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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.12.2021

PRONOUNCED ON : 23.06.2022

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.18058 of 2021

and

W.M.P.Nos.19285, 19286, 19288, 19289 and 23161 of 2021

1. Dr.M.A.M.Ramaswamy Chettiar of
Chettinad Charitable Trust
Rep. by its Managing Trustee Dr.A.C.Muthiah
Having its Registered office at
Chettinad House, Rajah Annamalaipuram,
Chennai - 600 028.

2. Dr.A.C.Muthiah
Trustee

3. Mr.AR.L.Sundaresan
Trustee

4. Mr.Jawahar Vadivelu
Trustee

5. Dr.Alagusundaram
Trustee

...Petitioners

All are having registered office at
Chettinad House,
Rajah Annamalaipuram,
Chennai - 600 028

-vs-

1. State of Tamil Nadu
Rep. by the Principle Secretary to the Government
Housing & Urban Development Department,
Chennai - 600 009.

2. The Chennai Metropolitan Development Authority
Rep. by its Member Secretary,
Thalamuthu-Natarajan Maaligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.



3. The Corporation of Chennai
Rep. by its Commissioner
Rippon Buildings,
Chennai - 600 002.

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4. Rajah Muthiah Chettiar Charitable and Educational Trust
Rep. by its Trustee, Mr.M.A.M.R.Muthiah
Rani Seethai Hall Building,
No.603, Anna Salai, Thousand Lights,
Chennai - 6000 006.

5. Mr.M.A.M.R.Muthiah
S/o. R.Sekkappa Chettiar
No.603, Anna Salai, Thousand Lights,
Chennai - 600 006.

6. Kumararani Tmt.Meena Muthiah
Trustee,
W/o. Late Kumararajah
Sri M.A.M.Muthiah Chettiar,
Chettinad House, Rajah Annamalaipuram,
Chennai - 600 028.

7. Mr.Ashwin C.Muthiah
Trustee
Chettinad House, Rajah Annamalaipuram,
Chennai - 600 028.

8. Mr.M.A.M.M.Annamalai
S/o. Late Kumararajahh,
Sri M.A.M.Muthiah Chettiar,
Chettinad House, Rajah Annamalaipuram,
Chennai - 600 028.

9. M/s. Chettinad Logistics Pvt., Ltd.,
Rep. by its Director Mr.S.P.Palaniappan,
Rani Seethai Hall Building, No.603, Anna Salai,
Chennai - 600 006.

...Respondents

(R9 impleaded vide order, dated 17.11.2021
made in W.M.P.No.26005 of 2021 in
W.P.No.18058 of 2021)

Writ petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent in connection with the order, dated 25.02.2021 in C3(S)730/2019 granting building plan permission to the fourth respondent in respect of land in R.S.No.4277/6 in Thandavarayan Street, Duraisamy Dinakaran Road, Rajah Annamalaipuram, Chennai - 600 028 and quash the same and direct the third respondent to cancel the



building permission and all approvals granted to the fourth respondent in pursuance of the planning permission, dated 25.02.2021 of the second respondent in favour of the fourth respondent.

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For Petitioners : Mr.R.Srinivas
for M/s.S.Sithirai Anandam

For Respondents : Mr.R.Shanmugasundaram,
Advocate General
assisted by
Mrs.V.Yamuna Devi,
Spl G.P for R1

Mrs.P.Veena Suresh
Standing counsel for R2

Ms.P.T.Rama Devi
Standing counsel for R3

Mr.M.S.Krishnan,
Senior counsel
for Mr.M.Praveen Kumar for R4

Mr.V.Raghavachari
for Mr.T.Balaji for R5

Mr.G.Masilamani,
Senior counsel
for Mr.T.Sathiyamoorthy for R6

Mr.T.Mohan
for Mr.Abinav Parthasarathy for R9

ORDER

The prayer sought for in this writ petition is for a writ of certiorarified mandamus calling for the records of the second respondent in connection with the order, dated 25.02.2021 granting building plan permission to the fourth respondent in respect of the land in R.S.No.4277/6 in Thandavarayan Street, Duraisamy Dinakaran Road, Rajah Annamalaipuram, Chennai - 600 028 and to quash the same and direct the third respondent to cancel the building permission and all approvals granted to the fourth respondent in pursuance of the planning permission, dated 25.02.2021 of the second respondent.

2. PLEADINGS :

The case projected by the writ petitioners as per the affidavit averments in support of the writ petition is as



follows :

2.1. That one Raja Sir Muthiah Chettiar (for the sake of easy understanding and brevity, herein after called as "father Muthiah") and his wife, one Meyyammai Achi had two sons, namely Kumararajah M.A.M.Muthiah Chettiar (for the sake of convenience and brevity, hence forth would be called as "son Muthiah") and Dr.M.A.M.Ramaswamy.

2.2. The father Muthiah created a Trust, namely, the fourth respondent, i.e., called Raja Muthiah Chettiar Charitable and Educational Trust by a Trust Deed, dated 14.03.1957 registered as Document No.213/57 on the file of the Registrar of Chennai. The father Muthiah executed a registered Gift Deed, dated 24.03.1960 in respect of half undivided share of the property by Document No.517/60 at SRO, Mylapore in favour of son Muthiah and the said settlement was accepted and acted upon. Thus the son Muthiah became the owner of the undivided 50% share in the entire property and he was in possession thereon.

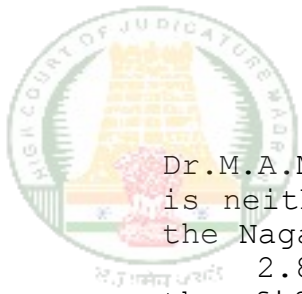
2.3.The said son Muthiah was the brother of Dr.M.A.M.Ramaswamy and son Muthiah died intestate on 24.01.1970. On the death of son Muthiah, his undivided half share in the entire property, i.e., about 63.50 grounds devolved equally on the sixth respondent who is the wife of the son Muthiah and late Meyyammai Achi, mother of the son Muthiah. Therefore, each inherited 31.75 grounds undivided share.

2.4.The said mother Meyyammai Achi died intestate on 01.03.1970, pursuant to which her share, i.e., 31.75 grounds undivided share devolved equally on her class-I heirs, i.e., her husband father Muthiah and her second son Dr.M.A.M.Ramaswamy, each inherited 15.89 grounds undivided share in the entire property.

2.5.The father Muthiah executed an registered deed, dated 28.03.1970 as Document No.635/1970 at SRO, Mylapore transferring his undivided half share of the entire property to the fourth respondent Trust. The remaining 50% undivided share belonging to son Muthiah was never transferred, conveyed or vested in the fourth respondent Trust in any manner.

2.6.The father Muthiah died intestate on 12.05.1984. Therefore on his death, his share in the entire undivided property devolved equally among Dr.M.A.M.Ramaswamy on one side and sixth and eighth respondents on the other. Each obtained an additional 7.9 grounds undivided share in the above property.

2.7.It is the further case of the petitioners that, the said property has not been partitioned at all and it remains an undivided extent of 127 grounds. Only in that circumstances, Dr.M.A.M.Ramaswamy founded a public Trust, namely, "Dr.M.A.M.Ramaswamy Chettiar of Chettinad Charitable Trust" the first petitioner on 09.02.2015 and he executed a Will on his own accord and volition as a last Will and testament on 18.02.2015, thereby bequeathed all his assets to the first petitioner Trust. The fifth respondent claims to be the adopted son of



Dr.M.A.M.Ramaswamy, however, the said adoption, dated 09.02.1996 is neither valid nor legal and it is contrary to the customs of the Nagarathar community.

2.8. During the life time of Dr.M.A.M.Ramaswamy, he disowned the fifth respondent and clearly declared that the aforesaid alleged adoption was void and not valid. Even the funeral ceremonies of the said Dr.M.A.M.Ramaswamy were not done by the fifth respondent as wished by Dr.M.A.M.Ramaswamy.

2.9. As per the Will, dated 18.02.2015 executed by late Dr.M.A.M.Ramaswamy, totally 23.77 grounds of undivided share in the said property has devolved on and got vested with the first petitioner on the death of Dr.M.A.M.Ramaswamy by operation of law. Therefore in order to get probate, the first petitioner applied for probate of the said Will, dated 18.02.2015 and the said case is pending as T.O.S.No.27 of 2021 in the original side of this Court.

2.10. While that being so, the respondents 4 and 5 are attempting to put up construction of a commercial building in about 41.630 grounds out of the wholesome property on its northern side having frontage on Thandavarayan Street. Since the 127 grounds undivided property where all the co-sharers have undivided shares of land and therefore, the respondents 4 and 5 cannot claim any exclusive or absolute right over the aforesaid property, where they are putting up construction, which is a portion of the suit A schedule property.

2.11. The petitioners are entitled to the undivided share in the entire property and the fourth respondent at the best can claim title only to undivided half share in the wholesome property.

2.12. While that being so, when the application was submitted by the fourth and fifth respondents, for construction of multi storied commercial building at the 41.630 grounds of land approximately out of the total 127 grounds, before giving any approval by the second and third respondents, the petitioners had given objection. Despite the said objection, the second respondent had given the planning permission by order, dated 25.02.2021.

2.13. In fact the fourth respondent has filed a Civil Suit in C.S.No.198/2016 in this Court against the sixth respondent and sixth respondent herein has filed a partition suit against the fourth and fifth respondents and others including the first petitioner in C.S.No.223/2021, which is also pending before this Court.

2.14. In these circumstances, having no other option or alternative efficacious remedy against the impugned order of planning permission, dated 25.02.2021 given by the second respondent, the petitioners have moved this writ petition with the prayer sought for therein.

3. The case which was projected by the fourth respondent, who



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3.5.C.S.No.198 of 2016 has been instituted by the fourth respondent Trust to cancel the lease deed, dated 29.10.2015 unilaterally executed by the then managing trustee



Dr.M.A.M.Ramaswamy of the fourth respondent Trust to and in favour of the society represented by the sixth respondent.

3.6.In the written statement filed by the sixth respondent in C.S.No.198 of 2016, the ownership of the fourth respondent Trust to the extent of land portion measuring all about 127 grounds was accepted or admitted by the sixth respondent.

3.7.Not having succeeded in her attempts to get order of injunction in C.S.No.198 of 2016, the sixth respondent instituted a suit in C.S.No.223 of 2021 in June 2021, wherein she sought for a partition and separate possession from the fourth respondent Trust and others, where also an application had been filed seeking for interim orders. Further the fourth respondent in the counter has raised a preliminary objection on the maintainability and locus standi of the petitioner Trust to file the present writ petition.

3.8.It is further stated that, the writ petition has been filed by the petitioners on the strength of a Trust Deed, dated 09.02.2015 and Will, dated 18.02.2015 alleged to have been executed by late Dr.M.A.M.Ramaswamy. Both the Trust Deed as well as the Will are disputed by the fifth respondent and the Will is also the subject matter of the dispute in T.O.S.No.27 of 2021. Dr.M.A.M.Ramaswamy was not in a sound disposing state of mind, therefore the writ petitioners 2 to 5 and 6th and 7th respondents herein had exploited the situation.

3.9.That apart, Dr.M.A.M.Ramaswamy was the managing trustee of the fourth respondent Trust, in that capacity, he had himself treated the entire property belonging to the fourth respondent by executing various documents in respect of the subject property like general power of attorney deed, dated 10.08.2012 in favour of R5, lease deed, dated 28.03.2011 and lease deed, dated 29.10.2015, which is impugned in C.S.No.198 of 2016, executed by the fourth respondent Trust represented by late Dr.M.A.M.Ramaswamy in favour of the society represented by the sixth respondent herein.

3.10.It has further been stated in the counter affidavit of the fourth respondent that, the claim that son Muthiah was the owner of the 50% of the undivided share in total 127 grounds at the time of his death on 24.01.1970 has surfaced for the first time after a period of 61 years. The family members including the sixth respondent were well aware that, the husband of the sixth respondent, i.e., son Muthiah had dedicated his 50% share in the entire property to the fourth respondent Trust under a Gift Deed, dated 09.03.1969.

3.11. It is further stated in the counter that, the fourth respondent Trust was established by the father Muthiah with his wife Rani Meyyammai Achi, their first son, son Muthiah, daughter in law and the sixth respondent and also their second son, Dr.M.A.M.Ramaswamy and their second daughter in law Smt.Sigapi Achi as donors by the registered Document No.213, dated 14.03.1957.



3.12.The entire property of 127 grounds was originally owned and possessed by father Muthiah. In the year 1960 vide Document No.513 of 1960, dated 24.03.1960, he bequeathed half undivided share in the entire property to and in favour of the son Muthiah. However in the year 1969, the father Muthiah as well as the son Muthiah had jointly gifted their respective undivided shares, by a deed, dated 09.03.1969, in the entire property to and in favour of the fourth respondent Trust and in fact, the fourth respondent Trust was put in possession on the very same day in the entire property. By virtue of the said dedication, the fourth respondent Trust had become the absolute owner of the subject property of 41.630 grounds also which forms part of the entire property of 127 grounds.

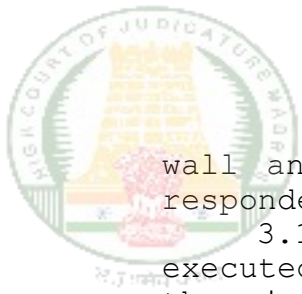
3.13.Since the son Muthiah pre deceased on 24.01.1970, of his father and on 01.03.1970, the father Muthiah's wife Rani Meyyammai Achi also died, the father Muthiah had given effect to the joint dedication made on 09.03.1969 with respect to his half share of the whole property to the extent of 150 grounds vide registered Document No.635 of 1970, dated 28.03.1970 before the SRO, Mylapore,

3.14.In the said document, dated 28.03.1970, the earlier document, dated 09.03.1969 has been specifically mentioned and what was intended and conveyed by both father Muthiah and son Muthiah of the entire property of 127 grounds to and in favour of the fourth respondent had been mentioned in the document, dated 28.03.1970.

3.15.In 1995, Dr.M.A.M.Ramaswamy acting in the capacity as the managing trustee of the fourth respondent, had executed a Gift Deed to and in favour of the third respondent, i.e., Chennai Corporation on 10.05.1995 gifting of about 6088.12 sq.mts land out of the entire property for the formation of road for public purpose.

3.16.These actions on the part of Dr.M.A.M.Ramaswamy were made as a managing trustee of the fourth respondent trust and execution of a Gift Deed makes it clear that, the sixth respondent and other family members had knowledge about the ownership of the entire 127 grounds, i.e., fourth respondent and only as a managing trustee of the fourth respondent, Dr.M.A.M.Ramaswamy acted upon.

3.17.Thereafter the society was started by the sixth respondent, namely Kumarasamy society and 10 grounds of land was allocated or leased out to the said society for starting a school for a monthly lease amount of Rs.12,000/-. However the school subsequently expanded slowly and become thoroughly commercial. It had started occupying a major extent of entire property to an extent of 76 grounds, therefore, totally it had occupied 76+10 totally 86 grounds out of the entire 127 grounds which is also a subject matter in C.S.No.198 of 2016. Therefore in order to protect the 41.630 grounds, i.e., the remaining land out of 127 grounds, the fourth respondent have put up a compound



wall and had leased out the said 41.63p grounds to the ninth respondent, namely Chettinad logistics.

3.18. While so, on 29.10.2015, Dr.M.A.M.Ramaswamy had executed a lease deed to the Kumararajah society represented by the sixth respondent vide lease deed in Document No.3203, which is impugned in C.S.No.198 of 2016 filed by the fourth respondent. In fact in the said lease, the entire property of 127 grounds was given to the society represented by the sixth respondent for a paltry sum of Rs.12,000/- per month.

3.19. The fourth respondent trust and its then managing trustee, Dr.M.A.M.Ramaswamy had given due approval with the consent of all the trustees of the fourth respondent trust to develop the land in R.S.No.4277/6, having an extent of 41.630 grounds, i.e., "the subject property" into a commercial complex. Towards the said process, as per the resolution of the fourth respondent trust, the managing trustee, Dr.M.A.M.Ramaswamy appointed the fifth respondent namely M.A.M.Ramaswamy Muthiah as the power agent of the trust vide registered general power of attorney, dated 10.08.2012.

3.20. Pursuant to which, the fifth respondent power of attorney on 07.09.2012 applied for planning permission to the second respondent. In the year 2013, the application submitted by the fourth respondent through the fifth respondent was returned / rejected, as against which the fourth respondent preferred appeal under Section 79 of the Tamil Nadu Town and Country Planning Act on 18.12.2013. Further documents were called for from the fourth respondent which were filed to the second respondent and on receipt of those documents, by considering the appeal filed by the fourth respondent, the first respondent Government allowed the appeal filed by the fourth respondent, following which, the second respondent imposed conditions and directions to remit a substantial sum of Rs.40 crores towards the statutory fees which were also paid by the fourth respondent. Thereafter the planning permission was granted by the second respondent for a five years from 25.02.2021 to 24.02.2026 by planning permission, dated 25.02.2021 and also the fourth respondent was directed to remit a sum of Rs.1,04,84,400/- towards building permission to the third respondent.

3.21. Only at this juncture, since this writ petition had been filed challenging the order of planning permission granted by the second respondent, dated 25.02.2021, the stand taken by the fourth respondent through the counter affidavit is that, the writ petition first of all is not maintainable, as the petitioners do not have the locus standi to file the writ petition as they have to file appeal against the order passed by the second respondent, CMDA and moreover the appeal filed by the fourth respondent since was allowed by the first respondent State Government, that is the basic order, pursuant to which only now the impugned planning permission was given by the



second respondent and therefore the Government decision should have been challenged without which, the consequential planning permission given by the second respondent cannot be challenged.

3.22. With these averments, the fourth respondent has filed the counter affidavit.

4. The stand taken by the sixth respondent as averred in the counter affidavit filed by her are as follows :

4.1. The sixth respondent claims to be one of the trustee of the petitioner trust and she adopts the averments and contention of the writ petitioner trust that, the trust is one of the co-owner of the land sought to be developed by the fourth respondent trust and the planning permission was given to the fourth respondent without the consent and notwithstanding the objection of the writ petitioners as well as the sixth respondent.

4.2. The sixth respondent also has taken a stand that, since her husband son Muthiah died on 24.01.1970 intestate, his undivided half share in the entire property of 127 grounds had devolved on his legal heirs namely the sixth respondent and her mother-in-law Meyyammai Achi equally, i.e., 1/4 share each by operation of law. She further states that subsequently by a registered Gift Deed, dated 28.03.1970, father Muthiah gifted his undivided half share of 75 grounds out of the total extent of 150 grounds of land comprised in R.S.No.4277, Mylapore village to the fourth respondent Trust. Therefore these documents prove that, the son Muthiah, i.e., husband of the sixth respondent got 75 grounds in R.S.No.4277.

4.3. She further states that, after the death of her mother-in-law Rani Meyyammai Achi who died intestate on 01.03.1970, her 1/4th undivided share in the said lands in R.S.No.4277 had devolved on her husband, father Muthiah and her younger son Dr.M.A.M.Ramaswamy, i.e., 1/8th undivided share in the total extent of 150 grounds each. After the death of the father Muthiah intestate on 12.05.1984, his 1/8th undivided share had devolved on her, as the wife of the pre deceased son, i.e., son Muthiah and on his younger son Dr.M.A.M.Ramaswamy, i.e., 1/16 share each in the total extent of 150 grounds.

4.4. She further states that, M.A.M.Ramaswamy died on 02.12.2015, leaving his last and final registered Will, dated 18.02.2015, where under, he had bequeathed all properties which belongs to him on the date of his death to the petitioner trust, namely Dr.M.A.M.Ramaswamy Chettiar of Chettinad charitable trust established by him. Thus 5/16th undivided share to the family of the sixth respondent and the petitioner trust is entitled to 3/16th undivided share in the entire 150 grounds amounting to 75 grounds for both herself and petitioners trust put together.

4.5. It was further averred by the sixth respondent in her counter that, since her father-in-law, i.e., father Muthiah was



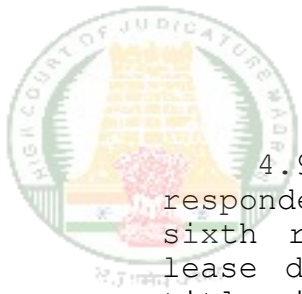
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very much interested in establishing educational institution and imparting education to all, the sixth respondent started a society in the year 1986 and the said society established and running a school, by name, Chettinad Vidhyashram in R.S.No.4277 with a consent and encouragement and co-operation of all the co-owners of the property. The school has grown from strength to strength during the last 35 years. Substantial buildings had been put up for the school with +2 standards. The school is run in consonance with the desire and vision of father Muthiah and son Muthiah in the same property owned and lived by them, which is very appropriate.

4.6.The fourth respondent without disclosing in what land they proposed to construct the building as they desired, for which they applied, in the undivided share between the co-owners, the fourth respondent applied to the CMDA, second respondent for grant of planning permission to develop 41 grounds in R.S.No.4277 out of the undivided total extent of 150 grounds. If the proposed building is constructed, that would be in the midst of the school premises, which is impermissible.

4.7. Already 8 grounds of land in S.No.4277 and an extent of 19 grounds in S.No.4288 were gifted under the Gift Deed in the year 1995 by the fourth respondent towards the Corporation of Chennai, the third respondent herein for laying a public road. Now after deducting the 8 grounds, the fourth respondent would be entitled for 75-8 only 67 grounds. The road frontage available for S.No.4277 is about 950 feet which should be divided between the fourth respondent, the petitioner and the sixth respondent family in proportion to their holding. Assuming without admitting that the road frontage has to be decided equally between the R4 on the one side and the petitioner and the R6 put together on the other side, the R4 would be entitled only to 475 feet of the road frontage, whereas, as per the proposed development, the fourth respondent has taken a road frontage of about 560 feet which is beyond the entitlement of the fourth respondent. Therefore on that ground also, the impugned planning permission ought not to have been given. On coming to know about the move made by the fourth respondent to get such a planning permission from the second respondent, CMDA, the sixth respondent made written objections. However, the same was not considered by the second respondent and they proceeded to give the planning permission through the impugned order.

4.8.It is further stated by the sixth respondent that, relying upon an unregistered agreement of Gift, dated 09.03.1969 executed by father Muthiah and son Muthiah jointly, the fourth respondent cannot claim the ownership of the entire 127 grounds or 150 grounds and in this regard, the 09.03.1969 document since did not comply with Sections 122 and 123 of the Transfer of Property Act and Section 17 of Registration Act, such a document cannot be relied upon. Therefore the fourth respondent cannot claim ownership of the entire 127 grounds.



4.9. Assuming that if a lease has been executed by the fourth respondent on 29.10.2015 in favour of the society, where the sixth respondent is the secretary, the execution of the said lease deed or the acceptance of the same shall neither confer title in favour of the fourth respondent in respect of 127 grounds nor prevent the lawful co-owners from claiming title to a portion of the land. The lease is only subservient to title.

4.10. The sixth respondent has further stated in the counter that, she had already filed C.S.No.223 of 2021 before this Court, seeking for a partition and separate possession of her share in respect of the said land in R.S.No.4277. The fourth respondent trust filed C.S.No.198 of 2016 challenging the lease deed, dated 29.10.2015 in favour of the society. The sixth respondent also stated that, she had filed A.No.334 of 2021 praying for interim injunction against the fourth respondent not to put up construction in the 41 grounds of land pending disposal of the suit in C.S.No.198 of 2016. Since these proceedings are pending before this Court, no further action can be taken by the fourth respondent to put up any construction, pursuant to the impugned planning permission. Therefore supporting the case of the writ petitioners, the sixth respondent has filed the counter and taken a stand as stated supra.

5. The ninth respondent, namely, M/s. Chettinad Logistics Pvt., Ltd., though was initially not arrayed as a party in the writ petition subsequently it had been impleaded as one of the party respondents. That is how R9 has come into the picture who filed counter affidavit supporting the case of R4 and R5.

6. As per the averments made in the counter affidavit filed by the 9th respondent, it claims that, in respect of the remaining land of 41.630 grounds out of the total 127 grounds, i.e., after deducting the 86 grounds, which is in possession of the sixth respondent and her society to run the school referred to above, a lease was executed by the fourth respondent through its erstwhile Managing Trustee, late Dr.M.A.M.Ramaswamy on 28.03.2011 for a monthly rent of Rs.2lakhs for use and occupation of the land in 41.630 grounds. Initially the lease period was 6 years and it was mutually agreed between 9th respondent and fourth respondent trust that, on the expiry of the lease, the fourth respondent trust agreed to extend the lease, on condition that, the land in 41.630 grounds be handed over to the fourth respondent for the purpose of putting up a commercial complex, on which the fourth respondent trust agreed to provide proportionate floor space to the 9th respondent company for the use and occupation as a lessee. The said terms were agreed by the ninth respondent company herein and accordingly, the lease arrangement was extended by another six years beginning from 01.06.2017.



7.It is the further averment of the ninth respondent in the counter affidavit that, since the sixth respondent attempted to interfere with the peaceful possession, it lead to the ninth respondent company herein to file a suit in O.S.No.201 of 2016 on the file of the VI Assistant City Civil Judge, Chennai. The said Court granted injunction in favour of the ninth respondent, which was challenged by way of Civil Miscellaneous Appeal filed by the sixth respondent, where also the Appellate Court confirmed the order passed by the trial Court and that has become final, therefore, there is a injunction operating against the sixth respondent restraining the sixth respondent from interfering with the peaceful possession of the 9th respondent in the said land, i.e., 41.630 grounds as a lessee as per the lease deed, dated 28.03.2011 extended with effect from 01.06.2017 for further six years, i.e., up to 2023.

8.By stating these averments, the 9th respondent filed the counter affidavit, supporting the case of the 4th and 5th respondents.

9.The second respondent, i.e., Chennai Metropolitan Development Authority, who issued the planning permission to the fourth respondent, which is impugned herein, has made the following averments in the counter affidavit filed :

9.1.The fourth respondent Trust represented by its general power of attorney, the fifth respondent applied for the planning permission for the proposed construction of High Rise Building for commercial purpose consisting of extended double basement floor and ground plus 14 floors for shop, hotel, rooms and office at Thandavarayan Street, Duraisamy Dinakaran Road, Rajah Annamalaipuram, Chennai - 600 028, being R.S.No.4277/6, Block No.1, Mylapore village.

9.2.They further stated that, earlier the planning permission application submitted by the fourth respondent for the proposed construction was examined and refused by letter, dated 18.11.2013. Against the refusal order, the fourth respondent preferred an Appeal under Section 79 of the Tamil Nadu Town and Country Planning Act 1971. The Appeal was presented before the Appeal Committee. Thereafter on 03.05.2016, a letter was received from the Secretary of the Kumararajah Muthiah School of Traditional Arts and Crafts Society, i.e., the sixth respondent along with the copy of the lease deed, dated 29.10.2015 with an objection that, the fourth respondent shall not be given planning approval. The said objection had been forwarded to the Government in Appeal No.D2/2334/2014, dated 22.08.2016.

9.3.Thereafter the Appeal Committee took note of clause 8 of



the Trust Deed, dated 14.03.1957 which entitle the trustees to sell, transfer or otherwise alienate any of the shares set out and described in the schedule and it shall be treated as a corpus of the trust and invested in such securities and in such manner as the trustees may decide. Considering these aspects with detailed deliberations, the committee allowed the appeal with a direction to reserve the required OSR and remitted the issue back to the CMDA, i.e., the second respondent to proceed further by taking action as decided by the Appeal Committee.

9.4.The fourth respondent resubmitted the planning permission application and the same was examined and placed before the 253rd MSB panel meeting held on 13.09.2019 and the planning permission application resubmitted was forwarded to the first respondent Government on 05.11.2019 along with the recommendation of MSB panel and also sought for the Government to clarify whether the payment of the OSR charges in lieu of reservation of OSR land is applicable to the said case and also to further clarify, whether the appeal decision implies that the unauthorised subdivision is regularisable.

9.5.Thereafter the first respondent, i.e., the Government, vide letter dated 18.11.2019 allowed the appeal with a direction to reserve the required OSR area and to regularise the unauthorised sub division. As per the School Education Department G.O.Ms.No.235, dated 24.05.1997, the minimum extent of the land required for Higher Secondary School within the city area is only three acres and which is satisfied by the residuary school site which is approximately six acres, as a whole site under reference abuts public road which is more than 18 metre wide, therefore such a proposal can be approved. Thereafter the fourth respondent has preferred an Appeal on 07.01.2020 with respect to OSR charges and the said appeal was also allowed by the Government issuing orders vide G.O.Ms.No,74, dated 20.05.2020 by the first respondent and directed the second respondent to collect the OSR charges in lieu of OSR under the provisions of rule 41(1) (b) of the Tamil Nadu Combined Development and Building Rules 2019 (in short, "the Development Rules") at the time of issuance of planning permission.

9.6.Since the applicant has complied all the Government conditions and remitted the necessary charges, the final plan, i.e., the planning permission in permit No.13259, dated 25.02.2021 was issued in Letter, dated 25.02.2021, which is valid up to 24.02.2026.

9.7.By citing the aforestated averments, the second respondent, i.e., CMDA, justifies the planning permission granted to the fourth respondent.

10.The first respondent has filed an adoption counter affidavit adopting the stand taken by the second respondent in its counter affidavit and it sought for leave of this Court to permit the first respondent to adopt the counter affidavit of



the second respondent insofar as it concern to the first respondent and also to treat and read the same as part and parcel of the adoption counter affidavit.

11. This is how the parties to the writ petition have filed their respective pleadings.

12. ARGUMENTS :

Before delve into the arguments advanced by the learned respective counsels appearing for the parties, for the sake of convenience, the learned counsels who made arguments either opposing or supporting the impugned order can be brought under two broad categories.

13.The writ petitioners and sixth respondent can be categorised as Group-A, as the sixth respondent fully supports the case of the writ petitioners.

14.Like that, the fourth and fifth respondents as well as the ninth respondent can be categorised as Group-B as the fourth respondent's case is supported by the fifth and ninth respondents.

15.The official respondents, especially R2 and R1 want to sustain the impugned order, therefore, they can also be treated as belongs to Group-B and the arguments made by the respective learned Senior counsels and counsels appearing for the parties would be dealt with accordingly.

16. Arguments by the A-Group :

The argument was lead by Mr.G.Masilamani, learned Senior counsel appearing for the sixth respondent and Mr.R.Srinivas, learned counsel appearing for the writ petitioners also argued extensively.

17.In order to sum up the arguments made on behalf of A-Group, the following summary of arguments were noted :

17.1. There was a Trust created among the family members of father Muthiah on 14.03.1957.

17.2. There was a Gift Deed on 24.03.1960, under which, the father Muthiah bequeathed half undivided share of the entire property at S.No.4277 and 4288 at Sub Registration of Mylapore and Registration District of Chennai to son Muthiah.

17.3.Only in the year 1970, there was a Deed of Declaration of Trust executed by father Muthiah, under which, only half share, i.e., 75 grounds of the total area of 150 grounds were transferred to the fourth respondent Trust, thereby the



remaining 50%, i.e., 75 grounds out of the total 150 grounds in the said two survey numbers belongs to the son Muthiah as per the 24.03.1960 Gift Deed of father Muthiah, has never been transferred to the fourth respondent, as before this date, i.e., 28th day of March 1970, the son Muthiah on 24.01.1970 died intestate.

17.4. Therefore 75 grounds of the land, i.e., 50% of the total land has never been transferred to the fourth respondent trust, therefore the said 75 grounds devolved to the family members like sixth respondent, mother of the son Muthiah and subsequently after the demise of mother of son Muthiah, that share devolved to son Muthiah's brother Dr.M.A.M.Ramaswamy.

17.5. While that being so, on 18.02.2015, a Will was executed and registered by Dr.M.A.M.Ramaswamy in Document No.6 of 2015 at SRO Mylapore, under which, the property, i.e., the share of the said M.A.M.Ramaswamy had been bequeathed to the first petitioner Trust.

17.6. The 09.03.1969 document is an unregistered agreement to gift the half share of the entire property of the father Muthiah and the remaining half share of son Muthiah towards the fourth respondent Trust, however, subsequent to the 09.03.1969 document since the son Muthiah died on 24.01.1970, only the father Muthiah executed the registered document in 1970, i.e., on 28.03.1970, hence, the fourth respondent cannot rely upon such an unregistered document, dated 09.03.1969.

17.7. As per Sections 122 and 123 of the Transfer of Property Act, the gift was defined and how the transfer to be effected has been made.

17.8. Under Section 123 of the Act, for the purpose of making a Gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by atleast two witnesses.

17.9. By relying upon these provisions, the learned counsels appearing for A-Group submitted that, since there was no registered document, as the document, dated 09.03.1969 is only an unregistered document, under which, the gift cannot be transferred, i.e., the gift of the land, half share belong to the son Muthiah has not been transferred or the transfer has not been effected to and in favour of the fourth respondent.

17.10. They also submitted that, every registerable document must be registered under Section 17 of the Registration Act and without having a registered document no ownership can be transferred and therefore, based on 09.03.1969 document no ownership can be transferred even by way of gift to and in favour of the fourth respondent as it runs contra to Section 17 of the Registration Act.

17.11. The fifth respondent before making an application to the second respondent seeking planning permission must have understood that, 50% of the entire property has not been conveyed to the fourth respondent trust. In this context, it is



the further submission of the learned counsels that, under Rule 6 of the Tamil Nadu Combined Development and Building Rules, 2019 (in short "the Development Rules") the application should be filed by all the owners to the CMDA.

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17.12. They also submitted that the term co-owner as has been explained by Ramanathar Iyer's "Law Lexicon" makes it clear that, co-owner is as much as owner of the property, he owns every part of the composite property. Therefore the application should have been filed by all the co-owners, since it has not been filed as such and it was only filed by the fifth respondent claiming to be the power of attorney holder of the fourth respondent, it was not filed bonafidely.

17.13. In the year 1995, a Gift Deed was executed by the then Managing Trustee of the fourth respondent of 27 grounds to and in favour of the third respondent for forming the road. The 27 grounds must be deducted only from 75 grounds, i.e., half share belonging to the fourth respondent, therefore, the remaining area is only 48 grounds. Hence, it cannot be construed that, the fourth respondent can claim ownership for the entire stretch of 150 grounds or 127 grounds as the case may be.

17.14. The title cannot flow by mere conduct of the parties unless and until there are instruments in writing, registered duly under the Registration Act, then only the title would flow from such documents and not by mere conduct of parties. They also submitted that, since they are co-owners, hence they have every right and locus to question the impugned order.

17.15. Moreover, they also submitted that, by the Will, dated 18.02.2015, the part of the property since has come to the petitioner Trust and since the petitioner Trust also becoming a co-owner of the entire stretch of the property, in order to protect the property being a legatee, the petitioner has got every right. Hence, the writ petition is very well maintainable.

17.16. The lease executed by R4 to and in favour of R9, i.e., Chettinad Logistics is an unregistered document and moreover once the lease expires, it cannot be automatically extended without the concurrence of the co-owners and therefore in this regard, since the Civil Suit filed by the ninth respondent in O.S.No.201 of 2016 is pending, the lease deed of 2015 made in favour of the society represented by the sixth respondent should be read down. When a partition suit is pending, it is not entitled for any party to develop the property in such a fashion as proposed by the fourth respondent to develop a multi storied commercial building.

17.17. They also submitted that, the road width abutting the



property in question is only 950 feet in the Thandavarayan Street, out of which, if the petitioner Trust and sixth respondent and others who are legal heirs of the son Muthiah are entitled for 50% of the entire property, they are entitled to 425 feet of frontage. Therefore the remaining 425 feet alone, for which the fourth respondent entitled to, however, now as per the proposed plan 560 feet of the frontage has been taken by the fourth respondent which is impermissible.

17.18. By virtue of this, since larger length of the frontage is proposed to be taken by the fourth respondent for the proposed multi storied building, the value of the remaining land, where the school of the sixth respondent is located and other connected land would get diminished.

17.19. They also submitted that more than 8000 students are studying in the school run by the sixth respondent and therefore, priority must be given to educational activities, which has already been developed. Therefore, abutting the said school environment if such a multi storied commercial buildings are developed, that would create a serious environmental issue and in this regard, no proper study for traffic issue and pollution issue was conducted before the planning approval was given by the second respondent. Rule 16 of the 2019 Development Rules speaks about the primary residential zone, where no permission under rule 16(6) can be given and no opportunity was given either to the writ petitioners or to the sixth respondent being the co-owner before deciding the application submitted by the fourth respondent for getting the plan permission.

17.20. If there is no remedy for the writ petitioners to file a writ petition herein, there would be no remedy for them. Hence, they submitted that the maxim "ubi jus ibi remedium" would rescue the cause of the writ petitioners.

17.21. The dedication of the property to any charitable trust without having a valid registered document may be accepted only in case of such dedication to be made to HR & CE or Hindu Trust and not for any other Trust like the fourth respondent. The alternative remedy plea raised by the fourth and fifth respondents as well as the ninth respondent would not be held to be a valid reason to entertain the case of the said respondents, because, since against the co-owners the planning permission has been given by the second respondent through the impugned order, hence they have every right to challenge such planning permission before this Court.

17.22. In the impugned order, no proper reasons have been given as to why, despite the earlier rejection of the application of the fourth respondent, subsequently, the resubmitted application was accepted and therefore on that



ground also, the impugned order is liable to be interfered with. There was total non-application of mind on the part of the second respondent before granting the planning permission, they contended.

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17.23. Irrelevant factors are taken into consideration by the Government, ergo it is arbitrary and violation of Article 14.

17.24. If at all the Government has taken any decision, that should have been by way of Government Order, not by way of letter. The Government in fact failed to exercise their power in proper perspective under Section 79 of the Tamil Nadu Town and Country Planning Act.

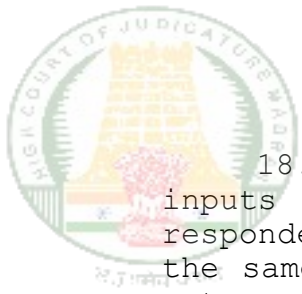
17.25. The 19.07.2019 order of the Government is not under Section 79 of the Act, therefore it is non-est.

17.26. By making all these detailed submissions, learned Senior counsel and counsel appearing for A-Group have relied upon number of Judgments in support of their contention.

18. B-Group arguments was lead by learned Senior counsel Mr. M. S. Krishnan, Mr. V. Raghavachari and Mr. T. Mohan also supported the cause of the fourth respondent. Along with learned Senior counsel, they made the following submissions :

18.1. As per the Trust Deed, dated 14.03.1957, there were five donors, i.e., five trustees, all are family members. On 24.03.1960, there was a Gift Deed, under 09.03.1969 Deed of Gift, 150 grounds were dedicated to the R4 trust including the subject property. On 28.03.1970, it was declared to be the trust with the properties, on 10.05.1995 it was a Gift Deed to the Corporation of Chennai for around 30 grounds. At present six people are trustees in the fourth respondent. Out of 127 grounds, 86 grounds are occupied or in possession of the society / sixth respondent / school. The remaining is 41 grounds, for which on 28.03.2011, lease deed was executed by the fourth respondent to the ninth respondent. On 02.08.2012, there was a Board of Trustees Meeting of the fourth respondent, pursuant to which, an unanimous decision was taken to develop the property at 41 grounds, pursuant to which, power of attorney was executed by the Managing Trustee of the Trust, M. A. M. Ramaswamy to the fifth respondent on 10.08.2012 for taking all steps including making application to the CMDA to develop the said property of 41.60 grounds.

18.2. Pursuant to the said decision taken by R4 Trust, the fifth respondent made application as a power of attorney of the fourth respondent to the second respondent.



18.3. When the said application was in process based on the inputs supplied by the fourth respondent Trust, the second respondent CMDA having considered the application, has returned the same as the sub-division made in respect of 41 grounds was not permissible, because, already the entire 127 grounds have been shown as a single property, wherein already permission sought for by the fourth respondent for construction of certain buildings for the purpose of locating the school of the sixth respondent were granted.

18.4. They also submitted that, subsequently, further inputs were supplied by the fourth respondent to the CMDA as to how the 41 grounds become a separate property as in between the 86 and 41 grounds, there is a compound wall and moreover the school which runs in the 86 grounds of land requires only three acres of land as per the norms of the Government and therefore, this 41 grounds can be independently developed by putting up a multi storied commercial complex, in order to augment the revenue of the trust towards the fulfilment of the object of the Trust and hence, the fourth respondent through the fifth respondent sought for reconsideration by preferring an appeal to the first respondent.

18.5. The first respondent's appeal filed against the order rejecting the proposal of the CMDA was placed before the Appeal Committee of the Government and they passed an order on 19.07.2019 in Letter No.1918/ UD-I/2014-7. The Government stated that, the Appeal Committee took note that clause 8 of the trust deed, dated 14.03.1957 entitles the transfer or otherwise alienate any of the shares set out and described in the schedule thereunder provided. However, that the amount realised on such sale or conversion or in the event of any of the company's going into the liquidation in lieu of the said shares, shall be treated as the corpus of the trust and invested in such securities and in such manner as the trustees may decide. After detailed deliberation, by taking into account clause 8 of the Trust Deed, the Committee decided to allow the appeal filed by the fourth respondent as against the order of the CMDA and with a direction to reserve the required open space reservation, remitted the issue back to the second respondent to pursue the matter further as per the decision as decided by the Appeal Committee.

18.6. In the meanwhile since the sixth respondent has filed an objection to the second respondent, not to process the application of the fourth respondent, that was also forwarded as per the stand taken by the CMDA to the Government, where the Appeal Committee having considered all these aspects only, allowed the appeal filed by the fourth respondent by letter of the Government, dated 19.07.2019.



18.7. The learned counsels would further contend that, though attempt had been made by the sixth respondent in filing application after application in the original suit filed by the ninth respondent before the City Civil Court as well as in the Civil Suit filed by the fourth respondent challenging the lease deed executed by the Dr.M.A.M.Ramaswamy to and in favour of the society / sixth respondent for the entire 127 grounds and also in the Civil Suit filed by the sixth respondent herself seeking partition of the property in question, all those Interlocutory Applications were ultimately ended against the sixth respondent as well as the writ petitioner Trust. Therefore by abusing the process of law, they once again approached this Court by filing the present writ petition, challenging the order of the second respondent granting planning permission to the fourth respondent.

18.8. Learned counsel would also contend that, as per the agreement of Gift Deed, dated 09.03.1969, the entire property, i.e., 150 grounds including the 127 grounds which is a larger extent, out of which the subject property of 41 grounds is located, were dedicated to the trust created in this regard dated 14.03.1957. The half share of father Muthiah and half share of son Muthiah were jointly bequeathed in favour of the fourth respondent trust by the said document, dated 09.03.1969.

18.9. However, at that time, since the parties to the gift deed wanted to get stamp duty exemption and they were awaiting orders in this regard from the Government, the registered document was not made and therefore they executed the said agreement to the Gift both by the father Muthiah and son Muthiah jointly to and in favour of the fourth respondent on 09.03.1969.

18.10. They would further submit that, the son Muthiah died on 24.01.1970 and the mother of the son Muthiah Meyyammai Achi also died on 01.03.1970. Therefore while the Gift Deed was registered by the father Muthiah on 28.03.1970 to and in favour of the fourth respondent trust, the undivided half share in about 150 grounds of land in R.S.No.4277 was executed, wherein specifically it was mentioned that, both father Muthiah and son Muthiah decided to gift the entire 150 grounds to and in favour of the fourth respondent, i.e., reflected in the Document, dated 09.03.1969. Moreover under the said document dated 09.03.1969, the very fourth respondent has been put in possession of the entire land and these factors have been suppressed by the petitioners while filing the present writ petition before this Court, they contended.

18.11. The learned counsels also submitted that, insofar as the entire 127 grounds are concerned, that has been gifted towards the fourth respondent trust and which was put in possession by the 09.03.1969 document itself.



18.12. Assuming without, admitting that the said document, dated 09.03.1969 is an unregistered document, the 28.03.1970 document being a registered one has ratified the gift, that was executed to and in favour of the fourth respondent by both father and son Muthiah on 09.03.1969 itself and based on which, every party of the family have started acting upon.

18.13. That is the reason why the fourth respondent through the then managing trustee M.A.M. Ramaswamy permitted the sixth respondent to start a society and to run a school in 10 grounds of land. However, subsequently, the sixth respondent / society started occupying the 86 grounds including the 10 grounds. Therefore a compound wall was put up by the fourth respondent separating the land used by the sixth respondent for the school and allied purpose as well as the remaining land, i.e., 41 grounds which has been given by way of lease by the fourth respondent trust for a period of six years to the ninth respondent by lease deed, dated 28.03.2011.

18.14. On 10.08.2012, the fourth respondent appointed the fifth respondent as its power agent, pursuant to the resolution of the trust, dated 02.08.2012 for the purpose of developing the 41 grounds to augment revenue to the trust. Therefore immediately the fifth respondent being the power agent of the fourth respondent trust, in order to execute the resolution passed by the fourth respondent, dated 02.08.2012 had applied for planning permission to the CMDA, which was processed for long years and ultimately in 2019, the Government allowed the appeal filed by the fourth respondent, pursuant to which on 25.02.2021, now the planning permission has been given, which is impugned in the writ petition.

18.15. Therefore at no stretch of imagination, it can be argued that, the entire property of 150 grounds including the property of 127 grounds, out of which present subject matter is 41 grounds have not been gifted to the fourth respondent trust. All the trustees have acted upon only as per the aforesaid arrangements which has been reflected in various instruments and the very sixth respondent being one of the trustees of the trust even in the year 1957, at the time of the trust was formed, having all the knowledge about these developments had only taken the 10 grounds initially and occupied the remaining 76 grounds only with the consent and permission or lease deed of the fourth respondent trust, thereby the title and possession of the fourth respondent by action of the sixth respondent was accepted.

18.16. They further submitted that, the present issue to claim co-ownership of the entire property surfaced only in the year 2015, as at the time since there were some strained relationship between the fifth respondent and his father, the erstwhile managing trustee of the fourth respondent,



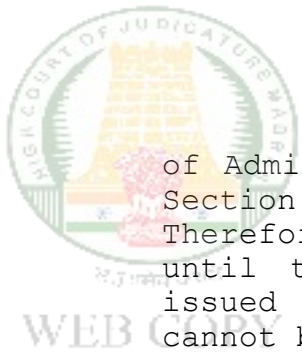
Dr.M.A.M.Ramaswamy.

18.17. By sudden swift of activities, on 09.02.2015, Dr.M.A.M.Ramaswamy constituted a trust, i.e., the first petitioner herein and on 18.02.2015, the said M.A.M.Ramaswamy said to have executed a Will, where under he bequeathed his properties both movable and immovable in favour of the first petitioner and on 29.10.2015, the very same Dr.M.A.M.Ramaswamy on behalf of the fourth respondent without any concurrence or support or permission or resolution of the fourth respondent, had executed a lease deed to and in favour of the society represented by the sixth respondent in respect of entire 127 grounds of R.S.No.4277 part, i.e., R.S.No.4277/7 for an annual lease rent of Rs.1,20,000/- and within a short period, Dr.M.A.M.Ramaswamy died on 02.12.2015.

18.18. Therefore the learned counsels would contend that, the circumstances and situation, where these documents were created on 09.02.2015, 18.02.2015 and 29.10.2015 is under great suspicion, in view of the death of Dr.M.A.M.Ramaswamy shortly, that is on 02.12.2015. That is the reason why the fourth respondent has filed Civil Suit in C.S.No.198 of 2016 challenging the lease deed, dated 29.10.2015 said to have been executed by Dr.M.A.M.Ramaswamy in favour of the society represented by the sixth respondent by laying the suit on 28.03.2016.

18.19. The learned counsels would also submit that, in the said suit as well as in the subsequent suit filed by the sixth respondent, the sixth respondent filed Interlocutory Application seeking for order restraining the fourth respondent from proceeding with the planning permission and construction of the multi storied building as proposed and in that attempt, they have not become succeeded.

18.20. The learned counsel also submitted that, insofar as the legal plea raised by the writ petitioners side that, under Indian Succession Act, i.e., in Section 211, the executor or administrator of a deceased person is his legal representative for all purposes and all the property of the deceased person vest in him as such, therefore the moment the Will has been executed by Dr.M.A.M.Ramaswamy on 18.02.2015, the portion of the property belongs to him bequeathed in favour of the petitioner trust is vest with them, therefore the petitioner has every right and locus to oppose and challenge the move made by the fourth respondent to get planning permission to develop part of the the property, i.e., 41 grounds is concerned, such a right cannot be automatically claimed by the writ petitioners, especially the first writ petitioner trust without having the said Will get probated in the Court of law and granted Letters



of Administration of the Will, this has been contemplated under Section 213 of the same Act, i.e., Indian Succession Act. Therefore the learned counsels would contend that, unless and until the Will is probated and Letters of Administration is issued in favour of the first writ petitioner, such a plea cannot be raised.

18.21. They would also submit in this regard that, the very O.P filed in this regard by the first writ petitioner to get probate of the Will since has been contested it has become Testamentary Original Suit and it is pending before this Court. Hence, as of now absolutely no claim whatsoever can be made by the writ petitioners in respect of 41 grounds, for which planning permission has been given in favour of the fourth respondent. Therefore the learned counsels contended that the petitioners have no locus to challenge the impugned planning permission given by the second respondent.

18.22. Insofar as the half share of the entire property of 150 grounds as claimed by the writ petitioners and sixth respondent side that, only father Muthiah's property has been transferred or bequeathed in favour of the fourth respondent Trust by the registered Deed, dated 28.03.1970 but not the half share belongs to the son Muthiah and in view of 09.03.1969 unregistered document, the half share of the son Muthiah cannot be transferred in view of the provisions contained in the Transfer of Property Act as well as the compulsory registration provision available in Section 17 of the Registration Act, learned counsels would contend that, those issues cannot be canvassed in this writ petition, because, the very right of the writ petitioners as well as the sixth respondent can only be decided conclusively in the partition suit filed by the sixth respondent which is pending before this Court and also in the Testamentary Original Suit filed by the first writ petitioner which is also pending before this Court.

18.23. Therefore the learned counsels would contend that, the attempt now made by the writ petitioners supported by the sixth respondent is nothing but an abuse of process of law.

18.24. The learned counsel would also submit that, insofar as the Development Rules are concerned, which is the governing statute as to how the planning permission application are to be dealt with by the second respondent CMDA, Rule 6 enables any owner, lessee or power of attorney holder to make an application and it would be treated only as an applicant and based on the prima facie documents submitted by such applicant, such planning permission application would be processed under the said rule and in this regard, though initially the planning permission application submitted by the fourth respondent was rejected by



the second respondent, on appeal, fourth respondent got succeeded and in this regard, the Government atleast two times has passed orders in favour of the fourth respondent as in the first time, the appeal was allowed, directing the CMDA to process and pursue the application of the fourth respondent for sanction of planning permission and in second time, the open space reserve charges in lieu of the open space reserve was also permitted to be paid including the unauthorised such division made within the property and therefore these decisions made by the Government by exercising its power vest in them under the Tamil Nadu Town and Country Planning Act has so far not been questioned by the writ petitioner, therefore, the consequential order of the planning permission given by the second respondent, which is impugned herein cannot be questioned as there has been no independent action made by the CMDA without the appeal of the fourth respondent being allowed by the Government.

18.25. Therefore the learned counsel appearing for the fourth, fifth and ninth respondents have made a plea that, because of this writ petition, where interim orders were granted, the process of making the construction pursuant to the impugned planning permission is getting delayed, thereby the fourth respondent being a charitable trust is incurring loss and hence, they seek dismissal of this writ petition.

19. On behalf of CMDA, Mrs.Veena Suresh, learned standing counsel appeared who has relied upon the counter affidavit filed by the CMDA and also the typed set of documents which is borne out of records of the CMDA pertaining to the present issue. She would submit that, the planning permission application are to be dealt with under the Tamil Nadu Combined Development and Building Rules, 2019 as well as the provisions of the Tamil Nadu Town and Country Planning Act, 1971. She would submit that, the application was submitted by the applicant, namely the fifth respondent on behalf of the fourth respondent for obtaining planning permission under rule 6 of the Development Control Rules.

20. Along with the said application, though certain documents were filed, the CMDA by relying upon the back file in this regard, had come to the conclusion that, the entire stretch of land, i.e., 127 grounds were initially shown as a single piece of land and based on the FSI being calculated for the entire land, earlier building permissions were obtained by the fourth respondent, where certain constructions had been made for locating the school and expansion of the school.

21. When that being so, how the 41 grounds alone now can be treated as a separate property and such an unauthorised division



22.As against which, when appeal was filed to the Government, the Government after having considered the same in the Appeal Committee, has allowed the appeal filed by the fourth respondent and thereafter the said application resubmitted was placed before the 253rd MSB Panel Meeting held on 13.09.2019 and thereafter further the planning permission application of the fourth respondent was forwarded to Government on 05.11.2019 along with the recommendation of the MSB panel and also sought for the clarification as to whether payment of the OSR charges in lieu of reservation of OSR land is applicable to the said case and also to clarify whether the decision already taken by the Government allowing the appeal of the fourth respondent implies that the unauthorised subdivision is regularisable.

24. In the said G.O.Ms.No.74, what has been decided by the Appeal Committee, in its meeting held on 06.05.2019 with their minutes have been given in detail. Following which, the Government after careful consideration of the recommendation of the Appeal Committee decided to allow the appeal petition. Accordingly, the Government allowed the appeal filed by the fourth respondent under Section 79 of the Tamil Nadu Town and Country Planning Act for payment of OSR charges in lieu of earmarking OSR for the proposed multi storied building. The Government also directs, in the said G.O, the CMDA to pursue further action accordingly.

26.Only thereafter, since the fourth respondent has complied with all such conditions imposed by the Government in the aforestated two orders, i.e., G.O.Ms.No.74, dated 20.05.2020 as well as Government letter, dated dated 16.06.2020, decided to grant planning permission and accordingly such planning permission was given on 25.02.2021.

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further submit that, whenever application is filed seeking for planning permission, only the prima facie right of the party or applicant who made such application to develop the property alone would be considered by the CMDA and whatever planning permission is given by the CMDA, would not confer any title on the applicant with regard to the property in which development is going to be made and this has been made only in consonance with the Development Control Rules, especially under Annexure III [under Rule 6(9)] of the Development Control Rules.

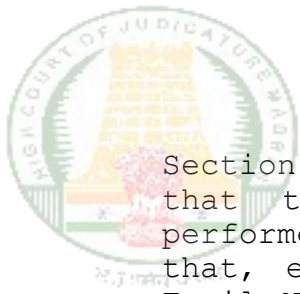
28. In this context, the learned counsel for CMDA also invited the attention of this Court about the relevant rules in the Development Control Rules as well as the Annexure III.

29. The learned counsel would also contend that, the CMDA's planning permission which is impugned in this writ petition is pursuant to the decision taken by the Government through the Appeal Committee twice as referred to above. The decision taken to give direction to the CMDA to pursue the application of the fourth respondent to grant planning permission is pursuant to the MSB meetings recommendation which was accepted by the Government through its Appeal Committee and what has been deliberated and accepted by the Appeal Committee also has been stated in G.O.Ms.No.74 and in letter, dated 16.06.2020. Therefore those decisions taken by the Government is the basis for granting planning permission, however those documents or orders issued by the Government have admittedly not been questioned by the petitioners in this writ petition. Therefore the consequential planning permission granted by the second respondent cannot independently be challenged, she contended. By making these submissions, the learned standing counsel appearing for CMDA seeks dismissal of this writ petition.

30. Arguments were made by the learned Advocate General who appeared on behalf of the first respondent :

30.1. By supporting the said contention made on behalf of the CMDA through the standing counsel, the learned Advocate General has contended that, the Government having placed the issue before the Appeal Committee, had decided to allow the appeal filed by the fourth respondent. He would submit that, on 19.07.2019 there was a Government letter, pursuant to which, the order of planning permission was given by the second respondent on 25.02.2021.

30.2. In this regard, the learned Advocate General would submit that, mere possessory right is enough to make an application to the second respondent under Rule 6 of the Development Control Rules. The Court can presume under Section 114 of the Indian Evidence Act, especially illustration (e) of



Section 114 that, existence of certain facts can be presumed that the judicial and official acts have been regularly performed. Therefore the learned Advocate General would submit that, exercising the power vest with the Government under the Tamil Nadu Town and Country Planning Act in Section 79 as well as the Development Control Rules, the appeal filed by the fourth respondent was placed before the Appeal Committee, wherein, after due deliberation, it was decided to accept the appeal filed by the fourth respondent. What has been deliberated and on what basis decision has been taken is reflected in all the orders passed in this regard by the Government.

30.3. The learned Advocate General would also submit that, insofar as the plea raised by the learned counsel for the petitioner side that the order passed by the Government is concerned, it must be only in the form of Government Order and not by Government letter, learned Advocate General would submit that, once a decision is taken by the Government, it may be either in the form of Government Order or in the form of the Government letter and it cannot be stated that, what has been stated in a Government letter cannot have any effect as that of the Government Order.

30.4. In this regard, the learned Advocate General has also relied upon a decision of the Kerala High Court in the matter of Sudheer C.B v. State of Kerala and others, reported in 2009 SCC Online Kerala 6773, where he relied upon the following passage :

"9. In view of the above decision, the claim of the appellant that an executive order, issued in the name of the Governor cannot be modified by a communication issued by the Secretary, cannot be accepted. A decision of the Government stands, until it is modified by a subsequent decision. By a subsequent decision of the Government, any earlier decision can be appropriately clarified or modified. The second order need not necessarily be issued in the name of the Governor. It can be issued in the name of any of the Secretaries of the Government. What is relevant is the substance of the order and not its form. If there is a decision of the Government which is taken by a Secretary to Government, as per the Rules of Business, the same can modify an earlier Government Order, issued in the name of the Governor, even if the latter decision is issued in the form of a letter of a Government Secretary. A circular is a letter, addressed to several persons simultaneously. So, a circular is



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also a letter issued by the Government / Government Secretary, bringing a particular decision to the notice of several persons simultaneously. The appellant does not have a case that no decision was taken by the Government / Secretary, as per the Rules of Business, before issuing Ext.P3. Until the contrary is proved, we must presume that official acts have been regularly performed and the common course of business has been followed in this case also. In view of the above position obtained under our Constitution, the decisions of the learned Judges, taking a contrary view, contained in Exts.P4 and P5 judgments, cannot be upheld. "

31. The following Judgments have been cited by both sides in support of their respective contentions on various aspects :

A-Group Counsels :

- (1) Maneka Gandhi v. Union of India, (1978) 1 SCC 248
- (2) E.P.Royappa v. State of Tamil Nadu, (1974) 4 SCC 3
- (3) Mohinder Singh Gill v. Chief Election Commr, (1978) 1 SCC 405
- (4) North Bihar Agency v. State of Bihar, (1981) 3 SCC 131
- (5) Bhikhubhai Vithalabhai Patel v. State of Gujarat, (2008) 4 SCC 144
- (6) Binapani Kar Chowdhury v. Sri Satyabrata Basu, (2006) 10 SCC 442
- (7) Hubert Probbhat Pereira v. Narayan Adhya, 2016 SCC Online Cal 6073
- (8) M.Somasundaram & another v. Srinivasan & another, 2009-4-LW 785
- (9) Satvithri Padmanabhan & 7 others v. M.Rajendran, 2009-4-LW 804
- (10) FGP Ltd., v. Saleh Hooseini Doctor, (2009) 10 SC 223
- (11) Arun Ganesh Dighe v. Kumudini Krishnaji Salakade and others, 2016 SCC Online Bom 15222
- (12) Raichand Dhanji v. Jivraj Bhavanji and others, ILR (Bom) Vol.LVI 65
- (13) Kanhirakotttil Mani and others v. Madhavi and others, 2017 SCC Online Ker 519
- (14) Ambika Prasad Thakur and others v. Ram Ekbal Rai and others, (1966) 1 SCR 758
- (15) Assistant Commissioner of State Tax and others v. Commercial Steel Limited, MANU/SC/0872/2021
- (16) Academy of General Education, Manipal and another v. B.Malini Mallaya, (2009) 4 SCC 256
- (17) The Commissioner Bruhath Bangalore Mahanagara Palike and others v. Faraula Khan and others, MANU/SC/0381/2021
- (18) Subba Naidu and another v. Kannia Naidu, 1949 SCC



Online Mad 364

(19) Kavitha Kanwar v. Pamela Mehta and others, 2020 SCC Online SC 464

(20) Prabhagiya Van Adhikari Awadh Van Prabhag v. Arun Kumar Bharadwaj and others, 2021 SCC Online SC 868

(21) Union of India and another v. Tulsiram Patel, (1985) 3 SCC 398

(22) Shiv Kumar and another v. Union of India and another, (2019) 10 SCC 229

(23) K.S.Palanisami v. Hindu Community in General and Citizens of Gobichettipalayam, (2017) 13 SCC 15

(24) Minor Ibramsa Rowther v. Sheik Meerasa Rowther, 1972-85-LW 596

(25) Bhubaneshwar Prasad v. Sidheswar Mukherjee, 1971 (1) SCC 556

(26) Jai Singh and others v. Gurmej Singh, MANU/SC/0054/2009

(27) Joginder Singh and others v. Suresh Kumar & others, 2015 SCC Online HP 864

B- Group Counsels :

(1) Narasinhaaswamy Dharmakarta v. Venkatalingam, AIR 1927 Mad 636

(2) Narayanadoss v. Gulab Bi Bai, AIR 1927 Mad 1054

(3) Menakuru Dasaratharami Reddi and another v. Duddukuru Subba Rao and others, AIR 1957 SC 797

(4) Hem Nolini Judah and after her LR Marlean Wilkinson v. Isolyne Sarojbhashini Bose and others, AIR 1962 SC 1471

(5) Madhya Pradesh Industries Ltd., v. Union of India & others, AIR 1966 SC 671

(6) Ram Kumar Ram Chandra & Co., v. Commissioner of Income Tax, UP, air 1966 All 100

(7) Union of India v. Jyoti Prakash Mitter, (1971) 1 SCC 396

(8) S.Devaraj v. Commissioner of Wealth Tax, (1973) 90 ITR 400

(9) Babubhai Muljibhai Patel v. Nandlal Khodidas Barot & others, (1974) 2 SCC 706

(10) Dharmadhar Mahasthavir, Rev v. Bengal Buddhist Association, (1976) ILR 1 Cal 57

(11) R.Antony Doss & Ors, v. The State of Tamil Nadu & Ors., 1991-2-LW 525

(12) Kapoor Chand v. Ganesh Dutt, 1993 Supp (4) SCC 432

(13) Union of India v. Jesus Sales Corpn, (1996) 4 SCC 69

(14) M.Vaidurayamma v. P.Suryanarayana Rao & Others, 1997-1-LW-49

(15) Rukmani Devi and 4 others v. R.M.Lakshmandoss, 2001-1-LW-236

(16) Hyderabad Potteries Private Limited v. Collector, Hyderabad, (2001) 3 ALD 600

(17) Illachi Devi v. Jain Society, Protection of Orphans



India, (2003) 8 SCC 413

(18) Sumathi Devi v. State of Tamil Nadu, 2004(2) CTC 48

(19) Bar Council of India v. High Court of Kerala, (2004) 6 SCC 311

(20) Crystal Developers v. Asha Lata Ghosh, (2005) 9 SCC 375

(21) The Commissioner of Income Tax (Central), Kanpur v Dr (Miss) Chandra Kanta Rohatgi

(22) K.Pavan Raj v. The Municipal Corporation of Hyderabad and others, 2008 (1) ALD 792

(23) K.Saraswathy v. The State of Tamil Nadu & Ors., 2010 (3) LW 892

(24) G.Ganesan & others v. P.Sundari & others, (2011) 4 MLJ 98

(25) Sainath Mandir Trust v. Vijaya & others, (2011) 1 SCC 623

(26) Padmavathy Ammal v. Pachaiyappa Nainar & another, 2012-1-LW-1017

(27) Nar Bahadur Khatriwada v. State of Sikkim & Ors., MANU/SI/0014/2013

(28) Radhey Shyam c. Shhabhi Nath, (2015) 5 SCC 423

(29) Alarmel Valli & Ors. v. The Secretary, Urban & Housing Department & Ors., MANU/TN/0437/2016

(30) Sri Sri Dhadhibaban Mahaprabhu Bije at Bhatli v. Paramananda Sahu, AIR 2020 Ori I

32. Though number of such decisions have been relied upon by both sides, in view of the discussion going to be made to reach a conclusion as to the issue raised in this writ petition, all these judgments having been considered by this Court and by taking out the proposition and principle laid down therein and having considered the said principle, this Court has proceeded to find out the answer to the issue.

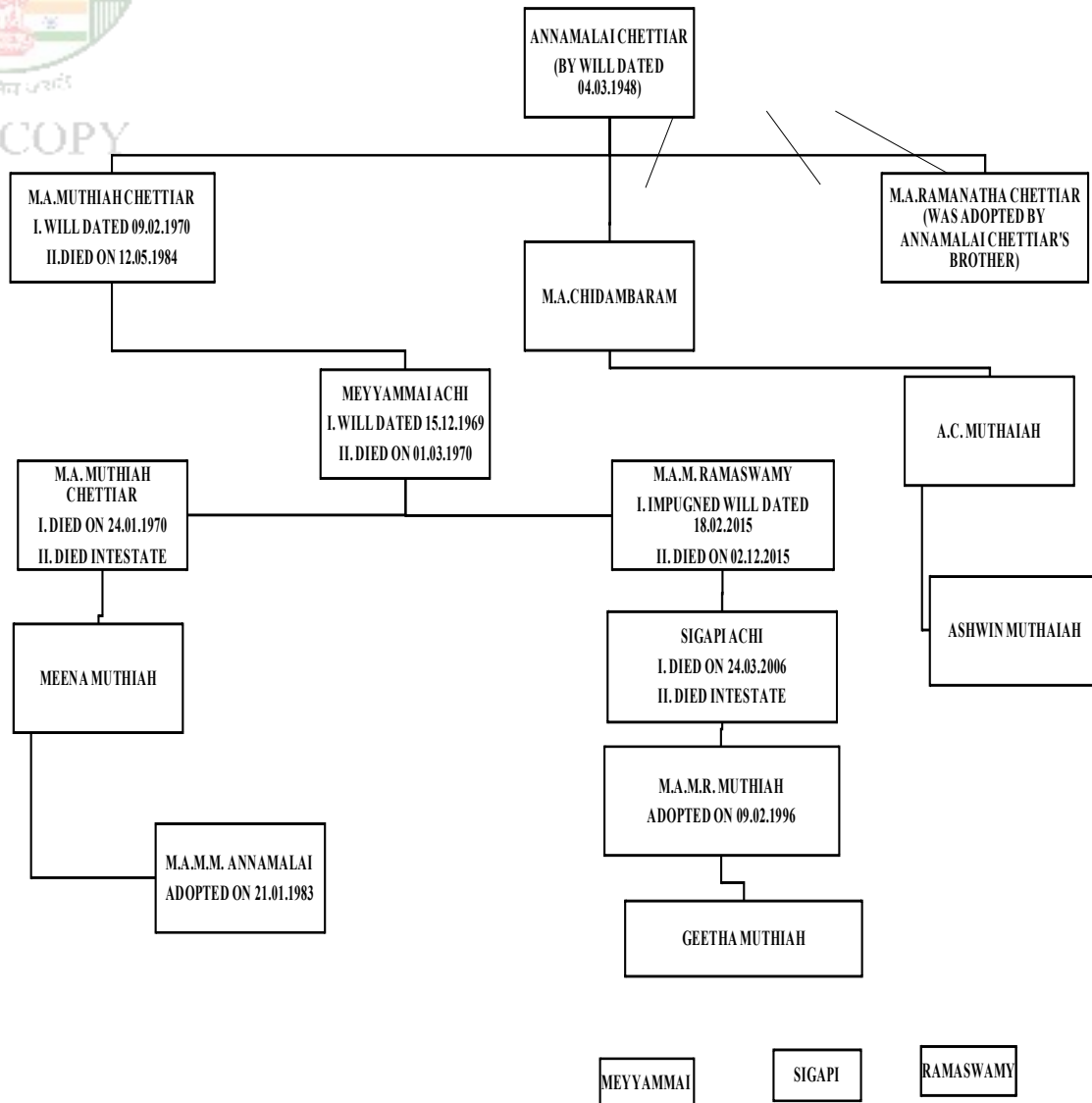
33. DISCUSSION :

The Genealogy of the family of the private parties is as follows :

GENEALOGY



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34. Though voluminous documents have been filed, lengthy arguments were advanced by the learned respective counsels appeared for both sides for more than 16 days, many number of Judgments have been cited by both sides, this Court after having analysed all these documents, citations and submissions made by the learned counsels, is of the view that, the issue raised in this writ petition, for the purpose of arriving at a decision, can be categorised as three parts. Part I is the locus of the petitioner to file the writ petition, Part II is the right and title of the parties over the property in dispute and Part III is the procedure and decision making process undertaken by the CMDA and the State Government in granting planning permission to the fourth respondent, which is impugned herein. Hence I propose



to discuss the issue raised in the writ petition only under these three heads.

35. I. LOCUS OF THE WRIT PETITIONERS and

II. RIGHT AND TITLE OF THE PARTIES :

WEB COPY The point of locus was predominantly raised by the B-Group lawyers who appeared on behalf of R4, R5 and R9. They contended that, the entire property of 150 grounds originally was gifted by father Muthiah and son Muthiah by way of agreement of Gift Deed, dated 09.03.1969. Thereafter reiterating or amplifying the said action on the part of the father Muthiah and son Muthiah for the entire stretch of 150 grounds, on 28.03.1970 the Deed of Declaration of Trust pertains to the fourth respondent has been made by way of registered document by father Muthiah alone.

36. The reason for such a document, dated 28.03.1970 was made only by father Muthiah alone is that, between 09.03.1969 and 28.03.1970 both the son Muthiah as well as lady Meyyammai Achi, wife of father Muthiah and mother of son Muthiah died on 24.01.1970 and 01.03.1970 respectively. However, if we look at the document, dated 09.03.1969, the following can be found out from it.

"This Agreement of Gift made this the 9th day of March 1969 by Dr. Rahah Sir Muthiah Chettiar of Chettinad, son of late Rajah Sir Annamalai Chettiar of Chettinad, Industrialist, residing at Chettinad House, Raja Annamalaipuram, Madras-28 and Kumara Rajah M.A.M. Muthiah Chettiar, son of the aforesaid Dr. Rajah Sir Muthiah Chettiar of Chettinad, industrialist residing at Chettinad House, Raja Annamalaipuram, Madras-28 both of whom are hereinafter referred to as the DONORS in favour of Rajah Muthiah Chettiar Charitable and Educational Trust, a Trust registered by a Deed of Trust, dated 14th March 1957 and enjoying the exemption under Sec. 80-G of the Income Tax Act 1961 under an order, dated 25.03.1968 issued by the Income Tax Officer, City Circle II(3) with its office at Chettinad House, Raja Annamalaipuram, Madras-28 hereinafter referred to as the DONEE witnesseth as follows.

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2. The Trustees of the Donee shall utilise



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the income from the scheduled property for the objects mentioned above.

3. The Trustees of the Donee shall have absolute right to sell the property and invest the proceeds in such a manner as the trustees may decided in their discretion.

4. The Trustees shall have the right to utilise also the corpus for any of the purpose mentioned above.

5. The Donors have put the trustees of the Donee in possession of the properties from today.

The Donors undertake to execute a document of Gift and register the same as soon as the exemption is obtained from the Government of Tamil Nadu for the stamp duty payable for the Deed."

(Emphasis supplied)

37. Only pursuant to the said document, dated 09.03.1969, the 28.03.1970 document was executed by the father Muthiah as in between the son Muthiah died. In the said document, dated 28.03.1970, the following has been made :

"Whereas the Donor and his eldest son Kumara Rajah M.A.M.Muthiah Chettiar, pursuant to an agreement and declaration dated 9.3.1969 have jointly conveyed the entire property to the Trust and put the Trustees in possession thereof from 9.3.1969.

Whereas it is now though desirable to execute a registered document in respect of the same. Whereas the eldest son who executed the declaration jointly with the donor died on the 24th January 1970 and as the execution of a joint document for the entire property is not possible at this stage.

Whereas the Donor is desirous of executing this registered document relating to his undivided half share in the vacant land more particularly described in the schedule hereunder."

38. From the recital of these two documents, it should be noted that, in the 1969 document, the donors undertook to execute a document of gift and register the same, as soon as the exemption is obtained from the Government of Tamil Nadu for the stamp duty payable for the deed. Therefore they waited for getting exemption for paying the stamp duty and in the meanwhile, son Muthiah died. Therefore the 28.03.1970 document



was executed only by father.

39.Only in this context, it was the vehement contention on the part of the A-Group lawyers supporting the writ petitioners that, without a valid registered document, no title of an immovable property would get transferred. In support of their contention, they rely upon Sections 122 and 123 of the Transfer of Property Act as well as Section 17 of the Registration Act.

40.Their contention is that, the entire property though was intended to be gifted to the fourth respondent by document, dated 09.03.1969, that is not the document at all in the eye of law in view of the same being an unregistered one. Therefore, if at all anything to be conveyed by a registered document, only document dated 28.03.1970 can alone be taken in to account and if that is taken in to account only the father Muthiah has gifted the half share belongs to him in the total property, i.e., only 75 grounds, hence, that 75 grounds alone had been transferred in favour of the fourth respondent.

41.In this regard, it is one thing to be noted that, in 1969 document, in clause 5, both father Muthiah and son Muthiah have stated that the donors have put the trustees of the donee in possession of the property from today, i.e., 09.03.1969.

42.It may not be the title in stricto sensu passed on in respect of the son's Muthiah's, 50% share to and in favour of the fourth respondent trust but the fact remains that, even under the 09.03.1969 document, the fourth respondent has been put in possession in respect of the entire 150 grounds and in the said document, both the father Muthiah and son Muthiah signed and they jointly executed the said document. Therefore prima facie we can conclude that the fourth respondent has been put in possession by the donors, i.e., father Muthiah and son Muthiah in respect of the entire property, i.e., 150 grounds in R.S.No.4277 with effect from 09.03.1969 itself.

43.Though it was an argument advanced on behalf of A-Group lawyers supporting the petitioner's cause that, if any donation or gift of immovable property by any unregistered document towards a trust which is not being a Hindu Religious or HR & CE Trust is made, such kind of gift or donation under which the property cannot be vested with the trust unless and until it is donated or gifted to and in favour of an hindu idol or HR & CE, the said arguments and the ultimate result of such arguments can only be tested in the Civil Suit which are pending in various Courts as stated supra. But the fact remains that, the fourth respondent has been put in possession w.e.f, 09.03.1969 by the donors, i.e., both father Muthiah and son Muthiah and that fact, for the sake of this writ petition, as a prima facie view, can



be accepted.

44. One more subsequent event would strengthen the said view taken by this Court is that, the erstwhile managing trustee of the fourth respondent Dr.M.A.M.Ramaswamy has executed a lease deed in favour of the society, namely Kumararajah School of Traditional Arts and Crafts, represented by the sixth respondent being the Secretary of the society, by a lease deed, dated 29.10.2015 in respect of entire 127 grounds at R.S.No.4277/7.

45. If it is the case of the A-Group lawyers supporting the cause of the writ petitioners that, only half of the entire property was transferred in favour of the fourth respondent by virtue of the Document, dated 28.03.1970 and not the remaining half belongs to the son Muthiah, on what basis Dr.M.A.M.Ramaswamy the erstwhile trustee of the fourth respondent executed the lease deed on 29.10.2015 to the society represented by the sixth respondent in respect of entire 127 grounds is a pertinent question. Therefore this action on the part of the said M.A.M.Ramaswamy who was the lessor in the lease deed, dated 29.10.2015 and the society represented by the sixth respondent who stood as lessee, supports the aforesaid view taken by this Court insofar as the possession enjoyed by the fourth respondent trust for the entire property right from 09.03.1969.

46. Though it was vehemently contended by A-Group counsels supporting the cause of the petitioners that, the part of the property belongs to the said late Dr.M.A.M.Ramaswamy since has been bequeathed in favour of the petitioner trust by virtue of the Will, dated 18.02.2015 and the moment the said Will is executed by the said M.A.M.Ramaswamy in favour of the petitioner trust, as per Section 211 of the Indian Succession Act, the property is vest with the petitioner trust and therefore, in order to protect the said property, the petitioner can act upon by filing the present writ petition opposing the move made by the fourth respondent to have the proposed construction of the multi storied building, for which the impugned planning permission was given by the CMDA, this Court feels that, the B-Group lawyers, in order to meet the said arguments of the other side, has quoted Section 213 of the Indian Succession Act, which says that, no right as executor or legatee can be established in any Court of justice, unless a Court of competent jurisdiction in India has granted probate of the Will, under which the right is claimed or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed.

47. Therefore it is purely a legal question to be decided by the competent Civil Court, after adducing evidence by both



sides, as to whether the A-Group is entitled to get relief under Section 211 of the Indian Succession Act or the B-Group can succeed under Section 213 of the said Act.

48. However the fact remains that, as on date, the situation of getting a probate or a letter of administration has not arisen since the O.P to get probate filed by the petitioner trust since has been contested by the fourth respondent, it has become Testamentary Original Suit and is pending consideration before the original side of this Court.

49. Therefore the claim made on behalf of the A-Group counsel supporting the cause of the petitioners by quoting Section 211 of the Indian Succession Act would not advance the cause of the petitioner side much.

50. It is also the contention of the A-Group counsel that, the petitioner trust as well as the sixth respondent being the co-owners of the entire property, of every inch of the property each co-owner will have right and therefore unless and until the partition suit filed by the sixth respondent is finalised and partition is effected, no development can be undertaken by any party in the entire stretch of property as such development would cause damage to the other co-owners is concerned, this Court finds that, the said argument assuming that is to be accepted, whether the petitioners and R6 would be entitled to thwart the attempt made by the fourth respondent to develop the part of the property by constructing the multi storied building is the question.

51. In this regard, if we note the averments made in the counter affidavit filed by the sixth respondent, she has stated that, the sixth respondent and the petitioner trust put together are entitled to 5/16th undivided share of the entire 150 grounds. Whether such entitlement as claimed by the sixth respondent and the petitioner trust is a rightful claim or not cannot be decided by this Court in the writ proceedings and that can be gone into and decided only by the Civil Courts in the pending Civil Suits.

52. In this context, it is further to be noted that, in the Civil Suit filed by the ninth respondent before the City Civil Court, i.e., O.S.No.201 of 2016, the VI Assistant City Civil Judge, by order, dated 11.04.2016 has granted an ad-interim injunction restraining the respondents / defendants including the society represented by the sixth respondent from interfering with the ninth respondent's peaceful possession and enjoyment over the scheduled property, i.e., 41 grounds. The said order was appealed by the society represented by the sixth respondent in C.M.A.No.68 of 2016, where the VI Additional District Judge,



Additional City Civil Court at Chennai, by order, dated 30.07.2019 dismissed the appeal by confirming the order passed by the VI Assistant Judge, dated 11.04.2016 as referred to above and it was submitted by the learned counsel appearing for the parties that the said order has become final as of now.

53. That apart in the pending Civil Suits, i.e., in C.S.No.198 of 2016 and C.S.No.223 of 2021, applications were filed, i.e., A.No.1831 of 2016 and O.A.No.334 of 2021 in C.S.No.198 of 2016 and O.A.No.412 of 2021 in C.S.No.223 of 2021. All these applications, of course pursuant to the remand order made by a Division Bench of this Court, was considered by a learned Judge, who passed order in the said applications by way of common order, dated 09.02.2022, which has been subsequently circulated by the learned counsel appearing for the fourth respondent, where, the learned Judge, for the limited purpose of disposing the said Interlocutory Applications, have exhaustively discussed the issue raised therein and the finding given by the learned Judge to some extent can be made use of by this Court in this writ proceedings :

"81. The pleadings of Kumararani Tmt. Meena Muthiah and the Society which is running the school in the previously instituted suit by the plaintiff Trust in C.S. No.198 of 2016 contradicts her statement made in the plaint as well in the affidavit in C.S. No.223 of 2021, wherein, she claims ownership of 5/32rd share by way of inheritance and has disputed the Deed of Declaration of Trust dated 28.03.1970 for the entire suit ?A? schedule property by which the plaintiff Trust in C.S. No.198 of 2016 became the absolute owner. Contradictory statements have been made by the plaintiff Kumararani Tmt. Meena Muthiah in both the suits viz., C.S. No.198 of 2016 and C.S. No.223 of 2021. The documents subsequently executed after the deed of declaration of Trust deed dated 28.03.1970 under which the plaintiff Trust in C.S. No.198 of 2016 claims to have become the absolute owner of the suit ?A? schedule property were not disputed by the plaintiff in C.S. No.223 of 2021 or the sixth defendant Society earlier which prima facie shows that the plaintiff in C.S. No.223 of 2021 and the sixth defendant Society have recognised the ownership of the plaintiff Trust in C.S. No.198 of 2016.

82. After a lapse of more than 50 years from the date of the agreement of Gift deed dated



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09.03.1969 and the Deed of Declaration of Trust dated 28.03.1970, the plaintiff in C.S. No.223 of 2021 has taken a diametrically opposite stand disputing the Deed of Declaration of Trust deed dated 28.03.1970 under which the entire suit schedule ?A? property was donated to the plaintiff Trust in C.S. No.198 of 2016.

83. A party seeking equitable relief must approach the Court with clean hands and there shall not be any suppression or inconsistency. The plaintiff in C.S. No.223 of 2021 has now taken a completely contradictory stand to what was taken in C.S. No.198 of 2016. In C.S. No.223 of 2021, the plaintiff has sought for partition whereas in C.S. No.198 of 2016, Kumararani Tmt. Meena Muthiah as well as the Society which is running the school have relied upon the lease deed dated 29.10.2015 for the purpose of protecting their possession over the entire suit ?A? schedule property. Though the plaintiff in C.S. No.223 of 2021 may plead that as a co-owner such an inconsistent stand can be legally taken, the said issue cannot be decided in an interlocutory application but can be decided only after trial. Therefore, the judgments relied upon by Mrs. Chitra Sampath, learned Senior Counsel for Kumararani Tmt. Meena Muthiah and the Society that as a co-owner of the suit Schedule ?A? property even though the lease deed dated 29.10.2015 was recognised by the plaintiff in C.S. No.223 of 2021 can claim partition cannot be decided in an interlocutory application but if at all can be decided only after trial.

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89. In the case on hand, the plaintiff in CS.No.223 of 2021 and the sixth defendant society in the said suit, which is running the school is admittedly in possession of the suit B schedule property measuring about 86 grounds. These interlocutory applications pertain only to the suit C schedule property measuring 41.63 grounds. The plaintiff in CS.No.223 of 2021 claims partition of 5/32 share in the suit A schedule property



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measuring 127 grounds approximately and assuming that if the same is allowed by this Court and a preliminary decree as prayed for is passed, the extent will be only approximately 20 grounds which is much less the extent of the suit B schedule property which measures 86 grounds which is currently under the possession of the plaintiff in CS.No.223 of 2021 and the Society which is running the school.

90. But on the other hand, the plaintiff Trust in CS.No.198 of 2016 has already got approval from the planning authorities for construction of a multistorey building complex over the suit C schedule property and proof has also been produced before this Court in the form of a receipt issued by the Chennai Metropolitan Development Authority to show that a sum of Rs.35,91,90,000/~ has been paid towards prescribed fees for getting building plan sanction from the Chennai Metropolitan Development Authority by the plaintiff Trust in CS.No.198 of 2016. It is also contended by the plaintiff Trust in CS.No.198 of 2016 that in all put together a sum in excess of Rs.40,00,00,000/~ (Rupees forty crores only) has been spent for getting approval from the Chennai Metropolitan Development Authority.

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97. The comparative mischief, hardship and inconvenience is heavier on the side of the plaintiff Trust in CS.No.198 of 2016 when compared to the plaintiff in CS.No.223 of 2021 and the sixth defendant Society in the said suit, insofar as the development of the suit C schedule property is concerned. Having spent substantial sums of money for obtaining the building plan approval for construction of the Multistorey building complex over the suit C schedule property and having right as an absolute owner, admittedly over 50% of the suit A schedule property even according to the plaintiff in CS.No.223 of 2021 and the society which is running the school, the balance of convenience is only in favour of the plaintiff Trust in CS.No.198 of 2016 and not on the side of the plaintiff in CS.No.223 of 2021 and the sixth defendant Society in



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the said suit. Accordingly, inconvenience caused to the ?PARTIES DISPUTING THE LEASE dated 29.10.2015? is far greater than to the ?PARTIES AFFIRMING THE LEASE dated 29.10.2015?, if development is not allowed to take place in the suit C schedule property.

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117. Clause 19 of the Deed of Indenture, dated 14.03.1957, stipulates that any resolution to be passed by the plaintiff Trust in C.S.No.198 of 2016 shall be decided by majority of the Trustees present at the meeting and the decision of the majority shall be final. However, the lease deed, dated 29.10.2015 in favour of the sixth defendant Society in C.S.No.223 of 2021 does not refer to any resolution passed by the majority of the Trustees of the plaintiff Trust in C.S.No.198 of 2016. Section 48 of the Indian Trust Act, though not applicable to a public trust, also stipulates that co-trustees cannot act singly and when there are more Trustees than one, all must join in the execution of the Trust, except where the instrument of Trust otherwise provides. Therefore, on a prima facie consideration, this Court will have to necessarily accept the resolution, dated 10.08.2012 passed by the plaintiff Trust in C.S.No.198 of 2021 deciding to develop the suit C schedule property, as the said resolution has been signed by all the then Trustees of the plaintiff Trust in C.S.No.198 of 2016."

54. These findings given by the learned Judge in disposing the said applications in the two pending Civil Suits filed by the parties, one is by the fourth respondent, another one is by the sixth respondent makes it abundantly clear that, assuming the sixth respondent as well as the petitioner trust is going to get some share as they claim in the respective Civil Suits, from out of the 127 grounds entire property, that would be comparatively lesser than the 41 grounds which is the subject matter in this writ petition. Therefore absolutely no prejudice would be caused to the writ petitioners and the sixth respondent and hence, the learned Judge, refused to grant any interim order as they prayed for and rejected their applications.

55. Insofar as the locus of the writ petitioners to challenge



the planning permission given by the second respondent in this writ petition is concerned, the first writ petitioner being a trust created in the year 2015 claimed to have some portion of the property, i.e., some portion in 127 grounds by virtue of the Will executed by the late Dr.M.A.M.Ramaswamy in the year 2015 and therefore as a legatee in order to protect the property, they wanted to stall the proposed construction to be undertaken by the fourth respondent and hence, they moved the writ petition they claimed.

56.Only to that limited extent, the writ petition can be considered to be a maintainable one, however on merits, whether the plea raised by the writ petitioners supported by the sixth respondent, can be accepted or not is altogether is a different question, for which, this Court has already made the above discussion arising out of various documents and also the view expressed by the learned Judge exactly on the connected issue between the same parties. These aspects would go to show that, though the petitioner can file this writ petition, for which, he may have the locus standi but on merits, whether he can succeed or not is concerned, prima facie this Court feels that, the said issue raised by the petitioner claiming the ownership of part of the property and the same claim made by the sixth respondent to be the owner of some part of the property and thereby become co-owners and therefore they are entitled to protect the entire property, i.e., 127 grounds is concerned, the said stand taken by the petitioner side supported by the sixth respondent cannot be accepted by this Court, for the simple reason that, admittedly the sixth respondent is holding 86 grounds, where a pucca school has been constructed, which admittedly has been functioning for the past about 30 years.

57.If at all the sixth respondent is entitled for 5/16 or 5/32 share of the entire property, on what basis the sixth respondent is holding the 86 grounds of the entire land by putting up a compound wall either by the sixth respondent or the fourth respondent, thereby within the 86 grounds, nobody is permitted to enter except the sixth respondent and her society. This action on the part of the sixth respondent and the society supported by the petitioner trust would make it abundantly clear that, the co-owner theory is only placed against the fourth respondent trust and the very same co-owner theory is not adopted by the sixth respondent and the society as well as the petitioner trust. Hence the co-owner theory vehemently projected by the A-Group lawyers is liable to be rejected.

58. III. PROCEDURE AND DECISION MAKING PROCESS UNDERTAKEN BY THE CMDA AND THE STATE GOVERNMENT:

58.1. Whether the CMDA as well as the State Government acted in accordance with law in granting the planning permission?



58.2. In order to delve into the said question, first we must see the decision taken by the fourth respondent trust to develop the property of 41 grounds.

58.3. The minutes of the meeting of the Board of Trustees of the fourth respondent trust, dated 02.08.2012 reads thus :

"Trustees present :

Dr.M.A.M.Ramaswamy, Managing Trustee

Mr.M.A.M.R.Muthiah, Trustee,

Mrs.Geetha Muthiah, Trustee

Mr.K.Chidambaram, Trustee

Mr.RM.Palaniappan, Trustee

Dr.M.A.M.Ramaswamy, Managing Trustee presided over the meeting.

The Trustees discussed about the development of the land owned by the Trust and situated in R.S.No.4277/6 extent measuring about 7168.50 sq mtr. He also suggested that the surplus funds of the Trust could be utilized for construction of commercial building in R.S.No.4277/6 and can be let out after putting up construction, so that there will be income to the Trust and the value of the immovable property will also be increasing.

The Trustees approved the suggestion given by Mr.M.A.M.R.Muthiah. Accordingly, the Trust decided to authorize Managing Trustee Dr.M.A.M.Ramaswamy to execute a General Power of Attorney in favour of Trustee Mr.M.A.M.R.Muthiah to sign all applications, forms, plans and other documents in connection with the construction of multi storeyed commercial building before the competent authorities like Chennai Metropolitan Development Authority (CMDA), Corporation of Chennai etc., in the name of Trust. Accordingly the trustees passed the following resolutions :

"RESOLVED that Dr.M.A.M.Ramaswamy, Managing Trustee be and is hereby authorized to execute General Power of Attorney in favour of Mr.M.A.M.R.Muthiah to develop the land by putting up commercial building in RS # 4277/6 at Thandavarayan Street, Rajah Annamalaipuram, Chennai - 600 028."

"RESOLVED that Mr.M.A.M.R.Muthiah, Trustee be and is hereby authorized to sign all applications, forms, plans and other documents in connected with the development



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of land owned by the Trust and situated at RS # 4277/6. He further be authorized to sign letters, deeds and all clarification for such development of the land before the competent authorities like Chennai Metropolitan Development Authority (CMDA), Corporation of Chennai and all other State Government and also Central Government departments for all purposes including for construction of building as per the existing laws in the name of Trust as Power of Attorney Agent." With a vote of thanks to the Managing Trustee the meeting concluded."

58.4. Pursuant to the said resolution, on 10.08.2012 a general power of attorney was executed by the then managing trustee of the fourth respondent trust, Dr.M.A.M.Ramaswamy to and in favour of the fifth respondent.

58.5. The fifth respondent on behalf of the fourth respondent filed the application seeking planning permission at the 41 grounds. The application was processed and a decision was taken by the second respondent CMDA, which is reflected in the file of the second respondent which has been produced by the learned standing counsel for CMDA before this Court for perusal, where the following has been stated :

"Raja Muthiah Chettiar & Educational Trust have applied for planning permission for the proposed construction of Double Basement floor (Stack parking in upper Basement) + Ground Floor + 2 Floors (Hotel-33 Rooms) + 3rd floor to 13th floor (Office) + 14th floor (terrace floor - AC plant) Commercial Building (Hotel & Office), Thandavarayan Street, Duraisamy Dinakaran Road, Chennai in R.S.No.4277/6, Block No.93 of Mylapore village in MSB No.1036/2012, dated 07.09.2012.

2. As per initial scrutiny remarks the site u/r falls in primary residential use zone and the site u/r falls in CRZ-II area. As per DR rule 6(8) the areas designated for PR in the SMP, site abutting road of width 18m and above are deemed to have been zoned for commercial use zone. Where in the proposed commercial activity (Hotel & Office) is permissible.

3. As per inspection report, the site under reference lies at a distance more than 100m



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from Adyar River and more than 500m from Bay of Bengal. The Google map put below may please be seen.

Ownership

As per the ownership document furnished, the original extent of the site that existed prior to 5.8.1975 was 150 grounds (33444.82 sq.m). As per Trust Declaration Deed 635/1970, originally Dr.Raja Sir Muthiah Chettiar and his elder son Kumara Raha, M.A.M.Muthiah Chettiar had been in possession and enjoyment of the property. Later both of them pursuant to the agreement and declaration dated 9.3.1969 jointly conveyed the entire property to the trust and put the trustees in possession thereon from 9.3.1969. In order to execute the register document in respect of the same, Dr.Raja Sir Muthiah Chettiar has executed registered document relating to his undivided half share in the vacant land in favour of the Raja Muthiah Chettiar Charitable and Educational Trust. Subsequently, the said Trust has given General Power of Attorney to M.A.M.R.Muthiah for land of extent 7168.5 sq.m.

Hence, the document has been executed only for half undivided share of 150 grounds in favour of the Trust. The documentary evidence for the other half undivided share which was in ownership with Kumara Raja Muthiah executed in favour of the Trust has not been furnished. As per the PLR extract furnished, the extent of the site is only 7168.5 sq.m. Though patta for extent of 7168.5 sq.m is furnished, the connected document in favour of Raja Muthiah Chettiar Charitable Educational Trust for the extent of 7168 sq.m. has not been furnished. Unless document for the extent of the site is furnished, the feasibility of regularization of unauthorised sub division if any could be confirmed. As per the document furnished the site has been unauthorisedly sub divided from 33444.82 sq.m to 7168.5 sq.m."

58.6. Thereafter the CMDA file further states that, the back file of the property concerned was called for and verified, where they found that, three times already planning permission / building permission was obtained by the fourth respondent and in respect of this, the following has been noted.



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"Back file No.C4/5558/90

This relates to planning permission for construction of school building in R.s.No.4277/4. Planning permission was issued on 01.10.1990 for school building in land of extent 28347 sq.m. On perusal of the documents, it is found that deed of declaration of Trust by Dr.Rajah Sir Muthiah Chettiar for land of extent 150 grounds being part of R.S.No.4277 was settled in favour of Rajah Muthiah Chettiar Charitable and Educational Trust. Patta in favour of the Estate of Kumara Rajah M.A.M.Muthiah Chettiar represented by M.A.Rajah Sir Muthiah Chettiar and Rajah Muthiah Chettiar Charitable and Educational Trust of extent 28347 sq.m has been furnished.

Back file No.C4/15096/1991

Subsequently, the Rajah Muthiah Chettiar Charitable and Educational Trust applied for additional construction and regularization of existing building in the same site of extent 28347 sq.m in R.S.No.4277/4 and the same was approved in this office letter No.C4/15096/1991, dated 07.02.1992.

Back file No.C4/14232/1993

This relates to planning permission for the proposed additional construction in R.S.No.4277/4 in land of extent 28347 sq.m. Planning permission was issued in letter No.C4/14232/1993, dated 08.03.1994.

On perusal of the documents now furnished, though the site under reference (R.S.No.4277/6) is a separate S.No. and PLR extract has also been furnished for this S.No., the site under reference is a part of R.S.No.4277/4. Hence, from the back files, it is observed that the applicant has earlier obtained planning permission for school building including the site under reference (R.S.No.4277/6). As already planning permission has been obtained for school building availing FSI for the extent of site wherein now Hotel building is proposed, now the applicant cannot sub divide the school site and proposed hotel building.

In view of above, the PPA for construction of Hotel building cannot be considered as the site forms part of the school site already approved by CMDA. Further, the proposed Hotel



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building in the school site is also not allowable as it is not a compatible activity within the already approved school site. Informing above, the PPA may be returned unapproved."

58.7. This is how the proposal was earlier rejected or returned, as against which the fourth respondent preferred appeal to the Government. On 13.09.2019, the 253rd MSB Panel Meeting was held, where certain decision was taken. On 05.11.2019 based on the MSB Meeting, the fourth respondent's request was forwarded by the CMDA to the Government, where the CMDA has stated the following :

"Against the refusal order of CMDA the applicant has preferred appeal under section 79 of TNCP Act, 1971. The appellant presented the case before the appeal committee. The committee took note that the clause 8 of the trust deed (Document No.213/4, dated 14.03.1957) entitles the trustees to sell, transfer or otherwise alienate any of the share set out and described in the schedule there under provided however that the amount realized on such sale or conversion, or in the event of any of the companies going into liquidation in lieu of the said shares shall be treated as the corpus of the trust and invested in such securities and in such manner as the trustees may decided. After detailed deliberations, the committee allowed the appeal with a direction to reserve the required OSR and remitted the issue back to CMDA. In view of above, Government in the reference 3rd cited remit back the issue to CMDA to pursue action as decided by the Appeal Committee.

4. Now the applicant resubmitted the Planning Permission Application in the reference 1st cited was examined and placed before the 253rd MSB Panel Meeting held on 13.09.2019."

58.8. The CMDA also requested the Government to clarify the position whether the OSR charges in lieu of OSR can be collected.

58.9. On 18.11.2019, the Government vide letter No.22558 has written the following :

"I am directed to invite your attention to the reference cited. With reference to the clarification sought for by Chennai Metropolitan Development Authority on payment



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of Open Space Reservation Charges in lieu of reservation, it is pointed out that the Appeal Committee in its meeting held on 6.5.2019 has allowed the appeal with a direction to reserve the required Open Space Reservation area. This implies that the appeal has been allowed based on a specific condition of reservation of Open Space Reservation area to regularise the unauthorised sub-division. Hence, the question of payment of Open Space Reservation Charges in lieu of reservation of Open Space Reservation area does not arise.

2. In view of the above, original records of Chennai Metropolitan Development Authority bearing C.No.C3(S)/730/2019 with current file page No.1 to 385 and Note file page No.1 to 31 (1 volume) is returned herewith with a request to comply with the directions of the Appeal Committee and also examine the other planning parameters including scrutiny of residuary plot details as per rules in force. The receipt of the original records may kindly be acknowledged.

Yours faithfully,
for Principal Secretary to

Government"

58.10. Since the requirement of a school as per the Government G.O.Ms.No.235, School Education Department, dated 24.05.1997 was only three acres and more than that area is available with the school belongs to the sixth respondent which is functioning, therefore the sub-division made in respect of 41 grounds by the fourth respondent to develop it as a separate property can be permitted.

58.11. This was the stand taken by the Government and accordingly, G.O.Ms.No.74, dated 20.05.2020 was issued by the Government, where after considering the recommendation of the Appeal Committee, the Government has passed the following order :

"9. Therefore, the Government after careful consideration of recommendation of the Appeal Committee have decided to allow the appeal petition. Accordingly, the Government allows the appeal filed by the Trustees, M/s. Rajah Muthiah Chettiar Charitable and Educational Trust representation by GPA Thiru.M.A.M.R.Muthiah, Chennai under section 79 of Tamil Nadu Town and Country Planning Act, 1971 for payment of Open Space



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Reservation Charges in lieu of earmarking Open Space Reservation for the proposed Multi-storeyed Building R.S.No.4277/6, Block No.93 of Mylapore village in Thandavarayan Street, Duraisamy Dinakaran Road, Chennai and direct Chennai Metropolitan Development Authority to collect Open Space Charges in lieu of Open Space Reservation under the provisions of Rule 41(1) (b) of TNCD & BR, 2019 during the issuance of planning permission.

10. The Government also directs Chennai Metropolitan Development Authority to pursue further action accordingly."

58.12. Consequently, on 16.06.2020, by letter Ms.No.78, the Government passed further order which reads thus :

"4. The Government after careful examination, have directed to accord approval to recommendation of 253rd Multi storeyed Building panel. Accordingly, the Government approve the recommendations of the 253rd MSB Panel to issue planning permission to M/s. Rajan Muthiah Chettiar Charitable and Educational Trust, represented by GPA Thiru.M.A.M.R.Muthiah for the proposed construction of High Rise Building for commercial purpose consisting of Extended Double Basement floor; parking, Ground floor + 2 floors : Shop, Hotel & Rooms and 3rd floor to 8th floor + 9th floor (pt) + 10th floor (pt) + 11th floor (pt) + 12th floor (pt) + 13th floor (pt) + 14th floor (pt) : office at Thandavarayan Street, Duraisamy Dinakaran Road, Rajaya Annamalaipuram, Chennai - 600 028, bearing R.S.No.4277/6, Block No.93 of Mylapore village subject to payment of Development charges and other charges and subject to satisfaction of usual conditions imposed in No Objection Certificates given by various departments and the condition imposed by the Multi-storeyed Building Panel as detailed below :

i) Revised plan rectifying all the drafting defects and required particulars listed in the agenda item No.9/253 in Annexure-I to be obtained before issue of planning permission.

ii) NOC from DF & RS, Police (Traffic), AAI and Environmental clearance are to be



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obtained before issue of planning permission.

iii) Structural design vetted by PWD to be obtained before issue of planning permission.

iv) Structural Stability Certificate for the entire structure and specifically that the basement top slab below the extended circulation at ground level should be designed for firefighting vehicular loads from PWD shall be obtained before issue of planning permission.

v) CCTV camera to be installed at regular interval of 50.00 m along the road which is abutting the site boundaries before issue of completion certificate.

5. I am to request you to obtain an undertaking before issue of planning permission from the applicant to the effect that he would fulfill all the provisions under Tamil Nadu Combined Development & Building Rules, 2019 and conditions imposed. I am also to request you to make regular inspection to the building to avoid any deviation in construction and to ensure that all the conditions are carried out in the Multi-storeyed Building.

6. I am therefore to request you to take necessary further action accordingly for issue of planning permission.

7. The original file of Chennai Metropolitan Development Authority bearing No.C3(S)/233/2019 [C.F.No.1 to 431 pages and N.F. No.1 to 41 (1 volume)] is returned herewith. The receipt of the same may be acknowledged."

58.13. In this process, though it was contended by the A-Group lawyers supporting the cause of the petitioner, that the objection raised by the petitioner trust as well as the sixth respondent for granting planning permission by the second respondent has not at all been considered is concerned, in fact the definite stand of the CMDA is that, that objection was forwarded to the Government, which was placed before the Appeal Committee Meeting. Originally the Appeal Committee meeting was held on 15.04.2019, where the agenda pertaining to the fourth respondent trust was deferred to the next meeting on 06.05.2019.

58.14. On the next meeting, on 06.05.2019, the agenda was taken into account, accordingly, the following decision has been taken by the Appeal Committee in respect of the fourth respondent's Appeal :

"The Appeal Committee went through the



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records and contention of the appellant in respect of refusal of PPA for the proposed Basement floor + Ground floor + 14 floors commercial building (Hotel and Office) at R.S.No.4277/6, Block No.93, Mylapore village in Thandavarayan Street, Duraisamy Dinakaran Road, Chennai.

The appellant presented the case. The committee took note that the clause 8 of the Trust Deed (Document No.213/4 dated 14.03.1957) entitles the Trustees to sell, transfer or otherwise alienate any of the shares set out and described in the schedule there under provided however that the amount realized on such sale or conversion, or in the event of any of the companies going into liquidation in lieu of the said shares shall be treated as the corpus of the trust and invested in such securities and in such manner as the Trustees may decide.

After detailed deliberations, the Committee allowed the appeal with a direction to reserve the required OSR space and remitted the issue back to CMDA."

58.15. Therefore it has become clear that, though initially the application of the fourth respondent was rejected or returned by the CMDA, the fourth respondent's Appeal was considered by the Government under Section 79 of the Tamil Nadu Town and Country Planning Act, where the MSB panel meeting and its resolution was taken into account and twice the matter was placed before the Appeal Committee of the Government, where also the Appeal Committee has considered the inputs supplied as well as clause 8 of the Trust Deed, where the fourth respondent trust is empowered to exploit the property for the purpose mentioned therein and also taken into account that the sub-division is allowable, the Government thought it fit to allow the appeal of the fourth respondent and accordingly, direction were given twice to the CMDA to pursue further.

58.16. Usual conditions as per the Development Control Rules have been imposed by the Government or directed to be imposed by the CMDA and those conditions were imposed and the statutory fee to the extent of more than Rs.40 crores were directed to be paid which was also complied with by the fourth respondent.

59. In view of the definite facts, which are placed before this Court for consideration and those factors can be culled out from the documents filed by both sides, where it is an admitted case on the part of the writ petitioners as well as the sixth



respondent that, 75 grounds of land out of the total 150 grounds belongs to the father Muthiah alone has been transferred to the fourth respondent and the fourth respondent in the year 2012, in its Trust Board Meeting, unanimously resolved to develop 41 grounds of the land, which has been separately earmarked and pursuant to which, fifth respondent was appointed as power of attorney holder and the fifth respondent as a power of attorney holder of the fourth respondent made an application to the second respondent CMDA which was considered and rejected, as against which fourth respondent filed appeal before the Government who after considering the appeal based on the inputs supplied by the CMDA, of course based on the MSB panel meeting resolution, decided to accept the appeal and pursuant to which by imposing all usual conditions, the building permission has been granted.

60.As has been held by the learned Judge, in the order quoted herein above, while disposing various applications filed by the parties in the pending two Civil Suits, neither the sixth respondent nor the writ petitioners can claim the entire stretch of property, i.e., 127 grounds. The co-owners theory projected by their side, has already been rejected by this Court by the conduct of both the parties, as admittedly the sixth respondent is in possession of 86 grounds of land, for which admittedly the sixth respondent is not entitled to.

61.Moreover, 2015 lease deed executed by the then managing trustee of the fourth respondent trust is in respect of entire 127 grounds, which was accepted by the sixth respondent, as a Secretary of the society, therefore even on that date, it was the stand of the sixth respondent that, the entire property belongs to the fourth respondent.

62.It is not the case of either the writ petitioners or the sixth respondent that, the fourth respondent is not represented by fifth respondent or the fourth respondent is not entitled to even the 50% of the entire 127 grounds.

63.It was the stand of the fourth respondent that the entire 127 grounds belongs to the fourth respondent, for which, they relied upon the 1969 document, as I have discussed in the earlier paras, from the date of 1969 document both the father Muthiah and son Muthiah jointly put the fourth respondent in possession of the entire property and all the parties who are none other than the closely netted relations in a single family have acted upon for decades together.

64. Based on these conduct of the parties and the documents produced before this Court, whether the title will flow in respect of entire 127 grounds in favour of the fourth respondent



trust is the prime question to be answered by the Civil Court in the pending Civil Suits, especially in the Civil Suit filed by the sixth respondent herself seeking a partition for her share.

65. Also the Civil Suit filed by the fourth respondent, questioning the lease executed by the then managing trustee M.A.M.Ramaswamy to and in favour of the society represented by the sixth respondent it is yet another civil dispute arising out of the same property which can also be decided only after full fledged trial to be conducted in this regard.

66. Even the petitioner trust whether can seek any portion of the property because of the Will executed by the said Dr.M.A.M.Ramaswamy in the year 2015 is also a question which can conclusively be decided only in the Testamentary Original Suit which is also pending in the original side of this Court.

67. When that being the legal and factual position, the plea raised by the writ petitioners as well as the sixth respondent, whether could be accepted or not is concerned, this Court is of the firm view that, for the present, their claim of ownership that is co-owner or the right of lessee or under any capacity, cannot be conclusively decided in this writ proceedings, based on which, they cannot question the right of the fourth respondent to get the planning permission for developing only 41 grounds.

68. Insofar as the process of considering the application and deciding it in favour of the fourth respondent by the CMDA, of course as per the order passed by the first respondent Government, in the appeal filed by the fourth respondent is concerned, the Development Control Rules is very clear in this regard and this has been mainly canvassed by the learned counsel appearing for the fourth, fifth and ninth respondents.

69. In Rule 6 of the Development Control Rules, it has been stated that, for the purpose of obtaining planning permission or building permit, the applicant who should be the owner of the land or lease holder or power of attorney holder who has right over the land to develop, shall submit an application online in the prescribed form to the competent authority.

70. Therefore the application can be submitted either by the owner of the land or lease holder or even power of attorney holder.

71. Here in the case in hand, the claim of the fourth respondent is that, they are the owner of the property in entirety and applicant is the fifth respondent on behalf of the fourth respondent, who is the power of attorney holder of the



fourth respondent. Therefore based on this prima facie view, the application was entertained by the CMDA and it was processed.

72. Rule 11 of the Development Control Rules makes it clear that, the permission granted by the competent authority shall not mean responsibility or clearance of the following aspects :

- (a) title or ownership of the site or building;
- (b) easement right etc.,

Therefore the title or ownership of site or building is not cleared or decided by virtue of the permission granted by the CMDA, that has been made clear under Rule 11.

73. In this regard, Annexure III under Rule 6(9) has been heavily relied upon by the learned counsels in B-Group supporting the cause of the fourth respondent, where the following has been stated :

"Planning Permission Application is processed based on the compliance to land use provisions in the respective development plan in force and the Tamil Nadu Combined Development and Building Rules.

Compliance to the provisions of other relevant Act and Rules with respect to construction is the responsibility of the applicant or owner and the competent authority is not responsible for any lapse;

Planning Permission for buildings is issued in accordance with the provisions of the Town and Country Planning Act, 1971 and the rules made thereunder.

Issuance of Planning Permission by competent authority under the statutory provisions does not confirm any ownership or title over the property, in favour of the applicant. Before issuing Planning Permission for any development, competent authority in this regard, checks only the aspect of applicant's right over the site under reference to make the development thereon based on the copies of the documents (such as Sale Deed, Patta, Lease Deed, Gift Deed etc., and GPA) furnished by the applicant along with his / her application to prove the same. Thus, competent authority primarily considers only the aspect whether the applicant prima facie has a right to carry out development on the site under reference.

Any person who acquires interest in the property shall ensure independently about the ownership and the applicant's right before



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acquiring the same. Further, if any individual claim right (or) title over the property he / she / they shall have to prove it before the appropriate or competent Court to decide on the ownership or get the matter settled in the Court of Law and competent authority is not the statutory authority to decide on this matter."

74.It has been made abundantly clear that, the competent authority primarily considers only the aspect whether the applicant prima facie has a right to carryout development on the site under reference. It has further been unambiguously stated in the Development Rules in the said annexure that, any person who acquires interest in the property shall ensure independently about the ownership and the applicant's right before acquiring the same. They shall have to prove it before the appropriate or competent Court to decide on the ownership or get the matter to be settled in the court of law.

75.Therefore the ownership / title issue would never be decided and in fact it cannot be decided by the CMDA or even by the Government while allowing the appeal under Section 79 of the Act.

76.The ownership and title can be decided if there is any dispute only by the competent civil court, which forum the parties who made objections have already approached. The writ petitioner has filed a O.P which has been converted into TOS and the sixth respondent already filed a suit for partition. These two Civil litigations will take care of the plea of claiming right and title over the property in question made by the writ petitioner as well as the sixth respondent. Therefore as of now, based on the prima facie satisfaction, the CMDA acted upon by entertaining the application and processed the same. Thereafter though it was rejected for some other reasons, the appeal was allowed by the Government by placing the same before the Appeal Committee twice and the reasons for allowing the appeal has also been stated which has been exhaustively discussed herein above.

77.The said action on the part of the CMDA has been defended by the learned Standing counsel appearing for the CMDA as well as the learned Advocate General who appeared for the State Government and they have stated that, for the purpose of giving planning permission, only the presumption with regard to the right of the party who made the application for getting a planning permission is enough to come to a safe conclusion, that such kind of permission can be granted provided the applicant satisfy all other parameters as provided under the Tamil Nadu Town and Country Planning Act as well as 2019 Development Rules.



78. In the case in hand, from the point of view of the State Government or the CMDA, the applicant, i.e., the fourth respondent is not in lack of any such fulfilment of the conditions imposed either under the Act or under the 2019 Rules. Therefore to that extent, the action on the part of the State Government in allowing the appeal and the consequential action on the part of the CMDA to grant planning permission cannot be said to be infirm and therefore the challenge made against such planning permission given by the CMDA, i.e., the second respondent which is impugned in this writ petition cannot be sustained.

79. Some technical objection though had been raised by the A-Group counsels supporting the cause of the writ petitioners, that the decision of the Government must be reflected only through a Government Order and not by the letter is concerned, the learned Advocate General met the point by citing a decision which is quoted herein above.

80. The format is not important, only the decision of the Government is paramount which has been in unequivocal term conveyed by the Government, either by Government Order or by Government Letter and therefore on that score, no advantage can be taken by the petitioner side.

81. CONCLUSION :

In view of the aforesaid facts and circumstances and discussions herein above made, this Court is inclined to dispose of this writ petition with the following orders :

(i) the locus of the writ petitioners is to be accepted to file this writ petition challenging the impugned order, accordingly it is accepted.

(ii) However the impugned order on its own merits is to be sustained accordingly it is sustained.

(iii) The right and title over the property in question since cannot be decided by this Court in this writ proceedings and the same can be decided conclusively only in the civil proceedings which have already been instituted by the parties concerned and are pending before the original side of this Court as well as in the City Civil Court, those decisions with regard to the title over the property can be best decided by the respective Civil Courts in the said civil proceedings.

(iv) The reasons stated, discussions made and what



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has been observed during the discussion in this order has been made only to reach the conclusion of the issue raised in this writ petition alone as to the sustainability or otherwise of the impugned planning permission given by the second respondent, hence those findings given in this order shall not stand in the way to decide the title over the property or the dispute raised by the parties with regard to the title over the property in question independently by the competent civil Court where the Civil Suits are pending as stated supra.

82.Before parting with the case, this Court wants to remind the private parties of this lis about the famous saying in Tamil which emphasise that "Unity is Strength". "கூடி வாழ்ந்தால் கோடி நன்மை" "Koodi Vaazhnthal Kodi Nanmai", means if you are united you will be benefited enormously.

83.With all these aforestated, since the writ petition fails and is liable to be dismissed, it is dismissed accordingly. The interim order of stay granted on 27.08.2021 in W.M.P.No.19289 of 2021 therefore is hereby vacated. The vacate stay petition in W.M.P.No.23161 of 2021 hence is allowed. Consequently, other connected miscellaneous petitions are closed. However there shall be no order as to costs.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

tsvn

To

1. The Principle Secretary to the Government
State of Tamil Nadu
Housing & Urban Development Department,
Chennai - 600 009.
2. The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu-Natarajan Maaligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.



3. The Commissioner
Corporation of Chennai
Rippon Buildings,
Chennai - 600 002.

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+1cc to M/s.T.Balaji, Advocate, S.R.No.38745
+1cc to M/s.M.Praveen Kumar, Advocate, S.R.No.38746
+1cc to M/s.P.T.Ramadevi, Standing Counsel, S.R.No.38473
+1cc to M/s.S.Sithirai Anandan, Advocate, S.R.No.38724

W.P.No.18058 of 2021

RP (CO)
RGA (27/06/2022) (28/06/2022)