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W.P.Nos.25981, 29953 & 4839 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.09.2023

PRONOUNCED ON : 21.09.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.25981, 29953 & 4839 of 2017

and

W.M.P.Nos.27574, 27575 of 2017, 14368
of 2018, 32462, 32463 & 5058 of 2017

W.P.No.25981 of 2017:

M/s.Kothari Industrial Corporation Limited,
Rep. by its Chairman and Managing Director,
Mr.Pradip D.Kothari,
No.114, Mahathma Gandhi Salai,
Kothari Building, Nungambakkam,
Chennai – 600 034.

... Petitioner

Vs.

1.The Secretary to Government,
Department of Municipal Administration,
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.

2.The District Collector,
Nilgiris District,
Nilgiris District – 643 102.



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3.The Commissioner,
Coonoor Municipality,
Nilgiris District – 643 102.

4.The Revenue Divisional Officer,
Coonoor,
Nilgiris District.

5.The Tahsildar,
Taluk Office, Coonoor,
Nilgiris District.

6.Mr.A.Asmath Ali

7.Mr.E.John Fred Vinil

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order No.Na.Ka.U2/15664/2016 dated 06.09.2017 of the Second Respondent and quash the same.

For Petitioner	: Mr.P.V.Bala Subramaniam Senior Counsel For M/s.BFS Legal
For R1, R2, R4 & R5	: Mr.G.Krishna Raja Additional Government Pleader
For R3	: Mr.R.Subbu Raj
For R6	: Mr.T.Dharani
For R7	: Mrs.G.Thilagavathi Senior Counsel For Mr.R.Gophinath



W.P.No.29953 of 2017:

John Fred Vinil

... Petitioner

Vs.

1.The District Collector,
District Collectorate,
Nilgiris District, Ootacamund.

2.The Revenue Divisional Officer,
Coonoor.

3.The Tahsildar,
Taluk Office, Coonoor.

4.The Commissioner,
Coonoor Municipality,
Coonoor.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the 1st respondent in Na.Ka.No.U2/15664/2014 dated 06.09.2017 and quash the same.

For Petitioner : Mrs.G.Thilagavathi
Senior Counsel
For Mr.R.Gophinath

For R1 to R3 : Mr.G.Krishna Raja
Additional Government Pleader

For R4 : Mr.R.Subbu Raj



W.P.No.4839 of 2017:

Mr.E.John Fred Vinil

... Petitioner

Vs.

1.The Secretary to Government,
Department of Municipal Administration,
Government of Tamil Nadu,
Fort St. George,
Chennai – 600 009.

2.The District Collector,
The Nilgiris District,
The Nilgiris District – 643 102.

3.The Commissioner,
Coonoor Municipality,
The Nilgiris District – 643 102.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the third respondent's impugned Notice No.138/2016 F1 dated 17.11.2016 and quash the same and directing the third respondent to give Building Plan approval after conducting a fresh survey.

For Petitioner

: Mrs.G.Thilagavathi
Senior Counsel
For Mr.R.Gophinath

For R1 & R2

: Mr.G.Krishna Raja
Additional Government Pleader



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W.P.Nos.25981, 29953 & 4839 of 2



For R3

: Mr.R.Subbu Raj



COMMON ORDER

The writ petition in W.P.No.25981 of 2017 is filed by the M/s.Kothari Industrial Corporation Limited, challenging the order dated 06.09.2017 passed by the 2nd respondent / District Collector.

1. (a) The writ petition in W.P.No.29953 of 2017 is filed by Mr.John Fred Vinil, challenging the order of the District Collector dated 06.09.2017 cancelling the permission granted and to demolish the illegal construction by evicting the encroachers.

1. (b) The writ petition in W.P.No.4839 of 2017 is filed by Mr.E.John Fred Vinil, challenging the notice dated 17.11.2016 issued by the Commissioner, Coonoor Municipality, rejecting the application submitted by the writ petitioner for grant of building planning permission.

2. On 31.10.1984, the writ petitioner M/s.Kothari Industrial Corporation Limited submitted an application to the Director of Town and Country Planning, Chennai for approval of two layouts namely Brook Land Estate, which was approved by the Director of Town and Country Planning.



One approval was granted in LP/R(CPN) No.173/84 in revenue Survey No.384 part to an extent of 10.21 acre land consisting of 62 plots, park area, 2635.06 Sq.m, children play ground to an extent of 570.37 Sq.m, school play ground and open area to an extent of 2167.07 Sq.m and shop for 624 Sq.m. Another layout of Brook Land Estate was approved in LP/R(CPN) No.19/85 in revenue S.No.384/1A & 418 in an extent of 11.18 acres, which consist of 77 plots, park and open space 5666 Sq.m and shop area 810 Sq.m.

3. The Senior Deputy Director, Director of Town and Country Planning approved the layout vide letter R.O.C.No.8874/85 Ko.Pa.No.Ma4 dated 31.09.1985.

4. In order to comply with the conditions stipulated in the Tamil Nadu Town and Country Planning Act, 1971, the writ petitioner admittedly registered a Gift Deed in favour of Coonoor Municipality in Document No.719 of 1985. The Coonoor Municipality / Local Planning Authority approved the park and road space by Resolution No.3 dated 10.05.1985. The Coonoor Municipality council has approved the layout through its Resolution No.2672 dated 30.05.1990. The writ petitioner complied with



the conditions and finally handed over the road, park and play ground by registered Gift Deed vide Document No.934/1990.

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5. The writ petitioner Mr.E.John Fred Vinil in other two writ petitions, filed an application for building approval on 07.12.2015, which was returned on 16.12.2015. A representation was submitted. The 3rd respondent / Commissioner, Coonoor Municipality refused to grant building plan approval in favour of the Mr.E.John Fred Vinil. Thereafter, the Town Surveyor inspected the land and submitted his report. The report revealed that the land was already gifted for common purposes in favour of the Municipality and therefore, the application submitted by the said Mr.John Fred Vinil was rejected.

6. Since the common amenities area are attempted to be occupied illegally, the 3rd respondent / Commissioner, Coonoor Municipality issued a demolition notice under Section 217-B, 217(J) and 217(G) of Tamil Nadu District Municipality Act, 1920 on 17.11.2016. The Subsequent applications submitted by the said Mr.E.John Fred Vinil was also rejected on the ground that the subject land vested with the Municipality in view of the Gift Deed



executed in compliance with the conditions imposed in the layout approval under the provisions of the Tamil Nadu Town and Country Planning Act.

The Said Mr.John Fred Vinil filed a writ petition before this Court and the Commissioner, Coonoor Municipality during the hearing of the writ petition brought to the notice of the High Court that the said Mr.E.John Fred Vinil constructed the building even during the pendency of the writ petition. The 3rd respondent / Commissioner, Coonoor Municipality lodged a complaint to the Police Authority. Thereafter, further actions were stopped.

7. The Gift Deed executed by M/s.Kothari Industrial Corporation Limited on 2nd July, 1990 reveals that the donor M/s.Kothari Industrial Corporation Limited applied for approval of town layouts for their lands. The first part of the layout consisting of 10.21 acres in R.S.No.384/1A part and the second part consisting of 11.18 acres in R.S.No.384/1A part and 418. The Senior Deputy Director of Town and Country Planning, Coimbatore has approved layout in part one LP/R(CPN)No.173/84 dated 21.12.1984 and C.No.9467/84 CPNR 4 and the Second part L.P/R(CPN) 19/85 dated 31.01.1985 C.No.8874/84 CPNR 4 accorded Technical approval for these layouts.



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8. The Senior Counsel appearing on behalf of the petitioner mainly contended that a technical approval was granted by the Senior Deputy Director of Town and Country Planning and the final approval has not been granted.

9. However, it is not in dispute that the layout was materialised and the authority under the Town and Country Planning accorded technical approval. Admittedly, the Gift Deed was executed for public purpose by M/s.Kothari Industrial Corporation Limited. As per the Gift Deed road portion stated in Schedule A and B of the Gift Deed and Schedule C and D denotes park and play space as under:

“PAGE NINE
PARK AND PLAY SPACE
Schedule 'C'

III In layout Part I LP/R(CPN)No.173/84 sa
per the Plan attached:

(1) Children Play space area between Plot
No.54 and 55 area, 6137 Sq.Ft (14-1/16 cents).

(2) (i) Park space between Lambs Rock
Road and Broocklands Estate labour line road



from Darlington Bridge are opposite to upper Coonoor Police Station.

(ii) Park Space between Plot 3 and 4, between main lay-out road and stream total area (i & ii) of the Park space is 28.353 Sq.ft (65 cents)

(3) (i) Area noted as “OPEN” between main layout road and Plot No.14.

(ii) School and Play Ground area between main layout road and stream on Northern side area of School Play ground and “OPEN” (i + ii) 23321 Sq.ft (53-8/16 cents) Total area of item 1, 2 and 3: 132-9/16 Cents.

Schedule 'D'

IV 1. Park area along stream side on Part II

(i) The northern side of stream.

(ii) Area noted as “OPEN” between road adjacent to Plot No.30 to 34 and in the Road adjacent to Plot No.1 to 7. Total area of Park and “OPEN”:60.966 Sf.Ft. (139-14/16 Cents).

10. Pertinently, the writ petitioner M/s.Kothari Industrial Corporation Limited executed Sale Deed in favour of Mr.John Fred Vinil in the year 2013 and the land allotted for park area has been sold by the writ petitioner M/s.Kothari Industrial Corporation Limited. The building plan approval



submitted by the Mr.E.John Fred Vinil was rejected on the ground that the Plots sold in his favour by M/s.Kothari Industrial Corporation Limited was already gifted in favour of Coonoor Municipality for maintenance of park and therefore, the building plan approval cannot be granted. The District Collector based on the report submitted by the Revenue Authorities ordered for demolition of building and to evict the petitioner so as to maintain the park area as per the layout approval.

11. The learned Senior Counsel appearing on behalf of M/s.Kothari Industrial Corporation Limited mainly contended that a field survey was conducted based on the directions of this Court. The 2nd respondent / District Collector has stated in their report that the layout has been approved, but no document has been filed to show that the council of the local body has approved the said layout. A plan of the proposed layout alone has been produced, which was a technical approval. The Gift Deed executed by the petitioner / Company on 02.07.1990 was a conditional one for approval of the layout. After execution of the Gift Deed, the layout was not approved by the council of the local body so the parties to the Gift Deed did not act upon the gift. The 2nd respondent did not take possession of the



land which was gifted. The local authority issued patta in favour of the petitioner / Company, which would confirm the fact that the Gift Deed was not acted upon. The proposal of layout forwarded by the Town and Country Planning Office has been approved by the Council of the local body i.e. the 3rd respondent to accord final approval to the layout. In the absence of final approval for the proposed layout, question of validity of the Gift Deed and land conveyed to the 2nd respondent belonging to the petitioner or the local body has to be decided before the Civil Court. In view of the facts and circumstances, the orders impugned are liable to be set aside.

12. The learned Senior Counsel appearing on behalf of Mr.E.John Fred Vinil made a submission that he is the bonafide purchaser of the house site plot from M/s.Kothari Industrial Corporation Limited. On such purchase, he submitted an application for building plan approval, which was rejected on the ground that the subject plot was gifted in favour of the Coonoor Municipality at the time of approval of layout and accordingly, the application was rejected.



13. The learned Senior Counsel contended that the land belonging to the petitioner is not falling under the lands gifted by M/s.Kothari Industrial Corporation Limited. The authorities have not considered these aspects. Patta was granted in favour of Mr.E.John Fred Vinil and without even identifying the lands gifted for parks as per the Gift Deed in favour of the Coonoor Municipality, the respondents have passed the impugned order. No opportunity was afforded to the writ petitioner to place his defence. Therefore, the order impugned dated 06.09.2017 is to be set aside.

14. In respect of the contentions, the learned Senior Counsel relied on the order passed by the learned Single Judge of this Court in the case ***S.Kumar Vs. The District Collector, Villupuram District*** in ***W.P.No.5655 of 2008***, wherein, it is observed that “As rightly pointed by the 3rd respondent in the counter affidavit mere executing a Gift Deed in favour of the local body cannot be taken as if a layout has been approved. The 3rd respondent has made a specific averment in the counter affidavit by stating that no layout plan was approved in respect of the lands of the 4th and 5th respondents and therefore, the question of enforcing the provisions of the Tamil Nadu Panchayat Building Rules does not arise and there is no power



vested with the 3rd respondent to interfere with revenue sub-division of plots”.

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15. The 3rd respondent filed a counter affidavit stating that the writ petitioner M/s.Kothari Industrial Corporation Limited applied to the Director, Town and Country Planning through 3rd respondent for two layouts namely Brook Land Estate layout approved by the DTCP Senior Director. One is LP/R (CPN) No 173/84 in revenue survey no 384 part to an extent of 10.21 acre land consist of 62 plots, park area 2635.06m², children play ground to an extent of 570.37m², school play ground and open area to an extent is 2167.37 m² and shop of 642 m². Another layout in Brookland of Brooklands estate is LP/R(CPN) no 19/85 in revenue S. No 384/1A & 418 in an extent of 11.18 acre land, which consists of 77 plots, park and open space 5666 m² and shop area 810 m². The writ petitioner's application forwarded to Director, Town and country planning, Combatore by letter number Roc.No.10189/84/fl. dated 31.10.1984 with final corrections. Then finally DCP senior Deputy Director approved the layout vide Letter No Roc. No. 8874/85 [Ko.Pa.No](#) Ma4 dated 31.1.1985. Thereafter, the writ Petitioner made a registered agreement to Coonoor Municipality vide Document No.



719/1985 on the file of the SRO, Coonoor. Thereafter, the writ petitioner fulfilled the condition and finally the writ petitioner handed over the Road, Park, and Play Ground by registered Gift deed vide document No 934/1990.

16. It is further submitted that the writ petitioner handed over the lands to the municipality through registered deed and as on date the public is using the same and the 3rd respondent is custodian of OSR lands. Coonoor Municipality Local Planning authority has approved the Park and Road space by Resolution No.3 dated 10.5.1985, then the Coonoor Municipality Council has approved the same through its Resolution No.2672 dated 30.05.1990. Therefore, the averments contained in the petitioner's affidavit with regard to possession and effect of Gift Deed is false and baseless. In other words the 3rd respondent is an owner of the park land and we are in the possession of the lands with effect from the date of Gift Deed. Till date the 3rd respondent is maintaining the layout roads and parks. The 3rd respondents is also providing the basic amenities to the residence of the Brookland layout. Therefore, the 2nd respondent order is valid and correct. In this layout 160 Buildings have been assessed property tax, 120 number of house service connections (water supply) have provided



and 64 street lights with poles have been provided and also laying of Roads from the year 1990 has been carried out by Municipality for about 26 lakhs and 48.5 lakhs road work tenders have been passed by 3rd Respondent for further development. It is pertinent to mention here that the writ petitioners are fully aware of the layout procedure and everything regarding park space and roads were informed through ROC.No.F1/98828/84 dated 08.02.1985 to the petitioners. Then only the writ petitioner gave a gift deed in favour of 3rd respondent on 02.07.1990 vide Doc.No.934/1990.

17. The learned counsel for the 3rd respondent mainly contended that the sale in favour of Mr.E.John Fred Vinil would not create any legal right to him, since prior to the Sale Deed in his favour, the writ petitioner Vendor / M/s.Kothari Industrial Corporation Limited executed a Gift Deed in favour of Coonoor Municipality vide Gift Deed dated 02.07.1990. Thus, the Coonoor Municipality is the owner and custodian of the property and it is a public recreation place i.e. Park. Patta was granted in his name, since the Gift Deed was not brought to the notice of the Revenue Authorities. Therefore, the patta would not confer any title in favour of Mr.E.John Fred Vinil. As per the Tamil Nadu District Municipalities Act, 1920 Section



217(J) demolition notice served to Mr.E.John Fred Vinil and on two occasions the Town Surveyor has inspected the site and gave a report and mentioned that the site is a part of the land. On 03.01.2017 a final notice was issued to the Mr.E.John Fred Vinil and directing him to remove the illegal building. But without any planning permission the 7th respondent constructed the building in a hilly area and no interim order was granted in these writ petitions.

18. Mr.E.John Fred Vinil has not complied with the directions issued by this Court in W.P.No.4839 of 2017. He has violated the building rules by citing the pendency of the writ petition. An application for grant of building approval was rejected. Therefore, the writ petition is liable to be rejected.

19. Though the writ petitioners have raised that the layout formed by M/s.Kothari Industrial Corporation Limited has not been approved, the said contention seems to be incorrect in view of the details provided by the respondents regarding the approval of the layout granted and the Gift Deed executed in favour of Coonoor Municipality for maintenance of park space roads etc. It is not in dispute that the lands belonged to M/s.Kothari



Industrial Corporation Limited were converted as house sites by forming layout and applications were submitted for approval of layouts before the Director of Town and Country Planning, Chennai through the 3rd respondent Coonoor Municipality.

20. The details provided by the respondents would be sufficient enough to form an opinion that the layout approval was granted. Whether it is technical approval or final approval is immaterial, since the layout was formed, housing plots were sold to third parties and such third party purchasers constructed houses in their respective plots. When the layout has already been formed and the housing plots were sold by M/s.Kothari Industrial Corporation Limited, the Gift Deed executed by them became valid and it is to be acted upon for the benefit of the people residing in that locality.

21. It is not in dispute that roads are formed based on the Gift Deed. Common public amenities are provided based on the Gift Deed executed by M/s.Kothari Industrial Corporation Limited. While so, the park area is also to be maintained for the benefit of the people residing in that locality.



M/s.Kothari Industrial Corporation Limited illegally sold few plots gifted in favour of Coonoor Municipality for maintenance of park area. Mr.E.John Fred Vinil is one such purchaser. Whether he has purchased the housing plot knowing the fact that the area was gifted for maintenance of park or otherwise is immaterial. Even if the sale was made without informing the fact regarding the Gift Deed by M/s.Kothari Industrial Corporation Limited it is for the purchaser to sue his vendor in the manner known to law.

22. In other words, the illegality committed between M/s.Kothari Industrial Corporation Limited and Mr.E.John Fred Vinil cannot be a ground to set aside the order now passed by the District Collector. M/s.Kothari Industrial Corporation Limited knowing the fact that they have executed a Gift Deed in favour of Coonoor Municipality, sold the property illegally in favour of Mr.E.John Fred Vinil. Therefore, Mr.E.John Fred Vinil has to sue his vendor for the fraudulent sale effected by M/s.Kothari Industrial Corporation Limited by suppressing the fact that the land was gifted in favour of Coonoor Municipality.



23. The Gift Deed executed for public purposes by M/s.Kothari Industrial Corporation Limited in favour of Coonoor Municipality unambiguously provides the park and play space and the lands gifted for formation of roads in the layout. Admittedly, the Gift Deed is in force. Even presuming, final approval was not granted in respect of the layout, the Gift Deed executed was not cancelled. So long as the Gift Deed stands in the name of the Coonoor Municipality the sale effected by M/s.Kothari Industrial Corporation Limited is illegal and fraudulent.

24. The very purpose and object of forming the layout in compliance with the provisions of the Town and Country Planning Act is to ensure roads are provided to the people, who all are purchasing the housing sites in the layout and to provide other infrastructure facilities for the benefit of the people residing there. Such laudable purpose and object at no circumstances be compromised and therefore, the subsequent sale effected in respect of the gifted property cannot be sustained.

25. Recently, the Hon'ble Supreme Court of India elaborately considered the Town Planning, Urban Planning Development Control



Rules, the Gift executed in favour of the authority also has been discussed by the Hon'ble Supreme Court of India in the case of *Association of Vasanth Apartments' Owners Vs. V.Gopinath and Others* reported in (2023) 4 MLJ 353 (SC), the relevant paragraphs are extracted hereunder:

“38. The distinguishing feature of law has been the subject matter of considerable debate and we may only for the purpose of these cases note that one of the essential features which mark out law from an executive order is that ‘law’ has general application. In other words, law sets out principles and rules which apply to all of those who would be within its purview otherwise. A law is not to be viewed as particularised decisions of the executive. Law is generally to have operation in the future. This court speaking through O. Chinnappa Reddy, J. held in Union of India v. Cynamide India Limited :

“5. The second observation we wish to make is, legislative action, plenary or subordinate, is not subject to rules of natural justice. In the case of Parliamentary legislation, the proposition is self-evident. In the case of subordinate legislation, it may happen that Parliament may itself provide for a notice and for



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a hearing — there are several instances of the legislature requiring the subordinate legislating authority to give public notice and a public hearing before say, for example, levying a municipal rate — in which case the substantial non-observance of the statutorily prescribed mode of observing natural justice may have the effect of invalidating the subordinate legislation... ”.

“7. The third observation we wish to make is, price fixation is more in the nature of a legislative activity than any other. It is true that, with the proliferation of delegated legislation, there is a tendency for the line between legislation and administration to vanish into an illusion. Administrative, quasi-judicial decisions tend to merge in legislative activity and, conversely, legislative activity tends to fade into and present an appearance of an administrative or quasi-judicial activity. Any attempt to draw a distinct line between legislative and administrative functions, it has been said, is “difficult in theory and impossible in practice”. Though difficult, it is necessary that the line must sometimes be drawn as different legal rights and consequences may ensue. The distinction between the two has usually



been expressed as “one between the general and the particular”. “A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy”. “Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases.” It has also been said: “Rule-making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class” while, “an adjudication, on the other hand, applies to specific individuals or situations”. But, this is only a broad distinction, not necessarily always true. Administration and administrative adjudication may also be of general application and there may be legislation of particular application only. That is not ruled out. Again, adjudication determines past and



present facts and declares rights and liabilities while legislation indicates the future course of action. Adjudication is determinative of the past and the present while legislation is indicative of the future. The object of the rule, the reach of its application, the rights and obligations arising out of it, its intended effect on past, present and future events, its form, the manner of its promulgation are some factors which may help in drawing the line between legislative and non-legislative acts.”

44. Even according to the petitioner in Association of Vasanth Apartments Owners, the DCR is a part of the Master Plan. This is precisely the argument of the respondent as well. We are in agreement with the stand taken by the petitioner and the respondent. The DCR is a part of the Master Plan. The process involved in the making of the Master Plan points to active participation of all stakeholders. The plan which is apparently tentatively prepared must first receive approval from the Government before the notice of its preparation is published. It is upon such notice being published, objections are also invited. It is open to the Planning Authority to amend the Plan,



paying heed to the objections found to be with merit. Again, the matter goes to the Government. Government has the power again to return it. Government as well may approve the Plan. As we have already found Master Plan cannot be conflated with a set of drawings or maps. It must, in the context of law in question, be extended to encompass within its embrace rules by which alone the Plan can become workable and the sublime goal of the lawgiver attained. The Master Plan accompanied with the DCR were to hold sway. It was to have general application. It was intended to bind everyone. It created rights and liabilities. It was not intended for any particular person. It was to operate in the future. It carried with it the attributes of law. The Government all throughout plays the pivotal and leading role and it is only with the imprimatur of approval by the Government that the Plan read with the Rules assumed force. Government undoubtedly had power to make rules under Section 122 of the Act. We would therefore hold that the DCR which held the field till 2008 when Regulations were enacted had the force of law.



54. We are concerned in this case with the provision which provides for town planning. In regard to such law, a certain measure of free play is to be given to the planning authority bearing in mind that it is urban planning what is involved. In regard to the grant of development permit up to 3000 sq. mtr., the rules do not contemplate any requirement in the matter of OSR. It is a matter which goes to the wisdom and clearly falls within the realm of policy. In other words, having regard to the size of the development contemplated, the authority has not found it fit to provide for reservation under the head open space. It cannot be described as being bereft of any rationale that upon the minimum threshold of 3,000 sq. mtr. being breached and the layout being between 3,000 sq. mtr. and 10,000 sq. mtr., 10% of the area excluding roads is to be maintained as open space. In other words, 10% of area would have to be reserved for communal and recreational facilities. It is no doubt true that that in cases falling in the said category namely group developments which comprise of an area in excess of 3,000 sq. mtr. and up to 10,000 sq. mtr., it is open to the project proponent to pay the market



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value equal to the land on the basis of valuation as provided therein. However, it is only if on account of the physical constraints it is not possible to provide open space, that payment is contemplated. Another noteworthy feature is that in cases where the land is between 3,000 sq. mtr. and 10,000 sq. mtr. public access for the area as earmarked shall not be insisted upon. It is when it comes to a case where if the area goes above 10,000 sq. mtrs., that it becomes obligatory to reserve 10% of the area excluding road and the OSR reserved is to be transferred by way of gift deed.

55. We are unable to persuade ourselves to hold that the impugned rule violates Article 14 on the score that it is discriminatory. In a challenge to a provision based on discrimination under Article 14, the burden is on the applicant to lay clear foundation in pleadings and further to discharge the burden by making good the case and the court will not lightly enter a finding of discrimination. Town planning being a complex subject involving various inputs and value judgments which are intended to ensure the



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orderly, visionary and planned development, they require greater deference from courts.

68. A perusal of Section 39 would clearly reveal that a right to compensation is conferred on any person whose property is 'injuriously affected' by any of the provisions contained in the master plan. A person seeking to develop his land and if he falls within the ambit of rule/regulation in question cannot be described as a person whose property is injuriously affected by the provisions of the master plan inter alia. The very language used in Section 39 appears to be incongruous with the raising of any such claim. It is not as if the parties have in this case raised any such claim. The contention taken in the case of Keyaram Hotels is that Section 39 provides for compensation to persons who are affected in the manner provided in the said provision. The provision actually deals with cases of a person having property, who, with the making of a master plan, inter alia, becomes injuriously affected. The words 'injuriously affected' would bear meaning if expounded with reference to a person who has a property and that property becomes injuriously



affected by virtue of the provision of any master plan. Take for instance, the land of a person is found to fall in a zone which is earmarked in the primary residential use zone. The provision in the DCR which forms part of the plan inter alia provides that all uses not specifically permitted under sub-rule (a) and (b) will stand prohibited in the zone. The proviso is only to be understood as qualifying the ambit of the main provision which itself must be understood has application in cases where a person is injuriously affected by the provision of a master plan inter alia.

169. The impact of Rule 19 (b)(II)(vii) is as follows. It empowers the CMDA to enforce the maintenance of the reserved areas by the owner to the satisfaction of the authority or to order the owner to transfer the land to the authority or any local body free of cost through a deed. The authority also reserves the right to decide on entrusting the maintenance work to institutions/individual on the merits of the case. It is noteworthy that there is no challenge to Rule 19(b)(II)(vii). It would appear that when a gift is executed then the duty of maintaining can be



given to institution/individual on the merits of the case. This would mean that even the project proponent or other individual/individuals who may have an interest as in the case of Vasant Apartments Owners Association, the said Association could be asked to maintain the open area.

170. The impression we gather on reading the contents of reservation to be made in respect of site having an extent between 3,000 to 10,000 square metres is that the reserved area is to be maintained as a park. When it comes to the site having more than 10,000 square meters, the provision that public access for area shall not be insisted upon is not to be found. This means that when it comes to the layout which in the wisdom and the policy of the Rule Maker, which as we have seen, has been made after the process undergone under the Act, as we have noticed, and apparently, after hearing objections, if any, and with the approval of the government that, were a large chunk of land be developed for group development, as defined, and certain percentage, which in these cases is 10 per cent or 1/10 of the



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total layout excluding roads is to be set apart as the OSR area. The word park is not in any way inconsistent with recreational purpose. It does not require much imagination to conclude that in an urban area and with a site being in excess of 10,000 square metres (nearly two and a half acres) where group development takes place, there would be a large number of people who would occupy the said area. Group development can be substantially conflated with flats and apartments comprised in two or more blocks or buildings as required to satisfy the requirement of group development under Rule 19(b)(II). A large number of people would occupy the said land. This is understandable having regard to the size of the layout and the definition of group building. Planned development, particularly, when it is informed by deep vision about the future does call for an expansive approach. Congestion in urban areas is a foreseen certainty. The requirement for lung space and that too the need for the same being available in the close vicinity of the area of residents is not difficult to conjure. Planned development has a considerable deal to do with the quality of the lives of the residents in an urban



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area, as can be perceived from provision made for aspects relating to parking, setback, roads, all of which do apparently make inroads into absolute right of property of developer. They are indispensable necessities from the standpoint of the town planner as much as it is for the residents in an urban area. While we are conscious of the fact that the DCR did contemplate open space zones which must be understood as parks, etc., as one of the zones, the idea, apparently, was to avoid concentration and the consequent need to undertake avoidable travel for the residents of an area to the site of the open space zone. An open space requirement is stipulated world over based on very formidable considerations. The fact that no construction is to be put up is the very corollary of and is in consonance with an 'open' space requirement. Still further, parks inevitably would have trees. Trees ensures a steady supply of much needed oxygen. Providing other recreational measures, which are at the heart of quality of a person's life, in keeping with modern demands, are critical elements of a legitimate public interest."



26. In view of the principles laid down by the Apex Court of India in the above judgment, the Gift Deed executed in favour of the local authority for the maintenance of park is to be kept open for the benefit of the people of that locality. Transfer of property by the writ petitioner in favour of third party for valuable consideration is illegal and cannot be sustained.

27. In the present case, the arguments as advanced by the petitioners are unacceptable, in view of the fact that layout was admittedly formed, housing plots were sold to third parties and residential buildings were constructed by forming roads and providing other common amenities. That being the factum, the land gifted by M/s.Kothari Industrial Corporation Limited for maintenance of park as per the Gift Deed is in force and thus, any sale of the park area is illegal and fraudulent.

28. Therefore, the petitioners have not established any acceptable reasons for the purpose of interfering with the orders passed by the respondents. Accordingly, the respondents are directed to demolish the illegal constructions made in the park area or in any other common area and maintain the park for the benefit of the people of that locality.



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29. In view of the facts and circumstances, this Court is inclined to pass the following orders:-

(1) The reliefs as such sought for in all these writ petitions are rejected.

(2) The District Collector, Nilgiris District, the Commissioner, Coonoor Municipality, the Revenue Divisional Officer, Coonoor and the Tahsildar, Coonoor are directed to remove the encroachments, illegal occupations and unauthorised constructions in the park area gifted in favour of Coonoor Municipality, within a period of four weeks from the date of receipt of a copy of this order and maintain the park area free from encroachments and illegal occupations for the benefit of the people of that locality.

(3) The writ petitioner Mr. John Fred Vinil is at liberty to sue his vendor M/s. Kothari Industrial Corporation Limited for compensation or for any other relief in the manner known to law.



30. With the above directions, all these Writ Petitions are disposed of.

Consequently, connected Miscellaneous Petitions are closed. However, there shall be no order as to costs.

21.09.2023

Jeni

Index : Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

To

1.The Secretary to Government,
Department of Municipal Administration,
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.

2.The District Collector,
Nilgiris District,
Nilgiris District – 643 102.

3.The Commissioner,
Coonoor Municipality,
Nilgiris District – 643 102.

4.The Revenue Divisional Officer,
Coonoor,
Nilgiris District.

5.The Tahsildar,
Taluk Office, Coonoor,
Nilgiris District.



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S.M.SUBRAMANIAM, J.

Jeni

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21.09.2023