



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.NO.43824 OF 2016 &

WMP.NOS.37647 TO 37650 OF 2016

S.P.Thiyagarajan

... Petitioner

Vs

1. The Commissioner
Coimbatore City Municipal Corporation
Coimbatore-641 001
2. The Member Secretary
Local Planning Authority, Sivananda Colony
Coimbatore-641 012
3. The District Educational Officer,
Coimbatore-641 001.
4. The Director of Town and Country Planning,
807, Anna Salai, Chennai-600 002.
5. The Chairman, Empowered Committee/
The Secretary to Government
Housing and Urban Development Department,
Secretariat, Chennai-600 009.
6. Sachithananda Nageswaran
7. The Executive Officer,
Kuniamuthur Panchayat,
Coimbatore District.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned Resolution of the 5th



respondent Empowered Committee passed in the 33rd Empowered Committee meeting held on 30.08.2016 in Agenda No.26 and quash the same and consequently direct the Commissioner, Coimbatore City Municipal Corporation to resume the land earmarked for Park and Playfield in the Nethaji Nagar Layout 5 from the 6th respondent as per the Notice issued by the 1st respondent in Letter Na.Ka.No.4660/2014/MH4(S) dated 10.03.2015 within a reasonable period as may be fixed by this Honourable Court.

For Petitioner : Mr.N.Manoharan and Darshan
For Respondents: Mr.Magesh, Standing Counsel - R1

Mr.Silambannan,
Additional Advocate General
assisted by Mr.TNC.Kaushik,
Additional Government Pleader - R2 to R5

Mr.Vijay Narayan, Senior Counsel
for Mr.R.Udaya Kumar - R6

O R D E R

The petitioner challenges a resolution passed by the Empowered Committee constituted under the provisions of the Town and Country Planning Act,1971 (in short 'Act') in its meeting dated 30.08.2016, Agenda No.26. He consequently seeks a direction to the Commissioner, Coimbatore City Municipal Corporation/R1 to repossess and resume the land earmarked for Open Space Reservation (OSR) as park and play field in the Nethaji Nagar Layout from the 6th respondent, i.e, Sachithadananda Nageswaran as per notice issued by R1 dated 10.03.2015.

2. At the outset I will deal with the objection raised on maintainability. The prayer of the petitioner has been contested strenuously by R6, who is a representative of Sri Siddhar Gnanapeeta Trust on the ground that the petitioner has no locus whatsoever to have filed this Writ Petition.

3. Admittedly, and as borne out from the pleadings, the petitioner has no private interest in the relief sought. He does not reside in the layout at S.No.117/2 (Part) Sundakamuthur Village, Kuniyamuthur panchayat, Coimbatore District and ergo cannot maintain the Writ Petition in its present form. It would have been a different matter had the petitioner filed a Writ Petition before the Division Bench in public interest, but that not being the case, this Writ Petition is liable to be dismissed solely on the ground of being bereft of locus.



4. The petitioner does not really have an effective defence as regards the allegation that he has no private interest in the relief sought. However, the official respondents have come to his defence pointing out that the petitioner is instrumental, not just in this case, but in others as well, to bring to their notice instances of violation of sanction conditions. For instance, it is only upon the initiative taken by the petitioner that the authorities have come to know about the encroachment in the present case by R6 upon land that had been earmarked towards OSR.

5. Thus, and while it would not answer the legal issue on locus, the official respondents would support the case of the petitioner to this extent. For his part, the petitioner would justify the Writ Petition stating that a hyper-technical stand not be taken in the matter since the issue raised has a great deal of public importance. Though, admittedly, the matter may not directly concern him, the violation is in relation to an area neighbouring his locality. Having come to know of the misdeeds of, and violations committed by R6, it would militate against his conscience not to agitate and bring to light the violations, in accordance with law.

6. R6 relies in this regard upon a judgement of the Apex Court in Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others, [(2012) 4 SCC 407] and a decision of the Karnataka High Court in the case of Syndicate Bank V. Manyatha Residents Association and others (Writ Appeal No.2872 of 2013 and batch, decided on 26.02.2021) to bring home its objection on maintainability.

7. In Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others, [(2012) 4 SCC 407], the Apex Court holds thus:

"58. Shir Chintaman Raghunath Gharat, ex-President was the complainant, thus, at the most, he could lead evidence as a witness. He could not claim the status of an adversarial litigant. The complainant cannot be the party to the lis. A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically harm of this description is called *damnum sine injuria*.



WEB COPY

59. The Complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to hang on, he cannot be heard as a party in a lis. A fanciful or sentimental grievance may not be sufficient to confer a locus standi to sue upon the individual. There must be injuria or a legal grievance which can be appreciated and not a stat pro ratione voluntas reasons i.e., a claim devoid of reasons."

8. In the case of Syndicate Bank, one of the objections taken was as to the locus of the petitioner, or the lack thereof. The petitioners were constituents of the residents association and an objection was raised as to whether they had the right to object to the diversion of the space earmarked for public purposes. The plea taken on their behalf was that, being residents, they were naturally aggrieved by the violations committed as they had a right to expect the use of the land earmarked for public purposes.

9. In that case, the usurping of the public space was by two companies. It was emphasised that the encroachers were not even public amenities but out and out commercial organisations that deserved no sympathy or latitude. R6 before me would, at this juncture point out its status is better than the usurper in the case of Syndicate Bank (supra), as it is a public charitable trust engaged in the dispensation of education and thus fulfils and serves a public duty.

10. The Court did not agree with these petitioners. Dehors the legal question raised in regard to the violation or otherwise of the applicable Rules, the Court held that the fundamental principles pertaining to locus standi would have to be complied with by the petitioners and they would have to demonstrate how their rights have been violated and in what manner they are aggrieved by the allotment of those sites to the companies. The Bench states, in this context, as follows:

.

41. At the outset, we state that the writ petition is not in the nature of the public interest litigation. Petitioner No.1 is Manyata Residents' Association and it is not pleaded that the other petitioners are site owners and/or members of petitioner No.1/Association. Their addresses are also of different places and not in the area under consideration. They have assailed the allotment of



WEB COPY

civic amenity sites by the BDA to three entities namely, Syndicate Bank, GAIL and Bennett Coleman and Company Limited, under the provisions of the BDA Act and 1989 Rules. These sites were ear-marked by the BDA as civic amenity sites pursuant to the relinquishment of the said sites by the promoters of the layout to the BDA, at the time of seeking plan sanction in terms of Section 32 of the BDA Act.

.....

42. In view of the above stated position in the instant cases, the question is, whether, the respondent / writ petitioners had the locus standi to assail the allotment of the civic amenity sites in question to the respective allottees by filing the writ petitions under Article 226 of the Constitution of India.

43. In the context of filing a writ petition under Article 226 of the Constitution, it is well settled by several decisions of the Hon'ble Supreme Court that only persons aggrieved can file writ petition in their personal / private capacity. In other words, there must exist some legal or constitutional right which has been violated or infringed and in such a case, a person can file a writ petition.

44. The term "locus standi" or "standing to sue" denotes the existence of a right of an individual or group of individuals to have a Court enter upon adjudication on an issue brought before that Court by proceedings instituted by the individual or the group of persons. The question of locus standi assumes importance when petitions are filed by incompetent persons. Ordinarily, a writ petition can be filed by a person aggrieved and not by a stranger except in public interest litigation and in the case of a writ of quo warranto.

45. Article 226 of the Constitution does not lay down as to who are the persons entitled to invoke the jurisdiction of the High Court under that Article. The question of locus standi has been decided from time to time in a large number of cases. Generally, individual person or a group of persons aggrieved by any action or inaction on the part of the State or its Authorities can institute a writ petition under Article 226 of the Constitution on the premise that,



WEB COPY

there is an infringement of their right or they have been prejudicially affected by any order. Thus, the right which is the foundation for exercising the jurisdiction under Article 226 of the Constitution is the personal or individual right of the petitioner himself, though in the case of writs like, habeas corpus or quo-warranto, this rule stands modified.

46. But, in the case of issuance of a writ of mandamus, so as to compel the Authorities to do something, it must be shown that the statute imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. But, where no right of the petitioner is affected, such a person has no locus standi to file the writ petition. Thus, no person can ask for a mandamus without a legal right. There must be a judicially protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or abstain from doing something. Existence of the right is implicit for the exercise of the extraordinary jurisdiction by the High Court under Article 226. For instance, a rival in a trade has no locus standi to challenge the grant of licence to other trader on the ground that the licence was granted illegally or suffers from defect of jurisdiction, vide J.M.Desai vs. Roshan Kumar, [AIR 1976 SC 578], (J.M.Desai); Nagpur Rice and Flour Mills vs. Teekappa Gowda and Brothers, [AIR 1971 SC 246] (Nagpur Rice and Flour Mills). In J.M.Desai, provisions of Bombay Cinemas Registration Act, 1953 and the Bombay Cinema Rules, 1954 came up for consideration and paragraphs 36 to 41 of the said judgment read as under:

"36. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody of meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of Pro Bono Publico, though they have no



WEB COPY

interest of the public or even of their own to protect. They indulge in the past-time of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category may be no more than speaking the wheels of administration. The High Court should do well to reject the applications of such busy bodies at the threshold.

37. The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in asliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of 'persons aggrieved'. In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer-zone may not be "persons aggrieved".

38. To distinguish such applicants from 'strangers', among them, some board tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognized by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person "against whom a decision has been pronounced which has wrongfully deprived



WEB COPY

him of something or wrongfully refused him something or wrongfully affected his title to something? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?

11. The position of the petitioner in the present case is no different. Though some attempt is made to state that the distance between the petitioners' location of the layout in question is proximate, the admitted fact that the petitioner is not a resident in the layout has no direct connection whatsoever with the same and is not aggrieved or impacted in a realistic sense with the impugned order is fatal to his case, qua maintainability. The decisions cited supra support this conclusion. The respondents are correct in stating that the petitioner has no locus to have filed a Writ Petition in the present form and the question of locus is thus answered against the petitioner.

12. R6 also points out that there is substantial delay on the part of the petitioner in approaching this Court and relies upon the following judgments of the Apex Court as follows to state that the delay is fatal to the writ petition:

(i) Shankara Cooperative Housing Society Limited .Vs. MM.Prabhakar and Others [(2011) 5SCC 607]

.

54. The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are:



WEB COPY

(1) there is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.

(2) The principle on which the court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.

(3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy.

(4) No hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

(5) That representations would not be adequate explanation to take care of the delay.

.

64. In the present case, the respondents in the writ petition had raised a specific plea of delay, as a bar to grant relief to the petitioners. In our view, it was perhaps necessary for the Court to have specifically dealt with this issue. It is now well settled that a person who seeks the intervention of the High Court under Article 226, should give a satisfactory explanation of his failure to assert his claim at an earlier date. The excuse for procrastination should find a place in the petition filed before the Court and the facts relied upon by him should be set out clearly in the body of the petition. An excuse that he was agitating his claims before authorities by making



WEB COPY

repeated representations would not be satisfactory explanation for condoning the inordinate delay in approaching the Court. If a litigant runs after a remedy not provided in the Statute or the statutory rules, it cannot be a satisfactory explanation for condoning the delay in approaching the Court.

(ii) Banda Development Authority Vs. Moti Lal Agarwal and Others [(2011) 5 SCC 394]

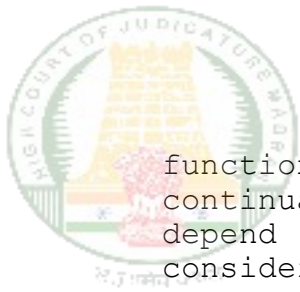
.

19. In matters involving challenge to the acquisition of land for public purpose, this Court has consistently held that delay in filing the writ petition should be viewed seriously and relief denied to the petitioner if he fails to offer plausible explanation for the delay. The Court has also held that the delay of even few years would be fatal to the cause of the petitioner, if the acquired land has been partly or wholly utilised for the public purpose.

.

26. In the instant case, the acquired land was utilized for implementing Tulsi Nagar Residential Scheme inasmuch as after carrying out necessary development i.e. construction of roads, laying electricity, water and sewer lines etc. the BDA carved out plots, constructed flats for economically weaker sections and lower income group, invited applications for allotment of the plots and flats from general as well as reserved categories and allotted the same to eligible persons. In the process, the BDA not only incurred huge expenditure but also created third party rights. In this scenario, the delay of nine years from the date of publication of the declaration issued under Section 6(1) and almost six years from the date of passing of award should have been treated by the High Court as more than sufficient for denying equitable relief to respondent No.1.

13. In the present case, there has been no submission on the aspect of whether there was information available in public domain that could have informed the petitioner earlier of the alleged violations committed by R6. In any event, the defense of R6 in this regard appears to be that the school should not be disturbed at this distance of time, seeing as it has been



functioning there since 1999. As far as this is concerned, the continuance or otherwise of R6 in the present location would depend on the merits of the petitioners' challenge and I will consider the same in the paragraphs to follow.

WEB COPY

14. On merits, the facts as necessary to decide are as follows:

(i) A layout had been approved for the land in question that belonged to the Jamiyathu Mohacinath Ladies Arabic College in DTCP No.155/88 for 45 residential plots, one shop, one borewell and OSR for park and playfield, the last admeasuring 17,528 sq.ft. in an overall landscape of 4 acres (approx.).

(ii) The plan was sanctioned and the land earmarked towards common amenities. The land earmarked towards OSR is stated to have been handed over to the Panchayat even prior to the grant of building approval.

(iii) It transpires that though the approval was conditional upon OSR, no gift deed had been executed between the builder and the Panchayat and consequently, no encumbrance reflected as regards the 17,528 sq.ft. that had been earmarked towards OSR.

(iv) For all the intents and purposes therefor, this portion of the property, though earmarked towards OSR, remains in a state of animated suspension.

(v) One view taken by the Court in the case of The Commissioner Vs. Vasanthikumari, S.A.No.1073 of 2019 dated 29.11.2019 is to the effect that in such circumstances that where a document of gift had not been executed by the concerned party, the land merely vests back in the builder by virtue of there being no document to evidence the gift to the local body. This is what has transpired in the present case and this is an admitted position.

(vi) Since there was no encumbrance as regards the land earmarked towards OSR, R6 proceeded to purchase 14,418 sq.ft. in four tranches from the builder under four sale deeds dated 21.04.1989, 16.11.1989, 04.03.1993 and 27.07.1994. Upon execution of the 1st sale deed on 21.04.1989, R6 sought and obtained an approval for a school on 25.07.1989 itself. Admittedly, the approval obtained was for an old-age home and not a school.

(vii) Be that as it may, a school was constructed upon the property and is being run after grant of licence for the said



purpose on 30.09.1998, renewed on 05.10.2004 and recognition granted by the Director of Elementary Education on 09.04.1999.

(viii) Around the year 2013, it came to be aware of proceedings being contemplated as against it for encroachment upon public space and made a representation to the District Collector seeking continued possession of the premises. It brought to the notice of the District Collector its activities including the interests of the students and the longevity of the Institution itself.

(ix) It has also, for whatever it may be worth, obtained a No Objection Certificate from the Nethaji Nagar Residents Association in March 2013 to the effect that the residents have no objection to the continued functioning of the school from the present premises.

(x) On 04.04.2013, it received a notice calling upon it to handover the property comprising 14418 sq.ft. The notice was itself triggered only when R6 sought permission to regularise the additional construction made by it to the school building till which time the violation committed had escaped notice in all quarters. Immediately upon being alerted to the proceedings contemplated against it, R6 made an application under Section 49 of the Act, seeking regularization of the school constructed on land reserved for OSR.

(xi) On 02.08.2013, R6 was put to notice that its application could not be accepted in light of the fact that it was an encroacher upon public property. On 30.08.2018 R6 made a representation seeking regularization of its occupation of the property and the construction thereupon, undertaking to furnish alternate land in place of that which it occupied.

(xii) On 06.02.20215 its representation came to be rejected stating that land reserved for public purposes could not be utilized for any other purpose than its avowed purpose by referring to the decisions of this Court in W.A.Nos.156 of 2020 and 45 of 2003 dated 12.04.2007 as well as the judgment of the Hon'ble Supreme Court in Civil Appeal No.2750 of 1991. The categorical conclusion was that OSR/ public park cannot be converted into civic amenity sites.

(xiii) A notice for demolition under Sections 56 and 57 of the Act came to be issued on 03.03.2015 and immediately thereupon, R6 took steps for regularization on 30.03.2015. An undertaking was given inter alia to shift the school premises within two years to an alternate location.



(xiv) Since the aforesaid exchange of communications between R6 and the official authorities had been reported in the press, it was at that juncture, that the petitioner, a public activist, had got wind of the violations committed by R6, obtained the requisite and connected documents under the Right to Information Act 2005, and immediately filed a complaint on 01.06.2015 before the authorities seeking their intervention for restoration of the land in question to its original status, nature and character as OSR and public park.

15. R6, by this time, had been in continued ownership and management of the OSR lands since 1989, running a school thereupon from 1999 onwards. It was only in 2015, after 16 years of the alleged encroachment, that the official respondents, at the instance of petitioner, had sought to take action. The petitioner urges that he had been unaware of the violations committed by R6 and had the same come to his knowledge earlier, requisite action would have been initiated in a more timely fashion. I do believe that he would have done so.

16. Per contra, it is the case of R6 that no Gift Deed had been executed in favour of the State and the transactions of its purchase of the land from the vendor were legitimate and legal. Moreover, it has been allowed to run a school from 1999 onwards and should not be disturbed at the mere say of the petitioner.

17. The application filed by the petitioner seeking regularization came to be recommended by the Member Secretary (in charge), Coimbatore Local Planning Commission in the following terms:

‘மேற்கண்டுள்ளவாறு செயல்பட்டு வரும் குருகுலம் உயர்நிலைப்பள்ளியில் 1994-ம் ஆண்டு முதல் தற்போது வரை 700 மாணவர்களுடன் செயல்பட்டு வருவதால் பள்ளிக்கூடம் அமைந்துள்ள இடம் மனைப்பிரிவு, பொது ஒதுக்கீடு இடம் என்பதால், மேற்படி மனைப்பிரிவில் டிரஸ்ட்டுக்கு அமைந்துள்ள இடமான மனை எண்.45 பரப்பு, 437.60 சமீ இடத்தினை பொது ஒதுக்கீடு இடமாக உள்ளாட்சிக்கு ஒப்படைக்கப்பட உள்ளதாகவும் மீதமுள்ள 901.66 சமீ பரப்புள்ள இடத்திற்கு உரிய வழிகாட்டு மதிப்பீட்டின்படி தொகையினை அரசுக்கு செலுத்தப்பட உள்ளதாக மனுதாரர் தனது விண்ணப்பத்தில் தெரிவித்துள்ளார். குறிப்பிட்டு விதிவிலக்கு கோரி மனுதாரர் விண்ணப்பித்துள்ளார்.

மேற்கண்டுள்ள குறிப்புகளின் அடிப்படையில் இடத்தில் பள்ளிக் கட்டிடம் கட்டப்பட்டு 1994 முதல் இன்று வரை சுமார் 700 மாணவர்கள் கொண்டு செயல்பட்டு வருவதாலும், மேற்படி பள்ளிக் கட்டிடம் அமைந்துள்ள இடம் வருவாய் ஆவணங்கள் அனைத்திலும் டிரஸ்ட்டுக்கு உரியது என்பதாலும் மனுதாரருக்கு உரிய 437.60 சமீ பரப்புள்ள இடத்தினை உள்ளாட்சிக்கு ஒப்படைக்கப்பட்டு மீதமுள்ள 901.66 சமீ பரப்புள்ள இடத்திற்கு உள்ளாட்சிக்கு ஒப்படைக்கப்பட்டு மீதமுள்ள 901.66 சமீ



பரப்புள்ள இடத்திற்கு உரிய வழிகாட்டு மதிப்பீட்டின்படி தொகையினை அரசுக்கு செலுத்தும் வகையில் மனுதாரர் கோரிக்கையினை பரிசீலிக்கப்படலாம் என்ற குறிப்புகள் பணிந்து சமர்ப்பிக்கப்படுகிறது.'

18. The basis of the recommendation was that as regards the land admeasuring 14,418 sq.ft., R6 had handed over 4711sq.ft. to the Local Body and for the balance of 10000 sq.ft.(approx.), it had paid a sum of Rs.48,57,500/-, being the guideline value thereof. A receipt from the authority to the aforesaid effect is available on file as is the deed of gift dated 14.12.2016, in respect of 4711 sq.ft. or 10 cents 355 sq.ft. or 437.66 sqmtrs gifted by R6 to the Coimbatore City Municipal Corporation.

19. The application of the petitioner came to be considered by the Empowered Committee constituted under Rule 10 of the Development Control Regulations issued under G.O.Ms.No.130, Housing and Urban Development (UP 4-1) Department, dated 14.06.2010.

20. Initially, the application came to be returned, the Committee being of the view that an alternate and better offer should be made by R6 for consideration of its application. Pursuant thereto, R6 made a subsequent offer of returning the 4711 sq.ft. that it had held in the layout and also gifting the land, for the balance 10000 sq.ft. by way of remitting the monetary value of the same to the authorities. It is this subsequent offer that came to be considered and accepted by the Committee under the impugned resolution.

21. The main argument of R6 is to the effect that it was unaware of the fact that the land upon which it proposed to construct had been ear marked as OSR. Admittedly, there has been no gift deed that had been executed qua the Panchayat and the authorities in this regard.

22. My attention has been drawn to several judgements in similar matters, though without the distinction drawn by R6 as noticed in the preceding paragraph and I discuss below some of the same. The decision of the Division Bench of this Court in Sridevi Nagar Residents Welfare Association V. Subabathal and others ((2007) 3 MLJ 990) was one of the first instances when encroachments upon land earmarked for public space was considered. The categoric ratio laid down was that any land reserved for public purposes in a layout or master plan approved by the Local Body should not be diverted for any other purpose, but must be used only for the stated purpose.

23. An omnibus direction was issued to the Chief Secretary to the Local Administration Department to ensure that all local



bodies scrupulously follow the directions issued by the Court to following effect:

.

WEB COPY

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

- i. Respondents 1 to 3 shall utilise the entire area reserved for public purpose within a maximum period of six months from the date of receipt of copy of this order;
- ii. If respondents 1 to 3 could not maintain the park within the time stipulated above, the Corporation, as a custodian of public interest, shall develop the area as a Park with the cooperation of respondents 1 to 3, with whom the title and possession would continue to remain;
- iii. The Corporation shall not collect any property tax;
- iv. The Corporation shall give access to the general public including the residents of the locality; and
- v. The Corporation is at liberty to collect necessary funds from the plot owners, who purchased the plots in the impugned layout for maintenance of the park.

24. The Bench held that, upon enquiry, if it was found that there was any deviation in the land given for public purpose, action shall be immediately taken by the concerned local body. This was one of the orders of this Court that have inspired good samaritans and public spirited individuals to look into and pursue cases of encroachment upon/diversion of land, earmarked for public purposes.

25. In Pt. Chet Ram Vashist Vs. Municipal Corporation of Delhi, [(1995) 1 SCC47], the Hon'ble Apex Court observes:

.

6. Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the



WEB COPY

owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law.

7. Even then the question is, should we set aside the order of the High Court and the appellate court and restore that of the trial court or we may alter the order passed by the courts below so as to do substantial justice. We have opted for the latter course for the reasons to be mentioned hereinafter. The appellant's plan was sanctioned subject to the conditions imposed by the Corporation. He did not raise any objection immediately and appears to have proceeded to sell and transfer the land. The suit was filed after nearly one year from the date of sanction. The Corporation has been exercising right over the land in dispute as transferor, since then, for nearly a quarter of a century. In these circumstances interfering with the order of the High Court would be setting at naught settled state of affairs. It was also stated by the learned counsel for respondent that the appellant has no land or house in the locality.

8. For these reasons even though the judgment and decree of the High Court are liable to be set aside but we refrain from doing so. Yet in order to protect interests of the owners of house and



WEB COPY

residents of the colony it is directed that the order of the High Court shall stand modified to the following effect :

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

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

(3) It is left open to the Corporation to get the land transferred in its favour after paying the market price as prevalent on the date when the sanction to the layout plan was accorded.

9. The appellant shall be entitled to his costs throughout.

26. There is no exception available to legitimize encroachments in OSR, and even public authorities are subject to strict rules and compliances in this regard. In Bangalore Medical Trust. Vs. B.S.Muddappa and Others [(1991) 4 SCC 54] the Apex Court considered the conversion by the Bangalore Development Authority of a park into a nursing home and states thus:

. . . .

23. The scheme is meant for the reasonable accomplishment of the statutory object which is to promote the orderly development of the City of Bangalore and adjoining areas and to preserve open spaces by reserving public parks and play grounds with a view to protecting the residents from the ill-effects of urbanisation. It is meant for the development of the city in a way that maximum space is provided for the benefit of the public at large for recreation, enjoyment, 'ventilation' and fresh air. This is clear from the Act itself as it originally stood. The amendments inserting sections 16(1)(d), 38A and other provisions are clarificatory of this object. The very purpose of the BDA, as a statutory authority, is to promote the healthy growth and development of the City of Bangalore and the area adjacent thereto. The legislative intent has always been the promotion and enhancement of the quality of life by preservation of the character and desirable aesthetic features of the city. The subsequent amendments are not a deviation from or alteration of the original legislative intent, but only an elucidation or affirmation of the same.



WEB COPY

24. Protection of the environment, open spaces for recreation and fresh air, play grounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and play grounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens.

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

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

.

36. Public park as a place reserved for beauty and recreation was developed in 19th and 20th Century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege



WEB COPY

of few. But now it is a, 'gift from people to themselves'. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology. A private nursing home on the other hand is essentially a commercial venture, a profit oriented industry. Service may be its morn but earn- ing is the objective. Its utility may not be undermined but a park is a necessity not a mere amenity. A private nursing home cannot be a substitute for a public park. No town planner would prepare a blue print without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development acts of different States require even private house-owners to leave open space in front and back for lawn and fresh air. In 1984 the BD Act itself provided for reservation of not less than fifteen per cent of the total area of the lay out in a development scheme for public parks and playgrounds the sale and disposition of which is prohibited under Section 38A of the Act. Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may given rise to health hazard. May be that it may be taken care of by a nursing home. But it is axiomatic that prevention is better than cure. What is lost by removal of a park cannot be gained by establishment of a nursing home. To say, there- fore, that by conversion of a site reserved for low lying into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility.

46. Financial gain by a local authority at the cost of public welfare has never been considered as legitimate purpose even if the objective is laudable. Sadly the law was thrown to winds for a private purpose.

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



WEB COPY

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

.

53. For these reasons the entire proceedings before the State Government suffered from absence of



WEB COPY

jurisdiction. Even the exercise of power was vitiated and ultra vires. Therefore the orders of the Government to convert the site reserved for public park to civic amenity and to allot it for private nursing home to Bangalore Medical Trust and the resolution of the Bangalore Development Authority in compliance of it were null, void and without jurisdiction.

27. In Dr.G.N.Khajuria & Ors Vs. Delhi Development Authority & Ors. (1995)C 5 SCC 762], the Apex Court states thus:

.

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

28. Equally so, the Apex Court, in R.K.Mittal and Ors. Vs. State of Uttar Pradesh and ors [(2012) 2 SCC 232], states thus:

.

68. The Master Plan and the Zonal plan specify the user as residential and therefore these plots cannot be used for any other purpose. The Plans have a binding effect in law. If the scheme/Master Plan is being nullified by arbitrary acts and in excess and derogation of the power of the Development Authority under law, the Court will intervene and would direct such authorities to take appropriate action and wherever necessary even quash the orders of the public authorities.

.



WEB COPY

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

"11. It is seen that the open lands, vested in the Municipality, were meant for the public amenity to the residents of the locality to maintain ecology, sanitation, recreation, playground and ventilation purposes. The buildings directed to be constructed necessarily affect the health and the environment adversely, sanitation and other effects on the residents in the locality. Therefore, the order passed by the Government and the action taken pursuant thereto by the Municipality would clearly defeat the purpose of the scheme. Shri D.V. Sehgal, learned Senior Counsel, again contended that two decades have passed by and that, therefore, the Municipality is entitled to use the land for any purpose. We are unable to accept the self-destructive argument to put a premium on inaction. The land having been taken from the citizens for a public purpose, the Municipality is required to use the land for the protection or preservation of hygienic conditions of the local residents in particular and the people in general and not for any other purpose. Equally acceptance of the argument of Shri V.C. Mahajan encourages pre-emptive action and conduct, deliberately chartered out to frustrate the proceedings and to make the result fait accompli. We are unable to accept the argument of fait accompli on the touchstone of prospective operation of our order."

.

73. The concept of public accountability and performance of public duties in accordance with law and for the larger public good are applicable to statutory bodies as well as to the authorities functioning therein. We find no justification, whatsoever, for the respondents to act arbitrarily in



WEB COPY

treating equals who are similarly placed as unequals. There is also no justification for the Development Authority to issue a public notice in the fashion in which it has done. A few officers of the Development Authority cannot collectively act in violation of the law and frustrate the very object and purpose of the Master Plan in force, Regulations and provisions of the Act.

29. In K.Rajamani & Ors Vs. Alamunagar Residents Welfare Assn. &Ors [(2011) 1 CTC 257], a Division Bench of this Court took note of the judgements in Bangalore Medical Trust and Pt. Chet Ram Vashist as extracted above, as well of this Court in Villupuram Municipality, represented by its Commissioner, Villupuram Municipality v. M. Subramanian, (2000 (3) MLJ 375) and a Division Bench of this Court in Karpaga Nagar Nala Urimai Sangam, rep. by its Secretary, Shanmugavel v. Municipal Administration and Water Supply Department, rep. by its Secretary, Chennai and others (2007 (4) MLJ 1006) in considering the question as to whether the lands specified for public purpose and left open in the layout could be used for any other public purpose. After a detailed consideration of the provisions of the Act and the scheme thereof, it was held that open space earmarked for public purpose cannot be altered and a layout sanctioned by the Municipal Authority cannot be altered by the Government by issuance of a Government Order de-reserving such plots.

30. In R.Chandran Vs. State of Tamil Nadu and another [2010 4 CTC 737], a DB of this Court holds thus:

... ..

13. From the Report it appears that T.Nagar has been shown primarily as commercial locality in Chennai. But, it appears that initially T.Nagar was primarily a residential area and only during the past few years there has been development in mushroom growth of commercial establishments. Many illegal constructions have been made for commercial purposes without providing space for car parking, as a result the regular stream of customers visiting these shopping complexes cause traffic congestion. In order to facilitate the customers visit in those shopping complexes and commercial establishments the respondents have decided to provide underground car parking by changing the character of the land which has been used as playground and park for the last six decades.

14. Prima facie we have no hesitation in holding that such decision of the respondent for using the



WEB COPY

park and the playground for the purpose of providing car parking and to facilitate the customers and the visitors for the shopping complexes and commercial establishments is illegal, arbitrary, unwarranted and unjustified.

17. During the course of argument the learned counsel for the second respondent would submit that apart from underground parking facility a commercial complex is also proposed, inter alia providing restaurants and other facilities to cater to the needs of the persons who use the car parking facility. It is further submitted that by establishing a commercial complex it would add to the revenue, as the revenue generated from the car parking alone would not be sizable. Therefore, it is contended that the entire project as conceived is in the interest of the general public. We however fail to see any public interest as projected by the second respondent. In fact this commercial complex proposed was not mentioned originally. Significantly, even in the notice issued for public hearing no such proposal was projected. Thus it appears that the impugned proposal includes commercial venture; which is impermissible in a site which has been reserved for recreational purpose. An attempt was made by the second respondent to justify their proposal by drawing an analogy to that of the Metro Rail Project, at New Delhi, the Palika Bazaar at New Delhi etc. In our view the submission is misconceived. The sole determinative factor in a case like the present one, shall be classification of the land in question. It is not in dispute that the land in question has been classified as "play ground", notified as such in Annexure III of the Development Control Rules, which lists out the areas included in open space and recreational use zone. As observed by their Lordships of the Supreme Court in the Case Pt. Chet Ram Vashist, (supra) by virtue of the law, if an area is specified as open space the Corporation may at best get a right as a "custodian of public interest" to manage it in the interest of the society in general. Any breach of this custodianship and any attempt to change the 'use' of such land would be impermissible under law and would be against public interest.

31. Again, in SIDCO Nagar Welfare Association Vs. CMDA & Ors [(2018) 5 CTC 857], this Court held as follows:



WEB COPY

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

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

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

(extracted earlier)

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



WEB COPY

Corporation Act, the Hon'ble Supreme Court had observed as follows:

(extracted earlier)

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

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

(extracted earlier)

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

"14. This Court had clearly laid down that such spaces could not be changed from green belt to residential or commercial one. It is not permissible to the State Government to change the parks and playgrounds contrary to legislative intent having constitutional mandate, as that would be an abuse of statutory powers vested in the authorities. No doubt, in the instant case, the legislative process had been undertaken. The Master Plan had been prepared under the Act of 1973. Ultimately, the respondents have realized the importance of such spaces. It was, therefore, their bounden duty not to change



WEB COPY

its very purpose when they knew very well that this is a low-lying area and this area is otherwise thickly populated and provides an outlet for water to prevent flood like situation. In fact, the flood-like situation occurred in the area in question. This Court has permitted the protection by raising Bandh."

32. A Division Bench of this Court in Sri Devi Nagar Residents Welfare Association v. Subbathal and others reported in 2007 (3) LW 259, had considered a similar case where the Writ Petition preferred by the Residences Welfare Association seeking a writ of Mandamus, forbearing the 4th respondent, namely The Commissioner, Coimbatore City Municipal Corporation, from any way interfering with the peaceful possession and enjoyment of the land which were reserved for public purpose by the residents of the locality. The Division Bench after referring to the judgments of the Honble Supreme Court, cited supra, had observed as follows:

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

12. Where open space for construction of public park is preserved and earmarked in the Plan for Development of a planned town, the Authorities cannot ignore or neglect to develop that open space into a public park within reasonable time. Unless an open space reserved for a public park is developed as such, the execution of the plan will remain incomplete. Buildings, as



WEB COPY

proposed in the plan, may have come up, amenities and civic amenities may have been provided and the people may have started living in the colony, yet the plan cannot be said to have been fully executed, if an open space meant for a park is not developed as such. The duty of the authorities is to implement the plan in entirety making the area beautiful with attractive public parks. Their job is not over when the area becomes habitable.

13. Good parks expansively laid out are not only for aesthetic appreciation, but in the fast developing towns having conglomeration of buildings, they are a necessity. In crowded towns where a resident does not get anything but atmosphere polluted by smoke and fumes emitted by endless vehicular traffic and the factories, the efficacy of beautifully laid out parks is no less than that of lungs to human beings. It is the verdant cover provided by public parks and greenbelts in a town, which renders considerable relief to the restless public. Hence the importance of public parks cannot be under-estimated. Private lawns or public parks are not a luxury, as they were considered in the past. A public park is a gift of modern civilization, and is a significant factor for the improvement of the quality of life. Open space for a public park is an essential feature of modern planning and development, as it greatly contributes to the improvement of social ecology."

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

(extracted earlier)

34. Yet another Division Bench of this Court in Kirubkaran and others v. The Commissioner (East), Corporation of Coimbatore, Coimbatore, reported in 2013 (6) CTC 441, had considered whether the Corporation has the power to permit construction of a



WEB COPY

private hospital in the area, which is reserved for a public purpose. After referring to Bangalore Medical Trusts case as well as Sri Devi Nagar Residences Welfare Associations case, cited supra, the Division Bench rejected the contention that even though an offer was made by the Hospital to treat 50% of the patients free, the same cannot be held to be in public interest and rejected the appeal upholding the order of the learned Single Judge.

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

Points 3 and 4:

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

37. We are therefore of the considered opinion that the Government has no power to re-classify a



WEB COPY

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

32. The ratio laid down is clear, categoric and unambiguous. In a case where there has been a classification/reservation of the land to open space, the question of de-classification or even conversion to other civic amenities has not been countenanced by the Courts. Emphasis has been laid on the purpose for such reservation in the first place and a clear embargo has been laid upon all, private and public authorities, to ensure that such places are maintained only for the original public purposes.

33. In the present case however, there is one material distinction. No doubt, in this case, the layout was sanctioned only upon condition that OSR of 17528 Sq.ft. be given by the builder for reservation as a park/playground. However, and admittedly, there has been no Deed of Gift that has been executed and the land in question has not been conveyed to the official respondents.

34. In Pillaiyar P.K.V.K.N. Trust Vs. Karpagam N.N.U.S & Others ((2010) 9 SCC 344), the Hon'ble Supreme Court considered a case where certain plots had been de-reserved by the Government. A layout had been approved by the Thallakulam Town Panchayat and the de-reserved plots related to public utility services, such as school and shopping complex. The Karpaga Nagar Nala Urimai Sangam challenged such de-reservation and the Court noted that though the plots had been reserved and ear marked towards other purposes, though not all public purposes, they had not been acquired by the Government within a period of three years and thus, in light of Section 38 of the Town and Country Planning Act would revert to the owner.

35. Thus, there is an automatic de-reservation in those cases, where an order of classification either gift or otherwise is not passed by the Government, actively taking ownership of the land acquired. The discussion in the judgement proceeds as follows:



WEB COPY

14. We also presume that the Director did consult the earlier correspondence on the subject and, therefore, the High Court was completely in error in deducing that the order was in excess of the power of the Government or was hit by mala fides or was in violation of the principles of natural justice. In our opinion, the deductions reached by the High Court in paragraph 11.5 are baseless. In the latter part of its judgment, the High Court has taken stock of the whole Act right up to Section. We have nothing to say about it excepting that the reference to all the provisions of the Act was not at all necessary. The High Court then referred to the argument made that admittedly 40 plots were private land and, therefore, even if it is presumed that it was included under the plan of 1992, yet since the land was not acquired either by agreement or by acquisition, they would be deemed to have been released from reservation.

15. The High Court has undoubtedly posed this question up to paragraph 16 but has chosen not to answer it till last. We, therefore, put the same question to the Counsel for the respondent as also to the Counsel for the Government and both the Counsel fairly conceded that the land is still not acquired.

16. Section 38 of The Tamil Nadu Town & Country Planning Act, 1971 runs as under:-

38. Release of land:- If within three years from the date of the publication of the notice in the Tamil Nadu Government Gazette under section 26 or section 27- (a) no declaration as provided in sub-section (2) of section 37 is published in respect of any land reserved, allotted or designated for any purpose specified in a regional plan, master plan, detailed development plan or new town development plan covered by such notice; or

(b) such land is not acquired by agreement, such land shall be deemed to be released from such reservation, allotment or designation.

In view of the admitted position that the land is not acquired by agreement till the date of the judgment of the High Court, the deeming clause would certainly come into force and, therefore, the



WEB COPY

concerned land would certainly be deemed to have been released. The High Court has also referred to the reported decision in *Raju S. Jethmalani & Ors. Vs. State of Maharashtra & Ors.* [2005 (11) SCC 222], where this Court has clearly held that the owner of the special land cannot be prohibited from using it since it is the private property and Government cannot deprive the persons from using their private property and, therefore, the acquisition of the property is a must before any such person is restrained from using the land. The High Court has again extensively referred to the earlier two decisions of this Court in *Bangalore Medical Trust Vs. B.S. Muddappa & Ors.* [1991 (4) SCC 54] and *Balakrishna H. Sawant & Ors. Vs. Sangli Miraj & Kupwad City Municipal Corporation & Ors.* [2005 (3) SCC 61]. However, we do not find any answer in these judgments. The respondents had specifically raised these questions in view of the fact that the concerned property has not so far been acquired. Therefore, it is clear that Section 38 will come in the way of the Government, and the appellant Trust could not have been stopped from using the property on the spacious ground that the said property was reserved for construction of school way back in the year 1975 and thereafter in 1992.

36. This is what precisely has happened in the present case. No party before me disputes that though 17528 sq.ft. was originally reserved towards OSR, the same has not been acquired by the Corporation and thus, by operation of Section 38 of the Act, the entirety of 17528 sq.ft. vests back in the owner. This legal friction enables subsequent sale of the same property to third parties as well.

37. In the case of *Commissioner V. Vasanthikumari S.A.No.1073 of 2019, dated 29.11.2019*) this Court considering the aforesaid judgment of the Hon'ble Supreme Court dismissed the appeal filed by the Tiruppur Corporation stating that though the property in question in that case had originally been reserved as a site for a school and play ground, there had been no execution of a gift deed and thus the local authority cannot claim ownership of the same. The facts are akin to the present matter and notably, the submission of the Corporation in that case to the effect that the reserved land would vest in the corporation even dehors the execution of a gift deed came to be rejected by this Court.

38. In the present case as well, upon de-reservation of the property, the land would stand re-vested in the Jamiyathul Mohacinath Ladies Arabic College, the legal right of R6 to have



purchased the land as a bona fide purchaser from the original owner of the plot cannot be questioned. Admittedly, as a result, the claim of R6 as a bona fide purchaser must be upheld, as there has been no encumbrance created upon the land in question and consequently no avenue for R6 to have come to know that the land had been reserved for any purpose, much less public purpose.

39. The effort of the petitioner is to draw attention to the prejudice caused to the public at large and the possibility of collusion between the parties, the original owner and R6. However, available evidence only establishes that the reserved land had not been acquired by the Government. The EC reflected that title to the same stood in the name of the original owner. No other material to establish either that the non-execution of the gift deed by a Corporation and College was conscious and calculated or that R6 had any prior knowledge of the reservation of the land for public purposes is placed before me.

40. In such circumstances, the question that arises is whether, R6 can be made to suffer adverse consequences when the transaction is, prima facie, a bona fide commercial transaction. In my considered view, the answer to this question must be in the negative and in favour of R6.

41. Yet another objection raised by the petitioner relates to the constitution of the Empowered Committee itself and this submission, in my view, has some merit. The Committee that has passed the impugned resolution is to be constituted with four members, being i) the Chairman of the Committee/Secretary to Government, Housing and Urban Development Department, ii) the Chairperson of the Chennai Metropolitan Development Authority, iii) the Joint Secretary to Government, Municipal Administration and Water supply Department and iv) the Commissioner of Town and Country Planning (in charge).

42. However, the same individual, one Mr. Dharmendra Pratap Yadav, Commissioner of Town and Country Planning has passed the order, representing the first, second and third posts in the Committee as well. Thus, as against the requirement of a Committee that contemplates four individuals to take a collective decision on the acceptability or otherwise of an application, the Committee, has comprised of one individual, the same individual, wearing three hats as the Secretary to Government, Housing and Urban Development Department, Member, Chennai Metropolitan Development Authority and Convenor, Town and Country Planning as well as another member.



43. This constitution defies all norms of fairness. The Committee is expected to sit in full capacity indicating that all posts in that Committee must be represented. This purpose certainly cannot be achieved if the same person sits in several capacities, thus effectively frustrating the broad based composition of the Committee. To this extent, the Constitution of the Committee that passed the impugned resolution is farcical.

44. However, in view of the preceding paragraphs, where I have noticed and decided the merits of the petitioner's case, this aspect of the matter is held not to be fatal to the proceedings. R6 has, admittedly, executed a gift deed in respect of 4,711 sq.ft. of land that presently vests in the authority. Then again, R6 has also remitted a sum of Rs.48,57,500/- which has been received and acknowledged by the authorities in relation to the balance of the land purchased. These are irreversible, except by an order of the Court.

45. R6 has, admittedly, executed a gift deed in respect of 4,711 sq.ft. of land that presently vests in the authority. Then again, R6 has also remitted a sum of Rs.48,57,500/- which has been received and acknowledged by the authorities in relation to the balance of the land purchased. These are irreversible except by order of the Court. With this, the quid pro quo is complete. No doubt, there is no question of such exchange or compensation in such situation normally as public interest is paramount. This aspect of the matter has been well settled beyond a pale of doubt as may be seen from the pronouncements of Courts over the last more than two decades. However, there is a distinction in the present matter and I see no justification, for the reasons stated above, and in addition to the fact that R6 has, admittedly, running a school in the premises for the last 16 years in the interests of the children of the locality, to unsettle a position that has obtained over one and half decades.

46. In light of the aforesaid detailed discussion, the petitioner's challenge to the impugned resolution dated 30.08.2016 in Agenda No.26 fails. This Writ Petition is dismissed. No costs. Connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sl/ska

Sub Assistant Registrar



To

1. The Commissioner
Coimbatore City Municipal Corporation
Coimbatore-641 001
2. The Member Secretary
Local Planning Authority, Sivananda Colony
Coimbatore-641 012
3. The District Educational Officer,
Coimbatore-641 001.
4. The Director of Town and Country Planning,
807, Anna Salai, Chennai-600 002.
5. The Chairman,
Empowered Committee/The Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai-600 009.
6. The Executive Officer,
Kuniamuthur Panchayat, Coimbatore District.

+1cc to Mr.N.Manoharan, Advocate, S.R.No.25437
+1cc to Mr.K.Magesh, Advocate, S.R.No.25317
+2ccs to Mr.R.Udaya Kumar, Advocate, S.R.No.25236
+1cc to the Government Pleader, S.R.No.25509

W.P.No.43824 of 2016 &

WMP.Nos.37647 to 37650 of 2016

SPD (CO)
PM/06/06/2022