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W.P.No.5363 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.5363 of 2014

Vishnu Lakshmi Trust,
Represented by its Managing Trustee,
K.Baskaran,
New No.103, Old No.153,
B.R.Main Street,
Banglow Thottam,
Dharapuram – 638 656.

...Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by the Secretary to Government,
Housing and Urban Development Department,
Fort St.George,
Chennai – 600 009.

2.The Commissioner,
Town and Country Planning,
807, Anna Salai,
Chennai – 600 002.

3.The Member Secretary,
Coimbatore Local Planning Body,
Corporation Complex,
Sivananda Colony,
Coimbatore – 12.

..Respondents



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Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent relating to collection of guideline value in lieu of the Open Space Reservation Area of the petitioner's institution Vishnu Lakshmi College of Engineering and Technology, Kanji Konampalayam, Vellalore Post, Coimbatore District and to quash the proceedings in ROC No.8936/2011/UTK-1, dated 02.09.2013 and the consequential proceedings in ROC No.8936/11 UTK-1 dated 28.10.2013 and consequently to direct the respondents to forbear from demanding levying or collecting from the petitioner the guideline value in lieu of Open Space Reservation Area in contravention of G.O.Ms.No.161, Housing and Urban Development {UD 4(3)} Department dated 26.06.2013. (Prayer amended as per order dated 07.09.2016 in W.M.P.No.27114/2016 in W.P.No.5363/2014)

For Petitioner : Mr.T.M.Hariharan

For R1 & R2 : Mr.S.Ravichandran
Additional Government Pleader

For R3 : Mr.V.Jayaprakash Narayanan

ORDER

The proceedings of the third respondent dated 02.09.2013 and the consequential proceedings dated 28.10.2013, demanding guideline value in lieu of the Open Space Reservation (OSR) area of the petitioner's institution/Vishnu Lakshmi College of Engineering and Technology, Kanjikonam Palayam, Vellalore Post, Coimbatore District is under challenge in the present writ petition.



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2. The petitioner Trust has established Vishnu Lakshmi College of Engineering and Technology. The planning permit was obtained on 30.03.2012 for construction of Engineering College and approval was also granted by All India Council for Technical Education for the Academic Year 2013-2014. The College is affiliated to Anna University, Chennai. The Development Control Regulations originally stipulated 10% of the total area, must be earmarked as Open Space Reservation (OSR) area. It is further stipulated in the Regulation that the OSR must be gifted in favour of the concerned Local Body and must be maintained as a Park. In line with the said Regulations, the Planning permit dated 30.03.2012 issued to the petitioner provided that the OSR Area must be gifted to the Local Body.

3. Subsequently, the Government directed that, with the sanction from the Empowered Committee, in lieu of the 10% OSR area to be gifted to the Local Body, guideline value for the said OSR area may be collected and the area may be kept as open without any constructions. Admittedly, the petitioner continues to be in possession of OSR area till date and has not gifted the same in favour of the Local Body. In proceedings dated 14.11.2012, the 2nd respondent communicated the Resolution of the Empowered Committee in the meeting held on 22.10.2012, resolving that



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the guideline value for the land may be collected from the petitioner in lieu of the land to be reserved as 10% of OSR and the OSR area should be earmarked and kept open and no construction should be made in that area.

4. The first respondent issued G.O.Ms.No.161, Housing and Urban Development [UD4(3)] Department, dated 26.06.2013, relaxing the condition in the Development Control Regulations, which necessitates handing over OSR area to the Local Bodies. The Government Order stipulates *“In respect of educational institutions for whom the Open Space Reservation Regulation is applicable, the Open Space Reservation shall be earmarked and kept open to sky without any construction with the condition that the Open Space Reservation area should be utilized only as a park and not as a playground by the concerned institutions. The guideline value should not be collected in lieu of Open Space Reservation area in such cases.”*

5. It is not in dispute that the said Government Order was issued prospectively with effect from 26.06.2013. In the present case, Planning permit was granted to the writ petitioner on 30.03.2012 before issuance of the Government Order and the said Government order cannot be applied



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retrospectively in respect of the Regulations, which had already been applied to the case, where the planning permit was granted.

6. The learned counsel for the petitioner mainly contended that the OSR area is in possession of the petitioner Trust and they have not put up any construction or otherwise. The area is kept open and is utilized as a park and thus, the impugned order, claiming guideline value in lieu of the Open Space Reservation (OSR) area of the petitioner institution is in violation of the principles settled by the Apex Court of India.

7. The Government order stipulates relaxation, under which, planning permit was granted to the petitioner. More so, the petitioner has not violated the OSR Regulations and thus, the action of the respondent is untenable.

8. In this regard, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of ***PT.Chet Ram Vashist (Dead) by LRs. Vs. Municipal Corporation of Delhi, reported in (1995) 1 SCC 47***, wherein the Apex Court made the following observations:



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“6. Reserving any site for any street, open space, park, school etc., in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order



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for transfer without there being any sanction for the same in law.”

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9. Relying on the above judgment, the learned counsel for the petitioner reiterated that the portion of the area was earmarked as Open Space Reservation (OSR) and the petitioner is maintaining it as an open area and thus, the order impugned is liable to be set aside. The Government cannot claim guideline value in lieu of Open Space Reservation (OSR) area.

10. The learned Additional Government Pleader appearing on behalf of the respondents 1 and 2 raised an objection by stating that the 2nd respondent had issued a consent letter on 30.03.2012 to the petitioner thereby directing the Petitioner that 10% of the total area must be earmarked as Open Space Reservation (OSR) area as per the Coimbatore Development Control Regulation and the same should be gifted in favour of the Local Body and must be maintained as a Park. The planning permission shall be issued to the Petitioner only in the event of gifting the Open Space Reservation (OSR) area in favour of the Local Body. It is contended that before obtaining planning permit, the petitioner commenced their construction in violation of the rules and they have not approached this



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Court with clean hands. Upon giving due consideration of the request made by the Petitioner Trust, it was resolved in the meeting of the Empowered Committee that instead of gifting the OSR in favour of the Local Body, Guideline value for the land may be collected from the Petitioner in lieu of the land to be reserved as 10% OSR and the OSR area should be earmarked and kept as open and no construction should be made over the same.

11. In order dated 30.03.2012, building permission was granted. The special conditions stipulated indicates that the petitioner has consented for gifting of the said OSR area in favour of the local body.

12. As far as the Government Order issued in G.O.Ms.No.161, Housing and Urban Development [UD 4(3)] Department dated 26.06.2013 is concerned, the same cannot have any application in respect of the petitioner's case since it will have only prospective effect. The said Government Order stipulates *“In respect of educational institutions for whom the Open Space Reservation Regulation is applicable, the Open Space Reservation shall be earmarked and kept open to sky without any construction with the condition that the Open Space Reservation area should be utilized only as a park and not as a playground by the concerned*



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institutions. The guideline value should not be collected in lieu of Open Space Reservation area in such cases”.

13. However, the said condition stipulated cannot have any application with reference to the case of the petitioner since the building permission was granted in proceedings dated 30.03.2012 before issuance of the Government order and more so, the petitioner has consented for gifting of the Open Space Reservation (OSR) area in favour of the Local body and on that condition, building permission was granted. While so, the petitioner cannot rely on the subsequent Government Order issued by the Government. Government Orders are to be implemented prospectively unless it specifically provides for retrospective effect. In the absence of any such clause for retrospective implementation, the orders are to be implemented prospectively. In the present case, G.O.Ms.No.161, Housing and Urban Development [UD 4(3)] Department dated 26.06.2013 was implemented prospectively and this has been stated in the counter affidavit filed by the third respondent.



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14. The respondents have emphasized that the consent order was issued on 30.03.2012 and therefore, it is not open for the Petitioner to allege that he is not entitled to pay the guideline value in furtherance with the Government Order, which was passed on a later date i.e., 26.06.2013.

15. The petitioner/Trust is bound by the terms and conditions stipulated in the building plan permission order dated 30.03.2012. The petitioner cannot seek any relaxation with reference to the subsequent policies of the Government issued at later point of time.

16. Regarding the judgment of the Hon'ble Supreme Court of India relied on by the petitioner, it is observed that *“Reserving any site for any street, open space, park, school etc., in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it”*.



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17. In the present case, the petitioner admits that they are in possession of the Open Space Reservation (OSR) area and they are utilizing it as a park, but nowhere they have stated that such a Park is open to the public and for public usage in general. That being the affidavit filed by the petitioner and more so, the Open Space Reservation (OSR) area is under the control of the petitioner's administration, the petitioner has to either pay 10% of the guideline value as demanded by the respondents or hand over the Open Space Reservation (OSR) area to the Local body as per the consented condition in proceedings dated 30.03.2012.

18. This being the factum established, the petitioner is not entitled for the relief as such sought for in the present writ petition. Accordingly, the writ petition stands dismissed. No costs.

20.03.2023

Index : Yes
Speaking order
Neutral Citation: Yes

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S.M.SUBRAMANIAM, J.

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