; Halsbury's Statutes, 4th edn., p. 17 et seq. and Journal of Planning and Environment Law, 1973, p. 130 et seq. See also: *Penn Central Transportation Company v. City of New York*, 57 L Ed 2d 631 : 438 US 104 (1978); *Village of Belle Terre v. Bruce Boraas*, 39 L Ed 2d 797 : 416 US 1 (1974); *Village of Euclid v. Ambler Realty Company*, 272 US 365 (1926); *Halsey v. Esso Petroleum Co. Ltd.*, (1961) 1 WLR 683].

26. In *Agins v. City of Tiburon* [447 US 255 (1980)] , the Supreme Court of the United States upheld a zoning ordinance which provided '... it is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant impacts, such as ... pollution, ... destruction of scenic beauty, disturbance of the ecology and the environment, hazards related to geology, fire and flood, and other demonstrated consequences of urban sprawl'. Upholding the ordinance, the Court said: (US pp. 261-62):

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

... The zoning ordinances benefit the appellants as well as the public by serving the city's interest in assuring careful and orderly development of residential property with provision for open-space areas." [See comments on this decision by Thomas J. Schoenbaum, *Environmental Policy Law*, (1985) p. 438 et seq. See also Summary and Comments, (1980) 10 ELR 10125 et seq.].



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27. The statutes in force in India and abroad reserving open spaces for parks and playgrounds are the legislative attempt to eliminate the misery of disreputable housing condition caused by urbanisation. Crowded urban areas tend to spread disease, crime and immorality. As stated by the U.S. Supreme Court in *Samuel Berman v. Andrew Parker* [99 L Ed 27 : 348 US 26] : (L Ed pp. 37-38 : US pp. 32-33):

"... They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river.

... The concept of the public welfare is broad and inclusive ... The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values ..." (Per Douglas, J.).

28. Any reasonable legislative attempt bearing a rational relationship to a permissible State objective in economic and social planning will be respected by the courts. A duly approved scheme prepared in accordance with the provisions of the Act is a legitimate attempt on the part of the government and the statutory authorities to ensure a quiet place free of dust and din where children can run about and the aged and the infirm can rest, breathe fresh air and enjoy the beauty of nature. These provisions are meant to guarantee a quiet and healthy atmosphere to suit family needs of persons of all stations. Any action which tends to defeat that object is invalid. As stated by the U.S. Supreme Court in *Village of Belle Terre v. Bruce Boraas* [39 L Ed 2d 797 : 416 US 1] : (L Ed p. 804 : US p. 9):

"... The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people."

See also *Village of Euclid v. Ambler Realty Company* [272 US 365 (1926)] . See the decision



of the Andhra Pradesh High Court in *T. Damodhar Rao v. Special Officer, Municipal Corporation of Hyderabad* [AIR 1987 AP 171] .

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29. The residents of the locality are the persons intimately, vitally and adversely affected by any action of the BDA and the government which is destructive of the environment and which deprives them of facilities reserved for the enjoyment and protection of the health of the public at large. The residents of the locality, such as the writ petitioners, are naturally aggrieved by the impugned orders and they have, therefore, the necessary *locus standi*.

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36. Public park as a place reserved for beauty and recreation was developed in 19th and 20th century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a, 'gift from people to themselves'. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology. A private nursing home on the other hand is essentially a commercial venture, a profit oriented industry. Service may be its 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 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.

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46. Financial gain by a local authority at the cost of public welfare has never been considered as legitimate purpose even if the objective is laudable. Sadly the law was thrown to winds for a private purpose. The extract of the Chief Minister's order quoted in the letter of Chairman of the BDA leaves no doubt that the end result having been decided by the highest executive in the State the lower in order of hierarchy only followed with 'ifs' and 'buts' ending finally with resolution of BDA which was more or less a formality. Between April 21 and July 14, 1976, that is less than ninety days, the machinery in BDA and government moved so swiftly that the initiation of the proposal by the appellant, a rich trust with 90,000 dollars in foreign deposits, query on it by the Chief Minister of the State, guidance of way out by the Chairman, direction on it by the Chief Minister, orders of Government resolution by the BDA and allotment were all completed and the site for public park stood converted into site for private nursing home without any intimation direct or indirect to those who were being deprived of it. Speedy or quick action in public institutions call for appreciation but our democratic system shuns exercise of individualised discretion in public matters requiring participatory decision by rules and regulations. No one howsoever high can arrogate to himself or assume without any authorisation express or implied in law a discretion to ignore the rules and deviate from rationality by adopting a strained or distorted interpretation as it renders the action ultra vires and bad in law. Where the law requires an authority to act or decide, 'if it appears to it necessary' or if he is 'of opinion that a particular act should be done' then it is implicit that it should be done objectively, fairly and reasonably. Decisions affecting public interest or the necessity of doing it in the light of guidance provided by the Act and rules may not require intimation to person affected yet the exercise of discretion is vitiated if the action is bereft of rationality, lacks objective and purposive approach. The action or decision must not only be reached reasonably and intelligibly but it must be related to the purpose for which power is exercised. The purpose for which the Act was enacted is spelt out from the Preamble itself which provides for establishment of the Authority for development of the city of Bangalore and areas adjacent thereto. To carry out this purpose the development scheme framed by the Improvement Trust was adopted by the Development



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Authority. Any alteration in this scheme could have been made as provided in sub-section (4) of Section 19 only if it resulted in improvement in any part of the scheme. As stated earlier a private nursing home could neither be considered to be an amenity nor it could be considered improvement over necessity like a public park. The exercise of power, therefore, was contrary to the purpose for which it is conferred under the statute.

47. Was the exercise of discretion under sub-section (4) of Section 19 in violation or in accordance with the norm provided in law. For proper appreciation the sub-section is extracted below:

"19. (4) If at any time it appears to the Authority that an improvement can be made in any part of the scheme, the Authority may alter the scheme for the said purpose and shall subject to the provisions of sub-sections (5) and (6) forthwith proceed to execute the scheme as altered."

This legislative mandate enables the Authority to alter any scheme. Existence of power is thus clearly provided for. What is the nature of this power and the manner of its exercise? It is obviously statutory in character. The legislature took care to control the exercise of this power by linking it with improvement in the scheme. What is an improvement or when any change in the scheme can be said to be improvement is a matter of discretion by the authority empowered to exercise the power. In modern State activity discretion with executive and administrative agency is a must for efficient and smooth functioning. But the extent of discretion or constraints on its exercise depends on the rules and regulations under which it is exercised. Sub-section (4) of Section 19 not only defines the scope and lays down the ambit within which the discretion could be exercised but it envisages further the manner in which it could be exercised. Therefore, any action or exercise of discretion to alter the scheme must have been backed by substantive rationality flowing from the section. Public interest or general good or social betterment have no doubt priority over private or individual interest but it must not be a pretext to justify the arbitrary or illegal exercise of power. It must withstand scrutiny of the legislative standard provided by the statute itself. The authority exercising discretion must not appear to be impervious to legislative directions. From the extracts of correspondence between the Chairman and the Chief Minister it is apparent that neither of them cared to look into the provisions of law. It was left to the



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learned Advocate General to defend it, as a matter of law, in the High Court. There is no whisper anywhere if it was ever considered, objectively, by any authority that the nursing home would amount to an improvement. Whether the decision would have been correct or not would have given rise to different consideration. But here it was total absence of any effort to do so. Even in the reply filed on behalf of BDA in the High Court which appears more a legal jugglery than statement of facts bristling with factual inaccuracies there is no mention of it. The extent of misleading averments for purpose of creating erroneous impressions on the court shall be clear from the statement contained in paragraph 1 of the affidavit relevant portion of which is extracted below:

"Respondent 4 had made an application for grant of land for purpose of constructing a nursing home. This application was made also to this respondent. Considering the fact that the medical facilities available in Bangalore were meagre and were required to be supplemented by charitable medical institutions, this authority was required to ascertain whether a suitable site could be given for the hospital building of respondent 4. Upon scrutiny of the Rajamahal Vilas Extension, as early as in 1976, the area in question which had been marked as a low level park measuring 13,485 sq. yards was found suitable to cater to the medical relief to the needy public. However, since the said area had been marked as a low level park, it was necessary to convert the said low level park as civic amenity site. Furthermore, it is essential that the government had to approve allotment of the site to respondent 4 as a civic amenity site. There are proceedings before respondent 1 in relation to allotment of site to public institutions. Under the recommendations which have been made, it was decided that plots could be allotted to public institutions subject to certain conditions."

It was this statement which resulted in erroneous finding by the learned Single Judge to the effect:

"Therefore, it is clear that though at the time of preparation of the scheme, formation of a park was considered in the interest of the general public, nothing prevents the BDA from taking the view that the construction of a hospital to provide medical facilities to the general public is necessary and therefore, the area earmarked for park should be converted into a civic amenity site. It is in exercise of this power, the BDA decided to convert the area



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reserved for park into a civic amenity site so as to enable its disposal in favour of respondent 4, for construction of a hospital. Though Section 19(4) does not expressly require the taking of the approval of the government for such alteration, the approval was necessary as the original scheme in which the area was reserved for a park had been approved by the government. Therefore, the BDA considered appropriate, and in my opinion rightly, to seek the approval of the government for making such conversion. The State Government accorded sanction for the conversion. Therefore, the conversion was in accordance with law."

The averment in the affidavit of the BDA that an application was made before it could not be substantiated. Nor it could be established that the BDA or any of its committees ever took into consideration that medical facilities were meagre in the city of Bangalore. Such misleading statements call for serious condemnation. No further comment is needed except that the public institutions should be cautious and must not give impression of taking sides. It is destructive of fairness. The then Chairman's letter in 1976 extracted above was forthright whereas the stand of BDA in 1983 appears to be crude effort to support the executive action. No record was produced to substantiate the averments. It was necessary as it was not in harmony with the correspondence extracted earlier. The statement by the counsel for the BDA that the records were not traceable was not satisfactory. The executive or the administrative authority must not be oblivious that in a democratic set up the people or community being sovereign the exercise of discretion must be guided by the inherent philosophy that the exerciser of discretion is accountable for his action. It is to be tested on anvil of rule of law and fairness or justice particularly if competing interests of members of society is involved. Was this adhered to by any of the authorities? Unfortunately not.

48. Much was attempted to be made out of exercise of discretion in converting a site reserved for amenity as a civic amenity. Discretion is an effective tool in administration. But wrong notions about it results in ill-conceived consequences. In law it provides an option to the authority concerned to adopt one or the other alternative. But a better, proper and legal exercise of discretion is one where the authority examines the fact, is aware of law and then decides objectively and rationally what serves the interest better. When a statute either provides



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guidance or rules or regulations are framed for exercise of discretion then the action should be in accordance with it. Even where statutes are silent and only power is conferred to act in one or the other manner, the Authority cannot act whimsically or arbitrarily. It should be guided by reasonableness and fairness. The legislature never intends its authorities to abuse the law or use it unfairly. When legislature enacted sub-section (4) it unequivocally declared its intention of making any alteration in the scheme by the Authority, that is, BDA and not the State Government. It further permitted interference with the scheme sanctioned by it only if it appeared to be improvement. The facts, therefore, that were to be found by the Authority were that the conversion of public park into private nursing home would be an improvement in the scheme. Neither the Authority nor the State Government undertook any such exercise. Power of conversion or alteration in scheme was taken for granted. Amenity was defined in Section 2(b) of the Act to include road, street, lighting, drainage, public works and such other conveniences as the government may, by notification, specify to be an amenity for the purposes of this Act. The Division Bench found that before any other facility could be considered amenity it was necessary for State Government to issue a notification. And since no notification was issued including private nursing home as amenity it could not be deemed to be included in it. That apart the definition indicates that the convenience or facility should have had public characteristic. Even if it is assumed that the definition of amenity being inclusive it should be given a wider meaning so as to include hospital added in clause 2(bb) as a civic amenity with effect from 1984 a private nursing home unlike a hospital run by government or local authority did not satisfy that characteristic which was necessary in the absence of which it could not be held to be amenity or civic amenity. In any case a private nursing home could not be considered to be an improvement in the scheme and, therefore, the power under Section 19(4) could not have been exercised.

49. Manner in which power was exercised fell below even the minimum requirement of taking action on relevant considerations. A scheme could be altered by the Authority as defined under Section 3 of the Act. It is a body corporate under Section 3 consisting of the Chairman and experts on various aspects, namely, a finance member, an engineer, a town planner, an architect, the ex-officio members such as Commissioner of Corporation of the City of Bangalore, officer of the Secretariat and elected members for instance, two persons of the State legislature, one a woman and



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other a scheduled caste and scheduled tribe member, representative of labour, representative of water supply, sewerage board, electricity board, State Road Transport Corporation, two elected councillors etc. and the Commissioner. This authority functions through committees and meetings as provided under Sections 8 and 9. There is no section either in the Act nor any rule was placed to demonstrate that the Chairman alone, as such, could exercise the power of the Authority. There is no whisper nor there is any record to establish that any meeting of the Authority was held regarding alteration of the scheme. In any case the power does not vest in the State Government or the Chief Minister of the State. The exercise of power is further hedged by use of the expression, if 'it appears to the Authority'. In legal terminology it visualises prior consideration and objective decision. And all this must have resulted in conclusion that the alteration would have been improvement. Not even one was followed. The Chairman could not have acted on his own. Yet without calling any meeting of the Authority or any committee he sent the letter for converting the site. How did it appear to him that it was necessary, is mentioned in the letter dated April 21, because the Chief Minister desired so. The purpose of the Authority taking such a decision is their knowledge of local conditions and what was better for them. That is why participatory exercise is contemplated. If any alteration in scheme could be done by the Chairman and the Chief Minister then sub-section (4) of Section 19 is rendered otiose. There is no provision in the Act for alteration in a scheme by converting one site to another, except, of course if it appeared to be improvement. But even that power vested in the Authority not the government. What should have happened was that the Authority should have applied its mind and must have come to the conclusion that conversion of the site reserved for public park into a private nursing home amounted to an improvement; then only it could have exercised the power. But what happened in fact was that the application for allotment of the site was accepted first and the procedural requirements were attempted to be gone through later and that too by the State Government which was not authorised to do so. Not only that the Authority did not apply its mind and take any decision if there was any necessity to alter the scheme but even if it is assumed that the State Government could have any role to play, the entire exercise instead of proceeding from below, that is, from the BDA to State Government proceeded in reverse direction, that is, from the State Government to the BDA. Every order, namely, converting the site from public park to private nursing home and even allotment to BMT was



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passed by State Government and the BDA acting like a true subservient body obeyed faithfully by adopting and confirming the directions. It was complete abdication of power by the BDA. The legislature entrusted the responsibility to alter and approve the scheme to the BDA but the BDA in complete breach of faith reposed in it, preferred to take directions issued on command of the Chief Executive of the State. This resulted not only in error of law but much beyond it. In fact the only role which the State Government could play in a scheme altered by the BDA is specified in sub-sections (5) and (6) of Section 19 of the Act. The former requires previous sanction of the government if the estimated cost of executing the altered scheme exceeds by a greater sum than five per cent of the cost of executing the scheme as sanctioned. And later if the 'scheme as altered involved the acquisition otherwise than by agreement'. In other words the State Government could be concerned or involved with an altered scheme either because of financial considerations or when additional land was to be acquired, an exercise which could not be undertaken by the BDA. A development scheme, therefore, sanctioned and published in the gazette could not be altered by the government.

.....

53. For these reasons the entire proceedings before the State Government suffered from absence of jurisdiction. Even the exercise of power was vitiated and ultra vires. Therefore the orders of the government to convert the site reserved for public park to civic amenity and to allot it for private nursing home to Bangalore Medical Trust and the resolution of the Bangalore Development Authority in compliance of it was null, void and without jurisdiction."

In the above landmark decision, the Honourable Supreme Court held that any reasonable Legislative attempt being a rational relationship to a permissible State objective in economic and social planning, will be respected by the Courts. A duly approved scheme prepared in accordance with the provisions of the Bangalore Development Authority Act therein, is a legitimate attempt on the part of the Government and the statutory authorities to ensure a quiet place free of dust and din, where children can run about and the aged and the infirm, can rest, breath fresh air and enjoy the beauty of nature. These provisions are meant to guarantee a quiet and healthy atmosphere to suit the family needs of persons of all stations.

[u]The Hon'ble Supreme Court went on to hold that any action which tends to defeat the said object, is invalid. In the above case, originally the place was earmarked for public park, as a



part of providing civic amenity, the place was subsequently sought to be allotted to a private Nursing Home of Bangalore Medical Trust, and the Bangalore Development Authority had passed a Resolution authorising the allotment, which the Hon'ble Supreme Court ultimately held as null and void and without jurisdiction. The Hon'ble Supreme Court has made profound observations as to the fundamental right of the citizens to have clean and pollution-free atmosphere and environment, which are guaranteed under the Constitution of India, which cannot be altered to the citizen's detriment.

[v] In another decision of the Hon'ble Supreme Court relied on by the learned counsel reported in **1999 (6) SCC 464 (M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu)**, the facts which gave rise to the filing of Civil Appeals before the Supreme Court in paragraph 1 of the said judgment, reads as follows:

"1. These appeals are directed against the judgment dated 23-8-1994 of a Division Bench of the High Court of Judicature at Allahabad (Lucknow Bench). By a common judgment in three writ petitions, the High Court speaking through Shobha Dixit, J. held that the decision of the Lucknow Nagar Mahapalika ("the Mahapalika" for short), also now called the Nagar Nigam or the Corporation, permitting M.I. Builders Pvt. Ltd. (the appellant herein) to construct an underground shopping complex in Jhandewala Park (also known as Aminuddaula Park) situated at Aminabad Market, Lucknow, was illegal, arbitrary and unconstitutional. The High Court set aside and quashed the relevant resolutions of the Mahapalika permitting such construction and also the agreement dated 4-11-1993 entered into between the Mahapalika and the appellant for the purpose. Writ of mandamus was issued to the Mahapalika to restore back the park to its original position within a period of three months from the date of the judgment and till that was done, to take adequate safety measures and to provide necessary safeguard and protection to the public, the users of the park. The High Court had noticed that the fact that the park was of historical importance was not denied by the Mahapalika and also the fact that preservation or maintenance of the park was necessary from the environmental angle and that the only reason advanced by the Mahapalika for construction of the underground commercial complex was to ease the congestion in the area. The High Court, however, took judicial notice of the conditions prevailing at Aminabad Market. It said it was so crowded that it was bursting from all its seams. Construction of the underground shopping complex in question would only



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complicate the situation and that the present scheme would further congest the area. It said that the public purpose, which is alleged to be served by construction of the underground commercial complex, seemed totally illusory.

Further, paragraphs 60 and 71 therein read as under:

"60. In *State of Bombay v. Laxmidas Ranchhodas* [AIR 1952 Bom 468, 475 (para 12) : 54 Bom LR 681] a Division Bench of the High Court was considering the argument that the writ of mandamus being discretionary, the Court should consider whether it should not put a limitation upon its own powers and jurisdiction. It was submitted that it was impossible for any State to function if there was a constant interference by the High Court in the executive acts performed by the officers of the State. Chagla, C.J., speaking for the Court, said:

"It may be that interference by the High Court may result in inconvenience or difficulty in administration. But what we have to guard against is a much greater evil. When we find in the modern State wide powers entrusted to Government, powers which affect the property and person of the citizen, it is the duty of the courts to see that those wide powers are exercised in conformity with what the legislature has prescribed. We are not oblivious of the fact that in order that the modern State should function the Government must be armed with very large powers. But the High Court does not interfere with the exercise of those powers. The High Court only interferes when it finds that those powers are not exercised in accordance with the mandate of the legislature. Therefore, far from interfering with the good governance of the State, the Court helps the good governance by constantly reminding the Government and its officers that they should act within the four corners of the statute and not contravene any of the conditions laid down as a limitation upon their undoubtedly wide powers. Therefore, even from a practical point of view, even from the point of view of the good governance of the State, we think that the High Court should not be reluctant to issue its prerogative writ whenever it finds that the sovereign legislature has not been obeyed and powers have been assumed which the legislature never conferred upon the executive."



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71. Thus there are two distinct areas of challenge in the present case – (1) the agreement is a fraud on power, prime land has been given for a song by the Mahapalika. The fact that the scheme is so lucrative could be seen from the fact that all the shops less 5% were booked within six days of the advertisement appearing in December 1993. Public interest and the public exchequer have been sacrificed. The Mahapalika is divested of its control over the project though notionally not for ever but the builder, on the other hand, has control over the project for all times to come, and (2) construction is in contravention of the provisions of law as contained in the Development Act. The project has been entrusted to the builder in violation of the provisions of the Act. The decision taken by the Mahapalika was not on proper consideration and was not an informed objective decision. Judicial review is permissible if the impugned action is against law or in violation of the prescribed procedure or is unreasonable, irrational or mala fide. As said earlier the High Court rightly exercised its power of judicial review in the present case. It has examined the manner in which the decision was made by the Mahapalika. The second principle laid down in *Tata Cellular case* [(1994) 6 SCC 651] applies in all respects. The High Court held that the maintenance of the park because of its historical importance and environmental necessity was in itself a public purpose and, therefore, the construction of an underground market in the garb of decongesting the area was wholly contrary and prejudicial to the public purpose. By allowing the construction the Mahapalika had deprived its residents as also others of the quality of life which they were entitled to under the Constitution and the Act. The agreement smacks of arbitrariness, unfairness and favouritism. The agreement was opposed to public policy. It was not in public interest. The whole process of law was subverted to benefit the builder. We agree with the findings and conclusions of the High Court."

The above decision of the Hon'ble Supreme Court is also a matter relating to grant of permission to construct an underground shopping complex in the park area and on consideration of the law governing the Rules and the Constitutionality of the permission for construction of underground shopping complex within the park area, the Honourable Supreme Court ultimately held that the action of the authority was illegal, arbitrary and unconstitutional.

[w]This Court's attention has also been drawn to the decision reported in 1995 (1) SCC 47 (PT.Chet ram Vashist Vs. Municipal



Corporation of Delhi), in paragraphs 1, 6 and 8 therein which read as under:

"1. The question of law that arises for consideration in this appeal is whether the Municipal Corporation of Delhi (hereinafter referred to as 'the Corporation') in absence of any provision in the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as 'the Act') was entitled to sanction the plan for building activities with condition that the open space for parks and schools be transferred to the Corporation free of cost.

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.

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.



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the temple alone should be conducted and it should not be used for commercial and business purposes.

5. The meetings and activities of Alaya Committee should be conducted as per laws.

6. The conditions made by the Government/VGTM UDA from time to time shall be in force.

7. If the conditions are violated the said site along with the building shall be taken over."

6. After about one month and ten days, the Vice-Chairman of Respondent 1 issued amended order dated 10-5-2010 in the name of Respondent 3 because by mistake permission for construction of the temple was issued in favour of the Residents Welfare Association, which had not even submitted application.

7. Having succeeded in convincing Respondent 1 to grant permission for construction of the temple at the site, which did not even belong to it, Respondent 3 approached the State Government for change of land use from recreational (park) to public/semi-public. Simultaneously, the Vice-Chairman of Respondent 1 addressed letter dated 15-6-2010 to the Principal Secretary to Government, Municipal Administration and Urban Development Department for change of land use. He pointed out that in the Integrated Development of Small and Medium Towns Scheme, 1981 (for short "the 1981 Scheme") 15 cents land comprised in Town Survey No. 2/3 was reserved for religious centre but, by mistake the same was shown as earmarked for recreational use in the Zonal Development Plan.

8. While Respondents 1 and 3 were making efforts for securing an order from the State Government for change of land use, the appellants filed writ petition by way of public interest litigation questioning the decision of Respondent 1 to sanction construction of the temple. They pleaded that the Zonal Development Plan prepared by Respondent 1 and approved by the State Government is statutory in character and land covered by the Zonal Development Plan cannot be used for a purpose other than the one specified in the Plan and Respondent 1 did not have the jurisdiction to sanction construction of temple at the site of which land use was shown as recreational (park).

20. An analysis of the abovenoted provisions shows that once the master plan or the zonal development plan is approved by the State Government, no one including the State Government/Development Authority can use land for any purpose other than the one specified therein. There is no provision in the Act under which the Development Authority can sanction construction of a building etc. or use of land for a purpose other than



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the one specified in the master plan/zonal development plan. The power vested in the Development Authority to make modification in the development plan is also not unlimited. It cannot make important alterations in the character of the plan. Such modification can be made only by the State Government and that too after following the procedure prescribed under Section 12(3).

22. The view taken by us on the legality of the order dated 30-3-2010 finds support from the judgment of this Court in *Bangalore Medical Trust v. B.S. Muddappa* [(1991) 4 SCC 54]. In that case, allotment of land, which was shown as open space in the sanctioned development plan, for construction of a nursing home was challenged on the ground that the State Government and the Bangalore Development Authority did not have the jurisdiction to make such allotment. The learned Single Judge negatived the challenge but the Division Bench allowed the appeal and quashed the allotment. The judgment of the Division Bench was approved by this Court. R.M. Sahai, J., who delivered the main judgment highlighted the importance of reservation of land for the public park in a development plan and adversely commented upon use thereof for construction of nursing home in the following words: (*Bangalore Medical Trust* case [(1991) 4 SCC 54], SCC p. 80, para 36):

"36. Public park as a place reserved for beauty and recreation was developed in 19th and 20th century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a, 'gift from people to themselves'. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology. A private nursing home on the other hand is essentially a commercial venture, a profit oriented industry. Service may be its 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 BD 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



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disposition of which is prohibited under Section 38-A of the Act. Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may 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."

25. In the result, the appeal is allowed and the impugned order is set aside. As a corollary, the writ petition filed by the appellants is also allowed and the order dated 30-3-2010 as also amended order dated 10-5-2010 issued by Respondent 1 are quashed. The parties are left to bear their own costs. Since we have allowed the main appeal, the contempt petition filed by the appellants is disposed of as infructuous.

In this case also, the Hon'ble Supreme Court in consideration of the fact of permission being granted by the authority for construction of a Temple in the land earmarked for 'park' in the Development Plan, held that when once the Development Plan is approved by the State Government, no one including a State/Development Authority can use the land for any purpose other than the one specified therein.

[y]The learned counsel further referred to another decision of the Apex Court reported in **2012 (2) SCC 232 (R.K.Mittal Vs. State of U.P)** and he relied on paragraphs 2 and 4 therein, containing the introductory facts and also paragraphs 38, 40, 48, 49, 55, 68, 69, 70, 72 and 73, which are extracted below:

"2. These appeals demonstrate some of the instances of widespread violation of the statutory provisions and somewhat arbitrary exercise of power by the Development Authority. Lack of adoption of uniform application of law has resulted in large number of cases of violation of law all over the State of Uttar Pradesh going unnoticed. The time has come for the development authorities to change their style of functioning and act vigilantly and uniformly, that too, strictly in accordance with law, keeping in view the larger public interest.

4. The facts and circumstances in all the appeals and even the intervention applications are somewhat similar. In any case, the common question of law arising in all the appeals and applications is whether



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the residential premises can be, wholly or partly, used by the original allottee or even its transferee, for any purpose other than residential?

38. The development plan has to be prepared in accordance with the provisions of the Act and the Regulations framed thereunder. As already noticed, the Development Authority has to prepare the draft plan, give public notice thereof, invite objections and thereupon conduct an inquiry and hearing as contemplated under the law, before preparing a final development plan. This final development plan is a statutory requirement which has to be prepared as ordained under the provisions of Section 6(2)(b) of the Act read with Regulations 5 to 11 of the Regulations. This Plan necessarily provides for a particular use or purpose of any area/site, namely, industrial, commercial, institutional or residential. The notified development plan has a legal sanction and provisions contained therein are mandatory in nature. They are incapable of being altered or varied without following the due process prescribed in law.

40. It has to be noticed at this stage that the development plan prepared in accordance with the Regulations take the statutory colour in terms of Section 6(2)(b) of the Act and, therefore, its alteration by an executive order would be impermissible. Even when a Master Plan is to be amended, the entire prescribed procedure must be followed. The power to amend should be exercised only in consonance with the settled norms without going beyond the original power of the Development Authority to make such plan in accordance with the provisions of the Act. The power to amend cannot be used to frustrate the provisions of the statute. Regulations, being subordinate legislation must fall in line with the principal provisions of the Act and in no way should be detrimental to the provisions and the legislative scheme of the Act.

48. A decision which is sought to be taken by the Development Authority in the garb of a policy decision matter, if not in conformity to the Master Plan, the Regulations and the provisions of the Act in force, would be an action extra jus. The Development Authority is to act in adherence to the provisions of the law regulating such user or construction. The laconic result of a collective reading of the afore referred statutory provisions is that the Development Authority or its officers, have no power to vary the user and spaces prescribed in the Master Plan, except by amending the relevant laws and that too, for a proper object and purpose. Any decision, as a policy matter or otherwise, for any extent of public convenience, shall be vitiated, if it is not supported by the authority. The courts would examine what is the sensible way to



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deal with this situation, so as to give effect to the presumed purpose of the legislation. The provisions in question should be construed on their plain reading, supporting the structure of the legislative intent and its purpose. The rule of schematic interpretation would come into play in such situations and the Development Authority concerned cannot be permitted to overreach the procedure prescribed by law with designs not acceptable in law.

49. The Development Authority is inter alia performing regulatory functions. There has been imposition of statutory duties on the power of this regulatory authority exercising specified regulatory functions. Such duties and activities should be carried out in a way which is transparent, accountable, proportionate and consistent. It should target those cases in which action is called for and the same be exercised free of arbitrariness. The Development Authority is vested with drastic regulatory powers to investigate, make regulations, impute fault and even to impose penalties of a grave nature to an extent of cancelling the lease. The principles of administrative justice squarely apply to such functioning and are subject to judicial review. The Development Authority, therefore, cannot transgress its powers as stipulated in law and act in a discriminatory manner. The Development Authority should always be reluctant to mould the statutory provisions for individual, or even for public convenience as this would bring an inbuilt element of arbitrariness into the action of the authorities. Permitting mixed user, where the Master Plan does not so provide, would be glaring example of this kind.

55. It is a settled position of law that no authority can exercise the power vested in it, contrary to law. In the present case, there appears to be no proper data collected or study carried out by the Development Authority even for mooted such a proposal, much less amending the Plan or the Regulations. It is a matter of regret that the Development Authority is dealing with such serious matters in such a casual manner. Either way, this certainly affected the rights of the parties adversely. It is not only the rights of individuals which are to be examined by the authorities concerned, but also the effect of such amendment on the residential sector as a whole which is one of the relevant factors to be considered.

68. The Master Plan and the zonal plan specify the user as residential and therefore these plots cannot be used for any other purpose. The plans have a binding effect in law. If the scheme/master plan is being nullified by arbitrary acts and in excess and derogation of the power of the Development Authority under law, the Court will intervene and would direct



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such authorities to take appropriate action and wherever necessary even quash the orders of the public authorities.

69. This Court in *K. Ramadas Shenoy v. Town Municipal Council, Udipi* [(1976) 1 SCC 24 : 1975 SCC (Cri) 746] was concerned with the resolution of the Municipal Committee to construct a cinema theatre at place where earlier the permission was granted for construction of Kalyan Mandap-cum-Lecture Hall and the contention before the Court was that town planning scheme forbade any cinema building at the place asked for and therefore, the resolution of the Committee was invalid. This Court accepted the contention and while setting aside the resolution observed that an illegal construction of a cinema building materially affected the right to enjoyment of the property of the persons residing in the residential area and there being unauthorised construction, the Court would intervene and quash the resolution of the Municipality. This view was followed in *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu* [(1999) 6 SCC 464] wherein this Court even directed demolition of unauthorised constructions.

70. At this stage, we may also refer to the judgment of this Court in *Virender Gaur v. State of Haryana* [(1995) 2 SCC 577], wherein this Court was concerned with the issue whether Dharmshala should be permitted to be constructed upon the land which was reserved as open space under the plan. This Court, while noticing the impact on environment, right to hygienic environment and protection of the residents, observed as under: (SCC p. 583, para 11):

"11. It is seen that the open lands, vested in the municipality, were meant for the public amenity to the residents of the locality to maintain ecology, sanitation, recreation, playground and ventilation purposes. The buildings directed to be constructed necessarily affect the health and the environment adversely, sanitation and other effects on the residents in the locality. Therefore, the order passed by the Government and the action taken pursuant thereto by the municipality would clearly defeat the purpose of the scheme. Shri D.V. Sehgal, learned Senior Counsel, again contended that two decades have passed by and that, therefore, the municipality is entitled to use the land for any purpose. We are unable to accept the self-destructive argument to put a premium on inaction. The land having been taken from the citizens for a public purpose, the municipality is required to use the land for the protection or preservation of hygienic conditions of the local residents in particular and the people in



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general and not for any other purpose. Equally acceptance of the argument of Shri V.C. Mahajan encourages pre-emptive action and conduct, deliberately chartered out to frustrate the proceedings and to make the result fait accompli. We are unable to accept the argument of fait accompli on the touchstone of prospective operation of our order."

72. From the above dictum of this Court, it is clear that environmental impact, convenience of the residents and ecological impact are relevant considerations for the courts while deciding such an issue. The law imposes an obligation upon the Development Authority to strictly adhere to the plan, regulations and the provisions of the Act. Thus, it cannot ignore its fundamental duty by doing acts impermissible in law. There is not even an iota of reason stated in the affidavits filed on behalf of the Development Authority as to why the public notice had been issued without amending the relevant provisions that too without following the procedure prescribed under the law.

73. The concept of public accountability and performance of public duties in accordance with law and for the larger public good are applicable to the statutory bodies as well as to the authorities functioning therein. We find no justification, whatsoever, for the respondents to act arbitrarily in treating equals who are similarly placed as unequals. There is also no justification for the Development Authority to issue a public notice in the fashion in which it has done. A few officers of the Development Authority cannot collectively act in violation of the law and frustrate the very object and purpose of the Master Plan in force, the Regulations and provisions of the Act."

It was pointedly held by the Hon'ble Supreme Court in the above decision that the master plan and zonal plan specify the user as residential, and therefore, these plots cannot be used for any other purpose. The Hon'ble Supreme Court has held that the plans have binding effect in law and the master plan cannot be allowed to be nullified by arbitrary acts and in excess and derogation of powers of the Development Authority under the law. In such cases, the Court would intervene and question the orders of the Development authorities. That is a case where the residential plots were being attempted to be converted as commercial zone in violation of the lease agreement entered into with the transferees of the plots.

[z]The learned counsel relied on a decision of the Supreme Court reported in **1995 (5) SCC 762 (Dr.G.N.Khajuria Vs. Delhi**



Development Authority) and referred to paragraphs 1, 2, 8 and 9, which read as follows:

"The appellants are some of the residents of Sarita Vihar. According to them, Respondent 1, Delhi Development Authority (DDA), permitted a nursery school to be opened in Park No. 6 of Pocket 'A' of Sarita Vihar by Respondent 2 in complete violation of the provisions of Delhi Development Act, 1957 (for short 'the Act'). When they approached with this grievance, the High Court of Delhi found no merit and dismissed the writ petition.

2. The short and important point which is required to be determined is whether the school in question is in possession of the land in question in violation of the statutory provisions contained in the Act. According to Shri P.P. Rao, learned Senior Counsel appearing for the appellants, there is no escape from the conclusion that the school was allowed to be opened in the park in violation of what has been contained in Sections 7 and 8 of the Act. The stand of DDA on the other hand, as put forward by Shri Jaitley, is that the appellants have either misconceived the statutory provisions or are interested, for one reason or the other, in seeing that the nursery school does not function at the place allotted to it by the DDA. The counsel for Respondent 2 buttresses this submission by contending that a school having been allowed to be opened and this respondent having spent substantial amount of money in raising a permanent structure at the site, we may not do anything, at this stage, to uproot the school which would cause not only financial loss to the respondent but would hamper the educational progress of the students as well.

8. We, therefore, hold that the land which was allotted to Respondent 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 2 or by any other body.



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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."

[aa]The Honourable Apex Court in the above decision held that the land which was allotted for running a nursery school, was originally reserved for a park area and the Hon'ble Supreme Court held that allotment in favour of the nursery school was misuse of power and it was further held that the allotment was in contravention of law.

[ab]The learned counsel further brought to the notice of this Court a decision of the Apex Court reported in **2014 (3) SCC 721 (Purushottam Vs. State of Karnataka)**, drawing reference to paragraphs 10, 11, 17, 18, 21, 25 and 26 therein which are extracted as under:

"10. Aggrieved by the aforesaid action, Writ Petition No. 5428 of 2006 and others were filed in public interest to challenge the decision of BDA dated 21-2-2006 with a prayer to quash the allotment of CA Site No. 2 in favour of Respondent 3 for establishing a petrol pump and to convert the same to a park for the elderly and a playground for the young.

11. By the impugned judgment [*Subramanya v. State of Karnataka*, WP No. 5428 of 2006, decided on 5-9-2011 (KAR)] , the Division Bench of the Karnataka High Court on interpretation of Section 38-A concluded that the allotment was in violation of Section 38-A sub-section (2). The High Court has concluded that CA Site No. 2 at the time of its allotment to Respondent 3 was expressly earmarked for use as "bank". Therefore, in terms of Section 38-A of the BDA Act, 1976 could not have been leased, sold or otherwise transferred for a purpose other than the one for which such area is reserved. Since the site in question was earmarked/reserved for "bank", it could not have been allotted for use as a petrol pump. The High Court also held that the allotment of the site was null and void as it was not in consonance with Section 38-A sub-section (2). The High Court further observed that even though both "bank" and "petrol pump" are civic amenities within the meaning of Section 2(bb) of the BDA Act, 1976, yet the mandate of Section 38-A is clear and unambiguous. It is for the very civic amenity, for which the area is reserved, for which it has to be put to use.

17. In our opinion, it is no longer necessary for us to consider the issues raised by the appellants on first



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Muddappa [Bangalore Medical Trust v. B.S. Muddappa, (1991) 4 SCC 54], this Court examined the entire issue wherein, it has been held that the legislative intent of the Bangalore Development Authority (Amendment) Act, 1991 [hereinafter referred to as "the BDA (Amendment) Act, 1991"], which came into force w.e.f. 16-1-1991 is to prevent the diversion of the user of an area reserved for a public park or playground or civic amenity to another user.

18. The original Section 38-A of the BDA Act, 1976 has been substituted with the present Section 38-A w.e.f. 21-4-1984, which reads as under:

"38-A. Grant of area reserved for civic amenities, etc.—(1) The Authority shall have the power to lease, sell or otherwise transfer any area reserved for civic amenities for the purpose for which such area is reserved.

(2) The Authority shall not sell or otherwise dispose off any area reserved for public parks and playgrounds and civic amenities, for any other purpose and any disposition so made shall be null and void:

Provided that where the allottee commits breach of any of the conditions of allotment, the Authority shall have right to resume such site after affording an opportunity of being heard to such allottee."

21. This apart on the interpretation of Sections 38-A(1) and (2), the inescapable conclusion is that under Section 38-A(1), BDA would have the authority to lease, sell or otherwise transfer any area reserved for the purpose for which such area is reserved, and no other. This clearly means that the Government can pass on the responsibility to another concern, be it individual, company or corporation for the purposes of carrying on the activity for which the plot has been reserved as a *civic amenity*. It does not give a licence to BDA to convert the area reserved for civic amenities for activities which do not fall within the definition of civic amenities. Sub-section (2) of Section 38-A is an embargo that even such sale or disposal otherwise of an area reserved for *public parks, playground* would not be permitted to private parties. Though such spaces, *playgrounds* and *parks* can be transferred to public authorities, but their user would be limited to the purposes for which they are reserved under the scheme. In case a disposition is made for a purpose other than the one for which it is reserved, the Act has declared that, it shall be *null and void*. In our opinion, Rule 3 of which the support is sought by the appellants cannot be permitted to override the statutory



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provision contained in Sections 38-A(1) and (2). Even otherwise, the Rule only reiterates the statutory provision in Sections 38-A(1) and (2).

25. From the above, it is evident that in fact, the site had been originally earmarked to be developed as a *public park/playground* in 1984. However, since the same has been converted to a residential area, Respondents 4 to 14 have very fairly stated that it could not at this stage be restored to its original purpose without causing havoc in the lives of the residents. They have, therefore, not insisted that the site be restored to its original purpose.

26. We also do not find any merit in the submission that the term civic amenities would permit BDA to change the reservation from one particular user to another without the necessary amendment in the development plan. This would be contrary to the law laid down by this Court in *B.S. Muddappa [Bangalore Medical Trust v. B.S. Muddappa, (1991) 4 SCC 54]* ."

[ac]In the above decision, the Honourable Supreme Court has followed the earlier decision reported in **1991 (4) SCC 54 (Bangalore Medical Trust Vs. B.S.Muddappa)** and in fact, the Apex Court extracted the important observations made therein and held that there cannot be change of user even for the residential purpose when once the place has been earmarked for public park or play-ground.

[ad]The learned counsel also referred to a decision of a Division Bench of this Court reported in **2013 (6) CTC 441 (Kirubakaran Vs. The Commissioner (East), Corporation of Coimbatore)** and this Court's attention has been drawn to paragraphs 1 and 6 to 12 and 15, which read as follows:

"1. This writ appeal is preferred against the order made in W.P.No.12536 of 2008 dated 30.4.2010, dismissing the writ petition filed by the appellants, who have prayed for issuing writ of mandamus directing the respondent to remove the Board placed by the respondent on 20.2.2008 in Housing Plot in S.Nos.177/1, 178/1, 185 in Kothari Layout, Sowripalayam Village, Singanallur Municipality, now within the limits of Coimbatore Corporation, forthwith and desist from attempting to encroach into the properties belonging to the appellants.

6. Mr.P.H.Arvind Pandian, learned Additional Advocate General on the other hand relied on the Division Bench Judgment of this Court reported in (2007) 3 MLJ 990 (supra) wherein the Division Bench held that the land reserved for public purpose in a layout or in a development plan or master plan approved by the local body, cannot be used for any other purpose

<https://hcservices.ecourts.gov.in/hcservices> one specified therein. In the said decision it



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is further held that the Corporation has the right to manage the land which was earmarked for school, park, etc. and the Corporation shall not have any right to change the user, which shall be for the beneficial enjoyment of the residents of the colony. In answer to the affidavit filed by the appellants, the respondent filed a memo objecting the proposal to construct hospital in the property in dispute. Learned Additional Advocate General also relied on the judgment of the Supreme Court reported in (1991) 4 SCC 54 ([Bangalore Medical Trust v. B.S.Muddappa](#)) and contended that establishing a Private Nursing Home cannot be treated as public purpose as it is a commercial venture. The learned Additional Advocate General also prayed time for filing an affidavit of undertaking to state that the reserved area will not be used for any commercial purpose and submitted that the Corporation has passed a resolution viz., Resolution No.57 dated 23.7.2008 and further action was taken on 12.9.2008 and prayed for dismissing the writ appeal.

7. We have considered the rival submissions of the learned Senior Counsel appearing for the appellants and the learned Additional Advocate General appearing for the respondent Municipal Corporation.

8. It is not in dispute that layout approval for housing plots in S.No.177/1, 178/1 and 185 in Kothari Layout of Sowripalayam Village, Singanallur Municipality, now within the limits of Coimbatore Corporation, measuring an extent of 5 acres and 37 cents was approved by the Deputy Director, Town and Country Planning, Coimbatore on 5.5.1976 containing 43 housing plots, subject to the condition that 53.80 cents of land be reserved for public purpose, which is a requirement under Section 250(2) of the Coimbatore City Municipal Corporation Act, 1981, whereunder the owner is having an obligation to reserve 10% of the layout area for the common public, in addition to the area earmarked for laying streets. The said 10% of land reserved by the owner for common public purpose cannot be utilised either by the Promoter or by the allottees, either jointly or individually, for any other purpose. The appellants are said to be the purchasers of the said 53.80 cents of land. Neither the promoter nor the purchaser utilised the land for public purpose as on the date of the notice put up by the respondent on 20.2.2008.

9. The Division Bench of this Court in (2007) 3 MLJ 990 (supra) considered the earlier decisions of the Supreme Court and held that "public purpose", though cannot be precisely defined, broadly means the general interest of the community as opposed to the interest of



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an individual. In the Judgment of the Supreme Court reported in AIR 1952 SC 252 ([State of Bihar v. Kameshwar Singh](#)) it is held that public purpose will be construed to promote the welfare of the people at large and if there is dispute regarding public purpose, the Courts have jurisdiction, and it is their duty to determine the matter whenever a requisition is made to acquire the land according to the spirit of the times in which particular legislation is enacted. The Supreme Court in the decision reported in AIR 1956 SC 294 ([State of Bombay v. R.S.Nanji](#)) also took a similar view. When the use of land earmarked for public purpose was unauthorisedly allotted to a School, the Supreme Court set aside the same and the said decision is reported in AIR 1996 SC 253 : (1995) 5 SCC 762 ([G.N.Khajuria \(Dr\) v. Delhi Development Authority](#)). The Division Bench in the above referred judgment held that, "a portion of land reserved for public purpose in a layout 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."

10. In the decision reported in 2010 (4) CTC 737 ([R.Chandran v. State of Tamil Nadu](#)) the First Bench of this Court considered the proposal for conversion of public park and play ground into an underground car park by the Corporation of Chennai, under the Tamil Nadu Country Planning Act, 1971 and Section 2(34) of the Development Control Rules, etc., and held that if an area is specified as a open space, the Corporation may at best get a right as a "custodian of public interest" to manage it in the interest of society in general and in breach of this custodianship, any attempt to change the user of such land would be impermissible under law and would be against the public interest and thus restrained Corporation of Chennai from constructing underground car park in the playground in question situated at Venkatnarayana Road, T.Nagar, Chennai-17. The SLP filed against the said order was also dismissed by the Hon'ble Supreme Court.

11. In the decision reported in 2011 (1) CTC 257 ([K.Rajamani v. Alamunagar Residents' Welfare Association](#)) similar issue arose and the Division Bench set aside the Government Order granting permission to change the user of the land from public purpose to housing plot in respect of a land in Coimbatore and in paragraph 22 held thus, "22. The contention of Mr.K.M.Vijayan, learned Senior Counsel for the Appellants is that the law relating to open space would be available only in case of apartments, where the purchaser of an apartment would have right to seek for maintenance of public space as such, as he/she has an undivided share in the open land as well and that law



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is not applicable to a layout. In our opinion, the said contention is totally on a misconception. The purpose for leaving open space is not only to meet the future developmental activity, but also to meet the recreational activity of the inhabitants. The provision of open space in a development plan is to provide green space as well which is an essential feature in the development of an area. In a layout leaving of certain area of land as open space for use of park is in conformity with the Development Control Rules. Hence, there cannot be a different yardsticks to the de-reservation of land left for open space in the case of an apartment and layout. Only in this context, the provisions of Section 432(10)(b) of the Coimbatore City Municipal Corporation Act relating to the power of the Municipal Corporation to make bye-laws in respect of protection of avenues, trees, grass, other appurtenances of public streets and other places was referred to by the learned Judge which, in our considered view, requires no interference. Hence, the learned Judge has rightly quashed the order of the Government in de-reserving the land earmarked for public purpose in the layout into housing plots and we are not inclined to interfere with the same."

Thus, it is evident that the land earmarked for public purpose cannot be used for private use by any one, including the Local Body restricting the usage of the public.

12. In this case, the contention of the appellants are that they are proposing to construct a hospital in the subject land, which will serve public purpose and an affidavit is also filed in writ appeal stage stating that 50% of the patients in the proposed hospital will be treated free of costs. Whether the establishment of a Private Nursing Home in an open space reserved for public park will serve public purpose was already considered by the Hon'ble Supreme Court in the decision reported in (1991) 4 SCC 54 ([Bangalore Medical Trust v. B.S.Muddappa](#)). The argument advanced on similar line that the Hospital with Research Centre and free service being more important from social angle, the inhabitants in the locality cannot be said to suffer any injury, much less substantial injury, was totally rejected by the Hon'ble Supreme Court.

15. In this case, 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 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



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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."

[ae]The Division Bench, in the above decision, held that permission to use the land for construction of a hospital, will not serve public interest and it was further held that the land earmarked for public purpose cannot be used for private use by any one. The Division Bench has, in extenso, relied upon the landmark decision of the Supreme Court in the case of B.S.Muddappa (cited supra) and also various legal principles evolved on the subject matter and finally held that the land earmarked for public purpose, cannot be used for private use including construction of a hospital, which was stated to serve public interest at large.

[af]The learned counsel further relied on a decision of a Division Bench of this Court reported in **2011 (1) CTC 257 (K.Rajamani Vs. Alamunagar Residents' Welfare Association)** and more particularly, this Court's attention has been drawn to the following paragraphs 10, 17 and 19 to 25:

"10. We have carefully considered the above submissions. The following questions arise for our consideration:

(i) Whether the Government would have power to order de-reservation of a land reserved for public purpose in a layout for use of other purpose?

(ii) Whether the open space earmarked in a layout for use of park, etc., could be allowed to be put in use for any other purpose?

(iii) Whether the provisions of the Land Acquisition Act are to be followed for acquiring that land with reference to the provisions of Section 36 of the Planning Act?

(iv) Whether the open space earmarked in a layout could be considered to be the property of the Municipal Corporation either in the absence of any declaration under Section 37 or in the absence of any gift by the owner?

17. For our purpose, the extent of land in a new town development area owned by a private person shall be used only in conformity with such development as provided under Section 47 of the Act. For such use, such person should apply to the appropriate planning authority for permission to erect any building or make or extend any excavation or carry out any mining or other operation, make any material change in the use of the land or construct, form or lay out any work. For that purpose, one should make an application for permission under Section 49. In terms of sub-section (2) of Section 49, the appropriate planning authority is required to consider the purpose for which the permission is required, the suitability of the place for



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

19. Point No.(ii): This takes us to the next question as to whether the lands specified for public purpose and left open in the layout could be used for any other public purpose. The question as to whether a land specified for public purpose and left open in a layout could be used for any other purpose came up for consideration before the Apex Court as well as this Court and we have enough authorities on the subject. The Apex Court in *Bangalore Medical Trust v. B.S.Muddappa*, (1991) 4 SCC 54, has held as follows:

"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



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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 percent 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 large scale and congested areas are coming up rapidly, may give rise to health hazard."

The very same question came up for consideration again before the Apex Court in Pt. Chet Ram Vashist v. Municipal Corporation of Delhi, (1995) 1 SCC 47, wherein the Apex Court has held 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



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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."

20. This Court has also ruled that the area reserved for public purpose cannot be altered to be put to use for any other purpose in the decision in Villupuram Municipality represented by its Commissioner, Villupuram v. M.Subramanian and others, (2000) 3 MLJ 375. A Division Bench of this Court in Karpaga Nagar Nala Urimai Sangam rep.by its Secretary, Shanmugavel v. Municipal Administration and Water Supply Department rep.by its Secretary, Chennai and others, (2007) 4 MLJ 1006, after considering in detail the provisions of the Act, has held that the open space earmarked for public purpose cannot be altered. This Court has further held that the layout sanctioned by the municipal authority cannot be altered by the Government by issuance of a Government Order de-reserving such plots.

21. A survey of the above law shows that the land once earmarked for public purpose cannot be earmarked for any other purpose and, particularly, to de-reserve or put to use as housing plots. (See Krishna Nagar Residents Welfare Association v. Director of Town and Country Planning, (2001) 3 LW 828.).

22. The contention of Mr. K.M. Vijayan, learned Senior Counsel for the Appellants is that the law relating to open space would be available only in case of apartments, where the purchaser of an apartment would have right to seek for maintenance of public space as such, as he/she has an undivided share in the open land as well and that law is not applicable to a layout. In our opinion, the said contention is totally on a misconception. The purpose for leaving open space is not only to meet the future developmental activity, but also to meet the recreational activity of the inhabitants. The provision of open space in a development plan is to provide green space as well which is an essential feature in the development of an area. In a layout leaving of certain area of land as open space for use of park is in conformity with the Development Control Rules. Hence, there cannot be a different yardstick as to the de-reservation of land left for open space in the case of an apartment and layout. Only in this context, the provisions of Section 432(10)(b) of the Coimbatore City Municipal Corporation Act relating to the power of the Municipal Corporation to make bye-laws in respect of



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protection of avenues, trees, grass, other appurtenances of public streets and other places was referred to by the learned Judge which, in our considered view, requires no interference. Hence, the learned Judge has rightly quashed the order of the Government in de-reserving the land earmarked for public purpose in the layout into housing plots and we are not inclined to interfere with the same. We answer the point No.(ii) accordingly.

23. Point Nos.(iii) & (iv): The next contention is as to whether in the absence of any proceedings under the Land Acquisition Act, the Municipal Corporation can claim a right over the property. The contention of Mr. K.M. Vijayan, learned Senior Counsel is that after the land is deemed to be the land needed for public purpose within the meaning of Land Acquisition Act in terms of Section 36, a declaration in this regard should be made under Section 37. In the event no declaration is made within a period of three years after the publication of notice in the Gazette as to the preparation of regional plan, master plan or the new town development plan, as the case may be, the land shall be deemed to be released from such reservation, allotment or designation under Section 38 of the Planning Act. In terms of Section 26, notice of preparation of regional plan, master plan or the new town development plan should be published in the Government Gazette after the appropriate Planning Authority had received the consent of the Government under sub-section (2) of Section 24. Thereafter, the Government is competent to acquire the land under the provisions of the Land Acquisition Act as contemplated under Section 36 and for that purpose, a notice shall be also published in the Tamil Nadu Government Gazette under Section 37. In the event such notice is not made within a period of three years from the publication of notice under Section 26 or 27, the land shall be deemed to be released from such reservation, allotment or designation. This contention would be available to a land owner before he/she makes an Application for approval of the layout plan as to the entitlement of a land owner for release of such land for non-compliance of the provisions of Sections 26, 27, 37 and 38 of the Planning Act. In this context, we may refer to the judgment of the Apex Court in *Balakrishna H. Sawant and others v. Sangli Miraj & Kupwad City Municipal Corporation and others*, 2005 (3) SCC 61. In that case, certain lands were reserved for high school and playground in a development plan. The concerned Municipal Corporation did not offer sufficient financial resources to construct the school and playground on the land and therefore the Municipal Corporation did not take action. In the meantime, the Government also took a stand that the reservation had lapsed and in that circumstance, the Apex Court had directed the release of the land. The above judgment was quoted with approval in *Raju S.*



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Jethmalani and others v. State of Maharashtra and others, 2005 (11) SCC 222, relating to the power of the Government for de-reservation. In both the judgments, the power of the Government for de-reservation has been upheld prior to the stage of approval of the layout and not afterwards. It is one thing to say that the land should be released to the owner and another thing to say to change the use of the said land. In this case, the question is whether after the layout has been approved showing certain extent of land to be used as park, etc., whether it could be de-reserved for the use of housing plots by an order of the Government. The Government's power to de-reserve the land is not available after the layout plan is approved, except as per the provisions of Section 90, which confers power on the Government only in respect of legality or correctness of the layout plan and not in respect of power to change the usage of the land as shown in the layout. Therefore, the contention of the learned Senior Counsel that in view of non-compliance of the provisions of the Land Acquisition Act, the land in question shall be deemed to have been released cannot be accepted on the facts of this case. Equally, we also hold that in the absence of acquisition of land in terms of Sections 36, 37, 38 of the Planning Act, the Municipal Corporation cannot claim right over the land, as the right of the owner cannot be deprived except following the above procedure. We may also mention that the owner of the land has not executed any gift deed as well in respect of the open space in favour of the Municipal Corporation, thereby the Corporation could claim a right over the land for all legal purposes.

24. This takes us to the next question as to whether in the absence of any declaration under Section 37 and the consequential release of the land under Section 38, the Municipal Corporation could claim ownership of the land on the basis of the resolution. The resolution questioned by the Appellants does not speak of the right of the Municipal Corporation for ownership, but it only speaks for taking over possession of the land. That resolution, in our opinion, could only be read for taking over possession of the open space by the Municipal Corporation in order to maintain as park, etc., as per the layout plan and not for conferring title on the Municipal Corporation. Hence, the validity of the resolution is of no consequence on the facts of this case. In *Pt. Chet Ram Vashist v. Municipal Corporation of Delhi*, 1995 (1) SCC 47, the Apex Court has directed that the Corporation shall have the right to manage the land which was earmarked for school, park etc., and 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 and it is left open to the Corporation to get the land transferred in its favour



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after paying the market price as prevalent on the date when the sanction to the layout plan was accorded. Placing reliance on the above judgment, the learned Judge has found that the Municipal Corporation would be only the custodian of the land and cannot claim to be the owner. The custodian of the land is only for the purpose of maintaining the open space and to put to use the purpose for which it was earmarked and for the benefit of the inhabitants. Hence, the learned Judge rightly did not interfere with the resolution and found that the Municipal Corporation is only the custodian of the open space. In our view, the said finding requires no interference. Accordingly, point Nos.(iii) & (iv) are answered.

25. For all the above reasons, we find no merit in the Writ Appeals and accordingly, they are dismissed. Consequently, M.P. Nos. 1 & 1 of 2010 are also dismissed. No costs. ''

In the above decision, the Division Bench, after surveying various case laws on the subject matter, concluded that when once the land is earmarked for a public purpose, it cannot be changed for any other purpose, including the usage of the land for housing plots. The Division Bench in the decision, after following various decisions, held that, neither the Municipal Authority nor the Government, can issue any order de-reserving the plots originally reserved for public purpose. Once a place is earmarked or reserved for a particular user, at best the State authority could only be a custodian of the land for the purpose of maintaining the open space and put to use the purpose for which it was earmarked for the benefit of the inhabitants.

[ag]Our attention has also been drawn to one other decision of a Division Bench of this Court reported in **2010 (8) MLJ 105 (R.Chandran Vs. State of T.N)**, and the following paragraphs 1, 12, 14 and 17 to 19 have been referred to:

"1. In this writ petition, by way of public interest litigation, the petitioner seeks a mandamus or any other writ or order in the nature of a writ forbearing the respondents herein, their agents or servants from constructing an underground Car Park in the Corporation Playground situated on Venkata Narayana Road, in the City of Chennai or for converting it for any other purpose.

12. It has not been disputed by the 2nd respondent-Corporation that the land in question has been used as park and playground for the last several decades. There is a basket ball ground in the said park, which is said to be an historical ground for many aspiring basketball players of the country. Many basketball training sessions and tournaments have been conducted there, and several high dignitaries visited the place and



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distributed prices to the winners of such tournaments. Similarly, public at large had been using the park since several decades. Learned counsel for the petitioner drawn our attention to Section 2(34) of the Tamil Nadu Town and Country Planning Act inter alia defines public open space, which means any land whether enclosed or not belonging to the Central or any State Government or any local authority or any body corporate, owned or controlled by the Central or any State Government on which there is no building or of which not more than one twentieth part is covered with buildings, and the whole or the remainder of which is used for purpose of recreation, air or light. Therefore, evidently the playground and the park could not be brought within the definition of public open space. It has also not been disputed that the playground at Venkata Narayana Road, T.Nagar has been listed as the playground both under the Tamil Nadu Parks, Play Fields and Open Spaces (Preservation and Regulation) Act, 1959 and the Development Control Rules. Rule 4(a) of the Development Control Rules provides that where the use of the site or the premises is specifically designated as open space, it shall be used only for that purpose for which it has been so designated.

14. Prima facie we have no hesitation in holding that such decision of the respondent for using the park and the playground for the purpose of providing car parking and to facilitate the customers and the visitors for the shopping complexes and commercial establishments is illegal, arbitrary, unwarranted and unjustified.

17. During the course of argument the learned counsel for the second respondent would submit that apart from underground parking facility a commercial complex is also proposed, inter alia providing restaurants and other facilities to cater to the needs of the persons who use the car parking facility. It is further submitted that by establishing a commercial complex it would add to the revenue, as the revenue generated from the car parking alone would not be sizable. Therefore, it is contended that the entire project as conceived is in the interest of the general public. We however fail to see any public interest as projected by the second respondent. In fact this commercial complex proposed was not mentioned originally. 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,



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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.

18. After giving our anxious consideration in the matter, and considering the fact that the land used as park and play ground for the last 50 years, the Corporation cannot be allowed to use the said play ground for construction of underground car parking. The decision of the Corporation to that effect is, therefore, declared illegal and unjustified.

1. We, therefore, allow this petition and restrain the respondents, their agents or servants from constructing an underground car park in the play ground in question situated at Venkata Narayana Road, in the city of Chennai or for converting it for any other purpose. No costs. Consequently, miscellaneous petitions are closed."

The above case is relating to the decision taken by the Development Authority for using the park and the playground for the purpose of providing car park, to be used by general public who visit the shopping complexes and the commercial establishments in and around the locality. But, the Division Bench held that the change of user as car park proposed by the authority was illegal, unjustified and allowed the writ petition filed by a member of public against the impugned proposal.

[ah]The learned counsel further referred to another decision of a Division Bench of this Court reported in **2007 (3) LW 259 (Sri Devi Nagar Residents Welfare Association Vs. Subbathal)**, and this Court's attention has been drawn to paragraphs 1, 5 and 14 to 17, which are extracted hereunder:

"Whether a portion of land reserved for public purpose in a layout approved by the local body can be used for any other purpose is the specific question that arises for our consideration in the above appeals, while the issue at large is whether the land reserved for public purpose in any layout or in a development plan or master plan can be used for any other purpose at a later stage?

5. It is a settled law that the object of approving the layout, before converting the land into house sites, is to regulate the development in the locality so as to



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secure the present and future inhabitants sanitary conditions, amenity and convenience, with the prior permission of the fifth respondent. The approval of the lay out, is, therefore, intended to secure amenity and convenience to the present and future residents in connection with laying out and use of lands. Therefore, regard is to be had in the making of a clear Town Planning in the locality to the laying out and use of neighbouring lands as well as to that of the land which is the actual subject matter of the layout. The result should be that as successive areas are developed, they should fit into one another and eventually form a harmonious whole. One of the most important things for consideration in the preparation of the layout is not only formation of roads, but also utilisation of the lands reserved for public purpose.

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

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

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

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

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

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

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

(v) the Corporation is at liberty to collect necessary funds from the plot owners, who purchased the



plots in the impugned layout for maintenance of the park.

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

For the reasons aforesaid, we hold that a portion of land reserved for public purpose in a layout 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. These appeals are ordered accordingly. No costs."

Here-again, the Division Bench of this Court held that the portion of the land reserved for public purpose in the lay-out or in the master plan approved by the local body, cannot be used for any other purpose than the one specified therein.

[ai]The learned counsel has also drawn the attention of this Court to a decision of a Division Bench of the Andhra Pradesh High Court reported in **AIR 2001 Andhra Pradesh 460 (C.Uma Devi Vs. Govt. of Andhra Pradesh)**, with reference to paragraphs 2, 3 and 8 to 14 which are reproduced as under:-

"2. A park commonly known as Green Park, is situated adjacent to Ramakrishna Street, Old City, Visakhapatnam. It is alleged by the petitioner that respondent No.3 Corporation has converted the said park into a Garbage Dumping Yard. It is not in dispute that the Ministry of Environment and Forests by Notification S.O. 783(E), dated 27-9-1999, prepared Draft Rules known as the Municipal Solid Wastes (Management and Handling) Rules, 1999 (for short 'the Rules'), applicable to every Municipal Authority responsible for collection, segregation, storage, transportation, processing and disposal of municipal solid waste. Rule 8 of the aforementioned Rules, which provides for Management of Municipal Solid Waste reads :

Management of Municipal Solid Waste -

(1) Any municipal solid waste generated in a city or a town, shall be managed in accordance with the compliance criteria and the procedure laid down in Schedule-II.

(2) The disposal of municipal solid waste of the specified categories shall be through landfill as per specifications and standards laid down in Schedule-III.

(3) The standards for compost and disposal of treated leachate to be followed by the Municipal authorities shall be as laid down in Schedule-IV.



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3. The A.P. Pollution Control Board (for short 'the Board') having received a complaint dated 27-4-1999 from the petitioner about the dumping of garbage in the park by respondent No.3 Corporation, brought the same to the notice of the Commissioner of respondent No.3 Corporation. The said letter reads :

This is to bring to your notice that this office has received a public complaint from Smt. C. Uma Devi, Advocate, against dumping of the garbage by Corporation adjacent to Ramakrishna Street vide reference 1st cited. The following are the objections in the complaint.

1. It was mentioned in the complaint that Corporation is dumping garbage adjacent to Ramakrishna Street which is affecting the residents of the locality.

2. It was mentioned in the complaint that present area i.e. where Corporation is dumping the garbage was originally a park.

3. It was mentioned in the complaint that as the Corporation is dumping garbage in the residential locality, the residents of the locality are prone to infectious diseases like Cholera, Malaria etc..

4. In view of the above objection, the complainant requested to shift the dumping yard from the present residential locality to a safer locality. The same has been already brought to your notice vide reference 2nd cited and you are requested once again to examine the matter and furnish your report to this office within 10 days with a copy to Member Secretary, APPCB, HUDA Complex, Ameerpet, Hyderabad.

8. It is the statutory duty and function of a local authority, including a Municipal Corporation, to see that the health and hygiene of the members of the general public is maintained. The Municipal Corporation, which is responsible for providing good civic amenities, and maintain hygiene of the surroundings, cannot itself take recourse to such activities, which create pollution of the environment and unhygienic conditions for its citizens to live in. We therefore, strongly deprecate the action on the part of respondent No.3-Corporation for defiling the park by dumping garbage in it.

9. Parks as is well known, act as lungs of the cities/localities, and therefore, under no circumstances, they should be allowed to be used for purposes other than recreation. In *M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu*, , the Apex Court in para 82 held :

"High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous



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decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorized. This dicta is now almost bordering rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such discretion cannot be exercised which encourage illegality or perpetuates an illegality. Unauthorized construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law, Judges are not entitled to exercise discretion wearing robes of Judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots."

10. The above aspect of the matter was also considered by a Division Bench of Calcutta High Court in *Howrah Genatantrik Nagarik Samity v. Chief Secretary*, 2000(1) Cal. HN 28, and it was held :

It is surprising as to how the Bidhan Nagar Municipality sanctioned the Building Plan within a park. The said action, in our opinion, was not commensurate with the professed policy decision of the State and the Municipality.

11. Further, referring to Section 63 of the West Bengal Municipal Act, 1993, it was observed :

The obligatory functions leave no manner of doubt that the park being a property, having vested in the Municipality, it has the duty to maintain and develop the same. It, of course, has a discretionary duty, inter alia to construct and maintain a Community Hall, but the same cannot be done at the cost of ecological greenery. The State, as noticed hereinbefore, has a duty to look of the environment safety and Improvement.

12. Sustainable development is the order of the day. In *Consumer Education And Research Society v. Union of India*, AIR 2000 SC 975, the Apex Court in para 7 observed:

"The forest in the notified and danotified areas is an edaphic thorn forest. It is desert forest but with a large number of trees. It has been identified



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as a potential site for designation as bio-sphere reserve by an Expert Committee constituted by the Ministry of Environment and Forest. It has been put in a "Rich area category", from bio-diversity point of view, by the Gujarat Ecology Commission. Even the Union of India in its affidavit has stated that the de-notified area of the sanctuary includes many areas of high and very high and very high floral and faunal value and these areas form Integral part of the Narayan Sarovar Sanctuary. The Rapid Impact Assessment Report by the Wildlife Institute of India has also pointed out that any reduction in the area of that sanctuary will reduce the number of species of trees. It is also at the same time true, as pointed out by the Government, that this part of the Kutch District is a backward area. There is no other possibility of industrial development in that area, though it contains rich mineral deposits. Therefore, if an attempt is made by the State Legislature and the State Government to balance the need of the environment and the need of economic development it would not be proper to apply the principles of prohibition in such a case. The reports of the three committees only point out of the ecological importance of the area and express an apprehension, that any major mining operation within the notified area and large scale industrialization near about the sanctuary as originally notified, may adversely affect the ecological balance and bio-diversity of that area. It would, therefore, be proper and safer to apply the 'Principle of Protection' and the 'Principle of Polluter pays' keeping in mind the principle of 'sustainable development' and the principle of inter-generation equity.'

13. Further, we are of the opinion, that the activities of the respondent No. 3-Corporation, are contrary to the provisions of Rule 8 read with Schedule II of the Municipal Solid Wastes (Management & Handling) Rules, 1999 issued by the Central Government in terms of the provisions of Ss. 3, 6 and 25 of the Environment (Protection) Act, 1986.

14. We, therefore, dispose of the writ petition with the following directions:

1. Respondent No. 3-Corporation shall not dump the garbage in the park in question or any other park.
2. Respondent No. 3-Corporation shall restore the lost glory of the Green Park, and maintain it properly.
3. The A.P. Pollution Control Board shall monitor the maintenance of the Green Park on



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regular basis, and in the event it comes to its notice that respondent No. 3-Corporation is not maintaining the park and violating provisions of the Municipal Wastes (Management & Handling) Rules, 1999, it may initiate criminal proceedings against No. 3-Corporation. The A.P. Pollution Control Board shall Issue circular to all the Municipal Bodies in the State directing compliance of the aforementioned rules.

4. A Copy of this order be communicated to the Secretary, Municipal Administration, so that the copies of this Judgment may be circulated to all the Corporations/Municipalities, and all officers concerned, for ensuring compliance of the directions contained in the judgement. No cost."

The Andhra Pradesh High Court, in the above decision held that the parks are the lung space of the Cities/localities and under no circumstances, they should be allowed to be used for the purposes other than recreation. It finally directed that the Corporation shall not dump the garbage in the park.

[aj]The learned counsel has also drawn the attention of this Court to a decision of a Division Bench of this Court reported in **2008 (6) CTC 689 (Thai Nagar Welfare Association Vs. Special Commissioner, Town Planning)**, with reference to paragraphs 12, 14 and 15 that read as follows:

"12. The members of the petitioner society purchased the plots by investing their hard earned money on the expectation that the colony will continue to retain for ever the common facilities and features as found in the layout plan, which is a legitimate expectation in them. But, in this case, such an expectation is overthrown and the place which is earmarked for common use is converted to the benefit of the self-interested persons.

14. An argument was advanced by the learned counsel for the petitioner that the term 'open space' in this case will attract the provisions of The Tamil Nadu Parks, Play Fields and Open Spaces (Preservation & Regulation) Act, 1959, under Section 2 and also certain other provisions with regard to use of open space. However, on a consideration of the facts and circumstances and the application having been made to the local authority after the land in question has been developed under the provisions of The Tamil Nadu Town and Country Planning Act and the Rules made thereunder, it is clear that the layout has been granted only under the provisions of The Tamil Nadu Town and Country Planning Act and the Rules thereof. Therefore, the argument of the learned counsel for the petitioner falls to the ground.



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15. As held by this Court in the case of R.Varadarajan (cited above), the minimum, which is required in public interest, is some open space in every colony which would not only act as the lungs of the colony, but also a must for young and old to spend their time and energy usefully. Such areas are necessary not only for reducing the congestion in the area, but also for the benefit of the physical and mental health of the residents especially the children and youth. That is the reason why there is statutory recognition for such a requirement to leave out a specified portion of the colony as open space as a pre-condition for sanctioning the layout plan. Further, the Supreme Court, in Bombay Dyeing & Mfg.Co.Ltd.'case (referred supra), held that if the construction of buildings results in an impact on ecology, the aggrieved persons can very well question the same. Also, in Sri Devi Nagar Residences Welfare Association's case (cited above), a Division Bench of this Court has held that a part of the land reserved for public purpose in a layout approved by the local body cannot be used for any other purpose than the one specified therein."

But in the above case, the Division Bench of this Court, based on the undertaking given by the party, finally has directed the party concerned therein to make an application to the local authority seeking permission to use a portion of the area earmarked for open space for public purposes, such as construction of Kalayna Mandapam or any other building permissible to meet the needs of the local public. On such application being made, permission may be granted by the authority concerned if he is so satisfied.

[ak]In yet another decision of this Court reported in **2004 Writ L.R. 514 (R.Varadarajan and others Vs. The Director of Town and Country Planning and others)**, relied on by the learned counsel for the appellants, it was held in paragraphs 20, 21, 24, 25 and 28 as follows:

"20. The basic requirement of open space/play ground/parks in the newly developing Colonies and housing scheme in public interest, is not an issue which requires to be explained. Lack of space and dense population in our country may act as negative factors for not being able to achieve the high level of environmental ambience of residential areas in western countries of large roads, pavements, separate marginal roads for two wheelers, etc. But the minimum which is required in public interest is some open space in every colony which would not only act as the lungs of the Colony, but also a must for young and old to spend their time and energy usefully. Such areas are necessary not only for reducing the congestion in the area, but also for the benefit of the physical and mental health of the residents especially the children



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and youth. That is the reason why there is statutory recognition for such a requirement to leave out a specified portion of the Colony as open space as a pre-condition for sanctioning the lay out plan. Having obtained the sanction of lay out plan by representing to the Corporation and the T.P. Authorities by earmarking and showing a portion of the lay out as playground/park, it would be totally illegal and against the public interest to go behind the said representation on the basis of which sanction had been obtained. The members of the Society/the purchasers of the plots who invest their money exercise their choice, and invest their hard earned money on the expectation that the Colony will continue to retain for ever the said common facilities and features as found in the lay out plan. There is therefore, a legitimate expectation in them. But in our country such expectations are often betrayed and the places which are earmarked for common use are converted high-handedly to the benefit of and the self-interest of persons with money and power. This is precisely what has happened in this case.

21. Before sanctioning the lay out, the applicant has to fulfill all the requirements, conditions in the Development Control Rules and the lay out plan will be sanctioned only on setting apart specific land for common use. Such land shall ever remain only for the benefit of the entire Colony.

24. It follows that, in this case, the Society which is the owner of the property, cannot use the property contrary to the sanctioned lay out plan much less alienate the property in favour of private individuals for any use contrary to the lay out plan. In this case, the Society had indulged in such an illegal action and hence requires to be deprecated. Even the prayer that the authorities should approve the resolution cannot be entertained as the resolution is per se illegal.

25. It would also relevant to refer to the provisions of the Tamil Nadu Parks, Play-fields and Open space (Preservation and Regulation) Act, 1959 which has been enacted in the interest of and maintaining retaining such open spaces. A duty is cast upon the Government and the local authorities for the proper preservation and regulation of open spaces. The control has to be exercised not only over public parks and open spaces, but are also exercisable in respect of parks and play fields which are not vested with the Government or local authorities. It is true that the Act contemplates listing of such parks and play fields and the play field in this case, could not have been enlisted in terms of the said Act in view of the attitude of the Society in this case and the general attitude of indifference of local authorities.



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Reference to the said legislation is made only to emphasise the importance which the Legislature has chosen to bestow on the maintenance of such open spaces either public or private. It is true that the building Society has the power to seek for conversion, and also power in the Registrar and the T.P. Authorities to approve such conversion. But such a power is to be exercised only in public interest and not in violation of the terms and conditions on which lay out plan has been approved. Therefore, the question of conversion would arise only in rare situations of some unforeseen circumstances justifying such conversion and also provided a proper and effective substitute of open space is available.

28. In the above circumstances, I am inclined to hold that the entire exercise on the part of the Society to convert the playground as house site is totally illegal, collusive and detrimental to the interests of the Colony people. Hence, the prayer in the writ petition for directing the local authorities to grant approval cannot be accepted. It is pertinent to note that the Municipality has also filed a counter positively stating that the area which has been shown as open area in the approved lay out, cannot be converted into a house site."

[al]The learned Single Judge of this Court, in the above decision, has held that an attempt to convert the playground as house-site, was detrimental to the interest of the colony people. The learned Judge has held after taking note of the lay-out plan and a specific land being earmarked for common use of the members of the Society, such land was ever to remain only for the benefit of the colony and the same cannot be used for any other purpose.

[am]The learned counsel lastly relied on a decision of this Court reported in **AIR 2000 Madras 446 (HIG Flat Owners Welfare Association Vs. Tamil Nadu Housing Board)**, wherein, a learned Single Judge, after finding that the action of the Housing Board's attempt to sell the land which had been reserved for open space, and to be used as common space for all the allottees for recreational use, as highly objectionable and illegal. The findings of the learned Single Judge in paragraphs 24, 25 and 27 are extracted hereunder:

"24. With regard to the allotment of three grounds to the Postal Department on 17-9-1995 and another three grounds on 26-11-1987, I am of the view that for the reasons stated above, neither the Housing Board nor the Government have power to allot those lands without the consent and concurrence of the allottees. I have already held that the open space is part and parcel of the layout and the cost paid by the allottees includes the cost of vacant land (open space). No doubt, it is stated that the new Post Office will vastly improve the service to the residents of Kotturpuram Neighbourhood. Nobody



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can underestimate the service of the Post Office. However there cannot be any justification for permitting the Post Office to construct massive building in the midst of a residential quarters. Further, they went to construct Post Office as well as quarters for their staff. The request of the postal authorities to construct Post Office and staff quarters in the open space earmarked for the use and benefit of the allottees cannot be permitted.

25. In the light of various particulars furnished by the Association viz., an approved layout in the year 1978, advertisement in the Hindu inviting applications for allotment of flats from the Kotturpuram Scheme, various clauses in the registered sale deeds, details regarding payment of cost which includes entire land cost, in the absence of any details in the counter-affidavit of the Housing Board, converting the open space into a plot and allotting it in favour of 4th and 6th respondent cannot be accepted. Likewise, the allotment made in favour of Postal Department is also liable to be cancelled. It is brought to my notice that the residents of the apartments are already using the Post Office which is functioning inside the Housing Board Colony and in such circumstance there is no necessity to allot a place for Postal Department for constructing a building and for staff quarters at the cost of the health of the residents. I hold that the conduct of the Housing Board in allotting more area for Postal Department from and out of the open space which is a lung space for the entire Colony is illegal. Initially, the planners have provided open space in the layout of 1978 taking into consideration the density of the families in the area and the requirement of lung space. I accept the argument of the learned counsel for petitioner-Association that the Housing Board cannot sell the land which had been reserved as open space and the said open space can be used only as common space for all the allottees. I am of the view that recreational and sports activity is very essential for health so that the residents can lead a healthy life. The action of the Housing Board in allotting and converting open space into residential house plots and selling it at a commercial rates to third parties is highly objectionable and illegal. I have already referred to the advertisement of the Housing Board luring the public for allotment of plot as well as the caution issued by M.M.D.A through newspaper.

27. Under these circumstances, a writ is issued to the Housing Board to cancel the allotment of plot Nos. 143-A and 143-B and also space allotted to the Postal Department in Kotturpuram Housing Board Colony and keep the open space shown in the layout of 1978 and approved by M.M.D.A as open space without permitting any construction



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thereon. Accordingly, W.P. 2461 of 1993 filed by the HIG Flat Owners' Welfare Association, Kotturpuram is allowed as prayed for. In view of allowing of the said writ petition, no separate order is required in W.P. 2491 of 1998 filed by one of the residents of Adayar Apartments, Kotturpuram, hence WP 2491 of 1998 is closed. No costs in both the Writ Petitions. Consequently, connected WMPs are also closed."

[an]The learned counsel for the appellants, after referring to the above decisions, of both the Hon'ble Supreme Court of India and the decisions of the learned Single Judge(s) and Division Bench(es) of this Court, including one from Andhra Pradesh High Court, submitted that the principles uniformly and pointedly laid down only that when once the land(s) is/are earmarked for a particular purpose and in this case, "park", the same to be used for recreational purpose only by the residents of the locality. The usage of such space cannot be changed or altered at all. In the face of the well-defined and enunciated legal principles, as laid down by the Hon'ble Supreme Court and this Court, the question of permissible deviation as a matter of concession, cannot be countenanced in law at all.

[ao]The learned counsel further submitted that the location of MCC in the park area under the pretext of serving larger public interest, is in fact, undermining another important public interest of lung space being provided in every locality, which has become mandatory in any Development Plan, due to rapid organization. It is therefore, not open to the Government or the local authority to convert the land which is specifically earmarked for public purpose, namely the park for recreational purpose to be used by all age groups including the children and the aged people in the locality. Their right to enjoy the place for their healthy life with clean environment, cannot be sought to be negated by having the MCC in the midst of the park.

[ap]According to the learned counsel, whatever be the assurance that may be given by the authorities as to the maintenance of MCC, but ultimately, the maintenance of the centres would degenerate into a breeding place for mosquitoes and other insects affecting the health of the public at large in the locality. The right to breathe unpolluted air is a fundamental right of every citizen and such right cannot be a matter of negotiation at the hands of the Government or the local authority by having MCC in every neighbourhood or locality as a consequence of policy of decentralisation of solid waste management. In such event, every neighbourhood and colony would become a dumping garbage yards, giving rise to multitude of health issues to citizens of various age groups.

[aq]The learned counsel finally submitted that in any case, if the use of the land is to be converted for different purpose than what is originally envisaged in the Development Plan, the statutory requirements are to be mandatorily followed. But, in all cases of



the location of MCC in various neighbourhoods, the authorities appeared to have not followed a semblance of any of the procedures contemplated in the governing Acts, Rules etc.

[ar]In the case of locating the MCC in every large residential complexes, wherein the Master plan/development plan originally provided for a park /play area to be used commonly by the residents for recreational purpose and the rights conferred on them by the authorities, cannot sought to be taken away in the name of serving another public interest. The present action on the part of the authorities concerned, amounted to negation of the rights of the public interest and replaced by the so-called larger public interest.

[as]The learned counsel therefore, implore this Bench to hold that no concessional breach or permissible deviation is legally tenable under the pretext of serving larger public interest, by locating MCC in the place earmarked as open space recreational area.

10 Per contra, Mr.Vijay Narayan, learned Advocate General appearing for the State has made the following submissions:-

At the outset, he would submit that the original Solid Waste Management Rules, 2000, was found to be patently inadequate as it contained only eight Rules. The Rules as it stood then, could not be implemented effectively due to growing challenges of developments in urban and semi-urban areas. Therefore, the original Solid Waste Management Rules, for the sake of brevity referred to as SWM Rules, was replaced by the SWM Rules, 2016. The said SWM Rules, 2016 was notified on 08.04.2016 in super session of the earlier Rules, 2000.

11 The learned Advocate General would draw reference to the various Rules as contained in the SWM Rules, 2016. He would first refer to **Rule 3.15** which deals with establishment of **Decentralised Processing** of bio-degradable waste and recovery of recyclables closest to the source of generation so as to minimise transportation of waste for processing or disposal. He would then refer to **Rule 3.32** which deals with **non-biodegradable waste** which has been defined as waste that cannot be degraded by micro organisms into simpler stable compounds. **Rule 3.35** deals with **processing as to segregation of solid waste** for the purpose of reuse, recycling and transformation into new products.

12 The learned Advocate General also referred to **Rule 4** which deals with **Duties of Waste Generators**. Number of sub-rules have also been provided thereunder. The sub-rules cumulatively would define the scientific disposal of the solid waste. **Rule 11** has also been referred to relating to the **Duties of the Secretary-in-Charge, Urban Development in the States and Union Territories**. The Learned Advocate General would also rely on the sub-clauses under **Rule 11, viz., [b], [c], [d] and [f] etc.** The said sub-clauses would highlight as to how the State Government and other



Local Bodies are under legal obligation to prepare a State Policy regarding the Solid Waste Management and to ensure implementation of the provisions of the Rules. The learned Advocate General would also refer to **Rule 12** which deals with the **Duties of District Magistrate or District Collector** as the case may be, for the purpose of facilitating identification and location of suitable land in terms of Clause [f] of Rule 11. The Collector or any other official at the District level is under legal obligation for setting up solid waste processing and disposal facilities in the District concerned, in terms of the Rules, 2016.

13 The learned Advocate General would also refer to **Rule 15** which deals with the **Duties and Responsibilities of Local Authorities and Village Panchayats of census Towns and Agglomerations**. The Local Authorities and the Panchayats are mandated to prepare a solid waste plan as per the State Policy and strategy of Solid Waste Management and arrange for door to door collection of solid wastes from the households etc. They are also under obligation to facilitate construction, operation and maintenance of solid waste processing facilities and associated infrastructure and also to undertake operation and maintenance of sanitary landfill and associated infrastructure as per Schedule-I for disposal of residual waste in a manner prescribed under these Rules. The learned Advocate General would particularly lay emphasis on **Rule [zi] of Rule 15** which clearly defines the State Policy of Solid Waste Management that if the Rules are followed in its' letter and spirit and implemented, the avowed objective of zero waste going to landfill could be achievable. He would therefore submit that with the introduction of the bio-scientific process of managing the solid waste disposal, the use of dust bins could be avoided completely.

14 Attention of this Court has also been drawn to **Rule 22** which provides for time frame for implementation. An elaborate time frame has been provided for, under the said Rules for each stage of strategy being worked out towards the solid waste management like identification of suitable site, procurement of suitable sites for setting up solid waste processing facility, enforcing waste generators to practice segregation of biodegradable, recyclable etc., ensure door to door collection of segregated waste and its transportation in covered vehicles, ensure separate storage collection and transportation and demolition wastes, setting up solid waste processing facilities by all Local Bodies having 1 lakh or more population etc. For each of the programs, a time line has been mentioned for the implementation.

15 The learned Advocate General would further submit that as far as Clause IX of Schedule - I to the SWM Rules, 2016, which was relied on by the appellants/writ petitioners, the same has no applicability on the issue on hand, as what is proposed to be located in the play area or park is Micro Compost Centre [MCC] and the maximum solid waste processing done in the said Centres would be 5 Tonnes in terms of its processing capacity.



Therefore, the reliance placed on buffer zone of no development near solid waste processing and disposal facility as mentioned in Schedule-I has no application at all and reliance placed on behalf of the appellants herein in this regard, is incorrect and misplaced.

16 The learned Advocate General would refer to the provisions contained in Environment [Protection] Act, 1986. He would particularly rely upon **Section 3** which deals with **Powers to be exercised by the Central Government to take all measures as it deems necessary or expedient** for the purpose of protecting and improving quality of the environment and preventing, controlling and abating environmental pollution. Under the said provisions, several sub-clauses have been incorporated laying various standards and norms towards control of environmental pollutants. The provision gives enormous power to the Central Government to regulate all activities from the point of view of protecting environment. **Section 5** of the Act deals with **Power of the Government to give suitable directions**. The power includes closure, prohibition or regulation of any industry, operation or process thereof etc. **Section 6** of the Act provides for regulation of environmental pollution. Under this section, procedures and norms have been laid down placing some restrictions on the location of industries for handling all hazardous substances, allowable limits of concentration of environmental pollutants etc. In furtherance of implementation of the various requirements under the Environmental Protection Act, 1986, the SWM Rules, 2016, has been brought into force and the strategy that is contemplated in the Rules and the State Policy envisaged therein is intended to serve larger public interest. According to the learned Advocate General, the Solid Waste Management has become a global challenge in the face of increasing pollution and urban developments. Therefore, there was a paradigm shift in the strategy and management of solid waste and hence, the centralized way of disposal of the solid waste has been replaced by a policy of de-centralisation. This is particularly so when the vacant space in urban areas keep shrinking due to fast paced development of all kinds.

17 The learned Advocate General would also refer to Article 253 of the Constitution of India. According to this Article, the country is under legal obligation to enact law for implementing any agreement or convention and in regard to the decisions taken at any international conference or association or any other Body. According to the learned Advocate General, a sustainable development is a constitutional duty and it is mandatory for the State to protect its' citizens right to be provided with clean water and unpolluted air.

18 In support of his submissions, the learned Advocate General would rely upon the decision of the Hon'ble Supreme Court of India reported in **1996 [5] SCC 647 [Vellore Citizens Welfare Forum vs Union Of India & Ors]** and in particular, paragraphs No.10 to 17, which are extracted infra in the later portion of the



19 This Court's attention has also been drawn to another decision reported in **2005 [10] SCC 510 [Research Foundation For Science, Technology National Resource Policy Vs. Union Of India & Ors.]** and he would rely upon paragraph No.16 which is extracted hereunder:-

'16. The legal position regarding applicability of the precautionary principle and polluter-pays principle which are part of the concept of sustainable development in our country is now well settled. In *Vellore Citizens' Welfare Forum v. Union of India* [(1996) 5 SCC 647] a three-Judge Bench of this Court, after referring to the principles evolved in various international conferences and to the concept of "sustainable development", inter alia, held that the precautionary principle and polluter-pays principle have now emerged and govern the law in our country, as is clear from Articles 47, 48-A and 51-A(g) of our Constitution and that, in fact, in the various environmental statutes including the Environment (Protection) Act, 1986, these concepts are already implied. These principles have been held to have become part of our law. Further, it was observed in *Vellore Citizens' Welfare Forum* case [(1996) 5 SCC 647] that these principles are accepted as part of the customary international law and hence there should be no difficulty in accepting them as part of our domestic law. Reference may also be made to the decision in the case of *A.P. Pollution Control Board v. Prof. M.V. Nayudu* [(1999) 2 SCC 718] where, after referring to the principles noticed in *Vellore Citizens' Welfare Forum* case [(1996) 5 SCC 647] the same have been explained in more detail with a view to enable the courts and the tribunals or environmental authorities to properly apply the said principles in the matters which come before them. In this decision, it has also been observed that the principle of good governance is an accepted principle of international and domestic laws. It comprises of the rule of law, effective State institutions, transparency and accountability and public affairs, respect for human rights and the meaningful participation of citizens in the political process of their countries and in the decisions affecting their lives. Reference has also been made to Article 7 of the draft approved by the Working Group of the International Law Commission in 1996 on "Prevention of Transboundary Damage from Hazardous Activities" to include the need for the State to take necessary "legislative,



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administrative and other actions" to implement the duty of prevention of environmental harm. Environmental concerns have been placed on the same pedestal as human rights concerns, both being traced to Article 21 of the Constitution. It is the duty of this Court to render justice by taking all aspects into consideration. It has also been observed that with a view to ensure that there is neither danger to the environment nor to the ecology and, at the same time, ensuring sustainable development, the court can refer scientific and technical aspects for an investigation and opinion to expert bodies. The provisions of a covenant which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can be relied upon by courts as facets of those fundamental rights and hence enforceable as such (see *People's Union for Civil Liberties v. Union of India* [(1997) 3 SCC 433 : 1997 SCC (Cri) 434]). The Basel Convention, it cannot be doubted, effectuates the fundamental rights guaranteed under Article 21. The right to information and community participation for protection of environment and human health is also a right which flows from Article 21. The Government and authorities have, thus to motivate the public participation. These well-enshrined principles have been kept in view by us while examining and determining various aspects and facets of the problems in issue and the permissible remedies.

In the above decisions, Article 47, 48-A and 51-A[g] of the Directive Principles of State Policy have been dealt with by the Hon'ble Supreme Court. The right to have clean water and unpolluted air is the fundamental right guaranteed in terms of Article 21 to every citizen of the country and the State Policy has been now directed towards achieving the said constitutional goal. The Hon'ble Supreme Court has drawn inspiration from the development of the modern concept of 'Sustainable Development', evolved for the first time in the Stockholm Declaration in 1972 on the concept being given a definite shape by the World Commission on Environment and Development in 1987. The Court referred to some of the salient principles of the concept of 'Sustainable Development' while laying down the law for this country. In the said circumstances, the Apartment owners in residential complexes cannot raise any legitimate objections to the location of MCCs, as the same is to be located near to the source of waste generator in their own interest and in the interest of public at large.

20 The learned Advocate General further referred to **Section 2** of the Act, 1971, which defines '**amenities**' like streets, open spaces, parks, recreational grounds, sewerage, drainage etc. He also referred to **Section 3** of the Tamil Nadu Parks, Play-Fields and



Open Spaces [Preservation and Regulation] Act, 1959, which provides for preparation and submission of list of parks, play-fields and open spaces by the Executive Authorities. He would then proceed to refer the Development Control Rules/Chennai. According to the Development Control Rules, every layout shall provide for reservation of certain percentage of area and that reserved area shall be transferred to the authority or to the Local Body and the authority or the Local Body may in turn permit the residents, association or the flat owners association for maintaining such reserved space as park.

21 This Court's reference has also been drawn to G.O.Ms.No.128, Municipal Administration and Water Supply [MA-2] Department, dated 02.09.2013, in regard to the constitution of Project Sanctioning Committee to approve the projects under Solid Waste Management Fund. As per the said Government Order, a Solid Waste Management Fund will be created with a sum of Rs.100 Crores for financing the projects in weak urban local bodies during 2013-2014. He also referred to another Government Order in G.O.Ms.No.105 dated 21.07.2015, wherein Administrative Sanction was given for implementation in the State of Centralised sponsored scheme, viz., **Swachh Bharath Mission**. The said Government Order delineates various guidelines for implementation of Swachh Bharath Mission at the State level. A Mission Directorate was also constituted for implementation of the Mission. Reference is also made to the Minutes of the High Power Committee of Swachh Bharath Mission held on 27.12.2017 and one of the Agendas was sanctioning of the Solid Waste Management Projects in Greater Chennai Corporation, Tirunelveli Corporation, 18 Municipalities and 249 Town Panchayats for the year 2017-18 and as far as Tirunelveli Corporation was concerned, the proposed construction of Micro Compost Centres in 37 locations was discussed. Apart from that, location of MCCs in other places like Tiruvannamalai and also purchase of commercial vehicles for transporting the wastes, was also discussed in the Meeting.

22 Likewise, the learned Advocate General also referred to High Power Committee Meeting held on 13.08.2019 in which it was proposed to locate MCCs in various locations, after referring to the proposals of the High Power Committee which was incharge of implementing Swachh Bharath Mission, a Centralised Concept Scheme. The learned Advocate General on his turn, has also referred the decision of the Division Bench of this Court dated 14.03.2018 rendered in WP.No.32938/2017 **[T.G.Ruthramani's case] [cited supra]** and particularly, referred to paragraphs No.8, 12 to 15, 18, 19, 21 to 26, which are extracted hereunder:-

8. In this connection, the learned counsel puts forward a strenuous argument that time and again, this Court, in several judgments, repeatedly held that the area reserved for the purpose of public park should be utilized for the public purposes and should not be diverted for any other purpose opposed to the welfare of the public. In reality, according to the petitioner/ Sangam, the



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public park is a gift of modern civilization and it is a significant factor for the improvement of the quality of life and it is also an essential feature of modern planning and development and it greatly contributes to the improvement of social ecology.

.....

12. It transpires from the counter affidavit filed by the fourth respondent/Municipality that several applications are pending in regard to dumping of wastes in the Municipal Compost Yard in S.No.629, Poonamallee village and S.No.56, Adhiyamarndhanallur village where the existing dump yard is situated. In view of the problem of handling the huge volume of wastes by simple open dumping, various steps were taken and the Solid Waste Management Rules, 2016 were notified in this regard. The State Government, following the said Rules, issued various directions for handling of wastes by particular processes suited for the concerned Local Bodies as per the local requirements and conditions. Furthermore, the disposal of wastes is now only to be done in source segregated manner by individual residents and the non bio degradable wastes are to be disposed in public receptacles only on certain days.

13. In this connection, it cannot be brushed aside that the said Rules were notified in the Gazette and an application was filed before the National Green Tribunal, Southern Zone Bench and the same was also disposed of by the Tribunal with a specific direction not to dump the solid wastes in S.No.56, Adhiyamarndhanallur Village, which was a water body. Another land in S.No. 629 of the same village adjoining lands was also in use for several years as a dump yard and due to objections raised and Application No.63 of 2013, the said dump yard has been directed to be closed.

14. The learned Standing Counsel for the fourth respondent/ Municipality points out that the park site in the layout, which has been referred to is now vested with them and that they, in furtherance of their duties to collect and properly dispose of the solid wastes, set up 9 micro compost plants in Poonamallee municipal area. That apart, the common solid waste management plant in partnership with Avadi and Thiruverkadu municipalities situated in Avadi municipal area is under construction. The said combined plant will take care of the bio non degradable and other solid wastes for processing into fuel and other recyclable uses.

15. With a view to process the highly decomposable wastes such as kitchen and vegetable wastes collected in each surrounding area, small



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micro compost plants are being set up by them throughout Poonamallee town. As of now, nine plants are to be established including that of the plant in the park site in question. Out of other eight locations, seven plants are completed and one is under construction. Moreover, there are no facilities in the said playground that were created by the petitioner or association of residents of the layout. The entire playground, according to the fourth respondent/ Municipality, is in disuse.

...

18. The primary collection of the solid waste for transportation to the micro compost plant will be by means of non polluting electric vehicles. The waste collected from the surrounding area will be brought to the composting facility and it will be immediately put into the composting process and there will not be any odour or insects from the waste. There will not be any dumping or accumulation of waste apprehended by the petitioner.

19. The total area available as a park site, according to the fourth respondent, measures an extent of 1.01 acres or 44,403 sq.ft. The micro compost yard is only of an extent of 1,500 sq.ft., which is less than 3% of the total area. Further, over the rest of the park site, the fourth respondent/ Municipality had already undertaken the development of the park with compound wall, walking path, green cover, children's play equipment. In short, the micro composting facility is to occupy only meagre portion of the playground. The micro composting facility will consist of public convenience for the residents as well as the workers engaged in the composting facilities to prevent any open defecation in the area. Apart from that, there will be a small storage room for the safe storage of the packaged manure before disposal.

.....

21. In reply, the learned counsel for the petitioner has relied upon the decision of the Division Bench of this Court in the case of Sri Devi Nagar Residences Welfare Association Vs. Subbathal [reported in 2007 (3) LW 259] wherein the relevant portions read as follows :

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

(ii) If respondents 1 to 3 could not maintain the park within the time stipulated above, the Corporation, as a custodian of public interest, shall develop the area as a Park with the



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cooperation of respondents 1 to 3, with whom the title and possession would continue to remain;

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

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

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

22. Apart from the above decision, One of us (SVNJ), while sitting singly, in the decision in the case of M.S.Rangarajan Vs. Pammal Municipality [WP.No.26581 of 2017 dated 22.1.2018], held as follows :

"16. Though the petitioner has raised genuine issues as regards pollution of all sorts due to the setting up of Micro Compost Plan in the Playground, this Court opines that the garbage that is dumped in and around the layout and playground, will be collected by the workers of Micro Compost Yard and segregated into bio-gradable wastes and non-bio-degradable wastes, to ensure that the place is neat. As regards pollution, the 1st respondent/Municipality, in paragraph 9 of its counter affidavit, has clearly stated that the composting will be carried out in hermetically constructed tubs using bricks and concrete of proper specifications for water proofing and will be self-contained to prevent any spread of decaying matter or leachate into the surrounding environment.

17. Private lawns or public parks are not a luxury, as they were considered in the past. Public Park is a gift of modern civilization and that reservation of vacant land as an open land is in conformity with the rules and regulations for formation of the layout and is meant for public use and enjoyment and it cannot be disputed that Open Space Reserve is treated as lung space.

18. The Apex Court has categorically held that where open space is preserved and earmarked in the plan for development of a planned town, the authorities cannot ignore the public interest and allot the same for construction of godowns, thereby causing environmental hazards. Ecology has been completely destroyed by human beings by encroaching OSR, playgrounds, river bunds, lakes, etc. But the official respondents must



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ensure that the waste has to be disposed of in a scientific manner. In a developing country, technicalities should not be a bar for development.

19. When a public park is a gift of modern civilization, Open Space Reserve is the lung space and setbacks are for the purpose of rain harvest, Micro Compost Yards are essential for disposal of the waste, so that it will not endanger the health of the citizens, more particularly, children, who are likely to be affected on account of mosquitoes, flies, etc, which cause air borne and water-borne diseases. When citizens want development, certainly, they will have to co-operate for the betterment of the environment and ensure that no pollution is caused on account of their attitude in disposing of the waste from their respective residence. Though, strictly speaking, Development Rules have come into effect in 1975 and that the layout in question was approved in 1972, there is no hard and fast rule that there cannot be any development at all.

20. Residents/citizens cannot expect the authorities to identify a different place far away from the place of residence to have a Compost Yard and that there is a possibility of the residents of that area to object for setting up of a Compost Yard for disposal of the waste which are not generated from their residence.

21. Now that the Government has come up with effective policies in segregation of wastes of all kinds, people are expected to welcome such measures and must co-operate with the authorities in maintaining a healthy environment. Even though garbage bins are set up in every street, it is painful to see people throw garbage near the bin and not into the bin. From stone-age, we have come to the modern era. Certainly development is required for our betterment and hence, technicalities should not come in the way that may be detrimental to the development of the Society.

22. In view of the above and taking into account the submissions of the 1st respondent/ Municipality that the Micro Compost Yard, that is to be set up in the Playground in question, will be neatly maintained without any pollution and that only a meagre portion of the Playground is required for setting up of Micro Compost



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Yard, this Court finds no reason to interfere with the impugned tender notice published by the 1st respondent/Municipality.

23. It is made clear that if the Micro Compost Yard that is to be set up in the Playground in question is not maintained properly, the officials, who are in-charge of that place during the relevant period shall be dismissed from service, on the ground that the Officer has failed to maintain absolute integrity, devotion to duty and that he has done the work of unbecoming of a member of his service."

23. The aforesaid order dated 22.1.2018 in W.P.No.26581 of 2017 is referred to in the order in W.P.No.34061 of 2018 dated 06.3.2018 [G.Raja Vs. State of Tamil Nadu & others].

24. Further, the Division Bench judgment dated 12.4.2007 of this Court made in W.A.Nos.156 of 2000 and 45 of 2003, relied on by the learned counsel for the petitioner, does not support the case of the petitioner; instead, it is against him. As per the said decision, public purpose is paramount. Public interest means general interest of the public, at large. Setting up of a Micro Compost Yard is of public importance. If the public place is converted into a hospital, the same is bad, as has been held in the case of Bangalore Medical Trust Vs. B.S.Muddappa [reported in 1991 (4) SCC 54].

25. In modern days, construction of Micro Compost Yard in a small portion of the public place cannot be said to be against public interest, when vegetable waste and garbage are thrown on the roads and vacant sites of private property. In the 21st Century, if setting up of Compost Yard is opposed, when admittedly the same is not against public interest, the persons, who are opposing these welfare/good activities, are certainly doing disservice to the community at large. When the Government comes forward with these kinds of benevolent acts, they are to be whole heartedly welcomed by the Homo sapiens.

26. On a careful consideration of the respective contentions and in view of the fact that the construction work had been fully completed even before the filing this writ petition and what remains now is only establishment of the attendant structures of the compost pits and in view of the fact that the processing shed is to be completed, this Court is of the considered view that the relief as sought for by the petitioner from this



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Court to restrain the respondents from interfering in any manner by way of putting up any construction of building or any structure in order to put up a garbage dumping yard in the Open Space Reservation area (OSR) situated in S.No. 443/1 of Poonamallee Village, which was gifted to the 4th respondent by the Poonamallee Nanbargal Nagar Veettu Manai Urimaiyalargal Nalasangam and consequently the further relief sought for to direct the 4th respondent herein to preserve the park as it is, cannot be acceded to by this Court to meet the ends of justice. One cannot ignore a primordial fact that interests of individuals/sangam/society may not come in the way of the interest and welfare of the public. To put it succinctly, the interest and welfare of the society is paramount. This Court, also taking note of the detailed counter affidavit filed by the fourth respondent/Municipality and also the contentions projected on either side, holds that the present writ petition filed by the petitioner/ Sangam sans merit.'

23 According to the learned Advocate General, the Division Bench has ultimately held that construction of Micro Compost Yard in a smaller portion of the public place cannot be said to be against public interest. In fact, the Division Bench has held that those who are opposing the location of Compost Yard are in fact, committing grave disservice to the community at large.

24 Thereafter, a reference has been drawn to the Notification issued by the Government of Tamil Nadu which was published in the Gazette dated 24.08.2018 seeking implementation of Rule 11 of the SWM Rules, 2016. In the Notification, several aspects were addressed by the State and some of the aspects have also been referred to by the learned Advocate General like [i] need for integrated approach ; [ii] need for proven technologies ; [iii] land acquisition ; [iv] policy objectives ; [v] shared responsibilities ; [vi] towards zero waste target ; [vii] promote a systematic 4 Rs [reduce, reuse, recover and recycle]. From the above Notification, it could be seen that the Government has come up with a comprehensive policy and strategy towards Solid Waste Management.

25 The learned Advocate General also referred to another decision of the Division Bench of this Court dated 10.12.2018 rendered in WP.No.18569/2018 **[N.Shanmugham's case] [cited supra]** and drawn the attention of this Court to paragraphs No.5, 8 to 10 which have already been extracted supra.

26 In the above said case also, the Division Bench has held that location of the Solid Waste Management plant is for a public purpose. In fact, the Division Bench has clearly held that the

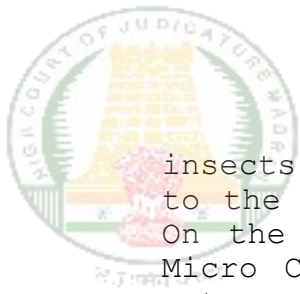


solid waste and garbage management have assumed enormous proportion and due to fast shrinking vacant space in urban areas, it has become necessary for the authorities to decentralise the entire management. The Division Bench has clearly held that the location of the Solid Waste Management plant is for the benefit of, not only for the public at large, but also beneficial to the locality concerned. In fact, the Division Bench has held that there is no violation of any law.

27 The learned Advocate General has also referred to the Local and Municipal Notification in respect of Coimbatore City Municipal Corporation. In terms of the Solid Waste Management Policy and Action Plan, detailed guidelines have been issued to the Municipal Corporation to deal with the problem of Solid Waste Management. The Notification envisaged decentralised processing units to tackle the issue of Solid Waste Management. He also referred to **para 4.9** of the Notification which deals with the decentralised facility. It envisaged segregation of solid waste at source and also to explore the possibility for decentralised facilities for handling solid waste. It also proposed to introduce incentive towards Property Tax Rebate for those generators implementing on-site segregation and treatment facility for full quantity of waste generator. He would finally refer to the Note of the Solid Waste Management which addresses the problems and challenges of Solid Waste Management in urban local bodies in India. The Note has taken into consideration the rapid industrial growth, urbanization, resulting in increased municipal solid waste generation.

28 The handling of solid waste problems has assumed alarming proportions and the same need to be addressed at all levels in order to protect the public at large from being affected by the dumping of garbage in open areas, which have by and large, become the breeding place for mosquitoes and other insects which are the root cause for spreading infections and diseases like malaria, dengue etc. Therefore, the State has come up with a comprehensive all round policy towards decentralisation of the entire solid waste management, owing to the rapid urban growth and shrinking of vacant spaces in urban and semi urban areas. As rightly held by the Division Benches of this Court, the location of Compost Yard in the identified the localities, is in larger public interest as well as community interest of the locality and any opposition to such location should in fact, be held as an illegitimate opposition to public interest.

29 The learned Advocate General therefore, submitted that the park or play area as earmarked in a particular locality as part of the Development Plan, can be used for location of Compost Yard when particularly and admittedly, only a minuscule portion of the park/play area is being carved out for the said purpose. Further, in terms of the Comprehensive Policy, the authority would ensure that the apprehensions expressed by the local residents regarding park being eventually rendered in unhygienic conditions and the place would become a breeding ground for mosquitoes and other



insects due to lack of upkeep and maintenance of place causing harm to the people of all age groups in that area, may not come true. On the other hand, the authorities would ensure that locating a Micro Compost Yard, the functioning and operation of the same do not result in any damage to the play area or park. Ultimately, the residents would be greatly benefited by the location of MCC as their own waste would get treated, recycled and reused etc.

30 The learned Advocate General therefore, submitted that the Courts have to look forward towards tackling of the problems of solid waste management, which is the highest priority aimed to promote public interest, in today's context.

31 Mr.Yashodh Vardhan, learned Senior Counsel appearing for the 1st Respondent/Coimbatore Corporation, at the outset, would submit that three grounds have been raised opposing the location of the Compost Yard in the park/play area, viz., (i) the residents have the fundamental right to have clean environment, (ii) open space is the lung space earmarked for the residents to enjoy the same unhindered and (iii) once the place is reserved as open space, it cannot be converted into any other use.

32 In regard to the above three grounds raised on behalf of the appellants, the learned Senior Counsel would refer to certain other Rules as contained in the SWM Rules, 2016. He would refer to **Rule 3.7**, which deals with the **buffer zone**. Sub-clause 7 of Rule 3 "buffer zone" reads as under.

***'3.7:-Buffer Zone:-**means zone of no development to be maintained around solid waste processing and disposal facility, exceeding 5 TPD of installed capacity. This will be maintained within total and area allotted for the solid waste processing and disposal facility.'*

The requirement of buffer zone is only in respect of the solid waste processing and disposal facility exceeding 5 TPD of installed capacity. In case of MCC, admittedly, it is less than 5 TPD and therefore, the requirement of buffer zone, namely, the zone of no development is not to be applied to the present location of compost yards.

33 The learned Senior Counsel would also refer to the **sub-rules 35 and 44 of Rule 3**. The sub rules deal with the scientific process by which segregated solid wastes are handled and the segregation of various components of solid wastes, namely, bio degradable waste and non bio degradable waste, etc. He would also rely on **Sub Rule 56 of Rule 3**, which deals with the definition of waste generator and along with that, **Rule 4 and its sub rules**. It is relevant to extract **Rules 4.1 to 4.8:-**

4.Duties of waste generators:-
generator shall, -

(1) Every waste



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(a) segregate and store the waste generated by them in three separate streams namely bio-degradable, non bio-degradable and domestic hazardous wastes in suitable bins and handover segregated wastes to authorised waste pickers or waste collectors as per the direction of notification by the local authorities from time to time.

(b) wrap securely the used sanitary waste like diapers, sanitary pads etc., in the pouches provided by the manufacturers or brand owners of these products or in a suitable wrapping material as instructed by the local authorities and shall place the same in the bin meant for dry waste or non-bio-degradable waste;

(c) store separately construction and demolition waste, as and when generated, in his own premises and shall dispose off as per the Construction and Demolition Waste Management Rules, 2016, and

(d) store horticulture waste and garden waste generated from his premises separately in his own premises and dispose of as per the direction of the local body from time to time.

(2) No waste generator shall throw, burn or burry the solid waste generated by him, on streets, open public spaces outside his premises or in the drain or water bodies.

(3) All waste generators shall pay such user fee for solid waste management, as specified in the bye-laws of the local bodies.

(4) No person shall organise an event or gathering of more than one hundred persons at any unlicensed place without intimating the local body, at least three working days in advance and such person or the organiser of such event shall ensure segregation of waste at source and handing over of segregated waste to waste collector or agency as specified by the local body.

(5) Every street vendor shall keep suitable container for storage of waste generated during the course of his activity such as food waste, disposable plates, cups, cans, wrappers, coconut shells, leftover food, vegetables, fruits, etc., and shall deposit such waste at waste storage depot or container or vehicle as notified by the local body.

(6) All resident welfare and market associations shall, within one year from the date of notification of these rules and in partnership with the local body ensure segregation of waste at source by the generators as prescribed in these rules, facilitate



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collection of segregated waste in separate streams, handover recyclable material to either the authorised waste pickers or the authorised recyclers. The bio-degradable waste shall be processed, treated and disposed off through composting or bio-methanation within the premises as far as possible. The residual waste shall be given to the waste collectors or agency as directed by the local body.

(7) All gated communities and institutions with more than 5,000 sqm area shall, within one year from the date of notification of these rules and in partnership with the local body, ensure segregation of waste at source by the generators as prescribed in these rules, facilitate collection of segregated waste in separate streams, handover recyclable material to either the authorised waste pickers or the authorized recyclers. The bio degradable waste shall be processed, treated and disposed off through composting or bio-methanation within the premises as far as possible. The residual waste shall be given to the waste collectors or agency as directed by the local body.

(8) All hotels and restaurants shall, within one year from the date of notification of these rules and in partnership with the local body ensure segregation of waste at source as prescribed in these rules, facilitate collection of segregated waste in separate streams, handover recyclable material to either the authorised waste pickers or the authorised recyclers. The bio-degradable waste shall be processed, treated and disposed off through composting or bio-methanation within the premises as far as possible. The residual waste shall be given to the waste collectors or agency as directed by the local body.

34 The learned Senior Counsel would also refer to **Rule 11** which deals with the duties of the Secretary, Urban Development of the States and Union Territories, which was already referred by the learned Advocate General. He would particularly draw reference once again to sub rules [e] and [f], which have already been relied upon by the learned Advocate General. He would refer to the counter of the Coimbatore Corporation filed in the writ petition. In the Counter Affidavit, he would particularly place reliance on the following: (Paragraphs, 2,3, 5 to 9).

"2. Before adverting to the various averments of the petitioner, I submit the following few facts which are germane for the proper disposal of this Writ Petition. I submit that after the implementation of the Municipal Solid Waste (Management & Handling) Rules, 2000, this Respondent Corporation is maintaining a centralized



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waste processing and disposal plant at Kurichi-Vellalore Village. As on date, the daily average Municipal Solid Waste generated in this Corporation area, comprising 100 wards is about 890 mt. tones per day. Out of which 584 mts, tones is biodegradable (wet) waste. Over the years it is learnt that transportation and handling of the mixed waste is a challenge for management and handling at the centralized plant at Vellalore. Therefore for the said purpose a private Agency/Concessionaire M/s.Coimbatore Integrated Waste Management Company Pvt. Ltd., was appointed from the year 2011 onwards, with a huge capital cost. The project is funded by Union of India, Government of Tamil Nadu as well from the General Fund of the Corporation, under JNNRUM Scheme.

3. It is further submitted that the issue of managing and handling of this huge quantity of MSW at that centralized plant at Vellalore dumping yard was a subject matter of a case before National Green Tribunal, SZ in Application Nos. 234 to 2013 & 264 of 2014 filed by V.Eswaran and K.S.Mohan, respectively representing the local residents. These two applications were finally transferred to the NGT, Principal Bench. Before the Hon'ble NGT one of the main issues of contention was that this respondent Corporation could not able to achieve 100% source segregation. Whereas on the part of this Corporation the various steps initiated to achieve 100% source segregation was explained.

5. It is further submitted that in the light of the above Rules, the Government of Tamil Nadu as policy decision decided to promote decentralized processing facilities with a view to minimize the environmental impacts and transportation cost, besides promoting 100% segregation and storage of waste in three separate streams i.e. biodegradable, non bio-degradable and domestic hazardous waste by the waste generator themselves as per Rule 4 of the SW Rules, 2016. Following the said policy of the State Government, it was decided by this Corporation to establish atleast 65 de-centralized Processing Facilities / Micro Composting Centers to manage and handle/process 278 mt. tones of bio-degradable (wet waste) only. With a risk of repetition, it is submitted that these Micro Composting Centers (MCCs) are meant only for handling a bio-degradable waste collected within that ward itself. In fact this method of de-centralized Micro Composting Centers are promoted in all local urban bodies, throughout the country. In urban Local Bodies like



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the Respondent herein availability of land to establish these MCCs is a major challenge. Due diligence is exercised in identifying the site. In all 65 cases utmost care is taken to locate the MCCs without any disturbance to the local residence.

6. It was further submitted that the above proposal of the respondent was submitted before the Principal Bench of NGT in pending application Nos.234 and 264 of 2013. Recording the above statement the Hon'ble Tribunal was pleased to dispose the said application by referring the matter to the Regional Monitoring Committee, Southern Zone headed by Hon'ble Mr. Justice P. Jyothimani, Former Judge of this Hon'ble Court for onward monitoring of the process. The said Committee is periodically monitoring and reviewing various action taken by this Corporation which includes the establishment of these Micro Composting Center, which is the subject matter of this Writ Petition.

7. It is further submitted that in the present case the proposed MCC is constructed in an area of 630 sq. mts (i.e. 6,781 sq. fts). It is a high roofed completely closed shed. Within that shed the following arrangements has been provided. There will be a conveyor system which receives the organic waste. Immediately on receipt of the organic waste, EM (Effective Micro Organism) Solution will be sprayed for bio-stabilization and to control the house flies as well as the odour. The waste from this feeder conveyor will be fed into a Shredding Machine to reduce the waste particle to the extent of 25 mm in size. The shredded materials then fed into compost a tank/cubicle. Totally there are 14 tanks. Each tank/cubicle is of size 5 m x 2.8 m x 1 m, which can accommodate around 14 cu. mts. of waste. Once the shredded waste is fed into the tank a layer of coir pith cover to the thickness of 5 cm will be provided. This is for the specific purpose to remove moisture content. This process is scientifically known as Microbial Composting, which was one of the methodology recommended under MSW Rules, 2016. By this process the odour as well as fly generation will be completely eliminated. The semi digested materials in the cubicles will be turned once in two days for facilitate faster degradation. The same method will be followed in the remaining 13 tanks, on successive days. On completion of one cycle of 14 days the materials in the 1st tank will be ready for harvesting the end product as City Compost, which is used a soil en-



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richer. This end product will be sold to the farmers or it will be distributed back to the local residents at free of cost.

8. It is submitted that in the above process the segregated bio-degradable waste is scientifically treated the Microbial Composting method and there will be not be any bad odour, fly menace or any instance of fire or emanation of smoke. Under the proposed de-centralized waste Management System by establishing these Micro Composting Centers the door to door collection of segregated waste, the transportation of the same to the Plant and processing are to be entrusted to the single entity, thereby a holistic implementation is ensured in accordance with SW Rules, 2016.

9. It is further submitted that in the present layout, as admitted by the petitioners themselves, the area reserved for public purpose is 5,678 sq. mts (i.e. 61,117 sq. fts). As above stated the land occupied by this Corporation for the construction of MCC is only to the extent 630 sq. mts (i.e. 6,781 sq. fts) which is located at the North Eastern Corner of the Layout. Therefore, in spite of the land occupied by this Corporation around 5,048 sq. mts (i.e. 54,337 sq. fts) of land is still available as park and children play space. The petitioners residence are on Southern and Western side of the present facility.

The Corporation hereby undertakes to develop a green belt around the present MCC shed and also to develop the remaining area into a park and children play space."

35 How scientifically the whole process would be handled, has been explained by the authority in the above averments. It is also stated that due diligence was exercised in identifying the site and utmost care was taken to locate the MCCs without any cause for inconvenience to the local residents. In fact, an undertaking was also given by the Corporation to develop green belt around the present MCC and also to develop the remaining area into a park and children play area. He would therefore, submit that the apprehension that the place would become unhygienic and extremely harmful to the local residents, is unfounded and misconceived.

36 The learned Senior Counsel would also refer to **Rule 15** of the SWM Rules, 2016 and particularly, sub-rule [b]. These Rules have also been relied upon by the learned Advocate General appearing for the State and has been taken note of by this Court. Rule 15 with sub-clauses relate to the duties and responsibilities of Local Authorities/Village Panchayats towards implementation of Solid Waste Management policy.



37 The learned Senior Counsel then proceeded to refer to provisions of the Act, 1971. He would refer to Section 2, which has already been referred to and the Sub Clause(2) of Section 2 which defines what amenities are. He would refer to Sections 47, 48 and 49 of Act 1971. According to the learned Senior Counsel, it is always open to the Government or Local Authority to carry out any development on any land or any building and the restriction is only imposed on private persons for making any material change in the use of land or constructions, forming of layout other than what is envisaged in the development plan.

38 The learned Senior Counsel would particularly refer to **Section 58** of the Act, 1971. As per this Section, any department or the State Government or the Local Authority is permitted to carry out any development on any land or building, but the requirement is only to inform in writing to the Planning Authority concerned the intention to do so and even if there is any objection by the Planning Authority, ultimately, the Government is vested with the discretion to approve the proposal with or without modification in terms of Sub Clause [3] of Section 58. Therefore, he would submit that it is not that the conversion is absolutely impermissible in law. Such conversion could possibly be undertaken well within the frame work of the Act. Therefore, it is incorrect to contend that once the land is developed for a particular purpose with an assigned layout in terms of the Development Plan, it would remain so forever for all times to come.

39 The learned Senior Counsel would refer to **Rule 4** of the Tamil Nadu Combined Development Rules, 2019, which require written permission for development. In terms of the above rule, it is possible to convert or change the use of the land or building with written permission of the authority concerned. Therefore, there is no absolute bar against the conversion of the land for different use. The learned Senior Counsel would also refer to **Section 24** of the Environment and Protection Act, 1986. According to the above section, the Act 1986, would have a binding effect notwithstanding anything inconsistent therein contained in any enactment other than this Act. Therefore, Solid Waste Management Rules, which was issued in exercise of the power under the provisions of this Act, would have to be interpreted as part of the policy initiative as envisaged in the Environment and Protection Act, 1986 and the rules framed thereunder.

40 The learned Senior Counsel would then refer to the **SIDCO Nagar's case**, reported in **2018 [5] CTC 857** which was principally relied upon by the learned counsel for the appellants. He would particularly rely on only paragraph 26 of the said case, which in fact, has been extracted supra along with other paragraphs. The Division Bench in the said paragraph has reasoned on the basis of various pronouncements of the Hon'ble Supreme Court that lands reserved for recreational purpose, cannot be reclassified as a residential or commercial zone. According to the learned Senior Counsel, in all the pronouncements of the Hon'ble Supreme Court of India as well as this Court, a common thread of fact is that the land, which was originally earmarked for park/play ground in the



Development Plan cannot be re-classified or converted into a different user, be it for residential or commercial purpose. In all the judgments, one could find that the public park or play ground was sought to be converted for location of a temple or hospital, nursing home or commercial complexes. Only in those circumstances, the Courts felt that the open space reserved for public purpose had been sought to be converted for private purpose and even if there was any trace of public benefit, it was benefiting only a section of public. Therefore, the Courts had thought fit to intervene in such matters. Whereas, in the present case, the location of compost yard is indisputably for serving larger public interest and the issues herein cannot be equated with facts of those cases.

41 Finally, the learned Senior Counsel referred to the decision of the Division Bench of this Court, which was also referred to earlier, reported in **2007 [3] L.W 259**. This Court's attention has been drawn to paragraph 6.1, which is extracted hereunder:-

"6.1. The public purpose, of course, cannot and should not be precisely defined and its scope and ambit be limited. The Public Purpose is not static. It changes with the passage of time, need and requirement of the community. But, broadly speaking, public purpose means the general interest of the community, as opposed to the interest of an individual."

The learned Senior Counsel would hence submit that the public purpose cannot be allowed to remain static and it has to evolve and has to receive expansive meaning in tune with the times. Today, the Solid Waste Garbage Management has become the most challenging job to be handled by the Governmental authorities and decentralisation of solid waste management is the only answer to the growing concern of all the citizens yearning for healthy environment. Therefore, any opposition to the location of MCC in the identified places is motivated and it seeks to subserve the residents' interest at the expense of larger public interest. According to the learned Senior counsel, opposition to the location is therefore devoid of substance.

42 Mr.Srikanth, learned counsel for the appellants, by way of reply would refer to the statements contained in paragraph No.5 of the counter affidavit filed by the Coimbatore Corporation. According to him, the statement that due diligence was exercised in identifying the site and utmost care was taken to locate the MCC is contrary to the records. There are places which are available far away from the residential complexes and in fact, all the stakeholders are not taken into consideration before identification of the site. There was no consultancy process before identifying the site and the statements made in regard to the maintenance and upkeep of the Centres, would only remain on paper and when it comes to implementation, the authorities would not be diligent enough to



43 According to the learned counsel, as far as the provisions as contained in the Act, 1971, Section 49 may not be applicable ; but only Section 58 and sub clauses [1], [2] and [3] would be applicable. He once again reiterated that the procedure contemplated in the above Section has not been followed in the present case. On this ground alone, the action of the respondent-Corporation is liable to be interfered with. He thus referred to sub-clause 120 of Rule 2 of the Combined Rules, 2019. The said sub-rule deals with unauthorised construction which has been defined as erection or re-erection, addition or alterations which are not approved or sanctioned by the competent authority. Therefore, the location of MCC becomes unauthorised and therefore, any attempt to have MCC located without following procedure is to be declared as illegal.

44 The learned counsel also referred to Rule 3[iii] of the Rules, 2019, which deals with the change of use or occupancy. He also relied on Rules 15, 17 and 19. With regard to Rule 15, it is mandated, all developments must be in conformity with these Rules. Rule 17 provides for correlation of land use zones in Master Plan, Detailed Development Plan and Development Rules. As far as the present issue on hand is concerned, in the Master Plan, it is provided for open space and recreational use in all places and so in the Detailed Development Plan. Therefore, there is a mandate that there has to be an open space for recreational use in terms of the Master Plan or the Detailed Development Plan. In terms of Rule 19, development is prohibited in particular areas. As per Annexure-XVI para 10 appended to the Rules, 'No habitats use within a distance of 30 metres from the solid waste dumping yard is allowed'.

45 The learned counsel for the appellants also particularly referred to the Notification issued by the Coimbatore Corporation with regard to the implementation of the Solid Waste Management Policy. In Chapter-1 of the Notification, according to the learned counsel, it is clearly mentioned that disposal of the municipal solid waste generated within their jurisdiction under the respective governing legislation. Therefore, the implementation of policies relating to the solid waste management would be in consonance with the local legislation, viz., the provisions of the Tamil Nadu Parks, Play Fields and Open Spaces Act, 1959 etc.

46 The learned counsel would finally rely on a decision of the Division Bench of this Court dated 26.10.2016 rendered in **WP.No.7244/2016 [M.Ramakrishnan Vs. The State of Tamil Nadu rep.by its Principal Secretary, Department of Municipal Administration and Water Supply, Fort St George, Chennai and others]**, in particular, paragraphs Nos.13 to 19, which are extracted hereunder:-

'13.Heard the learned counsel on either side
and perused the materials available on record



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14.It is true that the courts have consistently held that playgrounds, parks and open spaces cannot be converted into private nursing homes or car parking area, nor can they be leased for any private purposes. It was held by the Honourable Supreme Court in the case of Bangalore Medical Trust v. B.S. Muddappa, supra, as follows:

'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#

Protection of the environment, open spaces for recreation and fresh air, playgrounds 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#The public interest in the reservation and preservation of open spaces for parks and playgrounds 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#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.'

Therefore the preservation of open spaces and public parks to promote and protect the social and biological welfare of the residents of an urban locality has been



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strongly advocated by the Honourable Apex Court.

15. The point to be looked into is whether relocating of the present park affects the public interest or not. Such an apprehension may not survive in view of the fact that the present park is not totally vanished, but relocated to the adjacent area, only to facilitate widening of the road. Widening of the road will ease congestion and it will serve only good to the public. Further, it has been affirmed that the park will be used only as a park and it will not be used for any other purposes and the total area of the park, ie. 2704.01 sq.m., is not reduced and the same space is maintained. It has also been assured that relocated park will have facilities such as a children play area, walking area, adult exercise area, yoga centre, volleyball court, etc. Since the public interest is not affected, the contention of the learned counsel for the petitioner that notice under Section 5(2) of the Parks Act should have been issued to the public for varying the park and approval has to be obtained under Section 5(4) of the Parks Act, does not hold water.

16. This being the position, it must also be remembered that the State Government has an inherent right to make out a policy on a bona fide consideration, and the same cannot be assailed in law. In the case of *Narmada Bachao Andolan vs Union of India*, reported in (2000) 10 SCC 664, it was held as follows:

"It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it is to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and the peoples fundamental rights are not transgressed upon except to the extent permissible under the Constitution.

The Honourable Supreme Court has also held in *Ekta Shakti Foundation v. Govt. of NCT of Delhi*, (2006) 10 SCC 337 that:

"The correctness of the reasons which prompted the Government in decision-making taking one course of action instead of another is not a matter of concern in



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judicial review and the court is not the appropriate forum for such investigation.

The policy decision must be left to the Government as it alone can decide which policy should be adopted after considering all the points from different angles. In the matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental rights is not shown, the courts will have no occasion to interfere and the court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the court cannot interfere even if a second view is possible from that of the Government.''

17. In the present case, since a policy decision has been taken by the fourth respondent, to widen the roads, the Government, in exercise of its powers, relaxed the CMDA Building Regulation 28 (2) (C) relating to minimum requirement of 18 metre road width varying from 0.02 metre to 0.63 metre over a length of 50 metre between the junction of Strahans Road and Angalamman Koil Street, as the availability of the number of roads around the site will take care of the flow of traffic freely. It is a policy decision made and hence the same cannot be interfered with in the absence of adequate reasons. In such circumstances, the contention of the learned counsel for the petitioner that the exemption granted to the fifth respondent under Section 113 of the Tamil Nadu Town and Country Planning Act is illegal and mala fide, deserves only to be rejected, because the fourth respondent had already issued orders to widen the roads in six areas including Strahans Road as per G.O. (Ms) No. 22 and due to the same, it was decided to relocate the present park which is existing on the road side to the space inside the site of the fifth respondent. The decision for relocating the present park was made only after the fourth respondent took a decision to widen the roads as stated above. To better appreciate the requirement of road widening and relocation of park, the area plan submitted by the fifth respondent is attached herewith.

18. As a policy decision taken by the Government to ease congestion, the said decision has been taken upon a discretionary power vested with it for a good cause and not otherwise. The park is to be used only as a park and the present park is relocated to the adjacent area, without any reduction in space and change of its characteristics. Further, according to the learned



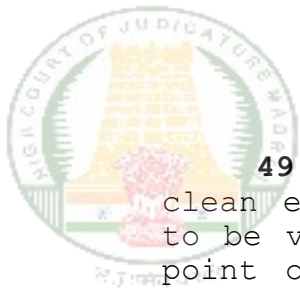
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Advocate Generals, the present park area is always vested with the corporation and the same will be utilised and maintained only as a park without causing any hindrance to the public. Therefore in any angle, the contentions put forth by the learned counsel for the petitioner will not survive, and the decisions relied upon by the learned counsel will not come to the rescue of the petitioner.

19. In view of the reasons state supra, the writ petition is disposed of accordingly. The fourth respondent # CMDA and the fifth respondent # builder are directed to maintain the park meant for the public, without any hindrance to them. It is open to the Government as well as the authorities concerned to take appropriate legal action against the fifth respondent, in case of any hindrance having been caused by them to the general public for the usage of the park newly developed or for violation of any norms connected therewith. No costs.''

47 The above Division Bench of this Court has reiterated the legal position that preservation of open spaces for public parks is integrated to promote social, biological welfare and protect the residents from the ill-effect of urbanisation. Ultimately, the Court has observed that the park is to be used only as a park and a direction was issued to the authority to take action in case there is any hindrance being caused to the public for the usage of the park.

48 The learned counsel therefore summed up that the decisions which support the case of the respondents have not referred to any of the provisions touching upon the core aspect of change in use of the place earmarked for park/play area and none of the provisions of the Development Control Rules or provisions of the Act, 1971 and also the Tamil Nadu Combined Building and Development Rules, 2019, etc., was considered by the Courts which held that the location of MCC would serve larger public interest. According to the learned counsel, any action of the State has to be tested on the basis of the statutory rules and regulations connected to the action. On the other hand, the views of the Hon'ble Apex Court as well as this Court have been very consistent that once a place is earmarked as a park/play area in the Development Plan, no conversion is permissible even in the name of serving public interest. Further, it has not been spelt out on behalf of the respondents that whether any efforts have been taken by the State or the authorities in identifying the sites not being in close proximity to the residential areas. The location of Micro Compost Yards in all the neighbourhood parks/open space, as a matter of routine, would not disclose proper application of mind and would also be against the letter and spirit of the SWM Rules, 2016, relied upon by the respondents.



49 He finally submitted that in any event, the protection of clean environment as canvassed on behalf of the respondents ought to be viewed from the perspective of the citizen and not from the point of view of solid waste administration. It is needless to mention that the location of Micro Compost Yard very close to the residential complexes would certainly have deleterious effect on the health of the residents of the locality and no amount of justification ought to persuade this Court towards upholding the State's action.

DISCUSSION:-

50 Heard Mr.V.Srikanth, learned counsel for the appellants/writ petitioners, Mr.Vijay Narayan, learned Advocate General appearing for the State and Mr,YashodhVardhan, learned standing counsel for the Coimbatore Corporation.

51 In our decisive consideration of the relevant enactments, Rules, Regulations and the case laws cited in support of the respective contentions of the parties, this Bench is called upon to unravel a ''burning'' issue which has been engaging the attention of the entire world. As a precursor to our discourse, it is useful to refer herein the prognosticating observations of the Hon'ble Supreme Court of India in the decision cited supra by the learned Advocate General reported in **1996 [5] SCC 647 [Vellore CitizensWelfare Forum vs Union Of India & Ors]**. The conceptual change of perception internationally and the ideational shift towards ''sustainable development'' in terms of our constitutional scheme have stated in paragraphs No.10 to 17 as under:-

''10.The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. In the international sphere, "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called "Our Common Future". The Commission was chaired by the then Prime Minister of Norway, Ms G.H. Brundtland and as such the report is popularly known as "Brundtland Report". In 1991 the World Conservation Union, United Nations Environment Programme and Worldwide Fund for Nature, jointly came out with a document called "Caring for the Earth" which is a strategy for sustainable living. Finally, came the Earth Summit held in June 1992 at Rio which saw the largest gathering of world leaders ever in the history – deliberating and chalking out a blueprint for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate



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change. These conventions were signed by 153 nations. The delegates also approved by consensus three non-binding documents namely, a Statement on Forestry Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. "Sustainable Development" as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". We have no hesitation in holding that "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists.

11. Some of the salient principles of "Sustainable Development", as culled out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays Principle" are essential features of "Sustainable Development". The "Precautionary Principle" – in the context of the municipal law – means:

(i) Environmental measures – by the State Government and the statutory authorities – must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The "onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign.

12. "The Polluter Pays Principle" has been held to be a sound principle by this Court in *Indian Council for Enviro-Legal Action v. Union*



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of India [(1996) 3 SCC 212 : JT (1996) 2 SC 196] .
The Court observed: (SCC p. 246, para 65)

"... we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country."

The Court ruled that: (SCC p. 246, para 65)

"... once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on".

Consequently the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas". The "Polluter Pays Principle" as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

13. The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Articles 47, 48-A and 51-A(g) of the Constitution are as under:

"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48-A. Protection and improvement of environment and safeguarding of forests and wildlife.—The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.



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51-A. (g) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures."

Apart from the constitutional mandate to protect and improve the environment there are plenty of post-independence legislations on the subject but more relevant enactments for our purpose are: the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment (Protection) Act, 1986 (the Environment Act). The Water Act provides for the constitution of the Central Pollution Control Board by the Central Government and the constitution of the State Pollution Control Boards by various State Governments in the country. The Boards function under the control of the Governments concerned. The Water Act prohibits the use of streams and wells for disposal of polluting matters. It also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment. The Air Act provides that the Central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act in the latter part of this judgment.

14. In view of the above-mentioned constitutional and statutory provisions we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country.

15. Even otherwise once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them as part of the domestic law. It is almost an accepted proposition of law that the rules of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. To support we may refer to Justice H.R. Khanna's opinion in *A.D.M. v. Shivakant Shukla* [(1976) 2 SCC 521 : AIR 1976 SC 1207], *Jolly George Varghese case* [*Jolly George Varghese v. Bank of Cochin*, (1980) 2 SCC 360 : AIR 1980 SC 470] and *Gramophone*



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Co. case [Gramophone Co. of India Ltd. v. Birendra Bahadur Pandey, (1984) 2 SCC 534 : 1984 SCC (Cri) 313 : AIR 1984 SC 667] .

16. The constitutional and statutory provisions protect a person's right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common law right of clean environment. It would be useful to quote a paragraph from Blackstone's commentaries on the Laws of England (Commentaries on the Laws of England of Sir William Blackstone) Vol. III, fourth edition published in 1876. Chapter XIII, "Of Nuisance" depicts the law on the subject in the following words:

"Also, if a person keeps his hogs, or other noisome animals, or allows filth to accumulate on his premises, so near the house of another, that the stench incommodes him and makes the air unwholesome, this is an injurious nuisance, as it tends to deprive him of the use and benefit of his house. A like injury is, if one's neighbour sets up and exercises any offensive trade; as a tanner's, a tallow-chandler's, or the like; for though these are lawful and necessary trades, yet they should be exercised in remote places; for the rule is, 'sic utere tuo, ut alienum non leadas'; this therefore is an actionable nuisance. And on a similar principle a constant ringing of bells in one's immediate neighbourhood may be a nuisance.

... With regard to other corporeal hereditaments; it is a nuisance to stop or divert water that used to run to another's meadow or mill; to corrupt or poison a watercourse, by erecting a dye-house or a lime-pit, for the use of trade, in the upper part of the stream; to pollute a pond, from which another is entitled to water his cattle; to obstruct a drain; or in short to do any act in common property, that in its consequences must necessarily tend to the prejudice of one's neighbour. So closely does the law of England enforce that excellent rule of gospel-morality, of 'doing to others, as we would they should do unto ourselves'.

17. Our legal system having been founded on the British common law the right of a person to a pollution-free environment is a part of the basic jurisprudence of the land."

From the above, what could be deduced is the traditional conceptual

<https://hcservices.ecourts.gov.in/hcservices/> to be replaced by striking harmony through



'Sustainable Development'' as between ecology and development. As Victorian Poet Alfred Tennyson wrote in one of his poems 'old order changeth, yielding place to new'. It is a clarion call for change in perception towards solid waste management. The above decision was followed by the Hon'ble Supreme Court in its decision reported in **2005 [10] SCC 510 [Research Foundational for Science, Technology, Resource Policy V. Union of India and others]**, wherein it has been held that Environmental concerns have been placed on the same pedestal as human rights concerns, both being traced to Article 21 of the Constitution.

52 In the light of the above, the entrusted reference assume far greater significance than to be pigeon holed into narrow construct of the actual expressions of the reference. Our focus thus is directed towards the substance and essence of the reference caught between two interests. We need to do the act of funambalist till we reach the conclusion, which public interest prevails over the other. In the spirit of our inquiry, we need to look ahead considering the rapidly evolving life style changes of the citizens in the advanced consumer age and the parallel growing concern for protection of environment.

53 Before this Court embarks upon the nucleus of the reference placed for our consideration, it is made clear that our ultimate ruling on the reference would not be on the of testing the validity of any particular action of State authority or any Corporation. The bedrock of our consideration as we are called upon, is not to hold any State authority's action is right or wrong with reference to the location of compost yard in a particular place. But our momentous endeavour is to address the larger issue of challenges confronted by the State by the exponential waste generation and its disposal management, after the advent of the consumer era.

54 The problem of the solid waste management has become a global concern in the face of the world becoming increasingly consumer oriented. Every nation, country in the world regardless of its geographical location, conceptualising new ideas in overcoming the mounting problems of disposal of the solid waste.

55 In the backdrop of the issue being the global concern among the comity of nations cutting across national boundaries, the answer to the reference must be discovered by looking forward towards heralding a change in perception of the solid waste management in our country too. This Bench is therefore, not inclined to refer to any particular or a specific stand of the Coimbatore Corporation in the counter affidavit as part of its judicial discussion. However, the views of the Corporation expressed in the counter affidavit would be appreciated as to how the new concept is imbibed and implemented on the ground.

56 With a view to get to the bottom of the reference, the relevant provisions, rules and the regulations need to be first referred to and examined trenchantly. The interplay of various Acts/Rules both enacted by the Central as well as the State Government need to be anatomized to come up with an authoritative



conclusion, as to whether it is legally permissible for the State to grant permission for deviations in larger public interest, after the lay out plan was finalised in terms of the Tamil Nadu town and Country Planning Act, 1971, read with Development Control Rules or not. Although the reference appears to be confined to the Act, 1971 read with Development Rules framed therein, this Bench in the course of its consideration of the reference has to necessarily take into consideration various developments that have taken place in the field of solid waste management over the years. The reference made before this Bench was a fallout of the issue whether the location of compost yard within a park/play area for the residents, is permissible or not. Therefore, it is inevitable and mandatory that legal developments that have taken place in the field of the solid waste management must essentially be part of the consideration.

57 Before referring to the relevant statutory provisions, it is pre-eminent to consider the decision of the learned Division Bench of this Court reported in **2018 [5] CTC 857 [SIDCO Nagar Welfare Association Vs. CMDA and Others]** which was relied upon as the flagship ruling, as according to the appellants, the learned Division Bench, in the said judgment, has considered all the relevant provisions of the Act, 1971 read with the Development Control Rules framed therein. According to the learned counsel for the appellants, the other contra decisions of the learned Division Benches of this Court did not deal with any of the provisions or the relevant statute, but premised their decisions entirely based on a single supposition that location of compost yard in the common play area earmarked, was serving larger public interest. In fact, the learned counsel for the appellants/writ petitioners has edified his arguments primarily on the learned Division Bench decision of this Court in **SIDCO Nagar's case**.

58 The learned Division Bench has referred to a few provisions of the Act, 1971, and also relied upon and followed the decisions of the Hon'ble Supreme Court of India rendered on the subject matter. The reasons weighed with the learned Division Bench were confined only with reference to Sections 2 and its sub-clauses [2], [13], [34], [36] and Sections 48, 49 and the Development Control Rules as it stood then, in particular Rule 19 and its sub rules, as framed under Section 122 of the Act, 1971.

59 The learned Division Bench has categorically held referring to those provisions that once the land is reserved for a recreational purpose, earmarked for particular user in the layout, the Government is denuded of its powers to reclassify the same, subsequently. On the other hand, the decisions of the other learned Division Benches holding a contra view, did not refer to the provisions of the Act, 1971 or the Development Control Rules and therefore, the learned counsel for the appellants/writ petitioners urged this Court to follow the legal principle laid down by the learned Division Bench in the **SIDCO Nagar's case**.

60 This Bench being bestowed upon with the present reference, in the face of two divergent views pronounced by this



Court, is under a constitutional obligation to examine all the statutory provisions, rules and regulations that are germane and applicable for consideration, with focus on the evolving futuristic legal principles towards attaining the constitutional goal of guaranteeing a healthy and a robust environment for all the people of the country across the spectrum. As observed by the Hon'ble Supreme Court, clean and healthy environment, provision for lung space is not any more the privilege of the few fortunate sections of the population. Right to free and clean environment is held to be a part of the fundamental rights enshrined in the Constitution. The Courts have been impelled and forced to adopt tough lines in its judgments in consideration of the disastrous effects caused by the callous polluters of myriad kind as a consequence of the heightened economic surge and leap over the last few decades. The flip side of the rapid economic growth had adversely impacted on the environment, raising grave concern on the well being of the people across the country. The unwholesome effect all around, led to shifting of focus on protecting the environment as a constitutional imperative.

61 As stated above, our purpose is therefore, not to be guided by the mere expressions as found in the reference, but the monumental essence of the reference in the contemporary context. The horizon of consideration thus not to be circumscribed and confined to the examination of the legal precedents of the Courts alone. But the consideration to be widened opening new vistas of understanding in addressing the modern day challenges concerning the people who are longing for lung spaces for betterment of their habitable quality. In the face of the rapid shrinking of urban space, the shared responsibility and the duty of every citizen becomes the order of the day towards ensuring clean garbage free environment in every neighbourhood for their own well being.

62 The first of the provisions need to be referred to is **Section 2 of the Town and Country Planning Act, 1971**. Section 2 [2] defines what is amenities and the same is extracted hereunder:-

'Amenities' includes streets, open spaces, parks, recreational grounds, playgrounds, water and electric supply, street lighting, sewerage, drainage, public works and other utilities, services and conveniences.'

Section 2[13], the proviso therein and Section 2[13][d] are extracted hereunder:-

2[13]-''development'' means the carrying out of all or any of the works contemplated in a regional plan, master plan, detailed development plan or a new town development plan prepared under this Act, and shall include the carrying out of building, engineering, mining or other operations in, or over or under land, or the making of any material change in the use of any building or land:



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provided that for the purposes of this Act, the following operations or uses of land shall not be deemed to involve development of the land, that is to say-

[a]...

[b]...

[c]...

[d]the use of any building or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such.

The interpretation and construction of these provisions would be dealt with at a later portion of this judgment, after dealing with the other provisions of the Act.

63 The relevant sections that deal with development as contained in the Act, 1971, are **Sections 32 and 33** along with **Sections 47 to 49 and 58**. These sections have been cited while assailing the move to encroach upon the reserved play area by having compost yard in the place by the State authorities. Section 32 of the Act, 1971, deals with variation, revocation and modification of the regional plan, master plan and the new town development plan and the said section reads thus:-

'32.Variation, revocation and modification of regional plans, master plans and new town development plans:-

(1)A regional plan, master plan or new town development plan approved under section 28 may, at any time, be varied or revoked by a subsequent regional plan, master plan or new town development plan, as the case may be, prepared and approved under this Act.

(2)[a] Once in every ten years after the date on which the regional plan for an area comes into operation, the Regional Planning Authority may, and if so directed by the Government shall, after carrying out such fresh surveys as may be considered necessary and in consultation with the Director, review the regional plan and make such modifications in such plan wherever necessary and submit the modified regional plan for the approval of the Government.

[b]Once in every five years after the date on which the master plan for an area comes into operation, the Local planning Authority may, and if so directed by the Government shall, after carrying



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out such fresh surveys as may be considered necessary and in consultation with the regional planning authority and the local authorities concerned, review the master plan and make such modifications in such plan wherever necessary and submit the modified regional plan for the approval of the Government.

(3) The provisions of section 26, 28 and 30 with such modifications as may be necessary shall apply to such modified regional plan or the master plan, as the case may be.

(4) The Government may, at any time, by notification in the Tamil Nadu Government Gazette, vary or revoke, the regional plan, a master plan or a new town development plan, as the case may be, prepared and approved under this Act."

64 This Section *per se* does not impose any prohibition on variation, revocation or modification, but it only lays down that a procedure to be followed for modification after conduct of fresh surveys by passage of time. The Section and its sub-clauses prescribe a particular plan period before any variation or modification is to be effected. In fact, **Section 33** gives the power for revocation or variation of the approved detailed development plan under Section 29 of the Act. More so, under sub-clause [3] of Section 33, the Government is conferred with the power to revoke any time, the approved plan under the Act. However, these two sections [Sections 32 and 33] may not be relevant for the consideration of this Bench as these sections deal with the general principles relating to variation, revocation and modification of various plans. However, the question herein is what is the principle to be applied after finalisation of the layout and reservation of a particular user of land.

65 In this regard, **Chapter VI** of the Act, 1971, deals with Control of Development and Use of Land. **Section 47** reads thus:-

'47. Control of Development and Use of Land:-

After the coming into operation of any development plan in any area, no person other than any State Government or the Central Government, or any local authority shall use or cause to be used, any land or carry out any development in that area otherwise than in conformity with such development plan:

Provided that the continuance of the use of any land for the purpose and to the extent for, and to which it is being used on the date on which such development plan comes into operation, may be allowed for such period and upon such terms and conditions as may be specified in such development

plan.' '



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Section 48 places restriction on buildings and lands in the areas of the planning authority. The said section reads thus:-

'48.Restrictions on buildings and lands, in the area of the planning authority.- On or after the date of the publication of the resolution under sub-section (2) of section 19 or of the notice in the Tamil Nadu Government Gazette under section 26, no person other than any State Government or the Central Government or any local authority, shall, erect any building or make or extend any excavation or carry out any mining or other operation, in, on, over or under any land or make any material change in the use of land or construct, form or layout any work except with the written permission of the appropriate planning authority and in accordance with the conditions, if any, specified therein.'

Likewise, Section 49 deals with permission to be obtained by persons for any development, before the planning authority and Section 49 reads thus:-

'49. Application for permission.-

(1) Except as otherwise provided by rules made in this behalf, any person not being any State Government or the Central Government or any local authority intending to carry out any development on any land or building on or after the date of the publication of the resolution under sub-section (2) of section 19 or of the notice in the Tamil Nadu Government Gazette under section 26, shall make an application in writing to the appropriate planning authority for permission in such form and containing such particulars and accompanied by such documents as may be prescribed.

(2) The appropriate planning authority shall, in deciding whether to grant or refuse such permission, have regard to the following matters, namely:-

(a) the purpose for which the permission is required;

(b) the suitability of the place for such purpose;

(c) the future development and maintenance of the planning area

(3) When the appropriate planning authority refuses to grant a permission to any person, it shall record in writing the reasons for such refusal and furnish to that person, on demand, a brief statement of the same.'



Even these sections could have application only at the stage when a person seeks to develop the land and such development must be in conformity with the development plan. Therefore, restriction has been imposed under Section 48 and permission need to be obtained under Section 49 before the planning authority. In fact, these provisions are not made specifically applicable to any State of Central Government or any Local Authority. The provisions therefore, will have a limited application only in respect of persons other than the State and how far these provisions could be applied for denying the right of the State authorities in having a Micro Compost Center [MCC] in a park or a play area, would be considered at the appropriate place in the judgment.

66 It is useful to refer to Section 58, a provision that deals with development undertaken on behalf of the State Government/Central Government or Local Authority. The same is extracted thus :-

58. Development undertaken on behalf of any State Government or Central Government or local authority.- (1) When any department of any State Government or the Central Government or any local authority intends to carry out development of any land or building, the officer-in-charge thereof shall inform, in writing, the planning authority concerned the intention to do so, giving full particulars thereof, and accompanied by such plans and documents at least thirty days before undertaking such development:

Provided that in case where any local authority is the local planning authority under this Act, it shall inform the fact of any such proposed development to the regional planning authority concerned within whose jurisdiction such local authority is situated.

(2) Where a planning authority concerned or the regional planning authority concerned, as the case may be, raised any objection to the proposed development on the ground that the development is not in conformity with the provisions of any development plan under preparation or for any other material consideration, the officer of the State Government, Central Government or any local authority, as the case may be shall-

(i) either make necessary modifications in the proposals for development to meet the objections raised by the planning authority concerned, or

(ii) submit the proposals for development together with the objections raised by the planning authority concerned to the Government for decision.

(3) The Government, on receipt of the proposal for development together with the objections of the planning authority concerned shall, in consultation with the Director, either approve the proposals



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with or without modifications or direct the officer to make such modifications in the proposals as they consider necessary in the circumstances and the officer concerned shall be bound to make such modifications as proposed by the Government.'

67 The above provisions once again do not place a blanket embargo on the development to be undertaken by the State Government or the Local Authority, as the case may be. The provisions only prescribe a procedure to be followed in case of any development by the State or Local Authorities. In fact, in this regard, one of the arguments advanced by the learned counsel for the appellants/writ petitioners is that the Coimbatore Corporation whose decision is under challenge, has not followed the procedure as contemplated in the above provision. According to the learned counsel, wherever there is an attempt to locate compost yards by the authorities of the Corporation, the procedure as mandated in Section 58 has not been followed at all. Therefore, the action *per se* is not sustainable in law, reasoned the learned counsel.

68 There are two limbs to the contentions raised on behalf of the appellants/writ petitioners herein in regard to the above section. Firstly, the State Government or the Local Authority while undertaking any development is required to go before the Planning Authority and any development not in the conformity with the Development Plan, the planning authority shall make necessary modification in the proposal. Under sub section 3, the Government is vested with the ultimate power of approving the proposal with or without modification after taking note of the objection of the Planning Authority. In that view of the matter, the Government cannot said to be completely denuded of its jurisdiction to undertake any development outside the frame work of the Development Plan. What is contemplated in the above section is, before undertaking such development, the procedure as laid down in Section 58 need to be followed. Secondly, whether the location of compost yard in the park or play area, could be called as a development at all in terms of the scheme of the Act, 1971, is to be fathomed out from the construction of all the relevant rules, that specifically govern the subject matter of the reference.

69 The learned Division Bench's reference to the Development Control Rules framed under the Act, 1971, has been now replaced by the Tamil Nadu Combined Development and Building Rules, 2019, for the entire State of Tamil Nadu. The revised Rules have been formulated

after taking note of the urban density and the scarcity of open space in the urban cities. The Division Bench has relied upon the decisions of the Apex Court which have been referred to therein and once the land is reserved for communal and recreational purpose, it cannot be converted to or reclassified into any other user of the land.



70 The facts before the Division Bench were that the State authority was attempting to put up a multi-storeyed commercial complex in the land which was originally classified as park-cum-play area/field. In consideration of such blatant change of the user of land, the learned Division Bench has approached the issue and interpreted the provisions of the Act, 1971, to protect the residents of the locality. The controversy therein was whether the accrued rights of the neighbourhood residents to have a park-cum-play field for their use and enjoyment could be infringed upon by putting up a huge commercial complex by re-classification of the land. The issue therein, therefore, was not between one public interest versus another public interest ; but public interest versus private, commercial interest. Therefore, the decision rendered in that context, cannot be taken to be a guiding force for this Bench's consideration.

71 Moreover, the most crucial and the pivotal consideration of the terms of reference is to be hinged upon the Central enactment, namely SWM Rules, 2016. The said Rules was not part of the subject matter of consideration at all by the learned Division Bench in **SIDCO Nagar's case**. As submitted by the learned Advocate General, the SWM Rules 2016, is a self-contained code, containing exhaustive and illustrative provisions, a futuristic policy blueprint towards implementation of the solid waste management from Panchayat, Municipal, State and to national levels. The reference to various rules and the sub-rules assume great contemporary importance, as the initiative of the State authority for location of Compost Yard in decentralised locations is in furtherance of the objects of the SWM Rules, 2016. These Rules indisputably take on the centre stage, in the implementation of the policies relating to Solid Waste Management. The SWM Rules, 2016, being framed under the Central enactment, viz., the Environment [Protection] Act, 1986, having dominant constitutional status may have to be read harmoniously in conjunction with the rules, statutory provisions of the State as well, in tackling the alarming problem of waste disposal. At the same time, in advancing the cause of one public interest, this Court cannot ride a roughshod over the other public interest, namely, right to have lung space and clean environment, unless acceptable harmony is achievable towards co-existence of both public interests.

72 The Solid Waste Management Rules, 2016, was framed in exercise of the power conferred on the Central Government under Sections 3, 6 and 25 of the Environment [Protection] Act, 1986. **Section 3** confers power on the Central Government to take measures to protect and improve environment and the same is extracted hereunder:

'3. Power of Central Government to take measures to protect and improve environment.-(1)

Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the

purpose of protecting and improving the quality of



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the environment and preventing, controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:—

(i) co-ordination of actions by the State Governments, officers and other authorities—

(a) under this Act, or the rules made thereunder; or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

<https://hcservices.ecourts.gov.in/hcservices> (xi) establishment or recognition of



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environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act."

73 Section 6 deals with the rules to be framed for regulating environmental pollution and the said section reads thus:-

6. Rules to regulate environmental pollution.-(1)

The Central Government may, by notification in the Official Gazette, make rules in respect of all or any of the matters referred to in section 3.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the standards of quality of air, water or soil for various areas and purposes;

(b) the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas;

(c) the procedures and safeguards for the handling of hazardous substances;

(d) the prohibition and restrictions on the handling of hazardous substances in different areas;

(e) the prohibition and restrictions on the location of industries and the carrying on of processes and operations in different areas;

(f) the procedures and safeguards for the prevention of accidents which may cause environmental pollution and for providing for remedial measures for such accidents."

74 Section 25 of the Environment [Protection] Act, 1986, is the enabling provision conferring power on the Central Government to make rules for enforcement of the intendment of the Act and the same reads as under:-

'25. Power to make rules:-

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.



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(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) The standards in excess of which environmental pollutants shall not be discharged or emitted under Section 7 ;
- (b) The procedure in accordance with and the safeguards in compliance with which hazardous substances shall be handled or cause to be handled under Section 8 ;
- (c) The authorities or agencies to which intimation of the fact of occurrence or apprehension of occurrence of the discharge of any environmental pollutant in excess of the prescribed standards shall be given and to whom all assistance shall be bound to be rendered under sub section [1] of section 9 ;
- (d) The manner in which samples of air, water, soil or other substance for the purpose of analysis shall be taken under sub-section [1] of Section 11 ;
- (e) The form in which notice of intention to have a sample analysed shall be served under clause [a] of sub-section [3] of Section 11;
- (f) The functions of the environmental laboratories, the procedure for submission to such laboratories of samples of air, water, soil and other substances for analysis or test ; the form of laboratory report ; the fess payable of such report and other matters to enable such laboratories to carry out their functions under sub section [2] of Section 12 ;
- (g) the qualifications of Government Analyst appointed or recognised for the purpose of analysis of samples of air, water, soil or other substances under Section 13 ;
- (h) the manner in which notice of the offence and of the intention to make a complaint to the Central Government shall be given under clause [b] of Section 19 ;
- (i) The authority or officer to whom any reports, returns, statistics, accounts and other information shall be furnished under Section 20 ;
- (j) any other matter which is required to be, or may be, prescribed. ''

75 Section 3 of the Act, 1986, lays down measures to be undertaken for protection and improvement of environment. The



section contemplates various measures on different aspects of prevention, control and abatement of environmental pollution. In terms of the objects of the Act, a nation-wide programme is devised laying down standards for the quality of environment on its various aspects. Section 6 is a regulatory provision and in terms of which, rules are to be framed in furtherance of measures to be initiated under Section 3 and other provisions of the Act.

76 The SWM Rules, 2016, is the direct result of the exercise of the power by the Central Government in terms of its policy initiative as delineated in Sections 3 and 6, as extracted above. The following rules and sub-rules are referred to, for highlighting the avowed concept of solid waste management and its actual implementation by the State authorities. **Rule 3[7]** of the Solid Waste Management Rules defines 'buffer zone' and the same reads thus:-

'buffer zone' means and includes buildings occupied by the Central Government departments or undertakings, State government departments or undertakings, local bodies, public sector undertakings or private companies, hospitals, nursing homes, schools, colleges, universities, other educational institutions, hostels, hotels, commercial establishments, markets, places of worship, stadia and sports complexes having an average waste generation rate exceeding 100kg per day.'

Sub-Rules 12, 15, 32, 35, 44, 46, 56 to Rule 3 define various activities related to the solid waste management, which are also extracted hereunder:-

12.composting means a controlled process involving microbial decomposition of organic matter.

15.'decentralised processing' means establishment of dispersed facilities for maximizing the process of bio-degradable waste and recovery of recyclables closest to the source of generation so as to minimize the transportation of waste for processing or disposal.

32.'non-biodegradable waste' means any waste that cannot degraded by micro organisms into simpler compounds.

35.'processing' means any scientific process by which segregated solid waste is handled for the purpose of recycling or transformation into new products.

44.'segregation' means sorting and separate storage of various components of solid waste namely biodegradable wastes including agriculture and dairy waste, non biodegradable wastes including recyclable wastes, non-recyclable combustible waste, sanitary waste and non recyclable inert



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waste, domestic hazardous wastes, and construction and demolition wastes.

46. 'solid waste' means and include solid or semi solid domestic waste, sanitary waste, commercial waste, institutional waste, catering and market waste and other non residential wastes, street sweepings, silt removed or collected from the surface drains, horticulture waste, agriculture and dairy waste, treated biomedical waste excluding industrial waste, bio-medical waste and e-waste, battery waste, radio-active waste generated in the area under the local authorities and other entities mentioned in rule 7.

56. 'waste generator' means and includes every person or group of persons, every residential premises and non residential establishments including Indian Railways, defense establishments, which generate solid waste.

77 The above rules exhaustively define the nature of waste, its segregation, processing of waste, the meaning of composting, reasons necessitating decentralized processing, the meaning of waste generator etc. The meaning of waste generator as defined under sub rule 56 of Rule 3 would include every group of persons, every residential premises which would peremptorily include residential complexes as well. There is no escaping for any citizen or group of citizens from being defined as waste generator. Rule 4 deals with duties of waste generators towards solid waste management. It is relevant to extract Rule 4 and all its sub clauses [1] to [8]-

4. Duties of waste generators:-[1] Every waste generator shall-

[a] segregate and store the waste generated by them in three separate streams namely bio-degradable, non biodegradable and domestic hazardous wastes in suitable bins and handover segregated wastes to authorised waste pickers or waste collectors as per the direction or notification by the local authorities from time to time.

[b] wrap securely the used sanitary waste like diapers, sanitary pads, etc., in the pouches provided by the manufacturers or brand owners of these produces or in a suitable wrapping material as instructed by the local authorities and shall place the same in the bin meant for dry waste or non biodegradable waste ;

[c] store separately construction and demolition waste, as and when generated, in his own premises and shall dispose off as per the Construction and Demolition Waste Management Rules, 2016 ; and



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[d]store horticulture waste and garden waste generated from his premises separately in his own premises and dispose of as per the directions of the local body from time to time.

[2]No waste generator shall throw, burn or bury the solid waste generated by him, on streets, open public spaces outside his premises or in the drain or water bodies.

[3]All waste generators shall pay such user fee for solid waste management, as specified in the bye-laws of the local bodies.

[4]No person shall organise an event or gathering of more than one hundred persons at any unlicensed place without intimating the local body, at least three working days in advance and such person or the organiser of such event shall ensure segregation of waste at source and handling over of segregated waste to waste collector or agency as specified by the local body.

[5]Every street vendor shall keep suitable containers for storage of waste generated during the course of his activity such as food waste, disposable plates, cups, cans, wrappers, coconut shells, left over food, vegetables, fruits, etc., and shall deposit such waste at waste storage depot or container or vehicle as notified by the local body.

[6]All resident welfare and market associations shall, within one year from the date of notification of these rules and in partnership with the local body ensure segregation of waste at source by the generators as prescribed in these Rules, facilitate collection of segregated waste in separate streams, hand over recyclable material to either the authorised waste pickers or the authorised recyclers. The biodegradable waste shall be processed, treated and disposed of through composting or bio methanation within the premises as far as possible. The residual waste shall be given to the waste collectors or agency as directed by the local body.

[7]All gated communities and institutions with more than 5000 square meters area shall, within one year from the date of notification of these rules and in partnership, with the local body, ensure segregation of waste at source by the generators as prescribed in these rules, facilitate collection of segregated waste in separate streams, hand over recyclable material to either the authorised waste pickers or the authorised recyclers. The biodegradable waste shall be processed, treated and disposed off through composting or bio methanation within the premises as far as possible. The



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residual waste shall be given to the waste collectors or agency as directed by the local body.

[8] All hotels and restaurants shall, within one year from the date of notification of these rules and in partnership, with the local body, ensure segregation of waste at source as prescribed in these Rules, facilitate collection of segregated waste in separate streams, hand over recyclable material to either the authorised waste pickers or the authorised recyclers. The biodegradable waste shall be processed, treated and disposed off through composting or bio-methanation within the premises as far as possible. The residual waste shall be given to the waste collectors or agency as directed by the local body.

78 From the reading and understanding of the above Rules, a participative duty is imposed on every waste generators, be it a resident or housing complex establishment in the segregation of waste at source, processing, treating and disposal through composting or bio-methanation within the premises as far as possible. Therefore, a great deal of emphasis has been placed on the active participation of every waste generator. By introduction of the Rules in the year 2016, there has been a paradigm shift in the policy towards management of solid waste, hitherto relegated to the exclusive concern of the State authority as if citizens had no responsibility towards his/her own waste disposal. A collective participation of citizens in disposal of the garbage is the motto of the rules. The earlier concept of 'dumping' the solid waste management exclusively in the hands of the State authority to the complete exclusion of any responsibility of the waste generators, has now been done away with, paving way for people's participation in the implementation of their own waste disposal.

79 The rules further provide for the actual implementation of the policy by conferring duties on the State authorities incharge, under Rule 11, which is extracted hereunder:-

Rule 11. Duties of the Secretary-in-charge, Urban Development in the States and Union territories.---

[1] The Secretary, Urban Development Department in the State or Union Territory through the Commissioner or Director of Municipal Administration or Director of Local Bodies shall-

(a) Prepare a state policy and solid waste management strategy for the state or the union territory in consultation with stakeholders including representative of waste pickers, self help group and similar groups working in the field of waste management consistent with these rules, national policy on solid waste management and



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national urban sanitation policy of the ministry of urban development, in a period not later than one year from the date of notification of these rules.

(b) While preparing State policy and strategy on solid waste management, lay emphasis on waste reduction, reuse, recycling, recovery and optimum utilisation of various components of sold waste to ensure minimisation of waste going to the landfill and minimise impact of solid waste on human health and environment.

(c) state policies and strategies should acknowledge the primary role played by the informal sector of waste pickers, waste collectors and recycling industry in reducing waste and provide broad guidelines regarding integration of waste picker or informal waste collectors in the waste management system.

(d) ensure implementation of provisions of these rules by all local authorities;

(e) direct the town planning department of the State to ensure that master plan of every city in the State or Union territory provisions for setting up fo solid waste processing and disposal facilities except for the cities who are members of common waste procedures facility or regional sanitary landfill for a group of cities; and

(f) ensure identification and allocation of suitable land to the local bodies within one year for setting up of procedures and disposal facilities for solid wastes and incorporate them in the master plan [land use plan] of the State or as the case may be, cities through metropolitan and district planning committees or town and country planning department;

(g) direct the town planning department of the State and local bodies to ensure that a separate space for segregation, storage, decentralised processing of solid waste is demarcated in the development plan for group housing or commercial, institutional or any other non residential complex exceeding 20 dwelling or having a plot area exceeding 5000 square meters;

(h) direct the developers of Special Economic Zone, Industrial Estate, Industrial Park to earmark at least five percent of the total area of the plot



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[a]prepare a solid waste management plan as per state policy and strategy on solid waste management within six months from the date of notification of state policy and submit a copy to respective departments of State Government or Union Territory Administration or Agency authorised by the State Government or Union Territory Administration.

[v]facilitate construction, operation and maintenance of solid waste processing facilities and associated infrastructure on their own or with private sector participation or through any agency for optimum utilisation of various components of solid waste adopting suitable technology including the following technologies and adhering to the guidelines issued by the Ministry of Urban Development from time to time and standards prescribed by the Central Pollution Control Board. Preference shall be given to decentralised processing to minimize transportation cost and environmental impacts such as-

[a]bio-methanation, microbial composting, vermi-composting, anaerobic digestion or any other appropriate processing for bio-stabilisation of biodegradable wastes;

[b]waste to energy processes including refused derived fuel for combustible fraction of waste or supply as feedstock to solid waste based power plants or cement kilns.

[w]undertake on their own or through any other agency construction, operation and maintenance of sanitary landfill and associated infrastructure as per Schedule I for disposal of residual wastes in a manner prescribed under these rules.

[x]make adequate provision of funds for capital investments as well as operation and maintenance of solid waste management services in the annual budget ensuring that funds for discretionary functions of the local body have been allocated only after meeting the requirement of necessary funds for solid waste management and other obligatory functions of the local body as per these rules.

[y]make an application in Form-I for grant of authorisation for setting up waste processing, treatment or disposal facility, if the volume of waste is exceeding five metric tones per day including sanitary landfills, from the State Pollution Control Board or the Pollution Control Committee, as the case may be.

[zi]allow only the non-usable, non recyclable, non biodegradable, non combustible and non reactive



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inert waste and pre-processing rejects and residues from waste processing facilities to go to sanitary landfills and the sanitary landfill sites shall meet the specifications as given in Schedule-I, however, effort shall be made to recycle or reuse the rejects to achieve the desired objective of zero waste going to landfill.

82 Rule 16 also mandates certain duties to be discharged by the State Pollution Control Board. The said Rule reads thus:-

16. Duties of State Pollution Control Board or Pollution Control Committee:-[1]The State Pollution Control Board or Pollution Control Committee shall-

- (a)enforce these rules in their State through local bodies in their respective jurisdiction and review implementation of these rules at least twice a year in close coordination with concerned Directorate of Municipal Administration or Secretary-in-charge of State Urban Development Department ;
- (b)monitor environmental standards and adherence to conditions as specified under the Schedule I and Schedule II for waste processing and disposal sites.

83 Further, Rule 22 provides a detailed time frame for implementation of the Rules as a whole.

Sl.No	Activity	Time limit from the date of notification of rules
[1]	[2]	[3]
1	Identification of suitable sites for setting up solid waste processing facilities	1 year
2	Identification of suitable sites for setting up common regional sanitary landfill facilities for suitable clusters of local authorities under 0.5 million population and for setting up common regional sanitary landfill facilities or stand alone sanitary landfill facilities by all local authorities having a population of 0.5 million or more	1 year
3	Procurement of suitable sites for setting up solid waste processing facility and sanitary landfill facilities	2 years



Sl.No	Activity	Time limit from the date of notification of rules
4	Enforcing waste generators to practice segregation of bio degradable, recyclable, combustible, sanitary waste, domestic hazardous and inert solid wastes at source	2 years
5	Ensure door to door collection of segregated waste and its transportation in covered vehicles to processing or disposal facilities	2 years
6	Ensure separate storage, collection and transportation of construction and demolition wastes	2 years
7	Setting up solid waste processing facilities by all local bodies having 100000 or more population	2 years
8	Setting up solid waste processing facilities by local bodies and census towns below 100000 population	3 years
9	Setting up common or stand alone sanitary landfills by or for all local bodies having 0.5 million or more population for the disposal of only such residual wastes from the processing facilities as well as untreatable inert wastes as permitted under the Rules	3 years
10	Setting up common or regional sanitary landfills by all local bodies and census towns under 0.5 million population for the disposal of permitted waste under the rules	3 years
11	Bio remediation or capping of old and abandoned dump sites	5 years

84 While framing the time frame for implementation of the rules, Rule 23 contemplates constitution of State Level Advisory Body, to oversee the implementation within the stipulated time.

85 Schedule I appended to the Rules provide for criteria for site selection. It deals with the nature of site selection and location of the same without affecting any sensitive eco-fragile areas etc. Under Schedule I[A] - Criteria for site selection, the State Department is responsible for providing suitable site for setting up of solid waste processing and treatment plant facilities and notify such sites.



86 While referring to all the above rules and also the Schedule appended thereto, the learned Advocate General for the State as well as the learned counsel for appellants/writ petitioners, have drawn particular reference to clause [ix] of the Schedule-I, which reads as under:-

'Schedule I-Specifications for Sanitary Landfills:-

[A] Criteria for site selection:-

....
[ix] A buffer zone of no development shall be maintained around solid waste processing and disposal facility, exceeding five tonnes per day of installed capacity. This will be maintained within the total area of the solid waste processing and disposal facility. The buffer zone shall be prescribed on case to case basis by the local body in consultation with concerned State Pollution Control Board.

87 The above clause was sought to be relied upon by the learned counsel for the appellants/writ petitioners contending that there shall be no development in and around any solid waste processing and disposal facilities in terms of the rules itself. To locate a compost yard within the park/play area amounted to flouting of the above prohibition and therefore, such development is impermissible ever under the SWM Rules, 2016.

88 However, the above contention has been specifically refuted and answered by the learned Advocate General stating that the location of Micro Compost Center [MCC] in neighbourhoods, has the processing capacity of waste only below 5 tonnes. Since it is only a micro processing unit, maintenance of buffer zone as contemplated above in clause [ix] cannot have any application. This submission has been well supported by the definition clause 3 [7] of the SWM Rules, 2016. What is 'buffer zone' has been defined that solid waste processing and disposal facility exceeding 5 TPD installed capacity.

89 The SWM Rules, 2016, is a comprehensive new policy initiative of the Central Government addressing the growing concern of solid waste management at all levels. Elaborate procedures have been laid down as to how solid wastes are to be managed and processed with the active participation of all stakeholders. The concept of installing Micro Compost Centre in every neighbourhood wherever there is availability of open space, be it a park area or play field, is in furtherance of the SWM Rules, 2016.

90 Now, coming to the governing rules of the State Government, viz., the Tamil Nadu Combined Development and Building Rules, 2019, the same was issued in G.O.Ms.No.18, dated 04.02.2019 by the Municipal Administration and Water Supply Department. The



Government Order sets out its reason for bringing out a consolidated building rules superseding all other earlier rules on the subject matter. It is useful to refer to the objects, reasons behind the framing of the Combined Rules, 2019, as stated in the said Government Order, which is extracted hereunder:-

"There is a need to ensure more efficient and sustainable utilization of scarce land, ensuring availability of land for various purposes to make housing more affordable, ensure effective enforcement of regulations relating to development and building construction and to promote ease of doing business in the State of Tamil Nadu. Therefore, the Government after careful consideration have decided to revise and re-issue various existing Building Rules under various Acts for Corporations, Municipalities, Town Panchayats and Village Panchayats and Development Rules/Regulations issued under the Tamil Nadu Town and Country Planning Act, 1971 as the Tamil Nadu Combined Development and Building Rules, 2019.

2. The Tamil Nadu Combined Development and Building Rules, 2019 are aimed at simplifying the rules and procedure for approval, for development of layouts and buildings with focus on safety, security and sustainability as also to enhance consistency and transparency. This exercise is based on a number of studies, reports and international consensus reflected in the United Nations Habitat's New Urban Agenda, which advocate greater urban density and compactness of cities to promote better use of scarce land and the easing of Floor Space Index [FSI] restrictions to enable persons belonging to the Low Income Group to buy houses at affordable prices. Provisions of the National Building Code, 2016, and the Model Building Bye-Laws, 2016 have also been incorporated. The Rules cover the provision of barrier free environment for differently abled, elderly, children, Rain Water Harvesting, Recycling of Grey Water, Solar Energy Capture Provision of Closed Circuit Televisions and Regulation of Swimming Pools.

91 In the beginning of the Government order it is emphasized that *"sustainable utilisation of scarce land, ensuring availability of land for various purposes"*, the expressions would by itself explain the shift in the Policy orientation towards development of building, construction in the present era. The objects and reasons of bringing about the new consolidated rules are stated to be in exercise based upon updating studies, reports, international consensus reflected in the United Nations Habitat's New Urban Agenda. The aim is to provide better and compact use of the scarce land. The rules reflect a radical policy shift towards



making virtue of necessity over coming the challenges of the booming urbanisation.

92 The definition clause, Rule 2(7) states that amenities shall have the same meaning as defined in the Act, 1971. In fact, on behalf of the appellants/writ petitioners, several provisions of these rules have been referred to dealing with conversion of land use, development, unauthorised constructions, including additions and alterations etc. In particular, Rule 3 has been referred to stating that Rules, 2019, shall apply to all developments, re-developments, additions, alterations to a building etc. Rule 3 reads thus:-

'3.Applicability of these Rule:-

[1]Except hereinafter or otherwise provided, these Rules shall apply to all development and construction including-

- i. all developments, redevelopments, erection or re-erection, design, construction or reconstruction and additions and alterations to a building.
- ii. Part construction where the whole or part of a building is demolished or altered or reconstructed, except where otherwise specifically stipulated, these Rules shall apply only to the extent of the work involved.
- iii. Change of use or occupancy where use of a building is changed, except where otherwise specifically stipulated, these Rules shall apply to all parts of the building affected by the change.
- iv. Reconstruction where the reconstruction in whole or part of a building which has ceased to exist due to fire, natural collapse or demolition having been declared unsafe, or which is likely to be demolished by or under of the Authority as the case may be and for which the necessary certificate has been given by the Authority shall be allowed subject to these Rules.

[2]Nothing in these Rules shall require the removal, alteration or abandonment or prevent continuance of the lawfully established use or occupancy of any existing approved building.

Rule 4 has also been relied upon and the same is extracted hereunder:-

'4.Written Permission for development:-

[1]Subject to section 47 and 58 of the Tamil Nadu Town and Country Planning Act, 1971 [Tamil Nadu Act 35 of 1972] no person shall carry out any development or construction of building or structure, subdivision, layout, reconstitution or



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amalgamation of land or change of use of land or building without the written permission of the competent authority.

Explanation- Such written permission shall include an electronic version issued with the digital signature of the competent authority.

[2] Any site approval or permission for any development / construction under these rules shall not absolve the applicant of his responsibilities to get clearance or permission under other Acts and Rules, if so required.

93 In pursuance of the above requirement, Rule 6 in Part II provide for submission of application for planning permission and building permit. As per the provisions, the State Government or the Central Government which intent to carry any development, shall seek permission from the competent authority. While seeking permission, the person or the State authority are under obligation to disclose what are the planning requirements in terms of Rule 8 like position of the building, boundaries of the site, details of adjacent streets, buildings etc. The permission seeker is also mandated to disclose statement indicating the total area of the site, area utilised under roads, parks and playground etc. Rule 15 place emphasis that any development shall be in compliance with the rules and cannot be in contravention of the same. Rule 17 provide for correlation of land use zones in Master Plan, Detailed Development Plan and Development Rules. The Rule also provide for open space and recreational use. Rule 19 also places prohibition on development, which reads thus:-

'19. Development prohibited or restricted areas:-

The regulations for Development prohibited or restricted areas are furnished in Annexure-XVII. The Government may notify modifications to these regulations from time to time and such modifications shall prevail.'

94 A great deal of reliance has also been placed on this provision by the learned counsel for the appellants/writ petitioners by referring to Clause 10 of Annexure-XVII, which reads as under:-

'Annexure-XVII:- Development Prohibited or Restricted Areas:-

.....
10. Solid Waste Dumping Yard:- No habitable use within a distance of 30m from the Solid Waste Dumping Yard is allowed.

95 When there is a clear prohibition for any kind of habitation, within a distance of 30 meters from the Solid Waste Dumping Yard, locating MCC within the park area, amounted to an action directly in contravention of Rule 19 and also in contravention of Rules 15 and 17. In this regard, Rule 32 has also been specifically referred to. It is relevant to extract the



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'32.Rules to over ride other Rules and Regulations:-

In the application of these Rules, if there is conflict between the provisions under these Rules and the requirements under the other Rules in time being in force, then provision in the above mentioed Rules shall stand suspended to the extent of conflict with these Rules.'

96 The over riding effect of the rule if it is read in conjunction with Section 111 of the Act, 1971, would make the legal position clear that compliance with the scheme of the Act, 1971, and the Combined Development Rules, 2019, is mandatory as the provisions have an over riding effect on other laws. It is useful to extract Section 111 of the Act, 1971, which is extracted hereunder:-

'111. Effect of other laws.- (1) The provisions of this Act shall be read subject to the provisions of the Chennai Metropolitan Water Supply and Sewerage Act, 1978 (Tamil Nadu Act 28 of 1978);

(2) Save as otherwise provided in this Act, the provisions of this Act and the rules and regulations made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law, custom, usage or contract;

(3) Subject to the provisions of sub-section (1) but notwithstanding anything contained in any other law-

(a) when permission for development in respect of any land or building has been obtained under this Act, such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development, has not been obtained;

(b) when permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained.'

97 Sub Rule 7 of Rule 2 of the Rules, 2019, which deals with amenities, is stated to be having the same meaning as defined in the Act, 1971. The meaning of 'amenities' as defined in Section 2 [2] is once again extracted hereunder:-

'2[2] 'Amenities' includes streets, open spaces, parks, recreational grounds, play grounds, water



and electrical supply, street lighting, sewerage, drainage, public works and other utilities, services and conveniences.''

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98 In fact, this section was specifically relied upon by the learned Division Bench of this Court in **SIDCO Nagar's case**. According to the learned Division Bench, the amenities which are provided like open space, park etc., are inalienable and therefore, it cannot be encroached upon by any authority including the Government. But, with due respect to the learned Division Bench, the meaning of amenities, though inclusive of open spaces, parks, recreational grounds etc., must also be expansively read to include micro waste disposal units as well. The solid waste management is the responsibility of every citizen, as the disposal of the waste in terms of Rules of the SWM Rules, 2016, through composting is to be done within the premises as far as possible. Therefore, location of a MCC in the neighbourhood is to be deemed and treated as one of the amenities made available for the welfare of the residents, for their enjoyment of a litter free environment, serving larger public interest as a whole. Scientific disposal of the waste in the present technology driven era is part of the amenities to be enjoyed by the society to be free from indiscriminate dumping of and accumulation of garbage in every nook and corner of streets and neighbourhoods. The SWM Rules, 2016, is the imprimatur and catalyst for the change to happen. Progressive implementation of the Rule is the only way forward and panacea in surmounting apathetic and uncaring collective attitude of the society towards proper upkeep of its environment free from miasma of stench and squalor. The evolution of the concept is to turn the focus on every individual citizen as the slogan goes 'the only cure for wither is yours'.

99 In the said circumstances, after the introduction of the SWM Rules, 2016, the location of MCC is to be treated as one of the amenities to be enjoyed by the local residents in the neighbourhood. In fact, the definition of 'amenities' in the Act, 1971, itself is open to wide interpretation and is also amenable to contemporaneous construct in tune with the aggressive and exponential growth and development, in urban and semi urban areas and towns. In the opinion of this Bench, the definition of amenities cannot receive a constricted meaning when it particularly uses the expression like 'other utilities, services and conveniences'. Such expression literally include every kind of service, that is beneficial to the public at large.

100 So much so is said about the developments that cannot be undertaken once a layout has been finalised and earmarked for a particular user of the land in the Master Plan/Detailed Development Plan, this Bench has to first consider whether the location of MCC within the minuscule specified area of the park or play area can be considered as a development at all even in terms of the governing provisions of the Act, 1971 or the Combined Development Rules,



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2019. In this connection, reference to sub-section 13 of Section 2 of the Act, 1971, is useful, which read thus:-

2[13] "development" means the carrying out of all or any of the works contemplated in a regional plan, master plan, detailed development plan or a new town development plan prepared under this Act, and shall include the carrying out of building, engineering, mining or other operations in, or over or under land, or the making of any material change in the use of any building or land:

Provided that for the purposes of this Act, the following operations or uses of land shall not be deemed to involve development of the land, that is to say,-

(a) the carrying out of any temporary works for the maintenance, improvement or other alteration of any building, being works which do not materially affect the external appearance of the building;

(b) the carrying out by a local authority of any temporary works required for the maintenance or improvement of a road, or works carried out on land within the boundaries of the road;

(c) the carrying out by a local authority or statutory undertaker of any temporary works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;

(d) the use of any building or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such; and

(e) the use of any land for the purpose of agriculture, gardening or forest (including afforestation) and the use for any purpose specified in this clause of this proviso of any building occupied together with the land so used;''

101 As per Rule 2(31) of the Combined Rules, 2019, "Development" shall have the same meaning as defined in the Act, 1971 alone. As per the proviso to sub-clause [13] and [d], the uses of land shall not be deemed to involve development of the land in connection with the use of any building or other land within the curtilage of a dwelling house for any purpose, incidental to the enjoyment of the dwelling house. The expression "curtilage" though not defined in the Act, is defined in Dictionaries such as Merriam-Webster, Cambridge, as "an area of land attached to house, which include road, buildings, courtyard, surrounding the house. The simple meaning of that is the land attached to a house. A gated community, Residential complexes in today's context of "development" can also be brought within the scope of 'dwelling house'.

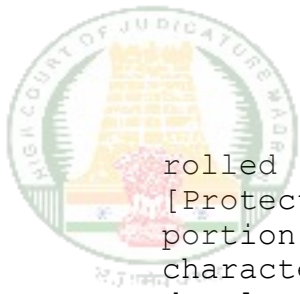


102 As far as the present reference is concerned, what is proposed is location of MCC in an already earmarked park/play area which is admittedly a part of that residential complex. It is true that such earmarked park / play area is a gift given to the residents of the neighbourhood to themselves. Yet, within that earmarked area, a minuscule portion, i.e., not more than 10% of the area, is being carved out for the purpose of providing another amenity to the residents by having MCC in that place. In the circumstances, the provisions which are relied upon that unless the procedures contemplated therein are followed, no development could be allowed to take place, may not be a valid argument at all, even within the framework of the Act, 1971, read with the Combined Development Rules, 2019.

103 The expression development that is contemplated in the Rules, 2019 and the provisions of the Act, 1971, on a proper semantic construct must relate to construction activity for a different user than what has already been classified, earmarked and reserved in the Master or Development Plan. There is a world of a difference between developing a land and converting the same to different user by changing its original character and classification and the location of compost yard as part of providing amenities to the residents of the locality. There is no change in user but location of additional amenity permissible in terms of the furtherance of the Act, 1971 and Combined Development Rules, 2019. It is akin to having "Rest Rooms" in public parks for the convenience of the park users. Can location of "Rest Rooms" within the park area be questioned as "Development" amounting to conversion? The answer cannot be anything else but No.

104 As far as location of MCC is concerned, it is certainly not qualified to be called as Development at all. It is a mere installation of a Micro Compost Unit for the welfare of the residents in particular and for promoting larger interest of the State as a whole. Even if sub-clause (d) and sub-section 13 of Section (2) does not lend scope for expansive construct, yet to call installation of MCC in the open space reserved for recreational purpose as Development in conflict with the provisions of the Act, 1971 and the Combined Development Rules, 2019, amounted to giving twist to the expression "Development".

105 To condemn providing waste disposal facility amounted to conversion or reclassification of the land and therefore, the same is impermissible in law in the opinion of this Bench, is injudicious and incomprehensible. The expression deviation presupposes development. If location of MCC is not to be construed as "Development" at all, then consideration of oxymoron expressions of the reference "permissible deviations" are permissible require tweaking without altering the kernel of the reference as "permissible development". Here again the expression development is not to be mixed up with the definition of "Development" as contemplated in the Act, 1971, or the Combined Development Rules, 2019, but within the conceptual framework of waste management as



rolled out by SWM Rules, 2016, read with the Environment [Protection] Act, 1986. The location of MCC in the minuscule portion of the park/play area, in effect, does not per se erase the character and the same cannot be said to be a reclassification or a development contravening the governing Rules. As stated above, location of MCC go hand in hand with the definition of 'amenities' as contemplated in Section 2[2] of the Act, 1971.

106 It is needless to emphasize that towards implementation of the policy of solid waste management, the way forward is to have as many decentralised processing units as contemplated in the SWM Rules, 2016. In every community, a group of persons is responsible for its management, as it is not for them to disown their own wastes and claim that waste management is the problem of the State civic authorities. The issue relating to solid waste management has assumed humongous and alarming proportions in the recent past and every effort has been taken to tackle the same. In the said circumstances, it is not for any particular community or residents that their wastes should go away somewhere.

107 The right to have lung space, unpolluted air, open space for recreational use, is intrinsic and implicit under Article 21 of the Constitution of India. The enactment of the Environment [Protection] Act, 1986 became a constitutional imperative to protect environment from degradation and provide pollution free, clean, healthy and robust living condition to the citizens of this country. Such guarantee being enshrined as part of the fundamental rights to be enjoyed by every citizen under Article 21 of the Constitution, is inalienable and not negotiable. This Bench cannot have any reservation on the lofty constitutional goal and mandate. In fact, Articles 47 and 48-A of the Directive Principles cast duty upon the State for improvement of public health and protection and improvement of environment and safeguarding of forests and wildlife. In fact, in all the important decisions of the Hon'ble Supreme Court of India, which had been cited on behalf of the appellants/writ petitioners, the Hon'ble Supreme Court has laid great emphasis on the protection of the environment and towards guaranteeing the citizens aesthetic enjoyment of use of park/play area for their all round well being.

108 Be that as it may, in all the decisions of the Apex Court cited and of this Court, the Courts have invariably premised its decisions on the change of user of land by the authorities for private and commercial use. In that view of the matter, the Courts have declared the actions of the State authorities as illegal as the change of user of the land towards commercial exploitation, is inimical to the fundamental rights of the citizens guaranteed in the Constitution of India and also not authorised by the statutory rules. However, none of the decisions has dealt with the modern concept of solid waste management, as contemplated in the Rules, 2016. Neither the Hon'ble Supreme Court of India or the other High Courts, including this Court, had any occasion in the recent past to deal with the conceptual development and its applicability with reference to the SWM Rules, 2016, vis-a-vis., the State enactments.



The Courts have also had no opportunity of considering the recent development of solid waste management after the introduction of the SWM Rules, 2016, and its mandatory implementation.

109 In spite of the above, the decisions relied on by the learned counsel for the appellants/writ petitioners are hereby referred to, for understanding the march of law relating to the importance of protection of environment, reserved open space/park/play area meant for public use. The precedential value of the judgments highlighting the paramount importance of protecting and safeguarding the environment would be the essential part of the consideration. This Bench is alive and conscious that no public interest is far greater than the guarantee of clean environment and healthy living.

110 In addition to the above Acts/Rules, the learned counsel for the appellants/writ petitioners also referred to the provisions of the Tamil Nadu Parks, Play Fields and Open Spaces [Preservation and Regulation] Act, 1959. This Bench attention has been drawn to Sections 3, 4 and 6 of the said Act, which are already extracted supra.

111 Section 6 of the Act, 1959, prohibits for use of parks, play-fields and open spaces to be used for any other purpose. The arguments of the learned counsel for the appellants/writ petitioners is that this being a special enactment relating to the preservation and regulations of the parks, play-fields etc., it will prevail over all other Acts, Rules and Regulations.

112 This Bench considered the provisions as extracted above. The Act was brought into force in the year 1959. The objects and reasons stated therein is that the enactment became necessary after noticing that many open spaces and play-fields were being encroached upon and many of the open spaces were not kept in proper sanitary condition. It was also noted that Corporations and Municipalities have themselves constructed many buildings for their use and have dumped in many places goods converting them into sore godowns. In consideration of a complete abuse of the open spaces in the parks, certain regulatory measure had to be put in place and therefore, the Act was brought into force in the year 1959. In fact, the Act, in terms of Section 3, provides for preparation and submission of list of parks, play fields etc., to be approved by the Government under Section 4 and prohibition in terms of Section 6 is only in respect of the parks specified in the list published under Section 4 of the Act, 1959. The application of this Act on the present controversy may not have much bearing on our consideration as the scope of the enactment was to prohibit any illegal construction or dumping any waste only in respect of public parks notified in the Act.

113 In any event, at the time when the Act came into being in the year 1959, the concept of solid waste management was non-existent and the Act could not have foreseen the present development



five decades before. Moreover, the park or play area earmarked or reserved in a neighbourhood in the new Development Plan may not come within the definition of park in the Act, 1959. What is contemplated in the Act, are the public parks owned and maintained by the State authorities. Even under the said Act, as per Section 6, there is no absolute prohibition. Any development is permissible with the previous sanction of the Government.

114 The usage of public parks and play field that is sought to be regulated under the Act, stand on a different footing than the park or a play area which is earmarked in every neighbourhood scheme as part of the conditions laid down by the Combined Development Rules, 2019, read with the Act, 1971. A portion of a private property is compulsorily to be reserved for community recreational purposes such as park or play area in residential developments if the extent of site is 3000 sq.m., or more. As per Rule 41 of the Combined Development Rules, 2019, 10% area to be reserved for the community recreational purposes. In terms of the Rules, the space so reserved shall be transferred to the Local Body, through a registered Gift Deed. It is the primary duty of the local authority to maintain the reserved space but it may permit Residents Association for maintaining such reserved space as park or playground. In **sub rule [6] of Rule 41**, a leeway is provided for putting structures for watchman's booth, Gardener's instrument room, public toilet, police booth. Rule 41 and sub-rule [6] is extracted as under:-

41. Reservation of land for community recreational purposes in certain developments.-

(1)...

(2)...

(3)....

(4)....

(5)....

(6) *Structures for watchman's booth, gardener's instrument room, public toilet and police booth for the purpose of maintenance and toilets may be permitted with total floor area not exceeding 5 percent of the total OSR area in one place.*

What needs to be appreciated herein is that the Rules contemplate provision for putting up structure in the recreational area as part of the community enjoyment like having a police booth. In such scenario, having MCC in a corner of the recreational area aimed towards achieving litter free zone in the neighbourhood cannot be seen as an activity infringing upon the rights of the residents to have unhindered access and enjoyment of the recreational area.

115 Now reverting to the SWM Rules, 2016, as stated earlier, the rules were framed under Section 25 read with Sections 3 and 6 of the Environment [Protection] Act, 1986. The statement of objects and the reasons of the Act, had already been extracted supra. The SWM Rules, 2016, which were framed in furtherance of the objects



and reasons of the Environment [Protection] Act, 1986 and its implementation cannot be considered to be opposed to the interest of the parent Act itself. When the rules have been framed under the Environment [Protection] Act, 1986 and measures have been initiated in terms of the rules, the location of a MCC in the park or play area as a consequence of its implementation cannot be said to run afoul of the parent Act, 1986. On the other hand, such measures are the long term strategy initiative towards achieving garbage free neighbourhood and providing clean environment all around, as envisaged in the Act, 1986.

116 In fact, in the statement of objects and reasons, it is stated that the enactment of the Act, 1986, was the result of India's participation in the United Nations Conference on the Human Environment held in Stockholm, in June 1972, raising its strong voice on environmental concerns. A specific legislation was felt imperative for implementing the decisions taken in the Conference and thus, born the Act, 1986. In terms of Article 253 of the Constitution, the Parliament has the power to make any law for implementing any Treaty, Agreements or any decision made at any International Conference etc. Further, as per Directive Principles of State Policy, contained in Part IV of the Constitution solemn duty is bestowed upon the State to improve public health and to protect and improve environment. Concomitantly, inter alia, a duty is imposed upon every citizen to protect and improve natural environment in Part IV-A of the Constitution.

117 The objects of all laws of environment should be to create harmony between the economic development on one hand and the environment on the other as held by the Hon'ble Supreme Court of India in the decision reported in **2004 [2] SCC 392 [Essar Oil Limited V. Halar Utkarsh Samiti and Others]**. The succinct observations of the Hon'ble Supreme Court in paragraphs No.25 to 27 are extracted hereunder:-

'25. The pivotal issue, as we have already noticed, is the interpretation of Section 29 of the WPA. In our opinion this must be done keeping in mind the Stockholm Declaration of 1972 which has been described as the "Magna Carta of our environment". Indeed in the wake of the Stockholm Declaration of 1972, as far as this country is concerned, provisions to protect the environment were incorporated in the Constitution by an amendment in 1976. Article 48-A of the Constitution now provides that the "State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country". It is also now one of the fundamental duties of every citizen of the country under Article 51-A(g) "to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.



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26. Certain principles were enunciated in the Stockholm Declaration giving broad parameters and guidelines for the purposes of sustaining humanity and its environment. Of these parameters, a few principles are extracted which are of relevance to the present debate. Principle 2 provides that the natural resources of the earth including air, water, land, flora and fauna especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning and management as appropriate. In the same vein, the fourth principle says:

"man has special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat which are now gravely imperilled by a combination of adverse factors. Nature conservation including wildlife must, therefore, receive importance in planning for economic developments."

These two principles highlight the need to factor in considerations of the environment while providing for economic development. The need for economic development has been dealt with in Principle 8 where it is said that "economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for improvement of the quality of life". The importance of maintaining a balance between economic development on the one hand and environment protection on the other is again emphasized in Principle 11 which says:

"The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries nor should they hamper the attainment of better living conditions for all;"

27. This, therefore, is the aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which



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we breathe. However, there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. This view was also taken by this Court in *Indian Council for Enviro-Legal Action v. Union of India* [(1996) 5 SCC 281], where it was said: (SCC p. 296, para 31)

"While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment."

The observations of the Hon'ble Supreme Court encapsulated the inevitable growth of modern civilization and the need for protection of environment at the same time. The Hon'ble Supreme Court has referred to Stockholm Declaration and the protection of Environment as envisaged in the Articles 47, 48-A and also Article 51-A[g] of the Constitution. The SWM Rules, 2016, being the fall out of the Environment [Protection] Act, 1986, the implementation of which would only be in furtherance of attaining the Constitutional goal in terms of Articles 47, 48-A and 51-A[g].

118 The Articles referred to above, are extracted hereunder:-

47:-Duty of the State to raise the level of nutrition and the Standard of living and to improve public health:-

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48-A:-Protection and improvement of environment and safeguarding of forests and wildlife:-

The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.

51-A:-Fundamental duties:-



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It shall be the duty of every citizen of India-

- (a).....
- (b).....
- (c).....
- (d).....
- (e).....
- (f).....
- (g) *to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures ;*
- (h).....
- (i).....
- (j).....
- (k).....''

119 It is needless to mention that when the Parliament enacts the law and the rules framed thereunder, in terms of Chapter XI and under Article 246, the laws of Parliament will prevail over the State Laws. Article 246 confers exclusive power on the Parliament to make laws with respect to any of the matters enumerated in List I in the VII Schedule [Union List]. As per Entries 13 and 14 of List 1 [Union List] of Article 246, the Parliament alone can make laws towards implementing decisions made during country's participation in International Conferences, Associations, Treaties, Agreements, Convention with foreign countries. Therefore, the framing of SWM Rules, 2016, is the initiative of the implementation of the India's commitment to the International convention, [Stockholm Declaration] in protection of environment. Therefore, the implementation exercise in terms of SWM Rules, 2016, assumes planetary importance larger than any other interest. As bemoaned by American Environmental Activist, Terri Swearingen, '*we are living on this planet as if we have another one to go*'. Mindless littering is a major cause for concern globally, today.

120 Now, referring back to the flagship decision relied on by the learned counsel for the appellants/writ petitioners, viz., **SIDCO Nagar's case**, the facts in that case were that originally the place was earmarked for a park and recreational area and at a later point of time, it was sought to be converted into a public user and the State authority was proposing to establish a commercial complex in that area. The learned Division Bench in that context, had correctly held that such conversion was impermissible. In consideration of those facts, the learned Division Bench examined the relevant provisions of the Development Control Rules and the provisions of the Act, 1971 and also followed the legal principles laid down by the Hon'ble Supreme Court of India as well as this Court, which had been referred to by the learned Division Bench in paragraph No.12 of the judgment.

121 The finding of the learned Division Bench was that Sections 48 and 49 had not been followed and found that original reservation of the site was under Rule 19[a][iii] of the



Development Control Rules and also held that once a land was reserved for communal or recreational purpose in the layout, the same did not vest with the Government any more. The Government is denuded of its power to reclassify the land under the provisions of the Development Control Rules. This Court does not see anything amiss with the conclusion reached by the learned Division Bench. Once the land had been classified and the layout had been sanctioned, the earmarked place cannot be subjected to re-classification and convert the same to a different user. The learned Bench has confined its consideration only with reference to Section 2 with sub sections [2], [13], [34] and [36]. The definition clause relating to 'amenities', 'development', 'public open space', 'public purpose' and Sections 48 and 49 of the Act, 1971, read with Development Control Rules, particularly Rule 19. The decision though well considered, but rendered on the narrow margin of a few sections of the Act, 1971, and particular Rule of the Development Control Rules cannot be considered to have any persuasive value. But the learned Division Bench had no opportunity to test the seemingly two conflicting public interests.

122 As far as the issue on hand is concerned, the expression 'Development' has been loosely used, which in the opinion of this Bench, may not be applicable at all. At the risk of repetition, what is proposed in a small portion of the park area, is only a location of MCC as a part of amenities to be provided to the people in the neighbourhood for their own benefit and enjoyment of garbage and litter-free atmosphere and clean environment. It is concept development in the modern era and it can never be called as 'Development' in terms of the provisions of the Act, 1971 or the Combined Development Rules, 2019. In the opinion of this Court, the arguments advanced with reference to those provisions amounted to barking up the wrong tree, as the entire focus ought to have centered on the implementation of SWM Rules, 2016.

123 Having considered the most vital judgment relied on by the learned counsel for the appellants/writ petitioners, the contra judgments delivered by this Court in two or three decisions need to be referred to hereunder.

124 In *Rudhramani's case [cited supra]*, the learned Division Bench was dealing with the case of the action of the Municipality therein, attempting to put up a garbage dumping yard in the park which was reserved in the neighbourhood scheme to be used by the residents therein. The contention of the residents therein was that the resident owners had jointly executed a Gift Deed in respect of a portion of the land to be exclusively earmarked for the purpose of park in the layout. The area has also been used as a park by the residents. Therefore, the same cannot be used as a dumping yard by the Municipality. The stand of the Municipality was that the park was being maintained and vested in the Municipality and therefore, they had a right to put up the solid waste management plant in the park area. The learned Division Bench, after consideration of two earlier decisions of the learned Division Bench in *Sri Devi Nagar Welfare Association's case*



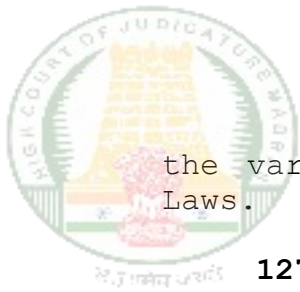
reported in **2007 [3] LW 259** and a learned Single Judge, rendered in **M.S.Rangarajan Vs. Pammal Municipality** in WP.No.26581/2017 dated 22.01.2018 and also relying on the leading judgment of the Hon'ble Supreme Court of India in **B.S.Muddappa's case** reported in **1991 [4] SCC 54**, has finally concluded as under:-

'25. In modern days, construction of Micro Compost Yard in a small portion of the public place cannot be said to be against public interest, when vegetable waste and garbage are thrown on the roads and vacant sites of private property. In the 21st Century, if setting up of Compost Yard is opposed, when admittedly the same is not against public interest, the persons, who are opposing these welfare/good activities, are certainly doing disservice to the community at large. When the Government comes forward with these kinds of benevolent acts, they are to be whole heartedly welcomed by the Homo sapiens.'

125 In fact, in paragraph No.28, the learned Division Bench has also cautioned the officials about the maintenance of the Compost Yard which is also extracted hereunder:-

'28. It is made clear that if the micro compost yard that is to be set up in the playground in question is not maintained properly, against the erring officials,/delinquents/deviants (who are in charge of that place during the relevant period), appropriate departmental action shall be initiated for their failure to maintain their absolute integrity coupled with devotion to duty and thereby rendering themselves of unbecoming of members of the services.'

126 In the other two decisions of the learned Division Benches, dated 10.12.2018 and 11.12.2018, in WP.Nos.18569/2018 and 8048/2018, similar views have been expressed and the challenges to the location of the Compost Yard, ultimately came to be rejected. The bafflement of this Court is that in none of the above three judgments, the learned Division Benches have based their decisions by referring to the SWM Rules, 2016 which ought to have been the fulcrum of the consideration in dealing with the issue of location of compost yard in the recreational area reserved for community use. Although this Court finds that in WP.No.18569/2018 **[Shanmugam's case]** dated 10.12.2018, the contents of the counter filed by the State authority had been extracted wherein, the SWM Rules, had been referred to, but the finding of the learned Division Bench eventually did not examine the Rules as the basis of its ultimate conclusion. Nevertheless, ultimately after cautioning the authority for proper upkeep of the Compost Yards, the challenge against location of compost yard had been rejected. To this extent, the learned counsel for the appellants/writ petitioners was right in contending that the learned Division Benches which upheld the views and contentions of the State authority did not consider

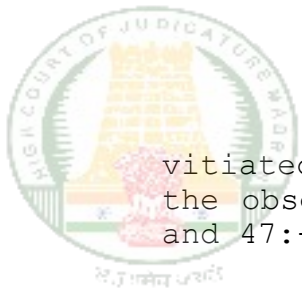


the various provisions of the State Acts as well as the Central Laws.

127 Be that as it may, when this Bench is called upon to take an authoritative call on the issue whether the location of MCC can be upheld as a permissible deviation, inexorably the answer to such reference is to be found principally only in the SWM Rules, 2016, which are primarily the source of implementation of policy initiative towards solid waste management. The learned Division Benches referred to above, might not have referred to the provisions of the SWM Rules, 2016. However, the ultimate conclusions reached by the learned Division Benches have to be tested with the applicable rules. The reasons of the learned Division Benches being not founded on any statutory regulations, notwithstanding, the learned Division Benches have understood the profound need for advancing the cause of larger public interest in terms of the constitutional aim towards ameliorating the living standards of the citizens. Therefore, the ultimate conclusion in the said decisions on the germane application of the SWM Rules, 2016, as a whole, saved the decision from the possible fallibility.

128 On behalf of the appellants/writ petitioners, various other decisions have been cited, rendered by the Hon'ble Supreme Court of India and this Court. The decision in **B.S.Muddappa's case** is considered to be one of the illuminating judgments of the Apex Court on the subject matter. The decisions cited and relied upon on behalf of the appellants/writ petitioners, can be taken to be relevant only on its limited application to our present consideration. The reason is simple that the judgments of the Apex Court and this Court at various point of time from the year 1991 onwards, had been rendered in the context of interpretation of the then State enactments when the SWM Rules, 2016, was non-existent. Further, the decisions were rendered before the concept of Solid Waste Management gained traction as a national policy initiative. But the decisions have singularly underscored the importance of protection of open and lung spaces. In none of the decisions relied on by the learned counsel for the appellants/writ petitioners, the Courts had the occasion to deal with the modern concept of solid waste management and the concerted action of the State authorities for its implementation across the board in the country.

129 However, from the perspective of protection of environment and the consequences of State's action in interfering with the public enjoyment in negation of their interest, need to be appreciated by this Court as an integral part of the consideration. In that view of the matter, the decisions of the Apex Court and certain observations made thereunder, need to be referred to for a panoramic understanding of the issue on hand. In **B.S.Muddappa's case**, a leading case, wherein a civic amenity made available in the Development Plan was sought to be converted into a different user. The Apex Court has held that conversion attempted by the State Government suffered from absence of jurisdiction and was also



vitiated as being ultra vires, the powers. It is useful to extract the observations once again of the Apex Court in paragraphs 28, 36 and 47:-

28. Any reasonable legislative attempt bearing a rational relationship to a permissible State objective in economic and social planning will be respected by the courts. A duly approved scheme prepared in accordance with the provisions of the Act is a legitimate attempt on the part of the government and the statutory authorities to ensure a quiet place free of dust and din where children can run about and the aged and the infirm can rest, breathe fresh air and enjoy the beauty of nature. These provisions are meant to guarantee a quiet and healthy atmosphere to suit family needs of persons of all stations. Any action which tends to defeat that object is invalid. As stated by the U.S. Supreme Court in *Village of Belle Terre v. Bruce Boraas* [39 L Ed 2d 797 : 416 US 1] : (L Ed p. 804 : US p. 9)

"... The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people."

See also *Village of Euclid v. Ambler Realty Company* [272 US 365 (1926)] . See the decision of the Andhra Pradesh High Court in *T. Damodhar Rao v. Special Officer, Municipal Corporation of Hyderabad* [AIR 1987 AP 171] .

36. Public park as a place reserved for beauty and recreation was developed in 19th and 20th century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a, 'gift from people to themselves'. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology. A private nursing home on the other hand is essentially a commercial venture, a profit oriented industry. Service may be its 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



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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 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.

47. Was the exercise of discretion under sub-section (4) of Section 19 in violation or in accordance with the norm provided in law. For proper appreciation the sub-section is extracted below:

"19. (4) If at any time it appears to the Authority that an improvement can be made in any part of the scheme, the Authority may alter the scheme for the said purpose and shall subject to the provisions of sub-sections (5) and (6) forthwith proceed to execute the scheme as altered."

This legislative mandate enables the Authority to alter any scheme. Existence of power is thus clearly provided for. What is the nature of this power and the manner of its exercise? It is obviously statutory in character. The legislature took care to control the exercise of this power by linking it with improvement in the scheme. What is an improvement or when any change in the scheme can be said to be improvement is a matter of discretion by the authority empowered to exercise the power. In modern State activity discretion with executive and administrative agency is a must for efficient and smooth functioning. But the extent of discretion or constraints on its exercise depends on the rules and regulations under which it is exercised. Sub-section (4) of Section 19 not only



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defines the scope and lays down the ambit within which the discretion could be exercised but it envisages further the manner in which it could be exercised. Therefore, any action or exercise of discretion to alter the scheme must have been backed by substantive rationality flowing from the section. Public interest or general good or social betterment have no doubt priority over private or individual interest but it must not be a pretext to justify the arbitrary or illegal exercise of power. It must withstand scrutiny of the legislative standard provided by the statute itself. The authority exercising discretion must not appear to be impervious to legislative directions. From the extracts of correspondence between the Chairman and the Chief Minister it is apparent that neither of them cared to look into the provisions of law. It was left to the learned Advocate General to defend it, as a matter of law, in the High Court. There is no whisper anywhere if it was ever considered, objectively, by any authority that the nursing home would amount to an improvement. Whether the decision would have been correct or not would have given rise to different consideration. But here it was total absence of any effort to do so. Even in the reply filed on behalf of BDA in the High Court which appears more a legal jugglery than statement of facts bristling with factual inaccuracies there is no mention of it. The extent of misleading averments for purpose of creating erroneous impressions on the court shall be clear from the statement contained in paragraph 1 of the affidavit relevant portion of which is extracted below:

"Respondent 4 had made an application for grant of land for purpose of constructing a nursing home. This application was made also to this respondent. Considering the fact that the medical facilities available in Bangalore were meagre and were required to be supplemented by charitable medical institutions, this authority was required to ascertain whether a suitable site could be given for the hospital building of respondent 4. Upon scrutiny of the Rajamahal Vilas Extension, as early as in 1976, the area in question which had been marked as a low level park measuring 13,485 sq. yards was found suitable to cater to the medical relief to the needy public. However, since the said area had been marked as a low level park, it was necessary to convert the said low level park as civic amenity site. Furthermore, it



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is essential that the government had to approve allotment of the site to respondent 4 as a civic amenity site. There are proceedings before respondent 1 in relation to allotment of site to public institutions. Under the recommendations which have been made, it was decided that plots could be allotted to public institutions subject to certain conditions."

It was this statement which resulted in erroneous finding by the learned Single Judge to the effect:

"Therefore, it is clear that though at the time of preparation of the scheme, formation of a park was considered in the interest of the general public, nothing prevents the BDA from taking the view that the construction of a hospital to provide medical facilities to the general public is necessary and therefore, the area earmarked for park should be converted into a civic amenity site. It is in exercise of this power, the BDA decided to convert the area reserved for park into a civic amenity site so as to enable its disposal in favour of respondent 4, for construction of a hospital. Though Section 19 (4) does not expressly require the taking of the approval of the government for such alteration, the approval was necessary as the original scheme in which the area was reserved for a park had been approved by the government. Therefore, the BDA considered appropriate, and in my opinion rightly, to seek the approval of the government for making such conversion. The State Government accorded sanction for the conversion. Therefore, the conversion was in accordance with law."

The averment in the affidavit of the BDA that an application was made before it could not be substantiated. Nor it could be established that the BDA or any of its committees ever took into consideration that medical facilities were meagre in the city of Bangalore. Such misleading statements call for serious condemnation. No further comment is needed except that the public institutions should be cautious and must not give impression of taking sides. It is destructive of fairness. The then Chairman's letter in 1976 extracted above was forthright whereas the stand of BDA in 1983 appears to be crude effort to support the executive action. No record was produced to substantiate the averments. It was necessary as it

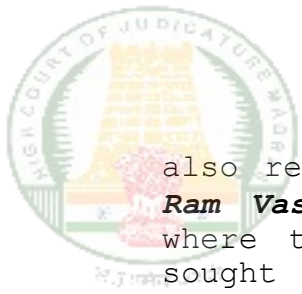


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was not in harmony with the correspondence extracted earlier. The statement by the counsel for the BDA that the records were not traceable was not satisfactory. The executive or the administrative authority must not be oblivious that in a democratic set up the people or community being sovereign the exercise of discretion must be guided by the inherent philosophy that the exerciser of discretion is accountable for his action. It is to be tested on anvil of rule of law and fairness or justice particularly if competing interests of members of society is involved. Was this adhered to by any of the authorities? Unfortunately not.''

130 In the above ruling, the Hon'ble Supreme Court of India has also made observations like 'public interest or general good or social betterment have, no doubt, priority over private or individual interest', but, it must not be a pretext to justify the arbitrary or illegal exercise of power. The Court also recognised existence of legislative mandate enabling the authority to alter any scheme. However, the Apex Court had factually found in that case that the mandatory procedure contemplated in the governing rules had not been followed, adhered to and ultimately, held that the action was ultra vires on the ground, the exercise of the discretion of the authority was improper. There, the fact was that permission was granted to establish a Nursing Home in the park area. In that context, the Hon'ble Supreme Court has held that conversion of a park into a private Nursing Home amounted to being oblivious of true character of the two utilities, namely park and private Nursing Home. The Hon'ble Supreme Court nevertheless recognised the State objectives in economic and social planning and the same to be respected by the Courts.

131 The one other decision was also cited on behalf of the appellants/writ petitioners, reported in **1999 [6] SCC 464 [M.I.Builders Pvt. Ltd. Vs. Radhey Shyam Sabu]**. That was the case where a park area was sought to be converted into underground commercial shopping complex. The Hon'ble Supreme Court of India, in the said case, after referring to various decisions of the High Courts and its own decisions, on a finding of fact held that construction of underground shopping complex for promoting public interest was mere a pretext and the dominant purpose was to favour one builder to earn huge profits. In fact, the Apex Court has also found that the Agreement entered into by the State authority for construction of the Shopping Complex was fraud on the power. This Court therefore does not appreciate the comparison of fraudulent exercise of power in favour of establishing a commercial complex and the exercise of power towards establishing public utility, viz., the Compost Yard, which comparison is an apology and is thoroughly misplaced. Therefore, placing reliance on the said judgment for the purpose of opposing the present action of the State authority, is to be discountenanced.



also relied on the decision reported in **1995 [1] SCC 47 [Pt.Chet Ram Vashist [dead] by LRs Vs. Municipal Corporation of Delhi]**, where the place which was earmarked for park, school etc., was sought to be transferred to the Corporation and in that context, the Hon'ble Supreme Court has held that such transfer of ownership was not permissible in terms of Delhi Municipal Corporation Act. The reasoning of the Apex Court in paragraph No.6 is extracted thus:-

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.'

133 The facts therein are not comparable to the controversy in the present case. One other decision of the Hon'ble Supreme Court was also relied on by the learned counsel reported in **2011 [12] SCC 154 [Machavarapu Srinivasa Rao and Others Vs.Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority and Others]**. It is also a case where a temple was sought to be constructed in the land earmarked for park in the Development Plan. The Apex Court, has ultimately held that once the Development Plan approved by the Government, no one including the State Government/Development Authority can use the land for any purpose



other than the one specified therein. The Hon'ble Supreme Court, has ultimately held that there was no provision in the Act for construction of the building including the temple or use of the land other than the purpose mentioned in the Master Plan / Development Plan.

134 There are three other decisions of the Hon'ble Supreme Court of India relied on by the learned counsel for the appellants/writ petitioners. In the decision reported in **2012 [2] SCC 232 [R.K.Mittal and Others Vs. State of U.P. And Others]**, the Hon'ble Supreme Court of India has held that any development should be in conformity with the Development Plan and no variation at all is permissible. The Hon'ble Supreme Court of India, in the decision reported in **1995 [5] SCC 792 [G.N.Khajuria Vs. D.D.A]**, has held that location of a nursery school in a park was not permissible. Likewise, in **2014 [3] SCC 721 [Purushottam V. State of Karnataka]**, a petrol bunk was sought to be located in the earmarked public place which was held to be illegal. In fact, in some of the above referred subsequent decisions, the Hon'ble Supreme Court has followed **B.S.Muddappa's case** for its ultimate conclusion.

135 As rightly contended by Mr.Yashodh Vardhan, learned Senior counsel appearing for the Coimbatore Corporation, there is a common thread in all the cases rendered by the Hon'ble Supreme Court wherein reliance was heavily placed by the learned counsel for the appellants/writ petitioners that the facts in those cases were uniformly relating to the conversion of the land reserved for public park or play area into private or commercial purpose. Such conversion inevitably required re-classification of the land and in that context, the Courts have rightly held that once the place is earmarked for a public use, the same cannot be subjected to re-classification and converted for a different user. The decisions have been rendered by the Honble Supreme Court and other Courts following the same on the cardinal consideration that the public interest ought not to suffer from arbitrary and fraudulent exercise of power by the State authorities in advancing the cause of private and commercial interest over the public interest.

136 The following decisions of our High Court as well as Andhra Pradesh High Court have also been cited and relied upon by the learned counsel for the appellants/writ petitioners:-

- (a) 2013 [6] CTC 441 [DB] [Kirubakaran Vs. Coimbatore Corporation] ;
 - (b) 2011 [1] CTC 257 [DB] [K.Rajamani Vs. Alumu Nagar] ;
 - (c) 2010 [8] MLJ 105 [DB] [R.Chandran Vs.State of Tamil Nadu rep.by its Secretary, Department of Municipal Administration and Water Supply, Fort St George, Chennai-600 009 and another] ;
 - (d) 2007 [3] LW 259 [Sri Devi Nagar Residences Welfare Association Vs.Subbathal and Others] ;
 - (e) AIR 2001 AP 460 [DB] [Smt.C.Uma Devi V. Government of U.P]
- (1) 2008 [6] CTC 689 [Thai Nagar Welfare Association Vs. Special



Commissioner, Town Planning, No.807, Anna Salai, Chennai-600 002 and Others] ;

(g) 2004 Writ.L.R. 514 [*S.R.Varadarajan and Others Vs. The Director of Town and Country Planning, Anna Salai, Chennai 600 002 and Others]* ; and

(h) AIR 200 Mad 446 [*HIG Flat Owners Welfare Association V. Tamil Nadu Housing Board and Others*].

137 All the above decisions have had no occasion to deal with the conceptual policy implementation of solid waste management in terms of the SWM Rules, 2016. In fact, as could be seen, in all those decisions, the State authority always attempted to convert the reserved area for commercial exploitation. Therefore, rightly the learned Division Benches and Single Judge have discountenanced such arbitrary and mala fide exercise of power. There again, the emphasis by the Courts was that there cannot be any negation of public rights to have a free and unhindered enjoyment of public space.

138 In the light of the above decisions being rendered on a completely different contextual and legal settings, with reference to the public interest being pitted against private or commercial interests, the Courts have, rightly tilted the scales of its consideration in favour of the public interest. In all the cases, there were clear findings by the Courts that the exercise of power by the State authorities was arbitrary, mala fide and was intended to defeat the public purpose. Therefore, drawing support from the decisions for opposing the present move for location of MCC can hardly carry any conviction with this Court.

139 A reading of the counter affidavit filed on behalf of the Coimbatore Corporation would show that construction of MCC is only in a minuscule portion in the public area earmarked for a park or recreational purpose, in the range of 10% of the total open area available. The SWM Rules, 2016, has clearly spelt out how scientifically the waste disposal at all levels, would be undertaken. While identifying the site, several stakeholders are to be made parties to the decision making process. Every provision of the Rules has been carefully drafted and designed leaving no room for any lacuna or shortcomings in the implementation. The Rules outlined the duties of various officials and State agencies from the stage of preparation of State policies, strategy and its implementation at the ground level. The Rules exhaustively address every minute part of the implementation process with the ultimate view of ensuring zero waste going to landfill. The types of waste have been identified and the remedial action delineated in detail in the Rules.

140 The Rules also assign duties and responsibilities to various hierarchial levels, in the State administration mandating the implementation of the State policy. The local authorities have been directed to frame bye-laws incorporating the provisions of the



rules and ensure timely implementation. From national to the village panchayat levels, various duties and responsibilities have been imposed on the authorities concerned. Most importantly, the rule perforce, impose on every 'waste generator' namely citizen, multifarious duties on his or her part towards its effective implementation. Each Agency or authority in the administrative set up is saddled with duties to oversee the implementation of the rules. The duties of the Central Ministry and the Central Pollution Board, duties of Secretary in-charge of Village Panchayats or Rural Development Department in the State and Union Territories, duties of the District Magistrate, District Collector or Deputy Commissioner, the duties and responsibilities of the Local Authorities and Village Panchayats have elaborately been adumbrated in the SWM Rules, 2016.

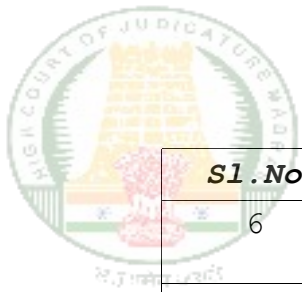
141 Apart from the above, there are also duties attached to State Pollution Control Board, on Pollution Control Committee, duties of manufacturers or brand owners of disposable products and sanitary napkins and diapers, duties of industrial units located within 100 kilometer from the refused derived fuel and waste to energy plants based on solid waste, criteria for duties regarding setting up solid waste processing treatment facility, criteria for waste and energy process. A time line for the implementation has also been drawn up under Rule 22 of the SWM Rules, 2016.

142 In terms of Rule 23, the State Level Advisory Body is also to be constituted which reads as below:-

23-State Level Advisory Body:-

[1]Every Department incharge of local bodies of the concerned State Government or Union Territory administration shall constitute a State Level Advisory Body within six months from the date of notification of these rules comprising the following members namely:-

Sl.No	Designation	Member
[1]	[2]	[3]
1	Secretary, Department of Urban Development or Local Self Government Department of the State.	Chairperson, ex-officio
2	One representative of Panchayats or Rural Development Department not below the rank of Joint Secretary to State Government.	Member, ex-officio
3	One representative of Revenue Department of State Government	Member, ex-officio
4	One representative from Ministry of Environment, Forest and Climate change, Government of India	Member, ex-officio
5	One representative from Ministry of Urban Development, Government of India,	Member, ex-officio



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Sl.No	Designation	Member
6	One representative from Ministry of Rural Development, Government of India,	Member, ex - officio
7	One representative from the Central Pollution Control Board	Member, ex - officio
8	One representative from the State Pollution Control Board or Pollution Control Committee	Member, ex - officio
9	One representative from Indian Institute of Technology or National Institute of Technology	Member, ex - officio
10	Chief Town Planner of the State	Member
11	Three representatives from the Local Bodies by rotation	Member
12	Two representatives from Census Towns or Urban Agglomerations by rotation	Member
13	One representative from reputed non Governmental Organization or civil society working for the waste pickers or informal recycler or solid waste management.	Member
14	One representative from a body representing industries, all the States or Central level	Member
15	One representative from waste recycling industry	Member
16	Two subject experts	Member
17	Co-opt one representative each from Agriculture Department and Labour Department of State Government	Member

[2]The State level Advisory Body shall meet atleast one in every six months to review the matters related to implementation of these rules, state policy and strategy on solid waste management and give advise to State Government for taking measures that are necessary for expeditious and appropriate implementation of these rules.

[3]The copies of the Review Report shall be forwarded to the State Pollution Control Board or Pollution Control Committee for necessary action.

143 The Rules provides for filing of annual report and the status of implementation of the rules at all levels and ultimately, the report will be referred to the Ministry of Environment during the meeting of the Central Monitoring Committee. **Rule 24** is extracted hereunder:-



discarded. Merely on the basis of foreseeing teething problems in the implementation of the policy, by itself cannot be professed to be opposed to the rights of citizens to have clean environment. It is like throwing the baby out with the bath water. There will always be issues in the real and actual implementation of the policy in terms of the SWM Rules, 2016, on the ground. But, at the same time, merely on the basis of possible shortcomings in the implementation, the comprehensive policy as unfolded in the text of SWM Rules, 2016, cannot be held to be bad in law nor its implementation can be held to be undermining the right of citizens to have free, unhindered enjoyment of open recreational space.

145 It is also relevant to refer to certain measures initiated by the State Government towards solid waste management, as pointed out by the learned Advocate General. In terms of G.O.Ms.No.128, dated 02.09.2013, Municipal Administration and Water Supply Department, a special Solid Waste Management Fund was proposed to be constituted with an initial sum of Rs.100 Crores for financing proposals in weak urban local bodies during 2013-2014. Under the said Government Order, a Project Sanctioning Committee was also constituted. Subsequently, by another G.O.Ms.No.105 dated 21.07.2015, administrative sanction was accorded for implementation of the centrally sponsored scheme 'Swachh Bharat Mission' [SBM]. The Government Order, in terms of the Mission objectives has brought all statutory towns to be covered under the Mission.

146 The Mission objectives in fact included 'Modern and Scientific Solid Waste Management', generate awareness about sanitation and its linkage with public health etc. A High Powered Committee was proposed to be constituted to oversee all facets of the implementation of the Mission Objectives. Subsequently, it transpired that a State High Powered Committee in one of its Meetings dated 27.12.2017 sanctioned more than 200 proposals under Solid Waste Management component. Similarly, the State High Powered Committee in another meeting held on 13.08.2018, proposed certain SWM Projects including installation of Micro Compost Centre. The above developments unequivocally demonstrate that the entire State is fully geared in translating the concept envisaged in the text into reality.

147 Despite, the rosy picture as conveyed, through the slew of measures initiated by the State authorities, yet the implementation on the ground, that there would always be a dichotomy between what is concerned on the text and the actual implementation is practice on the ground. The collective effort should be directed to ensure no laxity to be tolerated in the upkeep and the maintenance of the Compost Yard located in the open recreational area. When the Solid Waste Management is preferred to go hand in hand and in tandem with protection of clean environment linked to public health, the clean maintenance of the Yards is the fundamental duty of the authorities concerned. In fact, the learned Division Bench of this Court in **T.G.Rudhramurthi's case** has



148 The Hon'ble Supreme Court of India and also the other Courts have held, the right to have a lung space, a healthy and unpolluted atmosphere and environment is a part of the fundamental rights enshrined in Article 21 of the Constitution of India and also in terms of the provisions of the Directive Principles of the State Policy and the rights are held to be non-negotiable under any circumstances. The endeavour of this Bench is not to lay down any principle compromising such inalienable right to be enjoyed by all citizens. Every citizen is constitutionally entitled to have an unhindered or uninterrupted enjoyment of lung space reserved for them in terms of the scheme of the Act, 1971, read with the Combined Development Rules, 2019.

150 When the action of the State is being questioned and when it comes up for judicial review before the Constitutional Court, the touchstone of consideration is whether the objects which are sought to be achieved by the State have any nexus with public interest or not. As stated above, what was used to be exclusive concern and problem of civic authorities of disposal of solid waste has now become the concern of all the citizens of the State. Every citizen is a waste generator in terms of the SWM Rules, 2016 and every waste generator is responsible as such, for disposal of the waste. Therefore, there cannot be any legitimate opposition for locating the MCC in the park or open space or recreational area, wherever it is identified. The location of compost yard far away from the vicinity and eyesight of the public amounted to crass abdication of responsibility and duty by every citizen towards disposal of solid waste.

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of State Policy. "'Solid Wastes are the discarded left over of our advanced consumer society'" said the former President of the USA, Mr. Jimmy Carter. Disposal of the left over of every consumer that is every citizen, thus become the responsibility and duty of every citizen.

152 It is needless to mention that decentralisation of the processing of waste disposal is a civic imperative due to alarming shrinkage of urban space and also growing density of population in urban and semi urban areas. It is therefore, the bounden responsibility of every citizen to ensure all around clean environment which is possible and achievable only when the solid waste and the garbage disposal is handled scientifically at micro level in every neighbourhood.

153 It cannot be the case of the citizens or the people that no matter what the development going all around them and yet, no waste disposal facility to be made available near to them. Such attitude ought to change with the times we live in and the whole hearted participation of all the citizens will only make the policy implementation successful by a large measure.

154 By no stretch of legal standard, the location of MCC can be called "'development'" within the meaning of the scheme of the Act, 1971 read with the Combined Development Rules, 2019. The location of MCC is an idea, a modern concept. Therefore, decrying implementation of the modern concept of waste management as a Development as if the same would amount to reclassification of the land for a different user, is a conservative submission oblivious to the realities of the necessity of having decentralised waste disposal facilities to stay even with the modern conceptual development.

155 Moreover, there cannot be any selective enjoyment by the people. The people who have been benefited over the years by the rapid strides made on the economic fronts and enjoying the fruits of its boom and progress, resulting in relocation of people in the urban and semi urban areas have a collective responsibility and duty towards addressing the concerns of the civic problems. In fact, the root word of 'civic' is 'civis' a Latin word, meaning citizen. Hence, there is no gainsaying that the solid waste management is not the citizens' concern. As observed by the learned Division Bench in *T.G.Rudhramurthi's case*, opposition to the implementation of the SWM Rules, 2016, amounted to disservice to the community at large. A narrow and provisional interest may not be allowed to stymie the implementation of the visionary blueprint tackling solid waste disposal holistically with citizens' participation.

156 The above observations are not to be taken to be little or discredit the citizens' right to have healthy environment or a lung space for enjoyment of free and unpolluted air in ever dwindling urban space. The public interest of enjoyment of the



open recreational area does not stand relegated if an additional amenity is made available by locating decentralised waste disposal facilities. In the face of rampant development all around consuming the land area in the urban and semi urban space it has become the order of the day for the civic management to position waste disposal facilities nearer to the place of waste generation towards achieving the desired objective of SWM Rules, 2016, i.e., zero waste going to landfill. What is, therefore being implemented is only in the larger public interest without affecting the existing public interest and this Court does not think that opposition to such location can be considered as legitimate and legally acceptable.

157 Finally, when the rules itself have been framed under the Environment [Protection] Act, 1986, the underlying principle of the rules is mandated to provide better environment to the people at large. Therefore, the premise on which the opposition is edified has no foundational merit and therefore, the same is liable to be rejected.

158 The decisions of the Hon'ble Supreme Court and all other decisions did not have opportunities to consider the visionary concept of the SWM Rules, 2016. This Bench in its quest for an answer has to tread on the uncharted and virgin judicial terrain in the realm of policy implementation of Solid Waste Management. In the considered view of the Bench, the implementation of the SWM Rules, 2016, is not repugnant to any law or rules in force and it also is not affecting any public interest or any fundamental right of the citizens. On the other hand, the implementation of the SWM Rules, 2016 is to be read as a part of enforcement of the fundamental rights and duties as well, enshrined in Article 21 of the Constitution of India and in terms of Articles, 47, 48-A and Article 51-A[g] of the Directive Principles of State Policy. The right to have a free, clean environment include right to live in a clean neighbourhood, without garbage or solid waste. The policy implementation of solid waste management is thus oriented towards achieving the above constitutional goal, aimed at promoting larger than any other public interest to stay almost with the global outlook on the subject.

159 Therefore, location of MCC or Compost Yard in a park or open recreational space, can be held as a permissible deviation if it could be called as a deviation in the first place and the objections for its location, therefore have to be rejected, as the same are completely out of tune with the contemporary national thinking.

160 As regards the upkeep and maintenance of the compost yard is concerned, constitution of Advisory Committee is provided under Rule 23 and also the duties have been specified under various rule provision. The Rules also mandate the local authorities and village panchayats of census towns and urban agglomeration to frame bye-laws, incorporating the same within one year from the date of



the notification. This Bench has not been informed whether as on date, any bye-laws have been framed as per the SWM Rules, 2016 or not. In any event, as we expressed our reservation too, in the regular upkeep and foolproof maintenance of the Compost Yard, on the ground, we therefore, deem it fit to issue certain directions to the authorities for proper implementation of the SWM Rules, 2016, in the letter and spirit as well.

DIRECTIONS:-

161 Accordingly, the following directions are given to the State Government:-

- (1) The Government is directed to form a Committee at the State, District, Municipal and Panchayat levels with the officials concerned at each level, monitoring the implementation of the SWM Rules, 2016.
- (2) The Committees, apart from chosen officials, may also include a concerned member, from the neighbourhood wherever such MCCs or the Compost Yard is to be located.
- (3) The Committees are responsible for monitoring the upkeep and maintenance of MCCs and the Compost Yards and any issues relating to improper upkeep and poor maintenance of MCCs, or Compost Yards, the Committees should be empowered to intervene and take immediate remedial action.
- (4) Once the site for location of a MCC or other Compost Yard is identified and set up, thereafter, the objections regarding the proper maintenance of the park / recreational area from being spoiled by the operation of MCC, if raised, shall be addressed, with all earnestness.
- (5) The officials who are incharge of MCCs and Compost Yards shall ensure that the disposal facility does not fall into disuse, resulting in the place becoming a dumping yard of garbage, leading to the degradation of the entire open space toxically detrimental to the citizens enjoyment of clean environment.
- (6) Any negligence of officials towards proper upkeep and maintenance of MCC or Compost Yards, stern disciplinary action to be initiated promptly against the officials concerned and if negligence is proved, appropriate punishment to be imposed on them.
- (7) The Government is directed to issue a comprehensive Circular incorporating all necessary guidelines for the State/District/Panchayat Committees in implementation of the various facets of the SWM Rules, 2016, ensuring that the guidelines are strictly followed and implemented on the ground.

162 This Bench, in the conspectus of the above judicial discourse, answers the reference as follows.

163 Location of MCCs or the Compost Yard in the park/play field cannot be construed as Development in terms of the scheme of the Act, 1971 or the Combined Development Rules, 2019, and



therefore, any prohibition contemplated in the statutory rules and regulations does not apply to the implementation of the concept of solid waste management as envisaged in the SWM Rules, 2016.

164 The SWM Rules, 2016, are framed under the Central enactment, viz., the Environment [Protection] Act, 1986. The Rules thus prevail over the State laws to the extent of the implementation of the policies outlined towards solid waste management. Even otherwise, this Court does not see any palpable repugnancy between the SWM Rules, 2016 and the State laws.

CONCLUSION:-

165 In the exact words of reference, implementation of SWM Rules, 2016, fall within the 'permissible deviation' in larger public interest even in terms of the Tamil Nadu Town and Country Planning Act, 1971, read with the Development Control Rules framed thereunder.

166 The reference is answered accordingly.

-sd/-

07/10/2021

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TO

1 THE COMMISSIONER
COIMBATORE CORPORATION,
COIMBATORE-641001

2 THE SECRETARY TO GOVERNMENT,
MUNICIPAL ADMINISTRATION AND WATER SUPPLY
DEPARTMENT, FORT ST.GEORGE, CHENNAI 600 009

3 THE CHAIRMAN,
TAMIL NADU POLLUTION CONTROL BOARD,
GUINDY, CHENNAI - 32

Order
in

WA.NO.4078 OF 2019

AND CMP.NO.25523 OF 2019

Date :07/10/2021

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PM(12/10/2021)