



W.P.No.18945 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2024

CORAM:

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

W.P.No.18945 of 2024 and
WMP.Nos.20808 & 20809 of 2024

Nedunchalai Nagar Welfare Association,
(Regd.No.230/2011),
Rep. By its Secretary R.Chandrasekaran,
No.82/136-DF, Ganga Street,
Nedunchalai Nagar,
Salem

... Petitioner

Vs.

- 1.The Commissioner,
Salem Corporation,
Salem 636 005
- 2.Suaramangalam Municipality,
Salem Corporation Zonal Office,
Solampallam, Old Suramangalam,
Salem 636 005
- 3.The Special Officer, Secretary,
Nedunchalai Nagar, Co-operative House Building Limited,
Masti Towers, Bungala Street,
Thiruvagoundanur,
Salem 636 005
- 4.The Registrar,
House Building Society,
Tamilnadu Housing Board Campus,
493, Anna Salai,
Nandhanam,
Chennai 600 035



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5.The Joint Director,
Directorate of Town and Country Planning
No.6, Sannathi Street,
Subramaniya Nagar,
Suramangalam,
Salem 636 005

6.The Deputy Director,
Town and Country Planning(Spl)
Salem-Cuddalore Region,
Salem

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the impugned proceedings of the 5th respondent in Application No. SWP / BPA / 005519 / 2023 dated 13.02.2023 on the file of the Joint Director, Directorate of Town and Country Planning, in Commercial Building Plan Number as Planning Permission No.30/2023 from 13.02.2023 to 12.02.2031, (8 years) and to quash the same and direct the respondents to use the subject land of an extent of 19454 sq. ft. to be used as a Park as shown in the Layout Approval bearing No. LPH / DDT and CP No.9/75 issued by the Deputy Director, Town and Country Planning (SPl) Salem Cuddalore Region on 16.06.1975 after having revised LPH / DDT and CP No.6/75 for the public purpose such as forming park and children play space.

For Petitioner : Mr.S.Patrick

For Respondents

For R1 & 2 : Mrs.N.Devi,
Standing Counsel



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For R3 & 4 : Mr.G.Krishna Raja,
Additional Government Pleader

For R5 & 6 : Mr.N.Naveen Kumar,
Government Advocate

ORDER

This writ petition has been filed challenging the order passed by the fifth respondent dated 13.02.2023 thereby granted planning permission to construct ground + 1 floor of commercial office building for the third respondent Society.

2. The case of the petitioner is that the petitioner is the association consisting of the residents of Nedunchalai Nagar as its members. Originally the third respondent developed housing plots in the total extent of the land admeasuring 13.72 acres. On the application submitted by the third respondent, it was granted layout approval bearing No.LPH/DDT and CP.No.9/75 dated 16.06.1975 after having revised the LPH/PTT and CP.No.6/1975. As per the approved layout, the third respondent had gifted 4.75 acres and 3404 sq.ft. in favour of the second respondent by the registered gift deed dated 22.04.1992 registered vide



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document No.194/1992. Apart from that, the land admeasuring 19454 sq.ft. of land was earmarked by the third respondent for the purpose of constructing community hall and children play space. The house plots were purchased by the petitioner's members and had constructed their respective houses. However, the third respondent failed to develop the land which was earmarked for community hall and children play space.

2.1 Therefore, the petitioner had already filed writ petition before this Court in WP.No.16518 of 2018 for direction to the third respondent to hand over the land admeasuring 19,457 sq.ft. comprised in survey No.20/2A which has been reserved for public purpose so as to form children park and walking ground for senior citizens. In the said writ petition, the third respondent filed counter stating that the Town and Country Planning Authority earmarked 19,454 sq.ft. of land for building a community hall and formation of children play space. The third respondent passed resolution in the meeting dated 22.02.2017 to build a community hall and also to form a children playground in that earmarked area. The copy of the resolution with a request to permit the third



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respondent to proceed with the work as resolved is to be sent to the Registrar of Cooperative Societies, Chennai for permission. Recorded the said submission, the writ petition was closed by order dated 30.10.2018. However, the third respondent failed to put up any construction for community hall and also failed to form any children play space in the area which was originally earmarked for community hall and children play space. Suppressing the said fact, the third respondent once again filed application for planning permission to construct a commercial office building and the same has been approved by the fifth respondent by planning permission No.30/2023. In fact, the third respondent also suppressed the fact that the land earmarked originally for community hall and children place space and submitted application for planning permission to construct commercial office building.

3. The learned counsel appearing for the fifth respondent, on written instruction, submitted that the third respondent had applied for approval of the proposed construction of a commercial office building in the site comprised in new Town Survey No.78 in Block No.32 of ward N



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(old SF.No.2/2A Part) which was originally earmarked for purpose of constructing community hall and to develop children place space together in the revised plan No.9/75. On receipt of the said application, planning permission was granted by order dated 13.02.2023. He further submitted that as per Rule 47(6)(b) of Tamilnadu Combined Development and Building Rules, 2019 and clause 5(h) of the guidelines issued by the Director of Town and Country Planning, Chennai vide circular ROCNo.4367/2019-TCP2 dated 14.08.2021, approval was granted for the proposed construction of a commercial office building by an order dated 13.02.2023. He further submitted that Rule 47(6)(b) provides conversion of the use of these non-residential use sites and can be considered and decided on its merits when it is proved by the developer that demand for the same does not exist.

4. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.

5. It is true that Rule 47(6)(b) provides for the conversion of



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the use of non-residential land and can be considered depending upon its merits when it is proved by the developer that demand for the same does not exist. On perusal of the planning permission dated 13.02.2023, there was no application for conversion of the use of commercial use sites. The third respondent suppressed the fact that in the earlier writ petition, they submitted that the area which was originally earmarked for community hall and children play space to be developed accordingly and thereafter in the year 2023 submitted application for planning permission to construct commercial office building for Nedunchalai Nagar Cooperative House Building Limited. It was considered by the fifth respondent and granted planning permission vide planning permission 30/23 dated 13.02.2023 for the proposed commercial building construction consisting ground floor + first floor. The specific stand taken by the third respondent is that originally the lay out approval was of the year 1975 and even till today, the said land was not used for the purpose for which it was earmarked as per the original layout. Further, the Director of Town and Country Planning, Chennai by its circular dated 14.08.2021 issued guidelines to be followed during the conversion of the use of non-



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residential use sites such as sites earmarked for Kalyana Mandapam, community hall, school, dispensary, etc. The guidelines are as follows:

“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. Kalyana Mandapam, Community hall, School, Dispensary etc., is available outside the approved layout within a vicinity of 2 to 3 kms.”

6. As stated supra, admittedly the third respondent did not apply for conversion of the use of non-residential use sites such as sites earmarked for community hall and play space. Though the fifth respondent has power to convert the use of land and to grant planning permission for construction of commercial office building, the third respondent did not submit any application for conversion of the land. While being so, without conversion of the use of the land, the fifth respondent ought not to have issued planning permission for construction of office commercial building for the land which was originally



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earmarked for community hall and children play space. That apart, already the third respondent had undertaken before this Court to construct community hall and children play space. Without complying with the same and also suppressed the said fact, application was filed for planning permission to construct office building.

7. In view of the above, the planning permission cannot be sustained and the same is liable to be quashed. Accordingly, the impugned order passed by the fifth respondent dated 13.02.2023 is quashed and this writ petition is allowed. However, the third respondent is at liberty to file application for conversion of the use of the land which was originally earmarked for the purpose of community hall and children place space within a period of two weeks from the date of receipt of copy of this order. On receipt of the said application, the fifth respondent is directed to issue notice to the petitioner and counter parties, if any, and to conduct enquiry after giving opportunity of hearing and to pass appropriate orders on merits and in accordance with law. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.



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Neutral citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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