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W.P.No.25882 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on: 23.02.2024

Orders pronounced on: **15.03.2024**

CORAM :

**THE HON'BLE MR.SANJAY V.GANGAPURWALA ,
CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.No.25882 of 2022

Natasha Storey

.. Petitioner

Versus

The Auroville Foundation,
Represented by its Secretary,
Auroville Foundation Bhavan,
Auroville - 605101.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records and quashing the Notification No.AF/M/63/2022-23, dated 01.06.2022 containing Standing Order No.01/2022 issued by the respondent and published in Part III Section 4 of the Gazette of India: Extraordinary No.359, dated 15.07.2022.

For Petitioner : Mr.M.V.Swaroop

For Respondents : Mr.AR.L.Sundaresan,
Additional Solicitor General of India,
Asst. Mr.Vaibav R. Venkatesh



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ORDER

(Order made by the Hon'ble Mr Justice D.Bharatha Chakravarthy)

A. The Writ Petition :

This Writ Petition is filed challenging the notification, dated 01.06.2022 containing Standing Order No.01/2022 issued by the respondent. By the said Standing Order, directions were issued in the matter of the constitution of Auroville Town Development Council (hereinafter referred to as 'ATDC'). It replaces the existing Standing Orders in respect of the same.

B. The Case of the Petitioner :

2. The petitioner, *Natasha Storey*, is a resident of Auroville. It is pleaded that she has been a forester and steward of the evergreen forest in Auroville since the year 2002. She was earlier nominated to the ATDC by the Residents' Assembly. The Writ Petition is filed aggrieved by the above Standing Order as usurping the powers of the Residents' Assembly by the Governing Board. It is the case of the petitioner that formulation of the Master Plan and execution thereof are the primary functions of the Residents' Assembly. The deprivation of the power of the Resident's



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Assembly is against the provisions of the *Auroville Foundation Act, 1988* (hereinafter referred to as 'the *Act*').

2.1. The Master Plan has been duly approved by the Governing Board and thereafter by the Ministry of Human Resource Development, Government of India vide letter dated 12.04.2001 and the same is published in the Gazette. The Town Development Council is a creation of the said Master Plan. The entire development activities are to be executed by the said Council under the plan. The powers and functions of the *ATDC* are mentioned in the Master Plan. As per the Master Plan, the resident's participation forms the basis of the constitution of the *ATDC*. Now, the Standing Order runs counter to the Master Plan. It does violence to the very concept of Auroville, where the resident's participation in the development and activities is paramount.

2.2. Even while introducing the *Act*, it was made clear that residents should have autonomy over the activities of Auroville. The *ATDC* is constituted only by the members mandatorily appointed on nomination by the Residents' Assembly through the Working Committee from among the



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residents of Auroville. As per the Standing Order No.06/2011 dated 01.05.2011, the *ATDC* consisted of fifteen members, out of which, thirteen are nominated by the Residents' Assembly with one member each from the Governing Board and Working Committee. In the earlier judgment inter-parties in W.P.No.11738 of 2022, a Single Bench of this Court had laid down the importance and primacy of the Residents' Assembly and its participation in the manner of formulation and execution of the Master Plan. Despite having framed the Standing Order, the respondent withheld information about the same. Only during the previous litigation, it came to light and after that, the present writ petition was filed.

C. The Respondent's Case :

3. A counter-affidavit was filed by the respondent. It is stated that the Charter of Auroville was laid out by the Divine Mother to envision her noble principles. The original plan known as Galaxy Plan was made under the guidance of Mother herself in the year 1968. After her death in the year 1973, the affairs of Auroville became worse. The Hon'ble Supreme Court of India in *S.P.Mittal Vs. Union of India and Ors.*¹ had noted the alarming and deteriorating situation. Therefore, the *Act* was enacted by the

¹ (1983) 1 SCC 1



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Parliament. The *Act* vests the powers of management, control and authority to the Governing Board. The relevant provisions are Sections 6,7,11,16, 17 and 32 of the *Act*.

3.1. The *Act* also recognises yet another body called the Residents' Assembly which is authorised to constitute a Working Committee, whose duty is only to play an advisory role and perform recommendatory functions to aid and assist the Governing Board. A Single Bench of this Court in W.P.No.22895 of 2022, by the order, dated 13.12.2022, held that the Residents' Assembly can only supplement and not supplant the Governing Board. Way back in the year 1999, the Residents' Assembly approved the Master Plan which was further approved by the Governing Board and by the Ministry in the year 2001 and communicated to the foundation on 26.02.2001. The same was done in consultation with the experts and technical contribution of the Town and Country Planning Organisation under the Ministry of Housing and Urban Affairs, Government of India. On 16.08.2010, the Master Plan was also gazetted. The validity of the plan was also upheld in W.P.No.12378 of 2022.



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3.2. The writ petitioner has not placed on record a corrigendum, dated 07.12.2022 issued to the impugned Standing Order in which the source of power is traced to Sections 6(1), 7(1)(a), 11(3), 17(b)(d)(e)(f), 16(1) and 32 of the *Act*. Only the Governing Board is mandated with the responsibility of developing Auroville as per the Master Plan. The petitioner suppressed the crucial aspect as to the fact that partly, the self-same proceedings were impugned in the earlier writ petition. The petitioner could not trace out the powers of the Residents' Assembly to nominate the *ATDC* members. The *Act* nowhere lays down that the *ATDC* members should be nominated by the Residents' Assembly. Under Section 17(e) of the *Act*, it is only the Governing Board but not the Residents' Assembly that should ensure the development of the Auroville Township by the Master Plan.

D. The Submissions:

4. Heard *Mr.M.V.Swaroop*, learned Counsel for the petitioner and *Mr.AR.L.Sundaresan*, learned Additional Solicitor General of India for the respondent.



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4.1. *Mr.M.V.Swaroop*, the learned Counsel for the petitioner would submit that the Master Plan is a framework prepared for urban development of Auroville. Appendix V of the Master Plan prescribes the *ATDC* as the authority to plan, implement, monitor and carry out resource mobilisation/funding for the Master Plan. The Master Plan is already approved and gazetted. The Standing Order also mentions the *ATDC* as the prescribed authority for the implementation/operation of the Master Plan. Clause - 1(1) of the impugned order states that the *ATDC* shall consist of ten members to be appointed by the Governing Board. Clause - 1(2) states that the Governing Board may also authorise the Secretary of the Foundation to appoint the committee members. Clause - 1(3) states that the appointment of the *ATDC* can be made by office orders with the approval of the Chairman of the Foundation.

4.2. The learned Counsel for the petitioner would submit that the impugned Standing Order is contrary to the provisions of the *Act*. Section 10 of the *Act* establishes and incorporates the Auroville Foundation. Section 10(3) of the *Act* states that the Foundation shall consist of three authorities, namely, the Governing Board, the Residents' Assembly, and the



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Auroville International Advisory Council. There is no hierarchy between the three authorities and they are on equal footing. As per the structure of the *Act*, they are to work in tandem and supplement each other to carry out the activities of Auroville. The functions of the Governing Board are prescribed under Section 17 of the *Act*. Section 17(e) of the *Act* enables the Governing Board to prepare the Master Plan in consultation with the Residents' Assembly. Therefore, when the Standing Order completely excludes the Residents' Assembly from the decision-making process in the matter of appointing members of the *ATDC*, the same would be directly contrary to Section 17(e) of the *Act*.

4.3. Section 19(1) of the *Act*, which prescribes the functions of the Resident's Assembly, is widely worded that the Residents' Assembly shall perform such functions as are required by the *Act*. Section 19(2)(c) of the *Act* states that one of the functions/powers of the Residents' Assembly is to formulate the Master Plan. Thus, it can be seen that the actual authority that formulates the Master Plan is the Residents' Assembly.



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4.4. The attempt of the respondent to trace the power to Section 16 of the *Act* is erroneous. Under Section 16 of the *Act*, the Governing Board has the power to co-opt individuals who are not members of the Governing Board into the committees constituted under Section 16(1) of the *Act*. This implies that the committees under Section 16 of the *Act* should ordinarily consist of the members of the Governing Board. The Standing Order which empowers the constitution of the *ATDC* cannot be traced to Section 16 of the *Act*.

4.5. The next attempt of the respondent to rely upon Section 11(3) of the *Act* is also incorrect, in as much as it refers to the general power of superintendence and management and does not specifically refer to the Master Plan.

4.6. *Mr.M.V.Swaroop*, the learned Counsel for the petitioner would further contend that the Standing Orders are contrary to the Auroville Universal Township Master Plan. As per paragraph No.2.9.6 of the Master Plan, the details of the proposed structure for implementation of the Master Plan are in Appendix V. Appendix V is an organogram displaying the



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organisational structure for the Master Plan. It prescribes the *ATDC* as the authority for formulating and implementing the Master Plan. The *ATDC* is to have three groups, namely, a planning group, an implementation and monitoring group and a resource mobilisation and funding group. All three groups need to function with the residents' participation. Residents' participation can only be achieved through the Residents' Assembly. The Residents' Assembly will act through the Working Committee constituted under Section 20 of the *Act*. From paragraph Nos.2.11.1 and 2.11.2 of the Master Plan, it is also required that further plans are to be laid down.

4.7. The *ATDC* is the authority to authorise every construction within Auroville. Thus, it can be seen that the Standing Orders go contrary to the Plan. The earlier Standing Order No.6/2011 provides for the method of electing the *ATDC* from the Residents' Assembly through the Working Committee from amongst the Residents' Assembly. The impugned order is illegal. Even the residents wholeheartedly welcomed the *Act* which was passed to undo the mismanagement earlier. That does not mean that the respondent can issue Standing Orders *ultra vires* the *Act* and therefore, he would pray that the Writ Petition be allowed.



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4.8. Per *contra*, *Mr.AR.L.Sundaresan*, the learned Additional Solicitor General of India would submit that the respondent Foundation has the power to issue the impugned Standing Orders. The Standing Orders are issued under the Foundation Standing Orders Regulations. The power to issue such Standing Orders is vested in the Governing Board as per Section 11(3) of the *Act*. It can be seen that the Governing Board has the power of general superintendence, direction and management of the affairs of the Foundation. It can also exercise all the powers and discharge all the functions which are to be discharged by the Foundation. The Standing Orders only prescribe the manner of the constitution, method, composition, criteria, responsibility, and mandate of the *ATDC*. It does not take away the possibility of competent residents being appointed to the *ATDC* as members or serving in one of the sub-committees of the *ATDC*. As a matter of fact, under the Standing Orders, when the *ATDC* members were appointed, seven members were the resident members out of eight and the officer on special duty was the lone non-resident member.



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4.9. *ATDC* is one of the committees which is constituted as per Section 16 of the *Act*. Section 16(1) of the *Act* vests power on the Governing Board to constitute such a committee. Clause - 1.10.7 of the Master Plan states that the *ATDC* would oversee the planning and monitoring aspects of physical development i.e., the implementation of Township as per the Master Plan. This is the mandate of the Governing Board under the second part of Section 17(e) of the *Act* and therefore, the *ATDC* can only be a sub-committee of the Governing Board. The Master Plan does not specifically state that the Residents' Assembly should be involved in the implementation which would be *ultra vires* the *Act* itself. The *organogram* in Appendix V of the Master Plan mainly advocates the participation of the residents in all the sub-departments of the *ATDC*. Clause - 3.2 of the Master Plan defines prescribed authority as the authority decided by the Foundation for the operation and implementation of the Master Plan, which is the *ATDC*. The residents are at the bottom whose inputs are introduced into every sub-department under the *ATDC*. The position of the member of the *ATDC* is not political but a technical one, requiring expertise in the fields of administration and leadership,



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architecture and engineering, etc. The popularity among the Residents' Assembly cannot be a criterion for nomination into the *ATDC*.

4.10. When the vision of the Mother was to have 50,000 people in the 3000 acres, the situation has always been around 2000 people spread over 3000 acres. The past *ATDCs* mismanaged even the zones under the Master Plan. The Governing Board, taking the need to alter the stagnant situation and to give a fillip to the proper administration and development of Auroville, has framed the Standing Orders and as such, in the absence of any legally or factually tenable challenge to the Standing Orders, the Writ Petition is liable to be dismissed.

E. The Discussion & Findings:

5. We have considered the rival submissions made on either side and perused the material records of the case. The question to be decided is as to whether the impugned Standing Order is *ultra vires* and illegal.

5.1. As per paragraph No.4 of the counter-affidavit, it can be seen that Auroville, as a place, was intended to be developed as belonging to



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humanity as a whole, with no belonging to anybody. It is meant to be a site for material and spiritual research, free from moral and social conventions. Life should be organised according to inner consciousness and not according to outer and artificial rules. It could be seen that during the course, there was deviation from the path and mismanagement. The affairs were encapsulated by the Hon'ble Supreme Court of India in **S.P. Mittal's** case (cited *supra*). Therefore, it necessitated the Parliament to step in.

F. The Scheme of the Act :

6. The *Auroville Foundation Act, 1988 (Act 54 of 1988)* was enacted. By Section 3 of the *Act*, the Society, Trust, Body and everything relatable to Auroville stood transferred and vested in the Central Government. Section 6 of the *Act* enabled the Central Government by a notification, to constitute and vest in the 'Foundation' all that is vested in it under Section 3 of the *Act*. Section 10 of the *Act* names the Foundation as 'Auroville Foundation' and the same shall be a body corporate having perpetual succession and seal with powers to acquire and deal with property, entering to contract by its name etc. Section 10(3) of the *Act* lays down as to what constitutes the Foundation. It states that the Foundation shall



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consist of (a) the Governing Board; (b) the Residents' Assembly; and (c) the Auroville International Advisory Council.

6.1. Sections 11 to 17 of the *Act* deal with Governing Board. Sections 18 to 20 of the *Act* deal with the Residents' Assembly. Section 21 of the *Act* deals with the Advisory Council. The Central Government has the power to dissolve the Foundation under Section 22 of the *Act* and to make rules by notification as per Section 31 of the *Act*. Under Section 32 of the *Act*, the Governing Board is vested with the power to make regulations not inconsistent with the *Act* and the Rules to enable it to discharge its functions under the *Act*. The other provisions of the *Act* relate to Grants, furnishing of returns, entering into contracts, the over-riding effect of the *Act*, penalties for violation etc.

G. The Governing Board :

7. As per Section 11(1) of the *Act*, the Governing Board shall have nine members. Seven of them shall be nominated by the Central Government from persons who have rendered valuable service to Auroville; dedicated themselves to ideals of life-long education research or human



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unity; contributed significantly in respect of the activities promoted in Auroville such as environment, afforestation, arts and crafts, industry, agriculture, humanities, sciences and integral yoga. Two other members shall be the representatives of the Central Government. From among them, one member shall be nominated as Chairman by the Central Government.

7.1. As per Section 11(3) of the *Act*, the general superintendence, direction and management of the affairs of the Foundation shall vest in the Governing Board. The Governing Board may exercise all the powers and discharge all the functions which may be exercised or discharged by the Foundation.

7.2. Section 16 of the *Act* is titled “ Committees of the Governing Board”. Section 16(1) of the *Act* enables the Governing Board to appoint such committees as may be necessary for the efficient discharge of its duties and performance of its functions under the *Act*. It can co-opt non-members of the Board also in such committees as per Section 16(2) of the *Act* but such co-opted members shall participate in the proceedings but not entitled to vote.



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7.3. Section 17 of the *Act* delineates the powers and functions of the Governing Board. The Governing Board shall promote the ideals of Auroville and coordinate the activities and services of Auroville in consultation with the Residents' Assembly for cohesion and integration of Auroville. The Governing Board can review the basic policies and programmes of Auroville and give necessary directions for the future development of Auroville. The Governing Board has to approve the programmes of Auroville drawn up by the Residents' Assembly. The Governing Board has to monitor and review the activities of Auroville and secure proper management of the properties vested in the Foundation. More importantly, the Governing Board has to prepare a Master Plan of Auroville in consultation with the Residents' Assembly and to ensure the development of Auroville as so planned. The Governing Board has to authorise and coordinate fund-raising and secure proper arrangements for receipt and disbursement of funds.

H. The Residents' Assembly :



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8. As per Section 18 of the *Act*, the Residents' Assembly shall consist of all the residents of Auroville who are entered in the register of residents. Section 19 of the *Act* delineates the functions of the Residents' Assembly. The Residents' Assembly shall perform such functions as are required by the *Act* and shall advise the Governing Board in respect of all activities relating to the residents of Auroville. In particular, the Residents' Assembly has to allow the admission or cause the termination of persons in the register of residents. It has to organise various activities relating to Auroville. More particularly, the Residents' Assembly has to formulate the Master Plan of Auroville and make necessary recommendations for the recognition of organisations engaged in activities relatable to Auroville for the approval of the Governing Board. To carry out its functions, the Residents' Assembly may establish such committees as it may consider necessary which shall represent the residents' committee of the Residents' Assembly which shall assist the Residents' Assembly or the Governing Board in discharging the duties of the Residents' Assembly under the *Act*. The manner of choosing the members of the working committee shall be decided by the Residents' Assembly. The working committee, in turn, can



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create or constitute other organisations, trusts, societies or associations
relatable to Auroville.

I. The Auroville International Advisory Council:

9. Section 21 of the *Act* delineates that the Auroville International Advisory Council shall consist of not more than five members to be nominated by the Central Government. The Central Government may nominate persons who, in its opinion, are devoted to the ideals of human unity, peace and progress. The functions of the Council is to tender advice to the Governing Board concerning the ideals, for which, Auroville has been established and that the residents of Auroville are allowed freedom to grow and develop activities and institutions for the fulfillment of the aspirations and programmes envisaged in the Charter of Auroville. It shall consist of a Chairman, who shall be elected by the other members of the Council.

J. The Impugned Standing Orders :

10. With this background, the impugned regulations have to be considered. Firstly, Section 31 read with Section 17(e) of the *Act* enables



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the Governing Board to frame Standing Orders. The question is whether the Standing Orders are inconsistent with the Act or the Rules made thereunder.

10.1. The impugned Standing Orders contain directions in the matter of the constitution of the *ATDC* etc. It replaces the Standing Orders in respect of the same. Clause - 1 of the impugned Standing Orders lays down that the *ATDC* shall consist of not more than ten members. The members are to be appointed by the Governing Board. The Governing Board can also authorise the Secretary to appoint the Council members. Further powers are granted to the Secretary to issue office orders from time to time for the appointment of members.

10.2. Clause - 2 provides for the office bearers and work areas. The Governing Board shall nominate one Council member as Chairman, while the Member Secretary and Member-Finance & Accounts will be elected by the Council members from amongst themselves.



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10.3. Clause - 3 provides for the Term of office, to be four years from the date of appointment. It also provides the timeline for nomination of the succeeding council, reappointment etc.

10.4. Clause - 4 provides for cessation of membership if the member is absent for the meetings etc., and for making appointments to the vacancies.

10.5. Clause - 5 provides for the functions and responsibilities of the Council and it is essential to extract the same :

"1. The Governing Board herewith empowers the Council, with the following functions and responsibilities:

(a) To be the Prescribed Authority for the operation and implementation of the Auroville Master Plan as defined in section 3.2(2)(e) of the Auroville Master Plan;

(b) Ensure that the Auroville Township is planned, developed and built according to the Auroville Master Plan;

(c) Prepare and approve Detailed Development Plans for building the Auroville Township in a time-bound manner;

(d) Prepare and approve development plan regulations (building by-laws);

(e) Issue building permissions and completion certificates;

(f) Prepare and approve development projects, budgets, estimates, planning schedules, work plans and work completion schedules;

(g) Raise funds for the planning, developing and building of the Auroville Township including the



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consolidation of land required for the purpose in coordination with the Funds and Assets Management Committee (FAMC);

(h) Secure the services of town planners, urban designers, engineers, architects, contractors, surveyors, consultants, legal advisors, and such other experts and professionals from within and outside Auroville as may be necessary from time to time and on such terms and conditions as may be decided by the Council;

(i) Facilitate active and constructive participation of Auroville residents in the implementation of the Auroville Master Plan;

(j) Constitute technical teams, working groups, project teams and other resource groups as may be necessary from time to time on such terms and conditions as may be decided by the Council;

(k) Secure, where necessary, the support from the appropriate central, state, local or district government authorities for the implementation of the Auroville Master Plan in consultation and cooperation with the Secretary, Auroville Foundation;"

10.6. Clause - 6 contains the provisions for accountability and reporting.

10.7. Clause - 7 provides for the processes and procedures as to the internal working of the Council.

10.8. Clause - 8 empowers the Governing Board to constitute an Advisory Group to advise the Governing Board and the Council on matters



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relating to the Auroville Master Plan, including, but not limited to monitoring and reviewing planning and development progress.

10.9. Clause - 9 provides for the term of offices of the members of the Advisory Group.

10.10. Clause - 10 empowers the Governing Board to amend the provisions of the Standing Orders from time to time.

K. The Master Plan & The ATDC :

11. It can be seen that Section 19 of the *Act* entrusts the functions of formulating the Master Plan with the Residents' Assembly and the final preparation and approval thereof is with the Governing Board under Section 17(e) of the *Act*. Accordingly, a Master Plan is formulated by the Residents' Assembly as aforesaid and the same is already approved by the Governing Board and also by the Ministry of Human Resource Development, Government of India and is gazetted. *ATDC* is a creature of that Master Plan. Paragraph 1.10.7 of the Master Plan establishes two councils namely,



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the Executive Council and the Development Council. The same is extracted hereunder for ready reference :-

" **1.10.7** There are two important councils, namely the Executive Council and the Development Council. A number of groups have been constituted to manage specific aspects of Auroville's complex organisation, such as Entry Group, Economy Group, Funds and Assets Management Committee, Land and Estate Management, Project Co-ordination Group, etc. Appendix II indicates the responsibilities of the different working groups in Auroville. The Development Council oversees the planning and monitoring aspects of Auroville's physical development, while the Project Co-ordination Group assists working groups and project agencies in the formulation and funding of projects."

Thus, it can be seen that *ATDC* oversees the planning and monitoring aspects and should assist the working groups and project agencies in funding the projects.

11.1. The implementation of the Master Plan is entrusted with the *ATDC* as per paragraph No.2.9.6 and the details are mentioned in Appendix V. Appendix V is an *organogram* laying out the organisational structure for the Master Plan. From the same, it would be clear that the residents' participation is the basis. The residents shall participate in town planning and urban design, infrastructure construction maintenance and applied research on sustainable development which form part of the planning group.

The residents should also participate in the implementation and monitoring



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group and the resource mobilisation and funding group. All three groups function under the Town Development Council. Thus, it can be seen that the *ATDC* is the authority that implements the Master Plan on the ground in all spheres i.e., planning, implementation and resource mobilisation.

L. The Impugned Standing Orders are *ultra vires* the Act:

12. If that is the function of the *ATDC*, should it be considered as one of the committees of the Governing Board as per Section 16 of the *Act* or as a part of the Residents' Assembly and its activities under Section 19 of the *Act*?

12.1. The scheme of the *Act* is detailed above. It can be seen that of all the three organs of the foundation, the Governing Board is placed on a higher pedestal in the sense that it supervises all the activities and also is the ultimate decision-making authority. The performance of the functions required by the *Act* and all the activities relating to the residents of Auroville are vested with the Residents' Assembly under Section 19 of the *Act*. It can be seen that it is the Residents' Assembly that has to carry out



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those functions and day-to-day activities, not directly by itself, but, by aiding and advising the Governing Board.

12.2. Section 16 of the *Act* empowers the Governing Board to constitute sub-committees. Firstly, it can constitute sub-committees with its members. Secondly, it can constitute sub-committees by co-opting the outsiders along with its members for the performance of its functions. Thus, it can be seen that *ATDC* can never be a committee under Section 16 of the *Act* and the arguments of the learned Additional Solicitor General of India in this regard are misplaced. The functions that are performed by the *ATDC* are the functions of the Residents' Assembly under Sections 19(1) and 19(2)(c) read with Section 19(3) of the *Act*. Therefore, it can be seen that the entire Standing Orders enabling the Governing Board or further the Secretary to appoint members, without the nomination/selection emanating from the Resident Assembly does not align with the Scheme of the Act and is contrary to Section 17(e) read with Section 19 of the Act.

12.3. Further, from the ideals of the charter which are mentioned in the counter-affidavit, as also the ideals which are mentioned in the



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preamble to the *Act* and the various previous of the *Act* read in entirety, it would be clear that the development of Auroville town in a manner consonance with the ideals of the Mother is very much a critical aspect. The functional autonomy and the managing the affairs from inside are the hallmarks of the institution. The impugned Standing Orders grant power to the Governing Board and further, authorising the Secretary of the Governing Board to appoint any person as a member of the *ATDC* without the advice and consultation of the Residents' Assembly, is *ultra vires* the *Act*.

12.4. Secondly, no qualification whatsoever is also mentioned for any person to be appointed as a Member of the *ATDC*. There is no requirement for the said members to be residents. The same would also go against the purposes of the *Act* which enjoins administration from within the foundation. While we agree with the contention of the learned Additional Solicitor General of India that the *ATDC* may require technical members who may be experts in town planning etc., such technical members can only be in addition to the Resident members and and thus, Clause - 1 of the Standing Order does not even lay down residence or technical expertise as



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a criterion for members and thus falls foul of the *Act* and therefore, the impugned Standing Order is violative of Section 32(1) of the *Act*.

12.5. Similarly, Clause - 8 of the Standing Order constitutes a new body called an Advisory Group to advise the Governing Board and the Council on matters relating to the Auroville Master Plan. Clause - 9 provides for the terms of officers and members of the Advisory Group. It can be seen that such an Advisory Group also need not be necessarily from the residents or by the Residents' Assembly. Therefore, when Section 19 of the *Act* specifically enjoins that the Residents' Assembly shall advise the Governing Board; Clauses - 8 and 9 of the impugned Standing Order overreach and supplant Section 19 of the *Act* by constituting a different body known as the Advisory Group. Therefore, we find that the Standing Order is *ultra vires* the *Act*.

12.6. The Hon'ble Supreme Court of India in ***St.Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Anr.***² held as follows :-

² (2003) 3 SCC 321



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" 10. A Regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and Regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it..."

12.7. Similarly, in *Shri Sitaram Sugar Company Ltd. and Anr.*

*Vs. Union of India and Ors.*³, the Hon'ble Supreme Court of India held that the importance of the delegated legislation being in good faith and intra vires, the power granted has been adumbrated and paragraph No.47 of the said judgment reads as follows :-

" 47. Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land..."

M. The Impugned Standing Orders are in violation of the Master Plan :

13. Further, it can be seen that *ATDC* itself was a creature of the Master Plan which is already approved by the Governing Board as well as the Government of India. The same is neither amended nor sought to be

³ (1990) 3 SCC 223



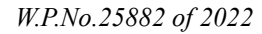
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reframed. On a perusal of Appendix V, it would be very clear that the residents' participation is the primary mandate as far as *ATDC* is concerned. Therefore, the impugned Standing Orders go contrary to the approved Master Plan.

N. The Impugned Standing Orders are beyond the powers of the Governing Board :

14. The Governing Board has powers to frame Standing Orders. It can prescribe the qualifications of the Members to be chosen by the Residents' Assembly as also provide for technical members. However, the selection/nomination of the said members can only be by the Residents' Assembly, though it may ultimately lie within the powers of the Governing Board to reject a nomination or selection of a particular person. The Governing Board arrogates the entire powers of the Residents' Assembly to itself and virtually nullifies its existence and role vis-à-vis the Master Plan.

14.1. Reliance placed on Section 11(3) of the *Act* to contend that the Governing Board can also discharge all the functions of the other organs. The provisions of the *Act* have to be read harmoniously. The



" **67.** Where two alternative constructions are possible, the Court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, eschew the other which leads to absurdity, confusion, or friction, contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment..."

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offending Clauses - 1, 2, 8 and 9, the entire Standing Orders have to be struck down.

O. The Result:

15. As a result, this Writ Petition stands allowed on the following terms:-

(i) The impugned Notification No.AF/M/63/2022-23, dated 01.06.2022 containing Standing Order No.01/2022 issued by the respondent is set aside;

(ii) However, it will be open for the respondent Foundation, through its Governing Board, to frame fresh regulations in tune with the provision of the *Act* and the observations made herein;

(iii) There shall be no order as to costs. Consequently, W.M.P.Nos.24960 and 24961 of 2022 are closed.

(S.V.G., CJ.)

(D.B.C., J.)

15.03.2024

Index : yes
Speaking order
Neutral Citation : yes
grs



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**THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.**

grs

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15.03.2024