



W.P.No.26673 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 24.04.2023

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

and

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

W.P.No.26673 of 2017

and

W.M.P.No.28404 of 2017

J.Amsaveni

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep.by its Principal Secretary,
Housing & Urban Development Department,
Fort St.George,
Secretariat,
Chennai - 600 009.



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2. The Chennai Metropolitan Area
rep by its Member Secretary,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore,
Chennai - 600 008.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records of the 2nd respondent Letter No.C1/10267/2017 dated 19.09.2017 and quash the same by directing the Respondents herein to release the lands belonging to the Petitioner herein situated at Thiruvallur District, Ambattur Taluk, Morai Village, S.No.370/4, measuring an extent of Ac 4.11 in Patta No.415 and in S.No.370/2, measuring an extent of Ac 1.90 in Patta. No.3293 and in Vellanur Village, S.No.1, measuring an extent of Ac 4.00 in Patta No.344 from being reserved as catchment area and reclassify the same as Urban use Zone within stipulated timeframe, thereby enabling me to proceed with any development activity in the above mentioned lands without any restriction pertaining to catchment area.



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For Petitioner : Mr.V.Srinivasa Babu
: for Mr.K.Sai Sharavan Kumar

For Respondents : Mr.P.Kumaresan
Additional Advocate General
assisted by Mr.C.N.Vinobha,
Standing Counsel for R2

Mr.R.Vigneshwaran – R1

ORDER

(Order of the Court was delivered by V. LAKSHMINARAYANAN, J.)

"நீர்இன்று அமையாது உலகெனின் யார்யார்க்கும்
வான்இன்று அமையாது ஒழுக்கு" (Thirukural Couplet 20)

English translation:

When water fails, functions of nature cease, you say;

Thus when rain fails, no men can walk in 'duty's ordered way'.

This couplet from Thirukural shows that the importance of water has been recognised in Tamil Nadu for thousands of years. After air, if life has to survive on this planet, it is attributable to water. Without water, there is no



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point in having any amount of wealth. It was once remarked, the next war

between nations, if at all occurs, it will be on account of water.

2.This writ petition deals with the water catchment area for the Red Hills Lake. There existed a small reservoir in Puzhal area. Five score and fifty years before, the British administration decided to expand this reservoir and constructed embankments' and masonry weirs for storage of water. The water stored in this lake, in addition to those in Chembarambakkam and Porur lakes, is essential for supply of water to the continually expanding Metropolis of Chennai.

3.The issue before this court is whether the respondents are justified in classifying the areas as a water catchment area for Red Hills Lake and declaring it as a “no development zone” under the Master Plan for



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Chennai. What is a water catchment area?. According to the *Sydney*

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Water Catchment Authority,

“A catchment is an area where water is collected by the natural landscape. In a catchment, all rain and run-off water eventually flows to a creek, river, lake or ocean, or into the groundwater system. Natural and human systems such as rivers, bushland, farms, dams, homes, plants, animals and people can co-exist in a catchment.”

According to *Understanding your catchment – stream sense manual*,

“A catchment is a basin shaped area of land, bounded by natural features such as hills or mountains from which surface and sub surface water flows into streams, rivers and wetlands. Water flows into, and collects in, the lowest areas in the landscape. The system of streams which transport water, sediment and other material from a catchment is called a drainage network. A catchment catches water which falls to earth as precipitation



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Hence, the doctrine of sustainable development has been included in this nation's DNA. The reports of the High Courts and Supreme Courts are replete with such views and few of them are referred hereunder.

5. We take as a reference point the judgment of the Supreme Court in *Intellectuals Forum, Tirupati Vs. State of Andhra Pradesh and Ors*, reported in (2006) 3 SCC 549. This judgment took of the fact that India was a party to the Stockholm Convention and categorially ruled that it is the duty of the State, its bodies and the citizenry to maintain the environment including water bodies. It held : -

“67. The responsibility of the state to protect the environment is now a well-accepted notion in all countries. It is this notion that, in international law, gave rise to the principle of "State responsibility" for pollution emanating within one's own territories [Corfu Channel Case, ICJ Reports (1949) 4]. This responsibility is



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clearly enunciated in the United Nations Conference on the Human Environment, Stockholm 1972 (Stockholm Convention), to which India was a party. The relevant Clause of this Declaration in the present context is Paragraph 2, which states:

"The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate. "

Thus, there is no doubt about the fact that there is a responsibility bestowed upon the Government to protect and preserve the tanks, which are an important part of the environment of the area."

6.The concept of sustainable development as a part of the constitutional universe of this nation was discussed at length, in this



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judgment. It read Article 48A and Article 51A as a duty on the State as

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well as that of the persons, living under its protection, to protect and improve the environment. We are extracting the said portion of the

Judgement for immediate reference : -

“81. The principles mentioned above wholly apply for adjudicating matters concerning environment and ecology. These principles must, therefore, be applied in full force for protecting the natural resources of this country.

82. Art. 48-A of the Constitution of India mandates that the State shall endeavour to protect and improve the environment to safeguard the forests and wild life of the country. Art. 51A of the Constitution of India, enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve the national environment including forests, lakes, rivers, wild life and to have compassion for living creatures. These two Articles are not only fundamental in the governance of



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the country but also it shall be the duty of the State to apply these principles in making laws and further these two articles are to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 of the Constitution of India and also the various laws enacted by the Parliament and the State Legislature.

....

85. Parliament has considerably responded to the call of the Nations for conservation of environment and natural resources and enacted suitable laws.

86. The Judicial Wing of the country, more particularly, this Court has laid down a plethora of decisions asserting the need for environmental protection and conservation of natural resources. The environmental protection and conservation of natural resources has been given a status of a fundamental right and brought under Art. 21 of the Constitution of India. This apart, the Directive Principles of State



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Policy as also the fundamental duties enshrined in Part IV and Part IVA of the Constitution of India respectively also stress the need to protect and improve the natural environment including the forests, lakes, rivers and wild-life and to have compassion for living creatures.”

7.A Division Bench of the Kerala High Court in ***Vishala Kochi Kudivella Samrakshana Samithi v. State of Kerala***, reported in 2006 ***SCC OnLine Ker 63*** has prioritized the need to provide drinking water over other development programmes. The relevant para reads as under:

“4. Water is one of the primary needs of man, second only to air. Water is in fact the elixir of life. Any Government whether proletarian or bourgeois and certainly a Welfare State committed to the cause of the common man, is bound to provide drinking water to the public which should be the foremost duty of any



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Government. When considering the priorities of a Government, supply of drinking water should be on the top of the list.....We have no hesitation to hold that failure of the State to provide safe drinking water to the citizens in adequate quantities would amount to violation of the fundamental right to life enshrined in Article 21 of the Constitution of India and would be violation of human rights. Therefore, every Government, which has its priorities right, should give foremost importance to providing safe drinking water even at the cost of other development programmes. Nothing shall stand in its way whether it is lack of funds or other infrastructure. Ways and means have to be found out at all costs with utmost expediency instead of restricting action in that regard to mere lip service.

8. In this context, it is apposite to refer to the observations of a learned single Judge of this Court in ***A. Periakaruppan v. The Principal***



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Secretary to the Government and Ors, in W.P. (MD) 18636 of 2013

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dated 19.04.2022. We are alive that the matter arose under service law.

However, the observations of the learned Judge are relevant for the case at

hand : -

“18. The mother nature ought to be preserved. Indiscriminate destruction or change is leading to several complications in ecosystem, ultimately is endangering the very existence of the animals, flora and fauna, forests, rivers, lakes, water bodies, mountains, glaciers, air and of course human. Strangely the destruction is carried on by few humans. Any such act ought to be checked at all levels. A report states, in India protected areas (like National Parks and Sanctuaries) notified under the Wild Life Protection Act 1972 occupy less than 5% of India’s geographical area. Infact this 5% provide ecosystem services to the human survival. Rest of 95% of India’s geographical area is available for humans. Inspite of the same it is unknown why the human is so desperate to



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intrude in the said 5% area. The indiscriminate activities in the said 5% area are causing huge damage, which is irreversible.

19.The natural environment is part of basic human rights of “right to life itself”. A report indicates 60 per cent of earth's ecosystems are experiencing terminal loss. Whether it is Amazon forest, sea life, elephants and tigers, rivers and lakes, glaciers or aquifers is strongly impacting human life. The few remaining original forests - our biodiversity treasury- are being destroyed to make way for huge mines or dams or lucrative real estate projects. And we attempt to pacify the destruction with the words like 'compensatory afforestation' and it is like giving sanction to kill all wild tigers and replace them by farming the same population in captivity, which is absolutely against “Nature”.

20.Under the guise of sustainable development the human should not destroy the nature. If sustainable development finishes off all our biodiversity and resources,



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then it is not sustainable development it is sustainable destruction. The phrases like 'sustainable development', 'the polluter pays', 'the precautionary principle' shall not be allowed anymore.

...

23.The past generations have handed over the 'Mother Earth' to us in its pristine glory and we are morally bound to hand over the same Mother Earth to the next generation.....”

9.We are not travelling to the entire distance which the learned single Judge did, declaring lakes, rivers and other entities as juristic persons, as that position has been kept in abeyance by the Supreme Court in ***SLP (CC) 7266 of 2017 dated 5th May, 2017.***



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10. The Supreme court in a very recent judgment has held that protection of environment is a part of the rule of law governance under Article 14. Chief Justice Dr. D.Y. Chandrachud has held in **Hanuman Laxman Aroskar v. Union of India**, reported in (2019) 15 SCC 401 as follows:-

“156. The rule of law requires a regime which has effective, accountable and transparent institutions. Responsive, inclusive, participatory and representative decision making are key ingredients to the rule of law. Public access to information is, in similar terms, fundamental to the preservation of the rule of law. In a domestic context, environmental governance that is founded on the rule of law emerges from the values of our Constitution. The health of the environment is key to preserving the right to life as a constitutionally recognized value under Article 21 of the Constitution. Proper structures for environmental decision making find



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expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution.”

11. Therefore, it falls to the duty of the court to balance development on one hand and environment on the other. It is a fine balance which has to be achieved keeping in mind the needs of today as against the rights of tomorrow. In that light, guidance can be taken from **N.D. Jayal v. Union of India**, reported in (2004) 9 SCC 362. The relevant paragraphs are extracted hereunder :

“24. The right to development cannot be treated as a mere right to economic betterment or cannot be limited as a misnomer to simple construction activities. The right to development encompasses much more than economic well-being, and includes within its definition the guarantee of fundamental human rights. The “development” is not related only to the growth of GNP. In the classic work, Development As Freedom, the Nobel prize winner Amartya



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Sen pointed out that “the issue of development cannot be separated from the conceptual framework of human right”.

This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well-being and realization of their full potential. It is an integral part of human rights. Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development.

25. Therefore, the adherence to sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to “sustainable development” cannot be singled out. Therefore, the concept of “sustainable development” is to be treated as an integral



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part of “life” under Article 21. Weighty concepts like intergenerational equity (State of H.P.v.Ganesh Wood Products [(1995) 6 SCC 363]), public trust doctrine (M.C. Mehta v. Kamal Nath [(1997) 1 SCC 388]) and precautionary principle (Vellore Citizens [(1996) 5 SCC 647]), which we declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development

26. To ensure sustainable development is one of the goals of the Environment (Protection) Act, 1986 (for short “the Act”) and this is quite necessary to guarantee the “right to life” under Article 21. If the Act is not armed with the powers to ensure sustainable development, it will become a barren shell. In other words, sustainable development is one of the means to achieve the object and purpose of the Act as well as the protection of “life” under Article 21. Acknowledgment of this principle will breathe new life into our environmental jurisprudence and constitutional resolve. Sustainable development could be achieved only



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by strict compliance with the directions under the Act. The object and purpose of the Act: “to provide for the protection and improvement of environment” could only be achieved by ensuring strict compliance with its directions. The authorities concerned by exercising their powers under the Act will have to ensure the acquiescence of sustainable development. Therefore, the directions or conditions put forward by the Act need to be strictly complied with. Thus the power under the Act cannot be treated as a power simpliciter, but it is a power coupled with duty. It is the duty of the State to make sure the fulfilment of conditions or direction under the Act. Without strict compliance, right to environment under Article 21 could not be guaranteed and the purpose of the Act will also be defeated.”



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12. The Supreme Court in the case of ***Indore Vikas Pradhikaran v.***

Pure Industrial Coke & Chemicals Ltd., reported in (2007) 8 SCC 705,

considered the balance that has to be maintained between public interest and the constitutional right to hold property as extrated hereunder:

“45. Town and country planning involving land development of the cities which are sought to be achieved through the process of land use, zoning plan and regulating building activities must receive due attention of all concerned. We are furthermore not oblivious of the fact that such planning involving highly complex cities depends upon scientific research, study and experience and, thus, deserves due reverence.

46. Where, however, a scheme comes into force, although it may cause hardship to the individual owners as they may be prevented from making the most profitable use of their rights over property, having regard to the drastic



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consequences envisaged thereunder, the statute should be considered in such a manner as a result whereof greater hardship is not caused to the citizens than actually contemplated thereby. Whereas an attempt should be made to prevent unplanned and haphazard development but the same would not mean that the court would close its eyes to the blatant illegalities committed by the State and/or the statutory authorities in implementation thereof. Implementation of such land development as also building laws should be in consonance with public welfare and convenience. In United States of America zoning ordinances are enacted pursuant to the police power delegated by the State. Although in India the source of such power is not police power but if a zoning classification imposes unreasonable restrictions, it cannot be sustained. The public authority may have general considerations, safety or general welfare in mind, but the same would become irrelevant, as thereby statutory rights of a party cannot be taken away. The courts must make an



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endeavour to strike a balance between public interest on the one hand and protection of a constitutional right to hold property, on the other.”

13. Therefore, the position is, it is not only the constitutional duty of the State and its entities but also the judiciary, to inform its decisions towards environmental protection and sustainable development. Having noted the law, we now proceed to the case at hand.

FACTS LEADING TO THE WRIT PETITION:

14. The writ petitioner claims to be the owner of the suit property situated at Survey No.370/4 of Morai Village, Ambattur Taluk, Thiruvallur District. The extent of the property is about 4.11 Acres. The petitioner has secured a patta in patta No.415. The petitioner also owns an extent of 1.90 acres in the same village in Survey No.370/2.



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15. In addition, the petitioner purchased an extent of 4 acres in Vellanur village of the same taluk and district. The petitioner states she is in possession and enjoyment of the property. The cause of action for the writ petition is under the Second Master Plan for Chennai Metropolitan Area 2026 (Development Regulations), issued by the first respondent in G.O.M.S.No.190 Housing and Urban Development (UDI) Dept. dated 02.09.2008, the lands had been classified as Red Hills catchment area. According to these Regulations, any area classified as catchment area, cannot be developed into a residential or a commercial property. The petitioner is aggrieved over the fact that the petitioner has not been heard prior to the Master Plan having been notified and that been in violation of Section 27 of the Tamil Nadu Town and Country Planning Act, the same has to be struck down.



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16. Apart from that, the petitioner alleges that as per Section 36 of the said Act, if land is not acquired by the Government within a particular period, the acquisition lapses and therefore, the lands deem to have been released. On the basis of these legal provisions, the petitioner made a representation on 17.07.2017 to the respondents. On receipt of the representation made by the petitioner, the respondent replied that it was only a restriction on the usage of lands in the Red Hills catchment area and therefore, the question of applying the Land Acquisition Act does not arise and consequently Section 38 of the Tamil Nadu Town and Country Planning Act, is not applicable.

17. We have to point out that the petitioner had admittedly purchased the property some time in the year 1997. The policy to maintain the area as a catchment area was taken in the year 1990. Therefore, it is a case



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where the petitioner has purchased the property after the decision had been taken. It is not the depreciation of the right of the petitioner, but a case where the petitioner knowingly purchased the property after the respondents has taken a policy decision.

18.The learned Counsel for the petitioner took us to the judgment of the Division Bench in ***W.P.No.18388 of 2016 etc.*** batch dated 27.09.2016 and requested us to direct the respondents to pass an order on the representation dated 27.07.2022. By the representation dated 27.07.2022, the petitioner has sought for reclassification of an extent of 67.695 Acres in Vellanur Village and Morai Village from “agricultural zone” to that of “primary residential zone”. He claimed that failure of reclassification will amount to violation of Article 300 A of the Constitution of India. The representation further states that in case the Government does want to acquire the lands, it should resort to the Right to Fair Compensation and



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Transparency in Land Acquisition, Rehabilitation and Resettlement Act,

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2013 and pay appropriate compensation for the same.

19. The learned counsel relied on the judgment of the learned Single Judge in W.P.No.30169 of 2022 wherein the learned Judge has held that the lands having not been acquired as per Section 38 of the Tamil Nadu Town and Country Planning Act, the same is released from the development area.

20. The Respondents filed a counter stating that as per the Second Master Plan, lands fall under the Red Hills catchment area. As early as on 15.02.1990, the CMWSSB informed the CMDA that in order to maintain the catchment area of the Red Hillslake, it was requested that no lay-out be approved. The CMDA on 26.12.1990 carefully considered the request



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of the CMWSSB and resolved to maintain the villages in the catchment area, which is clear from the following extract of the Resolution:-

- *"To keep all the lands classified as agricultural use zone as it is and, not to entertain any request for reclassification in the area.*
- *The Government lands in the area to be zoned for open space and recreational (O&R) use for developing social forestry.*
- *To keep the lands classified as Primary Residential use zone (PR) and Mixed Residential use zone (MR) as they are and allow developments according to Development Control Rules (DCR).*
- *To reclassify all the patta lands including Light Industry classification (except those zones for Primary Residential use zone and Mixed Residential use zone) into Agricultural use zone. It is to be noted here that the activities existing on*



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the day would be allowed to continue and no further expansion or development would be allowed."

21.The purpose of passing the resolution was to maintain the catchment area, which is eco-sensitive and to ensure that the surface run of water goes into the Red Hills lake. Taking into consideration these aspects the Second Master Plan was prepared, recognizing the need to conserve the Red Hills catchment area, free from pollution and to allow the surface run of water to the Red Hills lake to other water bodies connected to the lake.

22.The respondents further stated that as many as 23 villages have been classified as Red Hills catchment area. The entire Morai and Vellanur Village falls under this category. The respondents stated that during the preparation of Second Master Plan, all the requirements in the Town and



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Country Planning Act, 1971 including calling for objections and suggestions were adhered to. Four months time was granted for suggestions to be presented and a workshop was conducted on the basis of the Master Plan on 29th and 30th of August, 2007. As many as 909 suggestions were received including lifting of restrictions in the Red Hills catchment area. The planning authority had taken a policy decision that only structures which are in existence prior to 1975 would be recognized, by reclassifying, the appropriate zoning regulation.

23.The respondents had set out the policy decision as hereunder:-

“A policy decision has already been taken consciously to restrict development to preserve the Redhills Catchment Area”. Further it is informed that,

- The existing settlements and residential areas have been recognized.*



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- *The authorized industrial buildings approved by CMDA have been recognized and zoned as Industrial zone.*
- *The authorized institutional buildings have been recognized and have been zoned as institutional zone.*
- *All others areas which are zoned as Agricultural use zone, Vacant, O&R zone have been zoned as Redhills Catchment Area (RCA) restricted for development.*
- *The intention is to allow further developments if any within the area zoned as Primary Residential/Mixed Residential/Institutional/Industry in the SMP and prohibit developments in the remaining part of the area zoned as Redhills Catchment Area.*
- *In the first Master Plan itself the structures that are in existence prior to 1975 have been recognized by appropriate zoning."*



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24. The respondents have clearly stated the reasons for classifying certain areas as catchment areas. Red Hills lake and Puzhal lakes are the main source of water supply to the city of Chennai. In order to prevent negative impacts of urban development, the development regulations were carefully drawn up to ensure that there is no development in the catchment areas.

25. They pointed out that in order to apply Section 38 of the Tamil Nadu Town and Country Planning Act, 1971, Sections 36 and 37 should be applicable. In this particular case, neither Section 36 nor 37 have been applied and therefore the question of application of Section 38 does not arise.



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26.We heard Mr.Srinivasabalan, learned Counsel for the petitioner and Mr.P.Kumaresan, Learned Additional Advocate General assisted by Mr.C.N.Vinobha for the Chennai Metropolitan Development Authority and Mr.R.Vigneshwaran for R4. We have carefully gone through the records of the Tamil Nadu Town and Country Planning Act and perused the pleadings.

ANALYSIS AND FINDINGS:

27.At the outset, it has to be pointed out that the petitioner has challenged only an intimation letter of the CMDA stating that there is only a restriction on the usage of lands. The petitioner has not challenged G.O.Ms.No.190 Housing and Urban Development Department dated 02.09.2008.



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28. It was under the said G.O., the Government had approved the Second Master Plan for Chennai Metropolitan Area which in turn replaced the First Master Plan. Further in order to apply Section 38, for release of land it requires the application of Sections 26 and 27. This is clear from a bare reading of the Sections 26, 27 and 38 which read as under:-

“26. Notice of the preparation of the regional plan, the master plan or the new town development plan.-

(1) As soon as may be, after the appropriate planning authority has received the consent of the Government under sub-section (2) of section 24 to the publication of the notice, the appropriate planning authority shall publish the notice in the Tamil Nadu Government Gazette, and in leading daily newspapers of the region of the preparation of the regional plan, the master plan or the new town development plan, as the case may be, and the place or places where copies of the



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same may be inspected, inviting objections and suggestions, in writing, from any person in respect of the said plan within such period as may be specified in the notice:

Provided that such period shall not be less than two months from the date of publication of the notice in the Tamil Nadu Government Gazette.

(2) After the expiry of the period mentioned in sub-section (1), the appropriate planning authority shall allow a reasonable opportunity of being heard to any person including representatives of Government departments and authorities, who have made a request for being so heard and make such amendments to the regional plan, the master plan or the new town development plan, as the case may be, as it considers proper and shall submit the said plan with or without modifications to the Government.



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27. Notice of the preparation of the detailed development plan.-

(1) As soon as may be, after the local planning authority has received the consent of the Director under sub-section (2) of section 25 to the publication of the notice, the local planning authority shall publish the notice in the Tamil Nadu Government Gazette, and in leading daily newspapers of the region of the preparation of the detailed development plan and the place or places where copies of the same may be inspected, inviting objections and suggestions, in writing, from any person in respect of the said plan within such period as may be specified in the notice:

Provided that such period shall not be less than two months from the date of publication of the notice in the Tamil Nadu Government Gazette.

(2) After the expiry of the period mentioned in sub-section (1), the appropriate planning authority shall



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allow a reasonable opportunity of being heard to any person including representatives of Government departments and authorities, who have made a request for being so heard and make such amendments to the detailed development plan, as it considers proper and shall submit the said plan with or without modifications to the Government.

Section 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 purposes 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:



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Provided that the Government may, by notification, extend the period f or such time as they may think proper; but such extended period shall, in no case, exceed five years.”

29. Under the Tamil Nadu Town and Country Planning Act, 1971, the State has power to regulate the manner in which an area is to be developed. This is the fundamental of any zoning regulation law. The provision itself is clear. The land concerned must be reserved, allotted, designated or required by the State under a regional plan, master plan, detailed development plan, new town development plan or land pooling area development scheme. These terms are not arbitrary but are defined under Sections 2(15), 2(22-A) and 17. A combined reading of these Sections show that the plan must propose transfer of title from the owner to the Government for the purpose of implementing any of the aforesaid plans set forth under Section 36. In this aspect, it is pertinent to quote a



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recent Supreme Court judgment in *Assn. of Vasanth Apartments' Owners*

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v. V. Gopinath, reported in *2023 SCC OnLine SC 137*. The relevant portion is extracted hereunder:

“61....What Section 36 provides is, for power to acquire land, under the Land Acquisition Act. It goes on to provide that any land required, reserved or designated in a regional plan, master plan, detailed development plan, is deemed to be land needed for a public purpose under the Land Acquisition Act. What is more, such land can be acquired under the said law, as modified in the Act. It is thereafter that Section 37 contemplates that upon publication of the notice in a Government Gazette of the preparation of the plan that any land is required, reserved or designated in such plan, the appropriate Planning Authority, which includes, no doubt, the CMDA, can do two things : (1) It may enter into an agreement for the acquisition by purchase of any land. It is apparently land, which is covered by Section 36, which



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means land which is required, reserved or designated in a master plan, inter alia. (2) The Planning Authority may apply to the Government for acquiring such land under the Land Acquisition Act. Section 37(2) goes on to provide that if an application is received and if the Government is satisfied that the land is needed for the public purpose, the Government may make a declaration in the manner provided in Section 6 of the Land Acquisition Act, 1894. It will be noticed that what is contemplated under Sections 36 and 37 is that it is in regard to any land, which is required, reserved or designated in a plan that the question of acquiring such a land arises. In other words, if the property is needed under the plan and it is shown as required, reserved or designated, as such, in the plan, then, it is open to the Authority acting in coordination with the Government to acquire such land so that the lofty goal of planned and orderly development, contemplated in the plan, is achieved. In this connection, it is relevant to notice that



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Section 37 kicks in immediately upon the publication of a notice for the preparation of the plan. The notice is published under Section 26 or Section 27. Such notice is published after the consent of the Government is received under Section 25. It is next relevant to notice Section 38. Section 38 allows the period of three years from the date of publication of the notice under Section 26 or Section 27 for the Government to publish the declaration contemplated under Section 37, which, no doubt, amounts to a declaration under Section 6 of the Land Acquisition Act. Section 38 provides that if the declaration is not made under Section 37 of the Act, the land shall be deemed to be released from such reservation, allotment or designation. The time limit of three years, not being observed for acquiring the land by way of purchase, also has the same result, viz., the land, which in the plan, is shown as reserved, allotted or designated, shall be freed from such reservation, allotment or designation.”



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30. In the present case, there is no transfer of land but only restriction on use. The records reveal that the proposal for removing the area from being a catchment area was also considered atleast a decade ago, and rejected. Sections 26, 27 and 38 apply where at the time of making the plan, the land is reserved, allotted or designated for the use by the State for creation of public utility areas like roads, parks, community halls, etc. If these areas are not acquired, then the reservation under the plan lapses and the owner gets a right to develop it in a manner he deems fit. Even then, the development must be in accordance with the plan. As long as the plan exists, the owner cannot claim a right to raise a construction.

31. A master plan is formed under Section 17 of the Tamil Nadu Town and Country Planning Act, 1971. The master plan is prepared by the



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local planning authority after consultation with the regional planning authority. The provision under Section 17(2) empowers the architects of the master plan to decide as to how the land in the planning area (defined under Section 2(30) which includes the Master Plan for Chennai area) are to be used. The said Section 17 makes a difference between the manner of use under Section 17(2)(b) and 17(2)(c). This Section makes it very clear that the planning authorities have the power to restrict the usage of particular land or area. The provisions relating to acquisition do not apply to these lands. The areas where lands which are required, reserved or designated alone are to be proceeded for acquisition. In the case at hand, the restriction is on the use, that is to keep apart the area for the surface water to run off into the lake. By no stretch of imagination, the restriction on use can be interpreted as requisition / reservation / designation for the



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purpose of land acquisition in terms of Section 17 (2) (b), (c), (d), (g), (i), (k) and (j). The relevant provision reads as under:

“17. Master Plans.

...

(2) The master plan may purpose or provide for all or any of the following matters, namely:-

(a) the manner in which the land in the planning area shall be used;

(b) the allotment or reservation of land for residential, commercial, industrial and agricultural purposes and for parks, play-fields and open spaces;

(c) the allotment and reservation of land for public buildings, institutions and for civic amenities;

(d) the making of provision for national highways, arterial roads, ring roads, major streets, lines of communication including railways, airports and canals;

(e) the traffic and transportation pattern and traffic circulation pattern;



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(f) the major road and street improvements;

(g) the areas reserved for future development, expansion and for new housing;

(h) the provision for the improvement of areas of bad layout or obsolete development and slum areas and for relocation of population;

(i) the amenities, services and utilities;

(j) the provision for detailed development of specific areas for housing, shopping, industries and civic amenities and educational and cultural facilities;

(k) the control of architectural features, elevation and frontage of buildings and structures;

(l) the provision for regulating the zone, the location, height, number of storeys and size of buildings and other structures, the size of the yards and other open spaces and the use of buildings, structures and land;

(m) the stages by which the master plan shall be carried out; and

(n) such other matters as may be prescribed.”



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32.The right of the owner to develop an area after getting approvals, is restricted, for a period of three years. On the lapse of three years, law presumes that the Government does not require the land reserved by it and a right is conferred on the owner to develop it in accordance with law. The three year period is a reasonable restriction on the right of the owner. We have to note, even if there are no reservations, still the owner has to comply with the zoning and town planning laws. It is always open to the State to restrict the development of land. For example, it can refuse to grant permission for residential constructions in an industrial area and vice versa. That does not mean the right of the owner of the land is taken away, it is only regulated. Similarly, in the present case, the right, title and interest over the lands of the petitioner and those situated in 23 villages found in Annexure XVII of the 2019 Rules, are not taken away and they continue to be the owners. Even at the time of purchase, the petitioner was



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aware that they are purchasing lands near a huge trough of water.

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Unplanned development in such areas would lead to not only cutting of the source of water to the Red Hills lake but could also have consequences of flooding.

33. This would have been sufficient to dispose the writ petition. However, considering the importance of the issue we have to dwell into The Tamil Nadu Combined Development and Building Rules, 2019. These Rules of 2019 have been notified on 04.02.2019. The notification has been issued, inter alia, in the exercise of powers vested in the Government under Section 32(4) and Section 122 of the Tamil Nadu Town and Country Planning Act, 1971, apart from several other legislations dealing with local bodies. In particular we would refer to Annexure XVII read with Rule 9 of the Tamil Nadu Combined Development and Building Rules, 2019. As per the Annexure XVII, certain areas come under the



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category of development prohibited or restricted areas. Clause 12 of

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Annexure XVII reads as follows:-

“(12) Catchment area (only for CMA):

Redhills and Puzhal lakes are the main sources of water supply to the Chennai City. In order to protect this water source from the negative impacts of the urban developments contiguous areas in the catchments of these lakes has been declared as “Redhills catchments area”. The description of the catchments area and regulations for development therein is given in Appendix-B.”

34.As stated above, Red Hills and Puzhal lakes are very important lakes for water supply and it is the duty of the State to protect the same. Therefore, to prevent the negative impacts of urban development in these areas, “catchment areas” had been identified and Regulations for development had been notified. In so far as Red Hills catchment areas are concerned, Appendix-B to Annexure-XVII gives a list of 27 villages. Out



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of these 27 villages, 23 villages are covered in full and 4 villages have been partly notified. A perusal of the list of the villages notified shows that Vellanur and Morai villages come under the category of the entire villages being notified as the catchment areas. These two villages are found in Serial Nos. 4 and 5.

35.It has also been notified in clause 6 of Annexure B that no lands shall be re-classified into any urban use zone. The Rules read with the Annexure makes it very clear that the State and its entities in discharging its duties to protect the environment and to save the catchment areas, have decided to prohibit any development in the form of layouts in these areas. The need of the public outweighs the private interest in real estate development. Furthermore, the same has been observed in the very judgment that has been relied upon by the writ petitioner in ***W.P.No.18388***



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of 2016 etc. batch dated 27.09.2016. The relevant paragraph No.13 reads

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as under:-

"(13) Admittedly, in Development Regulation No.24(2) (c), Annexure-XII of the Second Master Plan for Chennai Metropolitan Area, 2026, the lands situated at Alamathi Village belonging to the petitioners are covered under the Redhills Catchment Area. According to the respondents, the lake at Redhills is the main source of water supply to Chennai and in order to protect it from the negative impacts of urbanisation of the surrounding areas, it has been declared as a catchment area, where development is restricted. However, development to certain extent are allowed, subject to satisfying zoning regulations and planning parameters in some areas falling under the catchment area, whereas, it is the specific case of the petitioners that as per Section 38 of the Act, if an area reserved under the Master Plan is not acquired within three years



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from the date of publication of such Master Plan, such area is deemed to be released from such reservation.”

36.The above order was passed on 27.09.2016 and the Regulations have come into force on 04.02.2019. We have to point out that the petitioner has not challenged these Regulations also. We have already held that Section 38 is inapplicable to the facts of the case. The solution of the petitioner ought to have been to challenge the Regulation and she has failed to do so.

37.It is the duty of the State under Article 38 to promote the welfare of the people by securing and protecting as effectively as possible a social order in which justice prevails. Apart from that, the petitioner owes a duty under Article 51 A (g) to protect and improve the natural environment including forest, lakes, rivers and wild life and to have compassion for all



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living creatures. It is well-known that the lakes of Puzhal and Red Hills, supply water to the residents of the city of Chennai. There has been a growing demand for development of property in and around Chennai. This development has to go hand in hand with the requirements of environment. We feel that, in discharge of this constitutional duty to balance the interest of the public and to protect the environment, at the same time respecting the rights of the individuals who own the property, these Regulations have been brought into force. Without water supply there is no point in trying to develop the land.

38.As early as in 1990, CMWSSB had flagged the issue of the negative impact of development of house sites in the catchment area. If the catchment area is filled up with houses, it will not only result in flooding but in the long term would result in drying up the lakes.



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We now refer to the work *Understanding your catchment - Stream sense*

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manual. It stated the use of catchment area. It reads:-

“Vegetation and wetlands act like sponges to slow and absorb water during wet times of the year. When we replace vegetation and wetlands with impervious surface (roading, paving, parking areas, rooftops, etc.), less water infiltrates into the ground and more water flows directly into streams through drainage ditches and stormwater drainage pipes. The increased runoff may cause a variety of problems, including flooding, streambank erosion, sedimentation and pollution. The problems created by paved surfaces are made worse at dry times of the year. Because infiltration is slowed, there is less build up of groundwater. The ~~po~~ sponge becomes dry. Without the return of groundwater, many streams simply dry up during periods of low rainfall. By reducing the amount of water a catchment can hold, you end up having too much when it rains and not enough when it does not.”



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This shows that development, by means of construction on catchment

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areas, is absolutely deleterious to the environment.

39.It is in that light, the petitioner's right to property has been restricted and not taken away. Therefore, the argument on Article 300A fails. It is here that the position of law approved by the Supreme Court in *Vasanth Apartments'* case (stated supra) assumes relevance. The Court has in approval of the above view, quoted the view in *Village of Euclid Ohio v. Ambler Realty Co*, reported in *1926 SCC OnLine US SC 189* as extracted hereunder:

“21.Building zone laws are of modern origin. They began in this country about 25 years ago. Until recent years, urban life was comparatively simple; but, with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to



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require, additional restrictions in respect of the use and occupation of private lands in urban communities. Regulations, the wisdom, necessity, and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as oppressive. Such regulations are sustained, under the complex conditions of our day, for reasons analogous to those which justify traffic regulations, which, before the advent of automobiles and rapid transit street railways, would have been condemned as fatally arbitrary and unreasonable. And in this there is no inconsistency, for, while the meaning of constitutional guarantees never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world it is impossible that it should be otherwise. But although a degree of



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elasticity is thus imparted, not to the meaning, but to the application of constitutional principles, statutes and ordinances, which, after giving due weight to the new conditions, are found clearly not to conform to the Constitution, of course, must fall.”

40. The Learned Additional Advocate General was positive in his submission that the Government is not going to acquire the land and deprive the owners of the title but had only placed a restriction on the usage. This we feel, balances the public interest for maintenance of the catchment area and the right of the writ petitioners to utilize the property for agricultural and allied purposes. With respect to the submission of the learned Counsel for the Petitioner that we should give a direction that the representation of the petitioner dated 27.07.2022 be considered, as done



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previously, we are not inclined to give directions for two reasons:-

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"(i)When such a direction was given in the year 2016, the Rules of 2019 had not come into force.

(ii).Secondly, even if we are to give a direction to dispose of the representation it will be contrary to clause 6 of Appendix B to Annexure XVII."

41.There can be no direction by way of a mandamus, contrary to the statute. In fact, the planning authorities cannot permit any development or regularization in the catchment area. If it were to do so, it will not only be violating the statutes but also its constitutional duty to protect the environment. We cannot issue a mandamus that will tend to force the authorities to act contrary to their constitutional and statutory duties. Hence, we decline to do so. Further, if we had given a direction, it would put the respondents in difficulty, as the power of the respondents to



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reclassify the land under Appendix-B has been taken away. Therefore, we

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are not inclined to give the said direction.

42. Accordingly, this Writ Petition stands dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

(V.M.V., J) (V.L.N., J)
24.04.2023

Index : Yes/No

Speaking : Yes/No

Neutral Citations : Yes/No

nst



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To:

1. The Principal Secretary,
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V.M. VELUMANI, J,
and
V. LAKSHMINARAYANAN, J,

nst

W.P.No.26673 of 2017
and W.M.P.No.28404 of 2017

24.04.2023