



W.P.Nos.5346 & 5352 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	11.06.2024
PRONOUNCED ON	11.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.5346 & 5352 of 2021

and

W.M.P.Nos.5938, 5941, 5945 & 5947 of 2021 and 34930 of 2023

W.P.No.5346 of 2021

Vikram Sarabhai Intranics
Estate Manufacturer's Association,
SI No.201/1996
Represented through its President
Having its office at :
Type II, Unit No.25, Dr.VSI Estate,
Thiruvanniyur,
Chennai – 600 041.

.... Petitioner

Vs

1. Government of Tamil Nadu,
Represented by its
Secretary to Government,
Industries Department,
Fort St.George, Chennai – 600 009.

2. Department of Industries and Commerce,
Through its Industries Commissioner
and Director of Industries and Commerce,
SIDCO Corporate Office Building,
3rd Floor, Thiru Vi. Ka. Estate,
Guindy, Chennai – 600 032.

3. The Managing Director,
Tamil Nadu Small Industries



W.P.Nos.5346 & 5352 of 2021

Development Corporation Limited (TANSIDCO),
SIDCO Corporate Office Building,
Guindy, Chennai – 600 032.

4. The Branch Manager,
TANSIDCO,
SIDCO Corporate Office Building,
Guindy, Chennai – 600 032.

5. The Secretary to Government,
Micro, Small and Medium Enterprises (C) Department,
Government of Tamil Nadu,
Secretariat, Chennai – 600 009.
(R5-impleaded as per order dated 24.11.2023
in WMP No.5327 of 2023 in
W.P.No.5346 of 2021)

.... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records of the third respondent relating to the impugned advertisement bearing No.DIPRI/1069/DISPLAY/2019(4) – Outright Sale Basis dated 18.01.2021 pertaining to Plot No.L19B (i.e., the common area in Phase II of the VSI Estate which is earmarked for water tank and sump) which was uploaded in the website of the third respondent, quash the same as illegal, arbitrary and devoid of merit and consequently direct the respondents to forbear from alienating, auctioning, selling, conveying, licensing, encumbering, disposing off or otherwise dealing with the common areas/amenities of the VSI Estate, including Plot No.L19B, pursuant to the aforementioned impugned advertisements.

W.P.No.5352 of 2021

Vikram Sarabhai Instranics
Estate Manufacturer's Association,



W.P.Nos.5346 & 5352 of 2021

SI No.201/1996

Represented through its President

Having its office at :

Type II, Unit No.25, Dr.VSI Estate,
Thiruvannmiyur,
Chennai – 600 041.

.... Petitioner

Vs

1. Government of Tamil Nadu,
Represented by its
Secretary to Government,
Industries Department,
Fort St.George, Chennai – 600 009.

2. Department of Industries and Commerce,
Through its Industries Commissioner
and Director of Industries and Commerce,
SIDCO Corporate Office Building,
3rd Floor, Thiru Vi. Ka. Estate,
Guindy, Chennai – 600 032.

3. The Managing Director,
Tamil Nadu Small Industries
Development Corporation Limited (TANSIDCO),
SIDCO Corporate Office Building,
Guindy, Chennai – 600 032.

4. The Branch Manager,
TANSIDCO,
SIDCO Corporate Office Building,
Guindy, Chennai – 600 032.

5. Mercatus Ventures Pvt. Ltd.,
Represented by its Director,
A.Saravana Kumar
No.11, Kodikkal Street,
Manamadurai,



W.P.Nos.5346 & 5352 of 2021

Sivaganga – 630 606.

(R5-impleaded as per order dated 24.11.2023

in WMP No.3086 of 2023 in

W.P.No.5352 of 2021)

.... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records of the third respondent relating to the impugned advertisement bearing No.DIPRI/1069/DISPLAY/2019(4) – Commercial Plot Sales dated 21.01.2021 pertaining to Plot No.I-9A, i.e., creche located in Phase I of the VSI Estate also a common infrastructure facility for all unit holders, which was uploaded in the website of the third respondent, quash the same as illegal, arbitrary and devoid of merit and consequently direct the respondents to forbear from alienating, auctioning, selling, conveying, licensing, encumbering, disposing off or otherwise dealing with the common areas/amenities of the VSI Estate, including Plot No.I-9A, pursuant to the aforementioned impugned advertisements.

(In both W.Ps)

For Petitioner	: Mr.E.Manoharan
For R1 & R2	: Mr.R.Ramanlal Additional Advocate General Assisted by M/s.C.Meera Arumugam Government Advocate
For R3 & R4	: Mr.S.Karthikei Balan
For R5	: Mr.Vijay Narayan, Senior Counsel for Mr.L.P.Maurya

COMMON ORDER

Both the Writ Petitions have been filed challenging the impugned Advertisement dated 18.01.2021 and 21.01.2021 pertaining to Plot No.L-19B in Phase II and Plot No. I-9A in Phase I of the Vikram Sarabhai Instronics Estate



W.P.Nos.5346 & 5352 of 2021

on the file of the third respondent for outright sale.

WEB COPY

2. The petitioner is an Association, which was formed with an object to promote and protect the members/units under the Vikram Sarabhai Industrial Estate, located at Thiruvannamiyur, Chennai, comprising in 28.91 acres, forming part of Phase I and Phase II of the Estate. All the owners of the units in the Estate are the members of the petitioner's Association. The first respondent had set up various industrial estates to develop industries, in which, one such Industrial Estate, was proposed in the year 1970. It was implemented under two phases, viz., Phase I and Phase II, in which, Phase I is about 10.27 acres consisting of 31 units (Type 1 Unit – 13 Nos and Type 2 Unit – 18 Nos) and Phase II was put up with an extent of 18.64 acres consisting of 67 units. After finalising the draft form of allotment, the first respondent issued G.O.Ms.No. 1131 Ind (Apl.) dated 28.04.1971, thereby ordered draft allotment letter appended thereto.

3. Accordingly, the unit will be allotted on a lease-cum-sale on higher purchase basis subject to certain conditions. It provides that the pro rata cost of land per unit has been arrived and the expenditure incurred on common amenities. The consideration towards the allotment would include the cost of maintenance, common amenities and facilities, such as roads, drainages and



W.P.Nos.5346 & 5352 of 2021

street lighting to be provided by the first respondent for the benefit of the unit holders. The cost of land is divided on the units on a pro rata basis on the cost of construction and loading per block worked out. Therefore, the respondent cannot deal or encumber any portion of the land within the Estate. In respect of the land, which is meant for common use of the estate occupants, for the purpose of putting up an administrative building, creche and installation of over-head tank etc.

4. Likewise, Phase II of the Estate constitutes 67 units, which had been purchased by 67 holders, who are also members of the petitioner's Association. The maintenance of the Estate was vested with the second respondent. After purchase of all the units in Phase I and Phase II, the petitioner's Association was formed and registered under the Tamil Nadu Societies Registration Act, 1975 on 23.05.1996. Thereafter, the petitioner requested the second respondent seeking permission to maintain the Estate. The second respondent, vide its letter dated 15.09.1998, called for proposal. Thereafter, on 15.09.1999, the second respondent informed the petitioner suggesting to hand over the maintenance of the Estate to the petitioner and sought for concurrence to take over the day to day maintenance of the Estate. Thereafter, the petitioner had taken over the day to day maintenance of the



W.P.Nos.5346 & 5352 of 2021

Estate and the same was also duly informed, by a communication dated 18.01.2000, that the petitioner had constituted a Committee for maintenance of the Estate. Though the entire maintenance was not handed over to the petitioner, the petitioner had maintained the Estate with the help of the members ; attended to important maintenance related requirements as if the maintenance was by the second respondent.

5. While being so, there were inter-se estate disputes between the members and the petitioner. Therefore, the petitioner made request to the second respondent to take over the maintenance of the estate. Pursuant to the request made by the petitioner, the second respondent had transferred the maintenance of all industrial estate in Tamil Nadu including the petitioner to the third respondent (as an agent of the Government) on remuneration basis, subject to certain conditions. “On as is where is condition” for maintenance of common infrastructure as per the terms and conditions prescribed. The creche is one of the common infrastructure located on the Phase I of the Estate. However, it was not maintained properly, though several requests were made by the petitioner. The creche, required within the industrial estate, is mandatory one under the law. Now, it is identified as Plot I-9A by the third respondent. Another, vacant plot meant for the over-head tank and sump, lying on Phase II of the Estate is a



W.P.Nos.5346 & 5352 of 2021

common area located on Phase II. However, over-head tank and sump has not been put up by the second respondent till today. It is now being used for garbage segregation.

6. Now, the third respondent identified as Plot L-19B. Both the Plot I-9A located in Phase I and Plot L-19B located in Phase II are advertised for outright sale. Both the plots were meant for creche and construction of over-head tank and sump as common area earmarked as per the layout of the Estate. The third respondent has no right, basis or locus, to deal with or advertise any property in the Estate. The third respondent was given right to maintain the Estate as per G.O.Ms.No.21, dated 20.07.2018. Therefore, the petitioner submitted a detailed representation seeking not to sell both the plots which were meant for other purposes and those plots were considered as common area for the use or enjoyment of the petitioner's members. The petitioner has lawful right to utilise the common facilities/infrastructure of the Estate. Therefore, the petitioner challenged both the advertisements as illegal.

7. The learned counsel appearing for the petitioner would submit that the sale of land and building as per the advertisement are earmarked as common area of the Estate. After the order in G.O.Ms.No.1131, dated



W.P.Nos.5346 & 5352 of 2021

28.04.1971, the layout was prepared as per the DTCP norms. Accordingly, the areas were allotted for common purpose and those areas cannot be encumbered or used for some other purpose. The order passed in G.O.Ms.No.877, Industries Department, dated 01.07.1982 and G.O.Ms.No.45, Micro, Small, Medium Enterprises (C) Department, dated 04.09.2013 did not deal with the Estate. That were issued in respect of six other industrial estate, which are Conventional Industrial Estates, contained industries of different products, i.e., Ambattur, Guindy, Thuvakudy Kappalur, Mettur and Thiruvallur, were transferred to the third respondent as an agent were to maintain the same. The ownership of the Estates will continue to vest with the Government as Government Industrial Estates. As per G.O.Ms.No.959, only two Functional Industrial Estates, viz., Leather based and Fruit based industries, were transferred to the third respondent in the year 1976. The Estate, which is a Functional Estate, dealing with electrical/electronics was not fully established at the time of Government orders and as such, it was not transferred to the third respondent for maintenance under the said Government orders.

8. He specifically contended that G.O.Ms.No.877, dated 01.07.1982, says about the allotment of sheds/tenements, cancellation of allotment, execution of agreement, to sell sheds etc., and maintenance of estates.



W.P.Nos.5346 & 5352 of 2021

Another order passed in G.O.Ms.No.45, dated 04.09.2013, thereby ordered certain amendments to the G.O.Ms.No.877, dated 01.07.1982, thereby delegating powers to the third respondent for any allotment of plots/sheds made hereafter in the Government Industrial Estates admeasuring to an extent of 50 cents. Even in the said G.O, the Estate was not included. Subsequently, the Government passed another G.O.Ms.No.21, dated 20.07.2018, thereby included the petitioner's Estate and Thiruvallur for maintenance of common infrastructure by the third respondent, "on as is where is condition" as per the terms and conditions prescribed under G.O.Ms.No.877 and G.O.Ms.No.45. Therefore, the petitioner Estate was handed over to the third respondent only for maintenance of common infrastructure. Thereafter, interse dispute between the members of the petitioner were settled by way of themselves and the petitioner made request to the third respondent to hand over the maintenance of the Estate by its communication dated 02.07.2019. On receipt of the same, by a communication dated 30.09.2019, the third respondent stated that the request of the petitioner was accepted and the maintenance of the Estate can be handed over to the petitioner by execution of memorandum of understanding with the third respondent.

9. While being so, the impugned advertisements were published



W.P.Nos.5346 & 5352 of 2021

by the third respondent to sell the area which were meant for creche and over-head tank with sump. As per the original estate plan, there was no earmarking of Plot No.I-9A in Phase I and Plot No.L-19B in Phase II of the Estate. After G.O.Ms.No.21, dated 20.07.2018, the respondent altered the layout by hand written and converted/alterd the common areas as Plot No.I-9A and L-19B. Therefore, the third respondent has no power to sell the common area, which was already handed over to the purchasers, viz., members of the petitioner's Association. The Estate was handed over to the third respondent only to maintain the common infrastructure of the estate.

10. He further submitted that the place, which was earmarked for creche, as prescribed under Factories Act is now converted as Plot No.I-9A situated in Phase I of the estate. The industries should consist creche and it is mandatory. Therefore, it cannot be altered as plot and it cannot be saleable one. Since the third respondent was not vested with power to sell common area of any part of the estate by the Government of Tamil Nadu, the third respondent was granted power only for limited purpose of maintenance of the sheds/common infrastructure. Even now, the website of the third respondent identified the shed in order to sell the above tiny places, sheds, modules by showing facilities such as canteen, banks, post office, telephone exchange, police station, fire station, communication centre, hospital with first aid,



W.P.Nos.5346 & 5352 of 2021

common creche for school children, common steps for association have also been provided in the estates. He further submitted that inspite of interim order granted by this Court, now the third party had put up construction in the respective places which were advertised by the third respondent for sale that too without any sale.

11. The third and fourth respondents filed counter and Mr.Karthikei Balan, the learned counsel appearing for the third and fourth respondents submitted that they never advertised to sell any area which was earmarked as common area/amenities to any entrepreneurs. The petitioner Estate viz., Vikram Sarabhai Instronic Estate, was formulated for establishment of electrical, electronics and instrument industries by way of acquisition of land to an extent of 28.91 acres by the Government order No.2363, Industrial Special Department, dated 25.07.1967, is comprised of Phase I with an extent of 10.27 acres and Phase II with an extent of 18.64 acres. Accordingly, the first respondent passed an order in G.O.Ms.No.1131 Ind (Spl), dated 28.04.1971 for the purpose of fixation of price and allotment and sale of units to prospective entrepreneurs. Accordingly, for allotment of plot, the pro-rata cost of saleable land per industrial plot has been arrived at and the expenditure incurred on common facilities have been added to the cost which is excluding the costs of the administrative building, canteen and creche. The saleable plot cost has been



W.P.Nos.5346 & 5352 of 2021

arrived at by calculating the total land cost plus development cost divided by the saleable land area.

12. As per DTCP norms, the first respondent had apportioned the required width of roads and area for common purpose and parks, common amenities like formation of road and providing water supply. The common area has been utilized and over-head tank, sump, sewage head works, oxidation pond/sewage treatment plant and administrative office etc. On the request made by the petitioner, the third respondent, in its 289th Board Meeting dated 09.07.2019, had accorded approval for handing over of maintenance of the estate to the petitioner. However, interse dispute between the members of the petitioner, the third respondent could not hand over the maintenance to the petitioner's Association. By G.O.Ms.No.21, dated 20.07.2018, eight Electrical and Electronic Industrial Estates and one Ceramic Industrial Estate from the control of the second respondent were transferred to the third respondent in “as is where is condition” for maintenance of common infrastructure as per the terms and conditions prescribed in G.O.Ms.NO.877, dated 01.07.1982 and subsequent amendment order by G.O.Ms.No.45, dated 04.09.2013. Accordingly, the petitioner estate was taken over by the third and fourth respondents from the second respondent.



W.P.Nos.5346 & 5352 of 2021

WEB COPY

13. He further submitted that as per G.O.Ms.No.877 ordered that power of attorney is granted to the third respondent to deal with the property such as allotment of sheds, tenements and godowns, cancellation of the allotments, execution of assignment deed, demanding the unit holders to insure the buildings, approval of additions and alterations in the units and carrying out of additional constructions, eviction of unauthorised occupants, collection of rental arrears from the unit holders under the provision of the Revenue Recovery Act, writ off the irrecoverable amount. Further, it is ordered to allot and sell sheds and lands above an extent of 5000 sq.ft and to sell the sheds on hire purchase basis and to fix the rent for the sheds. Subsequent amendment by way of G.O.Ms.No.45, dated 04.09.2013, ordered to delegates powers to the third respondent for any allotment of plots/sheds made hereafter upto an extent of 50 cents. By the subsequent G.O.Ms.No.21, dated 20.07.2018, a sum of Rs.10 crores were sanctioned for the maintenance of eight Electrical and Electronic Industrial Estates including the petitioner estate. Those estates were handed over to the third respondent in “as is where is condition” as per the terms and conditions prescribed in G.O.Ms.No.877 and G.O.Ms.No.45. Therefore, the third respondent has empowered to allot the vacant plot/sheds to the Micro, Small, Medium Enterprises.



W.P.Nos.5346 & 5352 of 2021

WEB COPY

14. In the petitioner Estate there is vacant land/sheds/plot, wherein creche building situated in Plot No.I-9A located in Phase I of the petitioner's Estate is mentioned as vacant. As per the layout, the said space is earmarked as canteen and subsequently, it was utilised as creche. After constructing the building, it was not utilised and it is surrounding with bushes. Therefore, the third respondent decided to take over the said building into vacancy list as commercial plot and advertised to sell the same as commercial Plot No.I-9A with building. Likewise, the vacant plot is available in Phase II which is originally earmarked for over-head tank and sump. But the underground sump is located in Phase I and the water is pumped through underground to the Phase II unit. Due to damage of pipelines water has not been supplied to the units for the past 15 years. Therefore, there is no need for the provision of the over head water tank and sump. Hence, the third respondent advertised the said plot for sale as Plot No.L-19B. Therefore, the third respondent has got power to allot the plots/sheds to the Micro, Small and Medium Enterprises as per the Government orders.

15. The first, second and sixth respondents filed counter and the Mr.R.Ramanlal, learned Additional Advocate General appearing for the



W.P.Nos.5346 & 5352 of 2021

respondents 1 and 2 submitted that reiterated the very same submissions made by the learned counsel for the third and fourth respondents.

He further submitted that as per the Government orders, the first respondent delegated the power to the third respondent for any allotment of plots/sheds in respect of the petitioner estate also. The ownership of the estate is vested with the Government. The petitioner had requested to provide creche in the estate in view of growing number of women employees. Considering the said request, the first respondent, subject to confirmation of the fact that the ownership of the building would continue to vest with the government, and the modalities of the lease of the building by the estate manufacturers association for the purpose of running the creche without conferring any right on the land and building by a communication dated 09.03.1988. Thereafter, the Government issued an order in G.O.Ms.No.61, Electronics Science and Technology Department, dated 04.04.1988, for construction of building for creche. Further, it is ordered that the said building was handed over to the petitioner only for the maintenance and running the creche and the ownership of the building should continue to vest with the first respondent.

16. The creche building was handed over to the petitioner for the monthly rent of Rs.1,715/- and water charges of Rs.192/- per quarter. The



W.P.Nos.5346 & 5352 of 2021

petitioner did not pay any rent and water charges. However, the said building was utilised for creche only for two to three years and thereafter, it was kept ideal for a long period. After several communication to the petitioner to clarify the intention of utilising the creche building and no reply from the petitioner. Therefore, the petitioner was issued with a show cause notice, as to why the allotment of creche building should not be cancelled and resumed since the creche building was not put into use for several years without proper maintenance. However, on receipt of show cause notice, there was no reply and as such, by a communication dated 17.10.2005, it was directed to send the cancellation proposal. On receipt of the proposal, once again the petitioner was issued with a show cause notice on 15.09.2006. Even then, the petitioner did not reply and as such, the allotment of creche building was cancelled by an order dated 15.11.2006 and it was directed to resume the said building by the estate officer. After taking possession of the creche, the petitioner turned up and requested to revoke the cancellation order. However, the said request was rejected by the communication dated 17.10.2007. That apart, it is in an inhabitable condition and infact the said areas was originally earmarked for canteen. Subsequently, there was proposal for better utilisation of canteen building as creche. After handing over the estate to the third respondent along with layout, the third respondent advertised to sell the same, insofar as I-9A is



W.P.Nos.5346 & 5352 of 2021

concerned. He further submitted that insofar as Plot L-19B is concerned, it is lying vacant and therefore, it was also advertised by the third respondent for outright sale basis. In fact, the petitioner is dumping garbage in the common space. Therefore, the third respondent rightly advertised to sell those plots since it has power, not only to maintain the estate but also for allotment/sale of plots/sheds.

17. The learned Senior Counsel appearing for the fifth respondent submitted that as per the advertisement issued by the fourth respondent, which is impugned in this writ petition dated 21.01.2021, thereby invited application for outright sale of vacant plots/sheds and requested all the entrepreneurs to apply online. The fifth respondent had applied for allotment of the vacant shed I-9A to an extent of 0.181 acres at the estate for the purpose of commercial activities. Accordingly, the fifth respondent was allotted the said shed by an allotment order dated 25.02.2021 by the fourth respondent. The fifth respondent proposed to put up building admeasuring 14,000 sq.ft. In view of the interim order passed by this Court, the fifth respondent was not able to proceed further. He further submitted that the said shed was originally allotted for the purpose of canteen (commercial activity). Subsequently, it was used for creche. Though, it was allotted for creche, it was not utilised by the petitioner



W.P.Nos.5346 & 5352 of 2021

for the past fifteen years and it is lying vacant. Therefore, in view of the G.O.Ms.No.21, dated 20.07.2018, handed over the eight Electrical and Electronics Estates including the petitioner's estate to the fourth respondent for maintenance of its common infrastructure “as is where is condition” as per the terms and conditions prescribed in G.O.Ms.No. 877, dated 01.07.1982 and G.O.Ms.No. 45, dated 04.09.2013.

18. He vehemently contended that G.O.Ms.No.21, dated 20.07.2018 cannot be read as isolated one and it has to be read in consonance with the earlier Government orders in G.O.Ms.No.877 and G.O.Ms.45. He further submitted that as per G.O.Ms.No.877, the power of attorney is granted in favour of the third respondent to allot and sell sheds and lands above an extent of 5000 sq.ft. on higher purchase basis. Subsequently, by the amendment, another order has been passed in G.O.Ms.No.45, dated 04.09.2013, thereby citing the G.O.Ms.No.877, dated 01.07.1982, first side and ordered and delegate powers to the third respondent for any allotment of plots/sheds made in the Government Industrial Estates measuring upto an extent of 50 cents. Though the petitioner estate was not handed over to the third respondent by way of G.O.Ms.No.21, dated 20.07.2018. The petitioner estate was handed over to the third respondent on “as is where is condition” for maintenance of common



W.P.Nos.5346 & 5352 of 2021

infrastructure as prescribed in the Government orders in G.O.Ms.No.877 and G.O.Ms.No.45. Therefore, the third respondent was delegated the powers to allot the plots/sheds of the petitioner estate measuring upto an extent of 50 cents.

19. As submitted by the counsels for other respondents, the plot No.I-9A is lying vacant and as such, the third respondent rightly advertised for outright sale. On the application submitted by the petitioner, it was allotted in favour of the fifth respondent.

20. Heard the learned counsel appearing on either side and perused the materials available on record.

21. On the above submissions made by the learned counsel appearing on either side, the issues arise in these writ petitions are as follows :

(i) Whether the third respondent was delegated powers to allot/sell the vacant plots/sheds as per the G.O.Ms.No.21, MSME (C) Department, dated 20.07.2018 ?

(ii) Whether the third respondent can modify the estate's approved layout ?



W.P.Nos.5346 & 5352 of 2021

(iii) Whether the third respondent can allot/sell the common area meant for creche and water overhead tank and sump by converting into the vacant plots/sheds ?

(iv) Whether the advertisement notified by the third respondent can be sustained or not ?

22. The Government has formulated a scheme and had acquired lands at Thiruvannamiyur to an extent of 28.91 acres vide Government Order No.2363, Industrial Special Department, dated 25.07.1967 for establishment of Electrical, Electronics and Instrument Industries formed as Dr.Vikram Sarabhai Instornics Estate comprised of Phase I with an extent of 10.27 acres and Phase II with an extent of 18.64 acres. The allotment for Phase I and Phase II of the estate were duly approved one. After formation of the estate, the petitioner was interested to maintain the estate and made request to the third respondent. On the said request, the third respondent conducted a meeting and suggested to hand over the maintenance of the estate to the petitioner in pursuant to the Administrative Order dated 12.01.2000. Though the entire maintenance was officially not handed over to the petitioner, the petitioner with the help of members attended to important maintenance related requirements. As per the Government order in G.O.Ms.No.1131, Ind (Spl), dated 28.04.1971, Phase I consists of 31 units (Type I – 13 units and Type II – 18 units) and the Phase II



W.P.Nos.5346 & 5352 of 2021

consists of 67 units for the purpose of allotting the sheds. The first respondent, by an order in G.O.Ms.No.1131, Ind (Spl) Department, dated 28.04.1971, finalised the draft form of allotment by lease cum sale on higher purchase basis and also issued working sheet for the purpose of fixation of price of units/blocks for the allotment of sale of units/blocks.

23. There are two categories in the industrial estate, one is conventional industrial estate and another one is functional industrial estate. The petitioner's estate is a functional industrial estate for electrical, electronics and instrument industries. Though the common area is vested with the Government in respect of maintenance of roads, drainage, sewage and other amenities, the maintenance will be with the third respondent. It also ordered in the worksheet to fix the cost of respective plots/sheds. Accordingly, the total cost will be fixed as land value, building cost and amenities. The cost of the land was valued at per cent, solatium and development charges as per the DTE. The cost of the building includes all the structures in the respective plots/sheds and common areas. The amenities were calculated by including levelling, final bores for water supply, water supply for construction, development of land by industries department, roads, construction of culvers, avenue plants, external sanitary arrangements, administrative block and quarters. The Government



W.P.Nos.5346 & 5352 of 2021

order in G.O.Ms.No.1131, dated 28.04.1971 was issued in respect of Phase I

and G.O.Ms.No. 1045, dated 27.07.1981 was issued in respect of Phase II.

After allotment/sale, the petitioner's Association was formed by its members and registered with the Registrar of Societies as Sl.No. 201 of 1996.

24. While being so, on 20.07.2018, the Government passed an order in G.O.Ms.No.21, MSME (C) Department, transferred the maintenance of all the Industrial Estates in Tamil Nadu including the petitioner's estate to the third respondent as an agent of the Government, on remuneration basis, subject to certain conditions. It is relevant to extract the portion of the Government order in G.O.Ms.No.21, dated 20.07.2018, which is as follows :

“10. The Government after careful examination decided to transfer the 8 Electrical and Electronic Industrial Estates and one Ceramic Industrial Estate currently under the control of Industries Commissioner and Director of Industries and Commerce to Tamil Nadu Small Industries Development Corporation Limited on “as is where is condition” for maintenance of Common Infrastructure as per terms and conditions prescribed in Government order second read above and subsequent amendment there on vide Government order sixth read above.”

25. Thereby, transferred the maintenance of the common



W.P.Nos.5346 & 5352 of 2021

infrastructure to the third respondent. The said Government order was passed by transferring the maintenance of the common infrastructure in terms and conditions of G.O.Ms.No.877, Industries Department, dated 01.07.1982 and G.O.Ms.No.45, Micro, Small, Medium Enterprises (C) Department, dated 04.09.2013. As stated supra, as per both the Government orders, the first respondent delegated the power to allot/sell the sheds and lands to an extent of 50 cents on higher purchase basis. Therefore, taking advantage of the said order, the third respondent issued the present impugned advertisement inviting applications for outright sale. In fact, as requested by the petitioner Estate, the entire maintenance was suggested to be handed over to the petitioner. However, the entire maintenance was not handed over to the petitioner and after Government order in G.O.Ms.No.21, dated 20.07.2018, the third respondent published the advertisement. In fact the entire maintenance was handed over to the third respondent only on 20.07.2018. Immediately, the third respondent altered the approved layout of the estate including the portion which was earmarked for canteen as Plot I-9A in Phase I and Plot L-19B, which was earmarked for over-head tank and sump.

26. A perusal of the approved estate layout and the modified estate



W.P.Nos.5346 & 5352 of 2021

layout reveals that the third respondent altered the layout, which was approved one, without submitting the revised layout and without approval of revised layout. It is not permissible in law. Originally, the portion which was earmarked for canteen was not used for creche. As per the requirement of creche for the industrial estate as per Section 48 of the Factories Act, it was constructed for the purpose of creche. However, it was not utilised by the petitioner for the past several years. Therefore, after issuance of show cause notice to the petitioner, the third respondent issued a proposal for cancellation of use of creche. Once again, the petitioner was served with a show cause notice dated 15.09.2006. However, the petitioner did not turn up with reply. Therefore, the second respondent had cancelled the allotment of creche building and directed the Estate Officer to resume it. Accordingly, the Estate Officer resumed it. Thereafter, the said building was not used for canteen purpose. It is lying vacant. Utilizing these circumstances and the power delegated to the third respondent, it proposed to go for outright sale by modifying the said canteen as Plot No.I-9A in Phase I of the petitioner estate. Likewise, the vacant plot which was earmarked for water over-head tank and sump in Phase II is also lying vacant, since, the water is provided to the Phase II sheds from Phase I.



W.P.Nos.5346 & 5352 of 2021

27. Therefore, the third respondent modified the approved plan by

hand written and converted the vacant place as Plot No.L-19B in Phase II.

Though the third respondent was delegated with powers to allot and sell the sheds and lands more than 50 cents on higher purchase basis, the third respondent has no power to modify or alter the approved layout by the authority concerned of the petitioner estate. Admittedly, both the plots were earmarked for other common purposes. In fact, the said land cost was also included in the cost of respective plots/sheds. Common amenities also operated from the respective allottees. In this regard, the learned counsel for the petitioner relied upon the Judgment of this Court reported in **2010 SCC Online Mad 5903** in the case of **K.Rajamani and others Vs. Alamunagar Residents's Welfare Association**, wherein, this Court held as follows :

“23. Point Nos. (iii) & (iv): The next contention is as to whether in the absence of any proceedings under the and Acquisition Act, the municipal Corporation can claim a right over the property. The Contention of Mr. K.M. Vijayan, learned Senior counsel is that after the land is deemed to be the land needed for public purpose within the meaning of Land Acquisition Act in terms of Section 36, a declaration in this regard should be made under Section 37. In the event no declaration is made within a period of three years after the publication of notice in the Gazette as to the preparation of



WEB COPY

*regional plan, master plan or the new town development plan, as the case may be, the land shall be deemed to be released from such reservation, allotment or designation under Section 38 of the planning Act. In terms of Section 26, notice of preparation of the Government Gazette after the appropriate Planning Authority had received the consent of the Government under sub-section (2) of section 24. Thereafter, the Government is competent to acquire the land under the provisions of the Land Acquisition Act as contemplated under Section 36 and for that purpose, a notice shall be also published in the Tamil Nadu Government Gazette under Section 37. In the event such notice is not made within a period of three years from the publication of notice under Section 26 or 27, the land shall be deemed to be released from such reservation, allotment or designation. This contention would be available to a land owner before he/she makes an Application for approval of the layout plan as to the entitlement of a land owner for release of such land for non-compliance of the provisions of Sections 26, 27, 37 and 38 of the Planning Act. In this context, we may refer to the judgement of the Apex Court in **Balakrishna H. Sawant and the others V. Sangli Miraj and Kupwad City Municipal Corporation and others, 2005 (3) SCC 61**. In that case, Certain lands were reserved for high school and playground in a development plan. The concerned Municipal Corporation did not offer sufficient financial resources to construct the school and playground on the land and therefore the Municipal Corporation did not take*



WEB COPY

*action. In the meantime, the Government also took a stand that the reservation had lapsed and in that circumstance, the Apex Court had directed the release of the land. The above judgement was quoted with approval in **Raju S. Jethmalani and others V. State of Maharashtra and others, 2005 (11) SCC 222**, relating to the power of the Government for de-reservation. In both the judgements, the power of the Government for de-reservation has been upheld prior to the stage of approval of the layout and not afterwards. It is one thing to say to change the use of the said land. In this case, the question is whether after the layout has been approved showing certain extent of land to be used as park, etc., whether it could be de-reserved for the use of housing plots by an order of the Government. The Government's power to de-reserve the land is not available after the layout plan is approved, except as per the provisions of Section 90, which confers power on the Government only in respect of legality or correctness of the layout plan and not in respect of power to change the usage of the land as shown in the layout. Therefore, the contention of the learned Senior Counsel that in view of non-compliance of the provisions of the Land Acquisition Act, the land in question shall be deemed to have been released cannot be accepted on the facts of this case. Equally, we also hold that in the absence of acquisition of land in terms of Sections 36, 37, 38 of the Planning Act, the Municipal Corporation cannot claim right over the land, as the right of the owner cannot be deprived except following the*



W.P.Nos.5346 & 5352 of 2021

above procedure. We may also mention that the owner of the land has not executed any gift deed as well in respect of the open space in favour of the Municipal Corporation, thereby the Corporation could claim a right over the land for all legal purposes”.

28. Thus, it is clear that once permission is carried for treating specific area for public purpose, thereafter, even the complying authority shall have no power to exempt the land of being put to use for any other purpose. Therefore, either the respondents 1 & 2 or respondents 3 & 4 have no power or jurisdiction to alter the conditions imposed in layout whereby certain lands are earmarked for public purposes such as canteen and over-head tank with sump. In fact, as per the original allotment, the shed No.I-9A was earmarked for the purpose of canteen. However, it was subsequently used for the purpose of creche. After construction of creche building, it was handed over to the petitioner. However, non-utilisation of the said building as creche, the allotment in favour of the petitioner was cancelled and had taken back the said building by the second respondent. But, originally it was meant for canteen purpose. Without submitting any revised allotment plan before the concerned authority on the power delegated by the first respondent, the third respondent unilaterally altered the approved layout as shed No.I-9A in Phase I. It is not



W.P.Nos.5346 & 5352 of 2021

permissible under law. Likewise, the vacant plot without giving any number earmarked for construction of over-head tank and sump. However, it was not constructed and it was lying vacant. Therefore, the third respondent converted the same into Plot L-19B by altering the layout for the purpose of outright sale. Thereafter, the third respondent issued impugned advertisement for outright sale of those two plots/sheds.

29. Further, though the common area which is earmarked for so many purposes and its ownership is vested with the first respondent, the petitioner has power to control over the common areas and facilities available to its members. In fact, even after G.O.Ms.No.21, dated 20.07.2018, the petitioner made several request to the respondents to hand over the maintenance of entire estate in favour of the petitioner. In this regard, the learned counsel appearing for the petitioner relied upon the Judgement of the Full Bench of this Court reported in **(2013) 3 CTC 129 (FB)** in the case of ***The Tamil Nadu Housing Board Vs. Mary Rani Immanual & others***, wherein this Court held as follows :

“8. Thus, an reading of the various provisions of the Act clearly demonstrate that the Society or the Association formed under the Act alone is in control over the common areas and facilities available in the apartments and it alone shall deal with the same. It can also frame rules and regulations for transfer of



WEB COPY

any apartment and percentage of undivided interest in the common areas and facilities. The preamble of the Act which is extracted above clearly spells out that the Act is enacted to provide for ownership of an individual apartment in a building, undivided interest in common areas and facilities pertaining to the transfer of apartment.

15. Thus the reading of the various provisions of the Tamil Nadu Apartment Ownership Act, 1984, the covenants in the sale deed executed by the Tamil Nadu Housing Board in favour of the allottees will amply establish that the Tamil Nadu Housing Board having not retained any right over the land appurtenant to the flats or common area, the question of obtaining “No Objection Certificate” from the Tamil Nadu Housing Board will not arise. In such circumstances, the allottees of the flats, after execution of the sale deed in their favour have got every right to demolish the existing building and construct new apartment blocks. Even if additional dwelling units are constructed and sold to the third parties, the Tamil Nadu Housing Board cannot lay the parameters of the rules of the CMDA, in our considered view, the Tamil Nadu Housing Board have got not say, even if additional dwelling units are constructed after demolishing the existing flats. As stated already, the Tamil Nadu Housing Board loses its rights as soon as it executes sale deed in respect of the flats, appurtenant land and even in the areas earmarked for the common enjoyment of the flat owners. The common area has to be enjoyed in common by the flat owners. If a consensus is



W.P.Nos.5346 & 5352 of 2021

arrived at by all the flat owners, they can utilize the common land also to put up construction without “No Objection Certificate” from the Tamil Nadu Housing Board. As stated already, the construction shall comply with the requirements of the rules and regulations of the CMDA. Even assuming that there are restrictive covenants in the sale deed executed by the Tamil Nadu Housing Board in favour of the allottees, the violation of the same cannot be questioned by the Tamil Nadu Housing Board, since as stated already, as soon as the Tamil Nadu Housing Board executes sale deed in favour of the allottees, it loses all its rights on the property and it cannot any more question the action of the allottees by saying that the allottees have violated the conditions enumerated in the sale deed.”

30. Therefore, the third respondent has no authority or power to sell the earmarked area which was originally earmarked for public purposes such as canteen, over-head tank and sump. Therefore, the contentions raised by the respondents cannot be countenanced and the impugned advertisement published by the third respondent for outright sale of Plot No.I-9A in Phase I and Plot No.L-19B in Phase II cannot be sustained. The Plot No.I-9A, which was originally earmarked for the purpose of canteen and after construction it was handed over for the purpose of creche. In fact, the facility of canteen is



W.P.Nos.5346 & 5352 of 2021

also mandatory under Section 46 of the Factories Act. It is relevant to extract

the provision under Section 46 of the Factories Act, which is as follows :

46. Canteens :- (1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for -

(a) the date by which such canteen shall be provided ;

(b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen ;

(c) the foodstuffs to be served therein and the charges which may be made therefor ;

(d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen ;

[(dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;]

(e) the delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c).

31. The petitioner estate is having Phase I and Phase II, with 31



W.P.Nos.5346 & 5352 of 2021

units in Phase I and 67 units in Phase II. In all the industries more than 250 workers are employed. Therefore, it is mandatory to have canteen for the industrial estate.

32. In view of the above discussion, the impugned advertisements dated 18.01.2021 & 21.01.2021 published by the third respondent and its consequential allotment/sale, if any, is hereby quashed. The first and second respondents are directed to consider the request made by the petitioner seeking maintenance of the petitioner Estate and pass appropriate order to handover the entire maintenance of the Estate to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

33. In the result, these writ petitions stand allowed. Consequently, connected miscellaneous petitions are closed. No costs.

11.07.2024

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

Neutral Citation : Yes/No

Lpp

To



W.P.Nos.5346 & 5352 of 2021

1. The Secretary to Government,
Industries Department,
Fort St.George, Chennai – 600 009.

2. The Industries Commissioner
and Director of Industries and Commerce,
Department of Industries and Commerce,
Through its
SIDCO Corporate Office Building,
3rd Floor, Thiru Vi. Ka. Estate,
Guindy, Chennai – 600 032.

3. The Managing Director,
Tamil Nadu Small Industries
Development Corporation Limited (TANSIDCO),
SIDCO Corporate Office Building,
Guindy, Chennai – 600 032.

4. The Branch Manager,
TANSIDCO,
SIDCO Corporate Office Building,
Guindy, Chennai – 600 032.

5. The Secretary to Government,
Micro, Small and Medium Enterprises (C) Department,
Government of Tamil Nadu,
Secretariat, Chennai – 600 009.



WEB COPY



W.P.Nos.5346 & 5352 of 2021

G.K.ILANTHIRAIYAN. J.

Lpp

Pre-delivery order in



WEB COPY



W.P.Nos.5346 & 5352 of 2021

W.P.Nos.5346 & 5352 of 2021
and
W.M.P.Nos.5938, 5941, 5945 &
5947 of 2021 and 34930 of 2023

11.07.2024