



W.P.Nos.7792 of 2017 & 14138 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.09.2024

PRONOUNCED ON : 28.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.7792 of 2017 & 14138 of 2024 and
W.M.P.Nos.8536, 8537, 15325 & 15326 of 2024

W.P.No.7792 of 2017 :-

Vakil Hosur Hills Owners' Association,
Rep. by its President George Koshi,
Villa No.VHHO15, Hosur,
Krishnagiri District.

... Petitioner

-Vs-

1. The Secretary to Government,
Housing and Urban Development Department,
Chief Secretariat,
Fort St. George,
Chennai-600 009
2. The Commissioner,
Town and Country Planning,
No.807, Anna Salai,
Chennai - 600 002.
3. The Member Secretary,
Hosur New Town Development Authority,
Hosur,
Krishnagiri District.



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4. M/s. Vakil Housing Development Corporation P. Ltd

Registered Office:- 78,
Koramangala Industrial Area,
Jyothinivas College Road,
Koramangala, Bangalore-95.

5. S.Bharathidasan

6. Jayanthi Mani

7. The Sub Registrar,
Hosur.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the proceedings in RC No.15094/2016/LA2 dated 19.10.2016 pending on file the second respondent consequently order of approval in RC No.744/2016/OPNVK dated 16.11.2016 passed by the third respondent and quash the same.

For Petitioner : Mr.V.Subamanian

For Respondents

For R1 to R3, R7 : Mr.V.Manoharan

Additional Government Pleader

For R5 & R6 : Mrs.V.Srimathi

For R4 : Mr.P.Gopiraja

For R3 : Mr.S.Diwakar

W.P.No.14138 of 2024 :-

Vakil Hosur Hills Owners' Association,
Rep. by its President K.Kannan
Villa No.VHH135, Hosur,
Krishnagiri District.

... Petitioner

-Vs-



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1. The Secretary to Government,
Housing and Urban Development Department,
Chief Secretariat,
Fort St. George,
Chennai-600 009
2. The Director,
Town and Country Planning,
No.807, Anna Salai,
Chennai - 600 002.
3. The Member Secretary,
Hosur New Town Development Authority,
Hosur,
Krishnagiri District.
4. The Commissioner,
Hosur Municipal Corporation,
Hosur, Krishnagiri District.
5. M/s. Vakil Housing Development Corporation P. Ltd
Rep. by its Managing Director,
Registered Office:- 78,
Koramangala Industrial Area,
Jyothinivas College Road,
Koramangala, Bangalore-95.
6. R.Krishnaswamy ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the proceedings pertaining to the planning permission in No.72/2024, Building permission in No.153/BL/2024/00072 both dated 13.02.2021 on the file of the fourth respondent and quash the same.



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For Petitioner : Mr.V.Subamanian
For Respondents
For R1 to R3 : Mr.V.Manoharan
Additional Government Pleader
For R4 : Mr.T.Balaji
For R5 : Mr.P.Gopiraja
For R6 : Mrs.V.Srimathi

COMMON ORDER

The writ petition in W.P.No.7792 of 2017 has been filed challenging the proceedings in R.C.No.15094/2016/LA2 dated 19.10.2016 on the file of the second respondent and the approval order dated 16.11.2016 on the file of the third respondent, thereby converted the subject property into house plot and granted technical approval. The writ petition in W.P.No.14138 of 2024 has been filed challenging the order passed by the fourth respondent dated 13.02.2024, thereby granted planning permission in No.72/24 and building permission in No.153/BL/2024/00072.

2. The petitioner in both writ petitions are one and the same and the subject property is also one and the same. Therefore, this Court is inclined to pass a common order in both writ petitions. The parties are referred to as per their ranking in W.P.No.14138 of 2024.



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3. The petitioner association is consisting the member of owners of their respective villas in the lay out of Vakil Hosur Hills. As per the lay out, 319 villas and individual houses were proposed to develop for residential purpose. The lay out was duly approved by the second respondent by its proceedings in Ma/va/Na.U.E.No.77/2006, on certain conditions. While granting approval, the area of lands have been categorized and reserved for specific purpose. Accordingly, the total extend of the land is 28.38 ares (1234990 sq.ft.); the number of residential plot is 319; the land ad measuring 131938 sq.ft., is earmarked for park and 28265 sq.ft., is earmarked for children play area. That apart, the land ad measuring 26702 sq.ft., is reserved for open space area and the land ad measuring 382405 sq.ft., is allotted for roads; 14530 sq.ft., of land is earmarked for three shops and 10424 sq.ft., land is earmarked for community hall and 16860 sq.ft., land is earmarked for public purpose.

4. After approval as per the lay out plan, the fifth respondent was not authorized to sell the lands which was specifically reserved for public purpose. Thus it is clear that the duty cast upon the developer to create facilities and amenities for the space earmarked for public



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purpose. Though in the approval order of the second respondent termed the land reserved for public purpose is saleable by the developer, it cannot be sold as the developer stands in the capacity of custodian, trustee for the residents for the purpose of creating the facilities like schools, clinic, community hall and to be handed over the same for maintenance by the petitioner association.

5. Further as per the condition on agreement for sale cum construction, the developer ought to have completed all the facilities and amenities including basic amenities and special amenities within 24 months from the date of this agreement, with six months grace period. Thereafter, the developer ought to have handed over such facilities in favour of the petitioner association, in order to maintain the same. Therefore, the fifth respondent cannot claim any right or title over the land which is specifically earmarked for that purpose.

6. While being so, the fifth respondent attempted to sell the entire land ad measuring 16860 sq.ft., land which is earmarked for public purpose to the third parties violating the lay out approval conditions as



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well as the sale cum construction agreement. Though the petitioner raised several objections, the fifth respondent sold out the subject property on 29.06.2016 vide document No.10274 of 2016 in favour of one Bharathidasan and Jayanthimani. Thereafter, they applied for conversion of the land from commercial to residential purpose. Without hearing the petitioner, the subject property was converted into house plots and granted permission to develop the same as residential plots. Therefore, both the orders are challenged in W.P.No.7792 of 2017 and it is pending with interim order that any registration pertaining to the land reserved for public purpose would be subject to the result of the writ petition.

7. While pending the above writ petition, the sixth respondent in W.P.No.14138 of 2024 purchased the said property from the said Bharathidasan and Jayanthimani vide sale deed dated 17.03.2017 vide document No.1996 of 2017. After purchase the sixth respondent had proposed to construct six apartments stilt with three floors and applied for planning permission. It was granted by the fourth respondent by the planning and building permission dated 13.02.2024, though the



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petitioners made specific objection for granting planning and building permission in favour of the sixth respondent.

8. Therefore, the petitioner filed a suit in O.S.No.49 of 2024 on the file of the District Munsif Court, Hosur for permanent injunction as against the sixth respondent. Subsequent, the petitioner instructed to withdraw the said suit as it is not maintainable as against the planning authority and filed the another writ petition in W.P.No.14138 of 2024

9. The learned counsel appearing for the petitioner submitted that when the writ petition is pending in W.P.No.7792 of 2017 challenging the conversion of the land into house plot and granting technical approval for construction of residential plots, the fourth respondent ought not to have granted planning and building permission for the subject property, which was purchased by the sixth respondent. The subject land is reserved for public purpose as per the lay out and also the conversion of the land is under challenge before this Court and therefore, the planning and building permission ought not to have granted by the fourth respondent.



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9.1. Further the fourth respondent has no jurisdiction or power to convert the land from the public purpose to residential purpose and it is clear violation of Sections 32 & 33 of the Town and Country Planning Act. As per the conditions imposed in the approved lay out, the common purpose area ad measuring 16860 sq.ft., is provided for childrens day care centre and clinic etc., as per the statutory needs. Apart from that other area is earmarked for park, children play area, community hall etc. Before conversion of land, the petitioner association was not given opportunity of hearing as such it is clear violation of principles of natural justice.

10. The fifth respondent filed counter and the learned counsel appearing for the fifth respondent submitted that the fifth respondent owned property comprised in survey No.436, 437/1a, 2a, 444, 446, 675/1, 2, 680 and 683/1,2,3 situated at Choodasandiram Village, Channathur Taraff, Hosur Taluk, Krishnagiri District, to an extent of 6,65,180 sq.ft. The fifth respondent developed the above said land into housing plots in the name of “Vakil Hosur Hills” consisting 319 villas in



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different dimensions and the same was duly approved by the second respondent in Na.Ka.No.77/2006 dated 12.05.2006. Thereafter the house plots were sold out to various third parties. As per lay out the subject property was earmarked for public purpose such as commercial complex. Therefore, it was remained with title of the fifth respondent and it is saleable area and it was sold out in favour of the sixth respondent. Usage of commercial property is meant for private profit and gain. Therefore, no public purpose involved in it.

11. The sixth respondent filed counter and the learned counsel appearing for the sixth respondent submitted that the subject property was purchased from the fifth respondent for the valid sale consideration by the sixth respondent vide registered sale deed dated 17.03.2019 vide document No.1996/2017. Thereafter, the sixth respondent had proposed to construct six apartments with three floors and applied for planning and building permission. The said application was duly considered and the planning and building permission was granted by the fourth respondent.



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11.1. She further submitted that as per the provisions of Town and Country Planning Act, 1971, after the lapse of five years, the land reserved for public purpose is not used then the reservation lapses. Though the lay out approved in the year 2006, the land which was originally earmarked for commercial purpose is not used so far, even after completion of more than fifteen years. Therefore, the fourth respondent rightly granted building and planning permission to construct residential apartments. In support of her contention, she relied upon the judgment dated **21.04.2022** passed in **W.P.(MD).No.7607 of 2022** in the case of **Ponnamani Vs. The Director, Town and Country Planning and ors.**, in which this Court held that in accordance with the provisions of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971, no steps have been taken for acquiring the lands for formation of road within the period of five years from the detailed development plan. Therefore, the entire proceedings has been lapsed and liberty was granted to deal with the property. The said order was also confirmed by the Hon'ble Division Bench of this Court in W.A.(MD)No.265 of 2024 by an order dated 28.02.2024.



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

13. Admittedly, the total extent of the land which was subjected for lay out is more than 28 acres viz., 1234990 sq.ft., for which the areas of land have been categorized and reserved for specific purpose as extracted hereunder:-

“மனைப்பிரிவு இடத்தின் பரப்பளவு : 28.34 ஏர்
1234990 சதுரடி

ஒதுக்கிய மனைகள்	:319
பூங்கா	:131938 சதுரடி
குழந்தைகள் விளையாடுமிடம்	:28265 சதுரடி
திறவிடம்	:26702 சதுரடி

மொத்தம் 186905 சதுரடி 15.14
உள்ளாட்சிக்குத் தானமாக ஒப்படைக்க வேண்டும்
15.14

உத்தேச சாலை	:382405 சதுரடி
கடைகள் 3	:14530 சதுரடி-1.12
சமுதாயகூடம்	:10424 சதுரடி-0.80
பொது உபயோகம்	:16860 சதுரடி-1.30

மனுதாரர் விற்பனைக்குரியது”

14. As per the lay out conditions, the place which is meant for specific purpose cannot be used for other purposes. In this regard, the circular was issued by the second respondent dated 29.06.1984 in



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Roc.No.9798/1983-BCC, thereby issued instruction that the layouts which are of less than ten acres in extent, 10% of such area should be reserved for open space only such as parks, play fields, etc. In case of layout of more than 10 acres in extent, 50% of the total reservation made may be provided for public purposes like Kalyana mandapam, Community hall, reading room, library etc., and the balance 50% may be reserved as open space.

15. Thereafter, by the subsequent circular dated 24.05.1985 in Roc.No.18150/85-01, the second respondent clarified that the reserved area in the layout would include parks, play fields, community halls, kalyana mandapam etc. The area reserved as open space like parks, play fields, children play space alone need to be handed over to the executive authority of the local body as they essentially belong to the category of non commercial public purposes. The other reservations like kalyana mandapam, community halls etc., belong to commercial category and the developer should not be deprived of income which he may likely to get by disposal of these plots as he has to surrender to the executive authority of the local body a sizable amount of land by way of non-



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commercial open spaces and instructions have already been issued that the layouts which are of less than ten acres in extent, 10% of such area should be reserved for open space only such as parks, play fields, etc. In case of layout of more than 10 acres in extent, 50% of the total reservation made may be provided for public purposes like Kalyana mandapam, Community hall, reading room, library etc., and the balance 50% may be reserved as open space.

16. Accordingly 50% of the land which is earmarked for commercial is saleable with a restriction that the purchaser should not change the public purpose for which the land was reserved. Further as per the subsequent circular dated 17.08.1987, it was made clear that only places earmarked for park, children play field alone should be gifted to the local bodies. Therefore, though 50% of the land earmarked for commercial purpose, it can be saleable with a condition that the purchaser should not change the purpose for which the land was reserved. Therefore, the judgments relied upon by the sixth respondent are not applicable to the case on hand.



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17. The learned counsel appearing for the petitioner relied upon the judgment dated **23.11.2010**, passed by the Hon'ble Division Bench of this Court in **A.Nos.38 & 39 of 2010** in the case of **K.Rajamani & ors Vs. Alamunagar Residents Welfare Association & ors.**, in which the following issues were dealt with :-

“(i) Whether the Government would have power to order de-reservation of a land reserved for public purpose in a layout for use of other purpose?”

“(ii) Whether the open space earmarked in a layout for use of park, etc., could be allowed to be put in use for any other purpose?”

“(iii) Whether the provisions of the Land Acquisition Act are to be followed for acquiring that land with reference to the provisions of Section 36 of the Planning Act?”

“(iv) Whether the open space earmarked in a layout could be considered to be the property of the Municipal Corporation either in the absence of any declaration under Section 37 or in the absence of any gift by the owner?”

Further all the issues were answered as follows :-

“11. Point No. (i): Before we delve upon the provisions of the Tamil Nadu Town and Country Planning



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Act, 1971, we may briefly refer to the object behind the enactment. Green space is an essential feature in any development, as it not only serves as lung space but also meets the communal and recreational requirements of the inhabitants. The reserved space is primarily meant for the use of the occupants in any development. The residents or purchasers of the plots are also obligated to maintain the same as reserved space, namely, park, etc. Conservation of such open space becomes more required, as the lands in cities become more scarce, population increase and infrastructure strain stimulate inhabitants demands. Open space element is also a part of general development. In that sense, land use planning is a process by which the land is allocated to secure the rational and orderly development of land in an environmentally sound manner to ensure the creation of sustainable human settlements. The development control function cannot and should not operate in a vacuum. The process of land use planning primarily consists of the two twin functions of the development/land use planning and development control.

12. With the above object in mind, the Tamil Nadu Town and Country Planning Act, 1971 Act (hereinafter referred to as "the Planning Act") was enacted to regulate the development of towns so as to secure to its present and future inhabitants, sanitary conditions, amenity and



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convenience as to the use of layout and use of lands. The Act covers both the manner in which the development/land use planning should be made and how the development should be controlled. Thereafter, keeping in mind the eco-expansion, certain amendments were made in the year 2002. In order to decide as to whether the Government would have power to de-reserve an open space earmarked for the use of public, certain provisions of the Planning Act are relevant to be referred. By the provisions of Section 3, appointments of the Director of Town and Country Planning and other officers are contemplated. By the provisions of Section 4, (i) the regional planning authority; (ii) the local planning authority; and (iii) the new town development authority were constituted. The Tamil Nadu Town and Country Planning Board consisting of high level Secretaries of various departments, apart from the Minister in-charge of Local Administration, was also provided. The Board was empowered to guide, direct and assist the planning authorities, advise in matters relating to planning, the development and use of rural and urban land in the State and to perform such other functions as the Government may from time to time assign to it. In addition to the above, the Board may also direct the preparation of development plans by planning authorities.

13. For the development of Chennai city, Section 9A



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provides the establishment of the Chennai Metropolitan Development Authority with high ranking officials of the Government. Section 9C of the Act relates to the functions and powers of the Chennai Metropolitan Development Authority, particularly to carry out the survey of the Chennai Metropolitan Planning Area and prepare a master plan or a detailed development plan or a new town development plan, etc. For the implementation of the development plans, the Government, in exercise of the power under Section 10, declares certain areas as regional planning areas, local planning areas and their amalgamation and sub-division and inclusion from other regions and local areas. Once the land is declared to be in the regional planning area, the regional planning authority shall prepare and submit a regional plan for the regional planning area or any part of it. That plan would contain the manner in which the land in the region shall be used, be it residential, industrial, commercial, agricultural and recreational purposes or as a forest area, for mineral exploitation, transport and communication, water supply, drainage, sewerage, etc., demarcation, conservation and development of areas of natural scenic beauty, forest, wildlife, natural resources and landscaping and so on. Likewise, after the declaration of local planning area under Section 10, the local planning authority, after consultation with the regional planning authority and the local



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authorities concerned, shall prepare and submit to the Government a master plan for local planning area or any part of it. The master plan may propose and provide, among other things, the manner in which the land in the planning area shall be used, the allotment of reservation of land for residential, commercial, industrial and agricultural purposes and for parks, play-fields and open spaces and for other amenities. Likewise, after the declaration, the new town development authority shall prepare a new town development plan after consultation with the Director and submit to the Government the new town development plan. By the above provision, it could be seen that when the Government decides to develop a particular area of land in urban or rural area, it should make a declaration in this regard by a notification in terms of Section 10.

14. The provisions of Sub-section (2) of Section 10 specify the development objectives that must be included in the plan. In addition to the provisions contained in Part-V of the Act (Amended by 2002 Act), the development plan shall include a housing strategy for the area of the plan. The objectives specified in Section 10 together with the housing strategy are mandatory requirements. Section 10(2)(a) of the 2002 Act requires that a development plan shall include the demarcation of land and particular area for the use solely or primarily for particular purposes, be it residential,



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commercial, industrial, agricultural, recreational (be it open space or otherwise or a mixture of these uses) and to such extent as the proper planning and sustainable development of the area as in the opinion of the planning authority necessary. The plan could be thereafter approved by the Government in terms of Section 26 of the Planning Act. On the basis of such declaration, once a regional plan, master plan or new town development plan is approved, the Government is competent to vary, revoke or modify such regional plan, master plan and new town development plan under Section 32 of the Act. After the above approval of the Government under Section 28, subject to variation, revocation and modification under Section 32, the Government can acquire those lands in terms of Section 36 of the Act. Once the plan is approved and the lands are acquired, the new town development authority could dispose of the land to such person in such manner and subject to such terms and conditions in terms of Section 40. After such disposal, the land shall be put to use only in conformity with the development plan.

15. Chapter-III of the Planning Act with provisions of Sections 10 - 35 relates to the declaration of planning areas, preparation of development plans by planning authorities, approval of the government to such development plan and power to vary, revoke or modify such approved plans.



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Chapter-IV of the Planning Act with the provisions of Sections 36 - 39 relates to the acquisition of land covered by the development plan by invoking the provisions of the Land Acquisition Act for being placed before the appropriate local planning authority. That chapter also includes the release of land if not declared within three years of the notification under Section 26/27 of the Planning Act. Chapter-V with the provisions of Sections 40 - 46 relates to the special provisions regarding new town development authority. By that chapter, the land acquired under Chapter-IV is placed at the disposal of the new town planning authority and related matters. Chapter-VI of the Planning Act with the provisions of Sections 47 - 58 relates to the control of development and use of land. The planning authority shall either grant permission subject to the provisions of the development control rules relating to the minimum requirement of open space for road and other purposes including open lung space for common use. There is clear demarcation of the provisions of constitution of planning authorities, submission of their proposal for regional plan, master plan and new town development plan to the Government, the acquisition of those lands vis-a-vis the power of the new town development authority to grant permission for execution of work or construction on such land with such conditions. While the earlier part of the enactment relates to the development of a particular area in



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the regional plan, master plan or new town development plan, the latter part of the enactment relates to the usage of the developed area in conformity with the development control rules.

16. A reading of the above provisions shows that if large extent of land is acquired by the Government on the basis of the proposal of the regional planning authority and subsequently the master plan authority and new town development authority for commercial, residential, industrial, etc., zone, those lands should not be put to use for any other purpose except to the extent of variation, revocation, modification under Section 32 of the Act. But once the land is acquired under Section 36 and is placed at the disposal of the new town development authority for further disposal to such person, the proposal of the regional planning authority for new town development and approved by the Government cannot be varied, revoked or modified by the Government.

17. For our purpose, the extent of land in a new town development area owned by a private person shall be used only in conformity with such development as provided under Section 47 of the Act. For such use, such person should apply to the appropriate planning authority for permission to erect any building or make or extend any excavation or



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carry out any mining or other operation, make any material change in the use of the land or construct, form or lay out any work. For that purpose, one should make an application for permission under Section 49. In terms of Sub-section (2) of Section 49, the appropriate planning authority is required to consider the purpose for which the permission is required, the suitability of the place for such purpose and the future development and maintenance of the planning area. In terms of Sub-section (3) of Section 49, the appropriate planning authority may also refuse to grant permission to any person, but by giving reasons thereof. Once the planning permission is granted, the appropriate planning authority would have power to either revoke or modify the permission granted in terms of Section 54 of the Act. Of course, there is a general power conferred on the Government under Section 90 of the Act to call for records, examine the same and pass orders after satisfying themselves as to the regularity of such proceedings or correctness, legality or propriety or any decision passed or made therein. This power would be available to the Government only in respect of either the permission granted or refused by the appropriate planning authority for a land to be put into use in a developed area. This power cannot be extended to the permission accorded by the Government for the purpose of approval granted by it in terms of Section 28 for regional plan, master plan or the new town development



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plan, as those plans could be varied, revoked or modified only under Section 32. In our considered view, such power cannot be extended to alter, revoke or modify the conditions imposed in the layout plan. In that view of the matter, we hold that once such permission is accorded and in that permission if a specified area is earmarked for public purpose, even the planning authority shall not have power to exempt that land for being put to use for any other purpose. In that context, the State Government also cannot have any jurisdiction to alter the conditions imposed in the layout, whereby certain lands are earmarked as open space to be used for public purposes.”

Thus, it is clear that the government has no power to de-reserve the land. Therefore, the land which was originally earmarked for commercial purpose as per the lay out cannot be converted into house plots.

18. That apart, when this Court already seized the matter with regard to conversion of the land and technical approval, the fourth respondent ought not to have granted planning and building permission in the subject property. In fact, while pending the first writ petition in W.P.No.7792 of 2017, the sixth respondent purchased the subject



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property and applied for planning and building permission. As stated supra, the sixth respondent can purchase the land with a restriction that he should not change the purpose for which the said land was originally reserved as per the lay out.

19. In view of the above discussions, the impugned orders dated 19.10.2016, 16.11.2016 issued by the second and third respondents respectively and the planning and building permission dated 13.02.2024, granted by the fourth respondent in No.72/24, are hereby quashed. Accordingly, both the Writ Petitions stand allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

28.10.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

rts



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G.K.ILANTHIRAIYAN. J.

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To

1. The Secretary to Government,
Housing and Urban Development Department,
Chief Secretariat,
Fort St. George,
Chennai-600 009
2. The Commissioner,
Town and Country Planning,
No.807, Anna Salai,
Chennai - 600 002.
3. The Member Secretary,
Hosur New Town Development Authority,
Hosur,
Krishnagiri District.
4. The Commissioner,
Hosur Municipal Corporation,
Hosur, Krishnagiri District.
5. M/s. Vakil Housing Development Corporation P. Ltd
Registered Office:- 78,
Koramangala Industrial Area,
Jyothinivas College Road,
Koramangala, Bangalore-95.
6. The Sub Registrar,
Hosur.

COMMON ORDER IN

W.P.Nos.7792 of 2017 & 14138 of 2024 and
W.M.P.Nos.8536, 8537, 15325 & 15326 of 2024

28.10.2024