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W.P.No.13826 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.13826 of 2024
and W.M.P.Nos.14982, 14983 and 14984 of 2024

Kovai Police Enclave Residents
And Land Owners Association,
Represented By Its President,
T.Joseph

... Petitioner

-Vs-

1. The Secretary,
Tamil Nadu Town Administrative
And Water Supply Department,
Chennai-600 009.
2. The Director,
Department Of Rural Development
And Panchayat,
Panagal Maligai,
Saidapet, Chennai - 600 015.
3. The Commissioner,
Commissionerate Of Town And Country Planning,
Annasalai, Chennai.
4. The Commissioner,
Coimbatore Corporation,
Town Hall, Coimbatore- 641 018.



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5. The Joint Director / Member Secretary,
The District Town Planning Office,
No.50, FCI Road,
Gandhima Nagar,
Ganapathy,
Coimbatore- 641 004.
6. Member Secretary,
The Local Town Planning Authority,
Raj Naidu Street,
Sivanantha Colony,
Coimbatore- 641 012.
7. The Sub Registrar,
Sub- Registrar Office,
Ganapathy,
Coimbatore.
8. The Block Development Officer,
Annur Panchayat Union,
Coimbatore.
9. M/s.Green Field Housing India Pvt Limited,
Rep. By Its Managing Director
C.K.Balasubramaniam,
Office At No.48/2 Sangu Nagar Road,
Surampatty, Erode- 638 011.

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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 records from 5th Respondent Letter vide Na.Ka.No.5418 / 2023 vu thi ku dated 12.12.2023, pertaining to convert Open Space Reserve Area earmarked for community hall into residential area with extent of



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2975.73 Sq.metre which is situated at Vellanaipatti Panchayat and village, Annur Taluk, Coimbatore District and quash the same and consequently direct the 6th Respondent to Construct the Community hall in 2975.73 Sq.metre Open Space Reserve Area earmarked for Community hall which is situated at Vellanaipatti Panchayat and Village, Annur Taluk, Coimbatore District.

For Petitioner	: Mr.P.Saravanan
For R1, R2, R5 to R7	: Mr.C.Kathiravan Special Government Pleader
For R3	: Mr.Thirumalai Rajagopal
For R4	: Mr.N.Umapathi Standing Counsel
For R8	: Mr.N.Naveen Kumar Government Advocate

ORDER

This writ petition has been filed challenging the order passed by the 5th respondent dated 12.12.2023, thereby converted the open space reservation area earmarked for the community hall to the residential area to an extent of 2975.73 Sq.metre situated at Vellanaipatti Panchayat and village, Annur Taluk, Coimbatore District.

2. Heard the perused the materials available on record.



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3. The petitioner is an Association and its members are purchasers of their respective house plots from the developer viz., 9th respondent herein. The 9th respondent is developer and applied for layout approval before the 6th respondent in respect of the property comprised in S.F.Nos.216/1, 217/1, 242/1A, 242/2, 243/1E, 244/1, 244/2, 245/4, 245/5A, 245/5B, 245/5C, 245/5D, 245/5E, 246/1A, 246/1B, 246/1C, 246/1D, 246/2A and 246/2B with extent of 17.55 acres (71021.24 sq.m), Vellanaipatti Panchayat and Village, Annur Taluk, Coimbatore District.

4. The 5th respondent had given a condition and layout approval by its communication dated 19.01.2018 under Section 49 of the Town and Country Planning Act with open space reservation and community hall to an extent of 2975.73 sq.m. The members of the petitioner Association had purchased their respective plots as per the approved layout. While being so, on an application submitted by the 9th respondent, the 5th respondent converted the Open Space Reserve area into residential plots.

5. The learned counsel for the petitioner would submit that the



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area which was earmarked for community hall is not salable one. Only on the assurance given by the 9th respondent that there would be a community hall, the members of the petitioner had purchased their respective plots. There are totally 170 plots in the layout and without giving any notice to them, the 5th respondent mechanically converted the area which was originally earmarked for community hall as per the approved layout into residential plots.

6. The 5th respondent filed counter and the submissions made by the learned Special Government Pleader revealed that as per the approved layout, the area to an extent of 2975.73 sq.metre has been earmarked for community hall. The layout was approved in the year 2017. However, till the year 2023, no community hall was constructed in the allotted space. Therefore, the 9th respondent made an application on 13.10.2023 seeking conversion of the said area into house plots for the reason that it was not utilized for community hall so far.

7. It is relevant to extract the Rule 47(6)(b) of the Tamil Nadu



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Combined Development and Building Rules, 2019 as follows:-

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“ Rule 47(6)(b) The building and use of land shall conform to the conditions that may be imposed while sanctioning the layout. The space set apart for commercial, institutional, industrial or other uses shall be used for the purpose set apart. However, conversion of the use of these non-residential use sites can be considered and decided on its merits when it is proved by the developer that demand for the same does not exist.”

8. Thus, the non-residential used sites can be converted into house plots. Further, as per the circular issued by the Director, Town and Country Planning, Chennai dated 14.08.2021, the 5th respondent has delegated power to pass an order for conversion if the following criteria are satisfied:-

“ The Committee discussed in detail and decided that the Director can issue orders for conversion of use from public purpose (saleable only) to other allowable uses like residential etc., if the following are fulfilled;

(a) The saleable plot/site earmarked for public purpose building has not been developed for the earmarked purpose and lying vacant for at least 5 years from the date of planning permission granted by the Planning Authority.

(b) The same public purpose facility for which the plot is earmarked i.e., Kalyan mandapam, community hall, school, dispensary etc, is available outside the approved layout within 2 to 3 kms.”

9. On verification of records also revealed that there is one



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marriage hall and one Panchayat community hall are situated within the vicinity of 2 kms from the approved layout. Therefore, the place which was originally earmarked for community hall has not been used by the 9th respondent for construction of community hall. It is lying vacant for the past six years. That apart, the area which is earmarked for community hall is salable one. The area which is earmarked for common purpose is not salable one. Therefore, when the area is salable one, it can be converted for other purpose, other than the purpose in which it was earmarked.

10. If at all the members of the petitioner are interested to construct the community hall, they can very well purchase the same from the 9th respondent and put up construction for community hall. Further, the subject place is not included in the cost which was paid by the members of the petitioner as common area while purchasing their respective plots.

11. In view of the above, this Court finds no infirmity or illegality



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in the order passed by the 5th respondent and the writ petition is devoid of merits and is liable to be dismissed. Accordingly, this writ petition stands dismissed. Consequently, connected Miscellaneous petitions are closed.

No costs.

05.08.2024

Internet: Yes

Index : Yes/No

Neutral Citation: Yes/No

Speaking/Non Speaking order
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To

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