



WP.Nos.13419 & 13437/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 26.03.2024

Delivered on 30.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

WP.Nos.13419 & 13437/2017

and

WMP.Nos.14464, 14465, 14492 & 14493/2017

WP.No.13419/2017:-

M/s.Global Waste Recyclers Ltd
No.5/245, Thiruvallore High Road
Alamathi, Redhills, Chennai 600 057.
rep.by its Managing Director,
Mr.Bharath Pujara

... Petitioner

Vs.

1.The Government of Tamil Nadu
rep.by its Secretary
Housing and Urban Development
Department, Fort St George
Chennai 600 009.



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2. The Member Secretary

Chennai Metropolitan Development Authority
Thalamuthu Natarajar Maligai
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008.

3. The Director,

Rural Development and Panachayat Raj
Panagal Building, Saidapet,
Chennai 600 015.

4. The Commissioner

Sholavaram Panchayat Union
Sholaavaram, Thiruvallur District.

5. The Superintending Engineer

Water Resources Organization
Palar Irrigation Division, Chepauk
Chennai 600 005.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorari calling for the records of the 1st respondent in issued Letter No.24801/UD-VII[1]/2016-3 dated 26.04.2017 and quash the same in lands comprised to an extent 1.21 acres in S.Nos.126/1B, 1B1, 295/2B2, B2 at Alamathi Village, Ponneri Taluk, Thiruvallore High Road, Redhills, Thiruvallur District having automatically deemed to have been released from reservation as catchment area under Section 38[b] of the Tamil Nadu Town and Country Planning Act, 1971.



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For Petitioner	: Mr.K.Kabir, Senior counsel for Mr.G.Krishnakumar
For RR1 & 3	: Mr.P.S.Raman, Advocate General assisted by Mrs.V.Yamuna Devi Spl.Govt.Pleader
For R2	: Mr.R.Sivakumar
For R4	: Mr.S.V.Durai Solaimalai
For R5	: Mr.E.C.Ramesh

WP.No.13437/2017:-

M/s.B.T.Enterprises Private Limited
rep.by its Director Mrs.B.Tamil Selvi
Having registered office at
New No.185 [Old No.110]
Poonamallee High Road
Kilpauk, Chennai 600 010

... Petitioner

Vs.

- 1.The State of Tamil Nadu
rep.by its Principal Secretary to Government
Housing and Urban Development
Department, Fort St George, Secretariat,
Chennai 600 009.
- 2.The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajar Maligai
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008.



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3. Alamathi Village Panchayat
rep. by its Executive Officer cum President
Alamathi Village, Sholavaram Panchayat Union
Thiruvallur District.

4. The Commissioner
Sholavaram Panchayat Union
Sholaavaram, Thiruvallur District.

5. Greater Chennai Corporation
rep. by its Commissioner,
Park Town, Chennai 600 003.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorarified mandamus calling for the records of the 1st respondent in issuing Letter No.24801/UD-VII[1]/2016-3 dated 26.04.2017 and quash the same as lands comprised Survey Nos.292, 293, 294, 295, 296, 297 & 302 covered in Patta Nos.4100, 4121, 4122, 4133, 6078, 6188 and 6200 situated in No.111, Alamathi 2 Revenue Village, abutting Redhills-Thiruvallur High Road, Sholavaram Panchayat Union, Thiruvallur District have automatically deemed to have been released from reservation as Catchment area under Section 38[b] of the Tamil Nadu Town and Country Planning Act, 1971 and consequently direct the 2nd respondent to process planning application of the petitioner without reference that the lands of petitioner are catchment area.



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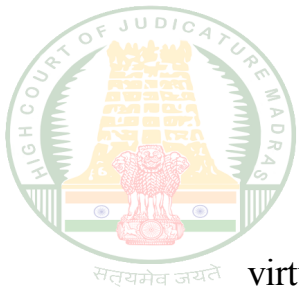
For Petitioner	: Mr.P.Wilson, Senior counsel for M/s.P.Wilson Associates
For RR1 & 3	: Mr.P.S.Raman, Advocate General assisted by Mrs.V.Yamuna Devi Spl.Govt.Pleader
For R2	: Mr.R.Sivakumar
For R4	: Mr.S.V.Durai Solaimalai
For R5	: Mr.E.C.Ramesh

COMMON ORDER

S.S.SUNDAR, J.,

(1) Though the petitioners are different, the writ petitions are filed challenging the common order and common issues are raised by the petitioners in both the writ petitions. Hence, these two writ petitions are disposed of by this common order.

(2) WP.No.13419/2017 is filed for issuance of a writ of certiorari to quash the impugned proceedings of the 1st respondent dated 26.04.2017 in respect of the lands measuring an extent of 1.21 acres comprised in S.Nos.126/1B, 1B1, 295/2B2, B2 at Alamathi Village, Ponneri Taluk, Thiruvallore High Road, Redhills, Thiruvallur District as the lands are deemed to have been released from reservation as catchment area by



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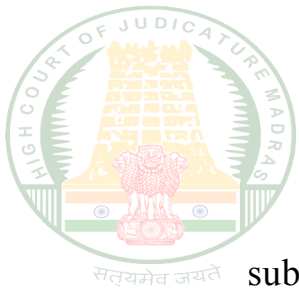
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virtue of Section 38[b] of the Tamil Nadu Town and Country Planning Act, 1971 [hereinafter referred to as 'the Act, 1971'].

(3) WP.No.13437/2017 is also filed to quash the proceedings of the 1st respondent dated 26.04.2017 in respect of the lands comprised in S.Nos.292 to 297 and 302 in Alamathi 2 Revenue Village, abutting Redhills-Thiruvallur High Road, Sholavaram Panchayat Union, Thiruvallur District as the said lands are deemed to have been released from reservation as Catchment area by virtue of Section 38[b] of the Tamil Nadu Town and Country Planning Act, 1971 and to direct the 2nd respondent to process planning application of the petitioner without reference that the lands of petitioner are reserved as catchment area in the Master Plan.

(4) Brief facts in WP.No.13419/2017 are as follows:-

(5) The petitioner is a Company registered under the provisions of the Indian Companies Act, 1956. The petitioner purchased an extent of 1.21 acres in S.Nos. 126/1B, 1B1, 295/2B2, B2 at Alamathi Village, Ponneri Taluk, under a registered Sale Deed date 10.03.2008. The petitioner, in order to construct a godown for storing the raw materials of the Company,

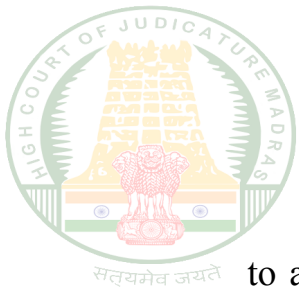


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submitted an application on 22.08.2008 before the Commissioner, Sholavaram Panchayat Union for planning permission and the 4th respondent processed the application in consultation with the 2nd respondent. The 4th respondent addressed a letter to the 5th respondent / Water Resources Organization on 22.08.2008, to find out whether any possibility of the construction of any building and to give No Objection Certificate for the construction of godown by the petitioner. The 5th respondent issued No Objection Certificate with conditions to raise the foundation of the building.

(6) On 30.10.2009, the 4th respondent granted Planning Permission in favour of the petitioner for construction of a godown. Pursuant to the Planning Permission and the Building Plan approval, the petitioner had put up a godown as well as office building. However, the 2nd respondent / CMDA issued a notice dated 26.11.2015 calling upon the petitioner to produce the approved plan. Thereafter, the 2nd respondent after holding that the entire construction is unauthorised, issued Locking, Sealing and Demolition Notice dated 31.12.2015 under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971 [hereinafter referred



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to as 'the Act']. The petitioner preferred a revision on 04.03.2016 under Section 80-A of the Act as against the Locking, Sealing and Demolition Notice. The 1st respondent rejected the revision on the ground that the site in which the petitioner's building/godown is constructed, lies in Redhills Catchment Area where no construction activities is permissible. Holding that there is no chance for the petitioner's building to be regularised, the 1st respondent rejected the revision filed by the petitioner. Challenging the same, the petitioner filed WP.No.18997/2015.

(7)The writ petition in WP.No.18997/2015 filed by the petitioner herein and the other writ petitions filed by petitioner in WP.No.13437/2017, were disposed of by this Court on 27.09.2016, by permitting both the petitioners therein to file a detailed representation to the respondents and the respondents were directed to consider and pass orders on the representation of the petitioners therein within a period of two months thereafter. There was an order of status quo till the 1st respondent therein passes an order on the representation of the petitioners. It was thereafter, the petitioners in both cases contended before the 1st respondent that the actions of CMDA in continuing to classify and treat the lands belonged to



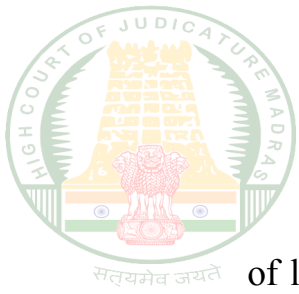
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the petitioner as catchment area is illegal by virtue of Sections 37 and 38 of the Act.

(8) The prime submission of the petitioner before the 1st respondent is that the lands including the petitioner's land though can be reserved in the Second Master Plan as catchment area, unless the land is acquired within three years, the lands are deemed to have been released from such reservation automatically by virtue of Section 38[b] the Act. However, the 1st respondent passed the Impugned Order dated 26.04.2017 rejecting the representation of the petitioners in both writ petitions on the ground that the lands have been declared as Catchment Area in the II Master Plan without reserving the lands for any public purpose, involving transfer of ownership and that question of land acquisition or release under Section 38 of the Act, 1971, does not arise, since only a restriction on the usage of lands in Catchment Area has been prescribed in the Master Plan. These writ petitions are filed challenging the order dated 26.04.2017.

Brief facts that are necessary for the disposal of WP.No.13437/2017:-

(9) The petitioner is a Private Limited Company incorporated under the Indian Companies Act, 1956. The petitioner purchased substantial extent



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of lands comprised in S.Nos.292 to 297 and 302 in Alamathi II Revenue Village abutting Redhills – Tiruvallur High Road within Sholavaram Panchayat Union under different Sale Deeds registered in the office of the Sub Registrar, Redhills between 30.09.2009 and 17.07.2015. The petitioner has also put up a compound wall covering the entire lands purchased by the petitioner and constructed temporary structures to serve as godowns. Out of three godowns, the petitioner has let out one godown to a third party and retained two other godowns for their own purpose. In February 2014, the petitioner came to know about the II Master Plan for Chennai Metropolitan Area 2026 [Development Regulations] vide G.O.Ms.No.190 dated 02.09.2008 wherein the petitioner's lands were classified as Redhills Catchment Area. Upon coming to know about Master Plan for Chennai Metropolitan Area and about the development regulations classifying the lands of the petitioner / Company as Catchment area, the petitioner applied before the Water Resources Development authorities of Public Works Department by an application dated 03.02.2014 and sought for reclassification of land from agriculture to commercial to the CMDA officials and to de-reserve the lands. Even



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though the respondents did not dispute that the lands are petitioner's private patta lands as per revenue records, the Chief Engineer, Water Resources Department, Public Works Department, recommended that if buildings were to be constructed, the height of the building should be raised more than the nearest road to avoid inundation. Thereafter, the petitioner / Company applied to Sholavaram Panchayat Union for reclassification of the lands from catchment area to commercial zone. The application submitted by the petitioner was forwarded by the Panchayat Union to the 2nd respondent vide proceedings dated 11.05.2015 for affixing the signature of the President of the Village Panchayat. However, after returning the application, the 2nd respondent issued a notice on 24.06.2015 under Sections 56 and 57 of the Act for locking, sealing and demolition of structure on the ground that the godown constructed by the petitioner for commercial purpose is not permissible as the lands fall under Redhills Catchment Area as per II Master Plan.

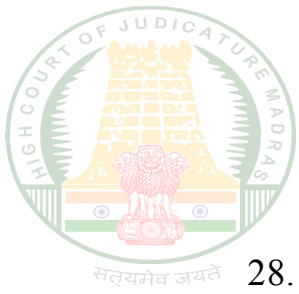
(10) It is seen from the records that the petitioner was pursuing his application for reclassification from catchment area and questioned the proceedings initiated under the provisions of Sections 56 and 57 of the



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Act. The application submitted by the petitioner for reclassification was processed simultaneously and the petitioner was asked to furnish necessary particulars. The petitioner was also required to pay a sum of Rs.69,326/- for paper publication in the English daily newspaper [The Indian Express] and Tamil daily Newspaper [Dinamani]. However, De-Occupation Notice was issued to the petitioner on 01.09.2015 on the ground that commercial activities are not allowed in "Redhills Catchment Area" where such activities are prohibited. The petitioner simultaneously filed a statutory revision under Section 80-A of the Act 02.11.2015 challenging the order of Locking, Sealing and Demolition of the premises and the subsequent de-occupation notice dated 01.09.2015.

(11)The 1st respondent rejected the revision filed by one Bala by an order dated 28.12.2015. The revision petition filed by petitioner under Section 80-A of the Act, 1971, was dismissed by an order dated 16.02.2016 on the ground that the entire extent of lands belonged to the petitioner is located in the catchment area where no construction activity is permissible as per the II Master Plan for the Chennai Metropolitan Area 2026. Thereafter, the petitioner challenged the orders of the 1st respondent dated



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28.12.2015 and 16.02.2016 by filing WP.Nos.18388 and 18400/2016 respectively. WP.No.18396/2016 is also filed by petitioner for a declaration, declaring that the lands comprised in S.Nos.292 to 297 and 302, which have been reserved as catchment area in II Master Plan for Chennai Metropolitan Area 2026, stand released from such reservation by virtue of Section 38[b] of the Act. All the three writ petitions were disposed of by a Division Bench of this Court by a common order dated 27.09.2016. Though the Division Bench found bona fides in the contention of petitioner that if an area reserved under the Master Plan is not acquired within three years, the area is deemed to be released from such reservation as per Section 38 of the Act, the Division Bench disposed of the writ petitions with a direction to the writ petitioners to submit a detailed representation to the respondents. The respondents were directed to consider the representation and to pass necessary orders.

(12)However, the 1st respondent vide Impugned Order / proceedings dated 26.04.2017, rejected the representations preferred by the petitioners in both the cases in the following lines:-



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"5.After careful examination of facts and the contention put forth by the Advocates of the petitioners and the Chennai metropolitan Development Authority, it is concluded that the question of acquisition of lands in Red Hills Catchment Area as per Section 36 does not arise, since only a restriction on the usage of the lands in the Red Hills Catchment Area has been prescribed in Second Master Plan without reserving the said lands for any public purpose wherein the ownership of the lands needs to be transferred from the existing owners to the Authority of Government. Accordingly, since the question of Land Acquisition does not arise and invoking provision of Section 38 of Town and Country Planning Act will also not arise. Therefore, the Government hereby reject the appeal filed by M/s.B.T.Enterprises Private Limited, rep.by its Directors, Mrs.B.Tamilselvi and M/s.Global Waste Recyclers Limited, rep.by its Managing Director, Mr.Bharath Pujara to release the lands in S.Nos.292, 293, 294, 295, 296, 297, 302, 126/2B, 1b1 and 2952B2B2 respectively from the reservation as catchment area."



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(13)Challenging the legality of the order of the 1st respondent, the petitioners have filed the present writ petitions.

(14)Mr.M.K.Kabir, learned Senior Counsel appearing for the learned counsel on record for the petitioner in WP.No.13419/2017 made the following submissions:-

- ➔ A reading of Sections 2[30],20, 27, 36, 37 and 38 of the Act would only show that any land which is required, reserved or desinated for public purpose in a Master Plan, shall be deemed to be released from reservation, requirement or designation if the land is not acquired within three years from the date of publication of notice under Section 26 or 27 of the Act.
- ➔ The 2nd respondent has no power to declare any particular area as "catchment area" under the provisions of the Town and Country Planning Act, 1971, thereby prohibiting construction or development without resorting to the provisions of Sections 36 and 37 and paying compensation as required under Land Acquisition [Central] Act.



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- ➔ Since the object of the Act is only to regulate the land use, the Planning Authorities or the Government has no power to prohibit development by declaring a particular area as catchment area.
- ➔ The restriction of use is sought to be introduced through Rule 19 of the Tamil Nadu Combined Development and Building Rules, 2019. The Regulations for development in prohibited or restricted areas, are furnished in Annexure XVIII of the Tamil Nadu Combined Development and Building Rules, 2019. In Appendix-B of Annexure VII, areas zoned as Primary Residential use zone and Mixed Residential use zone, Industrial use zone and the areas covered in approved layouts, and areas reserved for commercial exploitation within 122 m. (400 ft.) wide ORR, developments are permissible subject to satisfying zoning regulations and planning parameters prescribed in the rules. Therefore, the impugned order as if no construction is permissible is illegal and unconstitutional.
- ➔ In Annexure XVII of the Tamil Nadu Combined Development and Building Rules, 2019, it is for the Catchment Management



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Agencies to prescribe Regulations for development therein as per Appendix-B. In the absence of prohibition under Clause 12 of Annexure-XVII read with Appendix-B, the Development Authorities can exercise their discretion without any guidelines. The declaration of Red Hills Catchment Area as a "no development zone" is therefore, a mischief as the authorities may now permit development according to their whims and fancies without any accountability. Therefore, the whole exercise of declaring a vast extent of about 13,000 Hectares of land as catchment area and to vest them with the Catchment Management Agencies to regulate development without any guidelines, clearly indicate that the classification suffers from legal *mala fides*.

→ In ***Raju S.Jethmalani Vs. State of Maharastra*** reported in **2005 [2] SCC 222**, the Hon'ble Supreme Court has reiterated that a citizen cannot be deprived of his right without following a procedure according to law. When a property is earmarked for a particular purpose to serve a public cause in a Master Plan, unless the property is acquired within three years from the date of



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publication of Plan by paying compensation to the land owners for restricting their land use, the property is deemed to be released from such reservation and the respondents cannot be heard to say such classification does not affect the right of the petitioner as if it is the power of the State to classify the land in the larger interest of public under the Town and Country Planning Act, 1971 or under the Chennai Metropolitan Development Act. The judgment of Hon'ble Supreme Court in *Indore Vikas Pradhikaran Vs. Pure Industrial Coke and Chemicals Limited* reported in **2007 [8] SCC 705**, is relied upon by the learned Senior Counsel to support his arguments.

(15) Mr. P. Wilson, learned Senior Counsel appearing for the petitioner in WP.No.13437/2017 made the following submissions:-

A) The lands were used originally for agricultural purposes and later on put to other purposes after the lands dried up and became unfit for cultivation. The petitioner obtained the planning permission and approval from the Executive Engineer cum President of Alamathi Village Panchayat on 11.11.2013.



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The petitioner thereafter put up the construction which is in accordance with the approved plan. Apart from the payment of Property Tax, the petitioner is also paying the amount levied under the Tamil Nadu Urban Land Tax Act, 1966. Hence, the construction which is in accordance with approved plan cannot be termed as illegal.

B) The petitioner came to know about the II Master Plan for Chennai Metropolitan Area only when the petitioner received the notice for demolition. 27 Villages were reserved in the Master Plan as Catchment Area and almost major portion of this area is covered by constructions in all the 27 villages. There are even Government Buildings, commercial buildings, schools and colleges, petrol bunks etc., in the entire lands reserved as catchment area. The rejection of petitioner's application / representation on a ground that it is a catchment area, which is a total prohibitory zone, is contrary to the Regulations where developments are regulated even according to the respondents. Therefore, the impugned order is arbitrary,



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discriminatory and irrational and contrary to Regulation 24[2][C] when petitioner's building is permissible.

C) Earlier, the Chief Engineer of Public Works Department who was consulted, had recommended to reclassify the land to permit the petitioner's development when the application was earlier filed by the petitioner for plan approval. The petitioner was made to pay charges towards publication regarding change of land use. However, without reference to the process of petitioner's application for reclassification, the petitioner's revision under Section 80-A of the Act, filed as against the order of locking, sealing and demolition, is dismissed by the Government only on the ground that it is a 'no development zone' where no construction can be permitted. This itself would show how the respondents are inconsistent while exercising their power under the Statute.

D) The facts leading to this writ petition would only indicate that the object behind the classification is not in public interest and the *bona fides* of classifying or declaring a vast area as a



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catchment area is questionable. In other words, the impugned order suffers from legal mala fides.

E) This Court, earlier passed an order in a batch of writ petitions in WP.Nos.18388, 18396 and 18400/2016 accepting the case of the petitioners therein that after expiry of three years from the date of publication of notification, the reservation that it is a catchment area, is deemed to be discontinued after the lapse of time. Hence, the impugned order without taking note of the observation of this Court is erroneous.

F) Any land which is reserved, restricted, required or designated for a purpose which is required to serve public purpose, has to be acquired under Section 36 of the Act. Once Section 36 of the Act kicks in, such reservation gets de-reserved under Section 38[b] of the Act if the land is classified, designated or required for public purpose under the Act. The respondents without acquiring the land, cannot prohibit or restrict the petitioner from utilising the land in violation of Article 300-A of the Constitution of India. In the absence of any specific



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provision under the Act to reserve a vast extent of area as a Catchment Area in exercise of the power to prepare a Master Plan for development, the classification of petitioner's land and other lands as catchment area is illegal and colourable exercise of powers.

G) When the State and the Local Body including the CMDA in unequivocal terms state that they have no intention to acquire lands even at the time of preparing a plan and that it is not necessary to acquire the land or to pay any compensation in terms of Section 37 or Section 39 of the Act, the Impugned Order would certainly affects/infringes the rights of petitioner under Article 300-A of the Constitution. When the right to property is not only protected under Article 300-A but also recognised as a human right, the provisions of the Town and Country Planning Act, 1971, and the Tamil Nadu Combined Development and Building Rules, 2019 cannot be read to interpret the provisions to mean something which is not expressly given under the Statute.



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- H) The Hon'ble Supreme Court in ***Balram Kumawat Vs. Union of India*** reported in **2003 [7] SCC 628**, ***Krishi Utpadan Mandi Samiti V. Pilibhit Pantnagar Beej Ltd*** reported in **2004 [1] SCC 391** and ***Union of India Vs. West Coast Paper Mills Ltd.***, reported in **2004 [2] SCC 747**, has categorically observed that a statutory scheme cannot be allowed to ordinarily deprive a person of his right to use the land by way of reservation or designation. In other words, the constitutional right of the petitioner guaranteed under Article 300-A is at stake because of the wrong interpretation and understanding of the provisions of the Town and Country Planning Act, 1971.
- I) The scope of Sections 36 to 38 of the Act has been considered and interpreted by this Court in the following judgments:-
- (a) **Pallawi Resources Ltd Vs. Protos Engineering Company Pvt. Ltd [2010 [5] SCC 196]** ;
 - (b) **Arruppukkottai Nadars Uravinmurai Podhu Abiviruthi Trust rep.by its President Mr.M.Sudhahar Vs. The Commissioner, Aruppukkottai Municipality Aruppukkottai and the Director**



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- of Town and Country Planning Madras
[MANU/TN/0894/2002] ;
- (c) S.Kanagam Achi Vs. the Director Town and Country Planning ***[MANU/TN/1572/2014] ;***
- (d) Commissioner Aruppukkottai Municipality Vs. K.S.Kamakshi Chetty and Others ***[MANU/TN/3603/0211] ;***
- (e) V.Nagamani & Mrs.Soundara Devi Vs. The Director of Town and Country Planning ***[2010 [2] CTC 510] ;***
- (f) Pillayar P.K.V.K.N.Trust Vs. Karpaga N.N.U.S ***[2010 [9] SCC 344] ;***
- (g) State of Mysore Vs. H.Sanjeeviah ***[AIR 1967 SC 1189] ;***
- (h) Himat Lal K.Shah Vs. Commissioner of Police, Ahmedabad and Another ***[1973 [1] SCC 222] ;***
- (i) S.Rathna Devi Vs. The Secretary to Government and Another ***[WP.No.17753/2020] ;***
- (j) Sparejon Samuel Vs. The Director of Town and Country Planning and Another ***[WP.No.136/2015] ;*** and
- (k) A.S.Rathinam Vs. The Director of Town & Country Planning and 2 Others ***[WP.No.22991/2021].***

Therefore, the effect of failure to acquire land under Sections 36 and 37 of the Act within three years renders the classification, reservation or designation invalid as held by the above referred



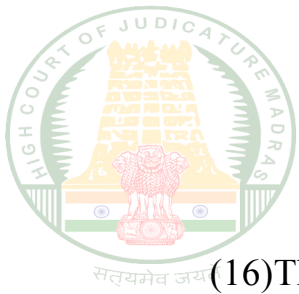
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to judgments.

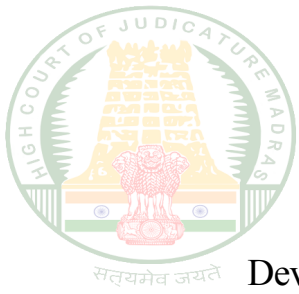
- J) Since this Court and Hon'ble Supreme Court has interpreted the powers conferred on respondents 1 and 2 under Sections 26, 27, 36 and 37 of the Act elaborately and with reference to similar enactments in other States, the judgment of the Division Bench in *J.Amsaveni Vs.The State of Tamil Nadu and Others* reported in **2023 [4] CTC 851** cannot be a binding precedent which is in ignorance of not only the law laid down by the Hon'ble Supreme Court on examining the same provisions of the Tamil Nadu Act, but also on the construction of similar provisions under similar legislations throughout the country.
- K) The respondents have permitted all types developments within the area reserved as Catchment Area quite contrary to the stand taken while rejecting representation of petitioner. The petitioner has only put up godowns which can be permitted even according to 2019 Regulations. Hence, impugned order is liable to be quashed and the writ petition has to be allowed.



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(16)The 1st respondent has filed a counter affidavit in WP.Nos.13419 & 13437/2017 specifically taking a stand that no building or commercial building can be approved in the Red Hills Catchment Area irrespective of its extent. It is contended by the Government that declaration of Red Hills Catchment area with a separate set of regulations or development restrictions imposed on lands which cannot be construed as land reserved for public purpose in the Master Plan. It is stated that Section 17 specifically authorise the officials to prepare Master Plans specifying the areas where developments can be allowed. Prescribing the land use zoning like residential, commercial, institutional, industrial etc., is part of the function of development authorities who are planning development. Since the land classified as Catchment Area was not required for a public purpose, without acquisition, areas can be conserved by restricting developments.

(17)It is stated further that the II Master Plan for Chennai Metropolitan Area was approved by the Government vide G.O.Ms.No.190 dated 02.09.2008 specifically categorising areas within Chennai Metropolitan Area as Areas for Buildings of Special Character, Ecologically Sensitive Areas,



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Development Prohibited Areas, Areas of Special Character, Natural Hazard Prone Areas and Green Belt Areas under Regulation 24 of Development Regulations for Chennai Metropolitan Area.

(18) In the counter affidavit, it is also stated that the area bounded by Tiruvanmiyur in the North, Bay of Bengal in the East, Buckingham Canal in the West and Chennai Metropolitan Area boundary in the South classified as Aquifer Recharge Area considering the good aquifer and recharge potential of the area. A development in this area is limited to 0.8 FSI with the height of 9m and ground coverage of 40%. The 1st respondent also compared the restrictions with the restrictions in Coastal Regulation Zone Areas, regulated areas as per the Archaeological Survey of India [ASI]. It is contended by the 1st respondent that in all these cases, restrictions cannot be construed as reservation of land for public purpose and hence, CMDA does not require these lands. When there is no question of acquisition, the petitioner is not deprived of their right over the property and the land will continue to remain in their ownership. It is also stated that the petitioner can use the land for any activity other than construction of a structure. Therefore, in the counter affidavit, a definite



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distinction is made between lands reserved for public purpose and zoning of areas restricting development. It is to be noted that agricultural activities are recommended.

(19) A counter affidavit was also filed by the 2nd respondent almost in tune with the counter affidavit of the 1st respondent. Surprisingly, an additional counter affidavit is filed by the 2nd respondent quite contrary to the stand taken by respondents 1 and 2 in the main counter affidavit.

(20) The Member Secretary of the 2nd respondent / CMDA has stated in the additional counter affidavit as follows:-

- ♦ The Government and the 2nd respondent has received several representations requesting for relaxing all Rules relating to water bodies for development of their patta lands. The Government by its Letter dated 18.07.2022, called for the details of water bodies marked in the I Master Plan, II Master Plan for Chennai Metropolitan Area and to list out variations between the two Master Plans in respect of water bodies. The 2nd respondent caused site inspection between 17.09.2022 and 03.10.2022 and an interim Report was submitted. The subject



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matter was discussed. After due discussion, the authority resolved to take up a study on 'Regulations for Red Hills Catchment Area', to review the present provisions and suitable recommendations on the subject of reclassification for change of land use from Red Hills Catchment Area.

- ♦ The Centre for Urbanization, Building and Environment [CUBE], IIT Madras Research Park was appointed as Consultant to study on 'Impact on Urbanization of Red Hills Catchment Area and Measures for its Conservation and Protection from Urbanization' with a request to recommend appropriate measures for protection of catchment areas in the context of urbanization development and to examine possibility of permitting developments in the catchment area to introduce best practices in the International and National level in maintaining and protecting the catchment areas and the level of urban uses permitted in the catchment areas and to suggest appropriate measures to protect catchment area and to examine the possibility of permitting developments in the study area in



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an overall balanced frame work of sustainable urban growth.

- ◆ In the additional counter affidavit, it is also indicated that M/s.CUBE was also entrusted to review special Rules and Developments in the catchment area and M/s.CUBE filed its Inception Report in July 2023 and the Interim Report during December 2023. It is also mentioned that based on the scientific study and assessment of various aspects, the respondents will review the Development Regulations.
- ◆ It is further stated that on 05.01.2024, the Interim Report of the consultant, namely, M/s.CUBE was reviewed by a Technical Review Committee comprising of several officials of the State, who has recorded its recommendations by a letter dated 06.02.2024. It is once again reiterated by the 2nd respondent that Final Report will be considered by the Review Committee once again and based on the suggestions of the Technical Review Committee, the further action will be taken.
- ◆ The 2nd respondent has also stated that the Report to be submitted by M/s.CUBE may have an impact upon the

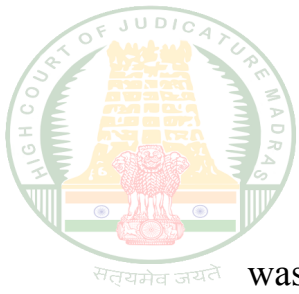


consequential reliefs sought for in the writ petitions.

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(21) The tenor and spirit of the contents of the additional counter affidavit is interestingly contrary to the contents of the counter affidavits filed by respondents 1 and 2.

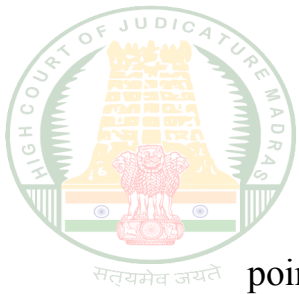
(22) Mr. P.S. Raman, learned Advocate General appearing for the official respondents highlighted the importance of Red Hills Catchment Area as Red Hills Lake is one of the most important sources for supply of drinking water to Chennai City and neighbouring areas. He pointed out that the main source of water to Red Hills lake is the surface run-off from the combined Catchment Area of the tank which comprises Free Catchment Area and Intercepted Catchment Area. Since 27 villages including Alamathi Village are situated in the Free Catchment Area of Red Hills tank, learned Advocate General submitted that any development towards residential or institutional or commercial or industrial purposes will adversely affect the quantity of water in the tank which is the main source of drinking water for the Chennai City. He further submitted that the necessity to prevent construction of buildings in such areas and to preserve the Catchments drainage pattern, the Red Hills Catchment Area



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was notified in II Master Plan prepared in the year 2008. Learned Advocate General submitted that the Development Regulations for Chennai Metropolitan Area as per II Master Plan was approved vide G.O.Ms.No.190, Housing and Urban Development Department dated 02.09.2008 and was published in the Government Gazette on 02.09.2008. He also pointed out that the Government in exercise of its power conferred under sub-section [4] of Section 32 and Section 122 of the Act, 1971, had repealed and replaced the Development Regulations, 2008 by the Tamil Nadu Combined Development and Building Rules, 2019 [hereinafter referred to as 'the Rules, 2019'].

(23)The whole argument of the learned Advocate General is based on the provisions of the Rules,, 2019 replacing the Development Regulations, 2008 vide G.O.Ms.No.190 dated 02.09.2008. He submitted that as per the Rules, 2019, activities which can be permitted in Primary Residential Use Zone and Mixed Residential Use Zone subject to certain conditions and Regulations, are permitted. Only classifications such as Commercial Use Zone and Institutional Use Zone etc., have not been made in these villages to prohibit such activities in this Catchment Area. It is also

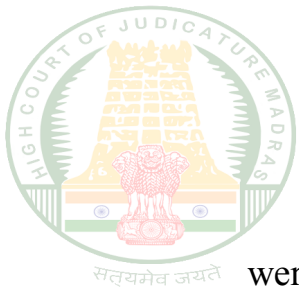


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pointed out that some authorised activities are permitted without expansion or enlargement. Hence, there is only restriction and not prohibition for development.

(24)Learned Advocate General submitted that Sections 36 to 38 of the Act are not attracted as there is no reservation or designation for a public purpose and no land owner can complain on any curtailment of their right over the land. Only where a particular land is reserved for parking, playgrounds or public road, or similar public purpose, Sections 36 to 38 of the Act will have application. However, in the instant case, there is no reservation or designation for a public purpose and the land owner continues to be the owner of the land.

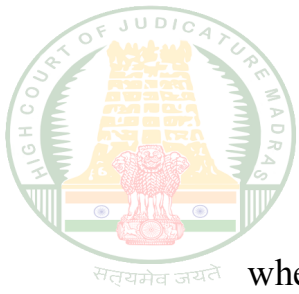
(25)Learned Advocate General in unambiguous terms, submitted that the Government or Local Body has no proposal to acquire the land in question either under Sections 36 and 37 of the Act or to pay compensation under Section 39 of the Act to any of the owners of the land. He further submitted that existing authorised activities are permitted in this area. He also pointed out that the land owners can continue their agricultural activities in the Catchment Area as these areas



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were shown as Agricultural Zone in the I Master Plan. He added that there is no public purpose for which the lands are required and hence, there is no proposal to acquire such lands. Learned Advocate General further submitted that only usage is restricted or regulated as authorised in the Master Plan and the Rules and there is no complete prohibition on the use of the land.

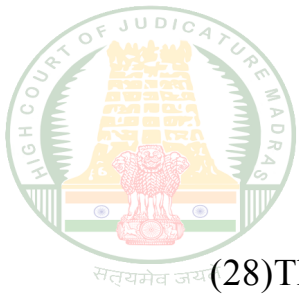
(26) Learned Advocate General relied upon paragraph No.141 of the judgment of Hon'ble Supreme Court, in the case of ***K.T.Plantation Private Limited Vs State of Karnataka*** reported in ***2011 [9] SCC 1***, wherein the Hon'ble Supreme Court made observations, distinguishing power of eminent domain and the power of State which exercise police power and referred to the restrictions that are imposed on private property in public interest while doing Zoning Regulation in urban planning. He also pointed out that by declaring the vast area as water Catchment Area, no individual has a right to seek reclassification of the land and the land owners are permitted to use the land as per the Zoning Regulation. He also pointed out that the State has power to impose restrictions as in the case of area which are within the Coastal Regulation Zone or Forest Area



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where any development is restricted.

(27)Learned Advocate General then relied upon the judgment of this Court in *J.Amsaveni Vs. State of Tamil Nadu and Others* reported in 2023 [4] CTC 851, which according to him, has followed the judgment of the Hon'ble Supreme Court in the case of *Association of Vasanth Apartments Owners Vs. V.Gopinath and Others* reported in AIR 2023 SC 1011. Referring to the fact that the Division Bench had dismissed the writ petition which is on identical facts, learned Advocate General submitted that the Division Bench has noted that there is no transfer of land but only restrictions for land use. Since the Division Bench has held that Section 38 of the Act is inapplicable to the facts, the decision of the earlier Division Bench cannot be ignored either as *per incuriam* or on any other ground merely because a different view is possible on the same set of facts. Since the petitioners herein have not challenged the Regulation, the petitioners cannot render the effect of Regulations ineffective merely by stating that the lands which are not acquired within three years from the date of publication of notice, cannot come under the purview of restrictions by reserving the area as Catchment Area.



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(28) This Court has anxiously considered the submissions made by the respective learned Senior Counsels appearing for the petitioners and the learned Advocate General appearing for the official respondents and perused the materials.

(29) The questions/issues that arise for consideration before this Court are as follows:-

(a) Whether the Government or the Local Body can declare a vast extent of land covering more than 27 Villages [approx. 13,000 Hectares] as Water Catchment Area in the II Master Plan for Chennai Metropolitan Area, 2026 and to prohibit any activity by declaring the same as 'No Development Zone' without acquisition of such land as contemplated under Sections 36 and 37 of the Town and Country Planning Act, 1971?

(b) Whether the reservation or designation or requirement of such vast extent of land as Catchment Area to preserve the land as 'No Development Zone' shall be deemed to be released from such reservation, allotment or



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designation if the entire land is not acquired within three years from the date of publication of notice in the Tamil Nadu Government Gazette under Section 26 of the Act?

- (c) Whether the 2nd respondent has power to declare or reserve a vast extent of 13,000 Hectares of land covering 27 villages as 'No Development Area' or restricting developments in the Master Plan without acquiring the land under Sections 36 and 37 of the Act or without paying compensation in terms of Section 39 of Town and Country Planning Act?*
- (d) Whether reservation of vast extent of land as Catchment Area in the Master Plan in this case without an intention of paying compensation infringes the rights of land owners guaranteed under Article 300-A of the Constitution and hence, as a consequence, the Impugned Order is unconstitutional.*
- (e) Whether the impugned order is liable to be quashed on the ground of being arbitrary, discriminatory and irrational on account of the position that the respondents have allowed*



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developments indiscriminately for several years without restrictions in other cases and thousands of buildings by private developers, institutions, industries, hospitals, schools, colleges, Government offices, Local Bodies, Corporations have come up with planning approvals in the area reserved as Catchment Area in the Master Plan?

- (f) Whether the impugned order can be sustained, especially when the respondents have now proposed to review the regulations after the final report from "CUBE", an Expert Body constituted based on representation of stakeholders?*
- (g) Whether the judgment of Division Bench in J.Amsaveni Vs. The State of Tamil Nadu and Others reported in 2023 [4] CTC 851, is in ignorance of the statutory provisions and several binding precedents of Hon'ble Supreme Court on the interpretation of provisions under the Town Planning Legislations of different States?*
- (h) Whether prohibitions for developments or*



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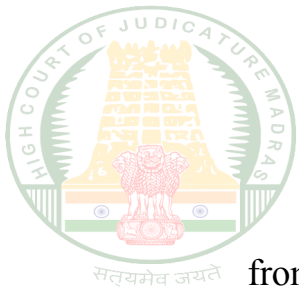
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restrictions for developments by declaring a vast area as Catchment Area can be accepted as it is like prohibiting developments under Coastal Zone Regulations [CZR] or restricting developments in areas declared to be prohibited for development under Archaeological Survey of India Regulations or restrictions in development under Forest Act?

ISSUES [a], [b], [c] & [d]:-

(30) In view of the growth of cities like Madras, Bombay and Calcutta, even during British Regime, Bombay Town Planning Act, 1915, Madras Town Planning Act, 1920 etc, were enacted. It is to be noted that every Town Planning Scheme is meant to provide Regulations for development. It is also to be noted that even under Madras Town Planning Act, 1920, the Local Body or the State Government was required to acquire private patta lands for using it for any public purpose, after paying compensation under the Land Acquisition Act for the land which is reserved or designated in Town Planning Scheme.

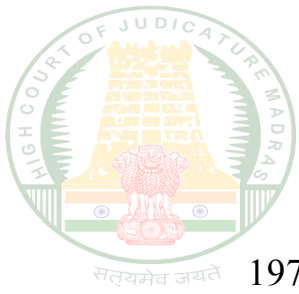
(31) The successful planning is to make people's lives more convenient by creating a physical environment which conduces to health, safe passage



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from place to place etc., to create a lung space within the city and to prohibit relentless building activities and to regulate activities by classifying lands based on user Zone which form part of such Town Planning scheme. Whenever a person's property right is injuriously affected by virtue of any provisions contained in any Regional Plan or Master Plan or Detailed Development Plan, the person's right to compensation is provided even under the Madras Town and Country Planning Act, 1920.

(32) The Madras Town and Country Planning Act, 1920, was repealed by the Tamil Nadu Town and Country Planning Act, 1971 [Act 35 of 1972]. It is seen that there is no material change in the scheme of Act. The Act provides for appointment of Director of Town and Country Planning Act and other authorities apart from constitution of Town and Country Planning Board. The functions and powers of the Board as well as functions of other authorities are given in the Act. Under Section 9A of the Act, which was introduced by way of an amendment in the year 1974, Madras Metropolitan Development Authority [MMDA] consisting of 12 persons was established. Under the Town and Country Planning Act,



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1971, after the declaration of Local Planning Area in terms of Section 10 and after the constitution of appropriate Planning Authority under Section 11, every Regional Planning Authority and Local Authorities are required to prepare and submit a Master Plan under Section 17 of the Act for the Local Planning Area providing for all or any of the following matters, namely,

- (a) the manner in which the land in the planning area shall be used ;*
- (b) the allotment or reservation of land for residential, commercial, industrial and agricultural purposes and for parks, playfields and open spaces ;*
- (c) the allotment or reservation of land for public buildings, institutions and for civic amenities ;*
- (d) the making of provision for the national highways, arterial roads, ring roads, major streets, lines of communication including railways, airports and canals ;*
- (e) the traffic and transportation pattern and traffic circulation pattern ;*
- (f) the major road and street improvements ;*



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- (g) the areas reserved for future development, expansion and for new housing ;*
- (h) the provision for the improvement of areas of bad layout or absolute development and slum areas and for relocation of population ;*
- (i) the amenities, services and utilities ;*
- (j) the provision for detailed development of specific areas for housing, shopping, industries and civic amenities and educational and cultural facilities;*
- (k) the control of architectural features, elevation and frontage of buildings and structures ;*
- (l) the provision for regulating the zone, the location, height, number of storeys and size of buildings and other structures, the size of the yards and other open spaces and the use of buildings, structures and land ;*
- (m) the stages by which the master plan shall be carried out ; and*
- (n) such other matters as may be prescribed.*

(33) Similar provisions are made in respect of different plans in respect of other planning areas in cities and towns of the State. Section 26 of the



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Act contemplates publication of the notice of the preparation of Master Plan for hearing any representation for modification of plan and Section 28 of the Act contemplates approval by Government. Section 35 of the Act specifically enables restriction on the applicability of any provisions of enactments governing Local Bodies which can be provided in the Development Plan and other aspects. Section 35-A deals with transfer of development rights by owner of site or land by surrendering it free of cost to Planning Authority when it is required for public purpose subject to terms. The procedure for variation, revocation or modification of Master Plan, Regional Plan or New Town Development Plan etc, is also prescribed under Section 32 of the Act.

(34) **Chapter IV of the Act** is regarding acquisition and disposal of land and it is relevant to extract the following provisions:-

36. Power to acquire land under the Land Acquisition Act.- *Any land required, reserved or designated in a regional plan, master plan, detailed development plan or a new town development plan, as the case may be, shall be deemed to be land needed*



for a public purpose within the meaning of the Land Acquisition Act, 1894 (Central Act I of 1894) and may be acquired under the said Act as modified in the manner provided in this Act.

37. Power to purchase or acquire lands specified in the development plan.-

(1) Where after the publication of the notice in the Tamil Nadu Government Gazette of preparation of a regional plan, master plan, detailed development plan or a new town development plan, as the case may be, any land is required, reserved or designated in such plan, the appropriate planning authority may, either enter into agreement with any person for the acquisition from him by purchase of any land which may be acquired under section 36 or make an application to the Government for acquiring such land under the Land Acquisition Act, 1894 (Central Act I of 1984):

Provided *that if the value of such land exceeds fifty thousand rupees the appropriate planning authority shall not enter into such agreement without the previous approval of the Government.*

(2) On receipt of an application made under



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sub-section (1), if the Government are satisfied that the land specified in the application is needed for the public purpose specified therein, they may make a declaration to that effect in the Tamil Nadu Government Gazette, in the manner provided in section 6 of the Land Acquisition Act, 1894 (Central Act I of 1894), in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section 6 of the said Act:

Provided that no such declaration in respect of any particular land covered by a notice under section 26 or section 27 shall be made after the expiry of three years from the date of such notice.

(3) On the publication of such declaration, the Collector of the district within whose jurisdiction the land is situate, shall proceed to take order for the acquisition of such land under the said Act; and the provisions of that Act shall, so far as may be, apply to the acquisition of the said land with the modification that the market value of the land shall be the market value prevailing on the date of publication of the



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notice in the Tamil Nadu Government Gazette under section 26 or section 27, as the case may be.

38. Release of land.- *If within three years from the date of the publication of the notice in the Tamil Nadu Government Gazette under section 26 or section 27- (a) no declaration as provided in sub-section (2) of section 37 is published in respect of any land reserved, allotted or designated for any purpose specified in a regional plan, master plan, detailed development plan or new town development plan covered by such notice; or*

(b) such land is not acquired by agreement, such land shall be deemed to be released from such reservation, allotment or designation.

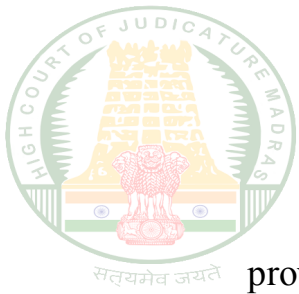
39. Right to compensation.- *(1) Any person whose property is injuriously affected by virtue of any of the provisions contained in any regional plan, master plan, detailed development plan or a new town development plan made under this Act shall, if he prefers a claim for the purpose to the Tribunal with such particulars and within such period as may be prescribed, be entitled to obtain compensation in respect thereof as determined by the Tribunal:*



Provided that property shall not be deemed to be injuriously affected by reason of any of the provisions inserted in any development plan which impose any condition or restriction in regard to any of the matters specified in clause (f) of sub-section (2) of section 15, or in clauses (k) and (l) of sub-section (2) of section 17 or in clauses (m) and (n) of sub-section (1) of section 20, as the case may be.

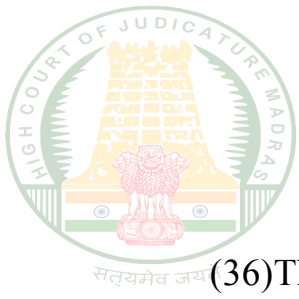
(2) If, at any time after the day on which any regional plan, master plan, detailed development plan, or a new town development plan has come into force, such plan is varied, or revoked, any person who has incurred any expenditure for the purpose of complying with such plan, shall, if he prefers a claim for the purpose to the Tribunal with such particulars and within such time as may be prescribed, be entitled to obtain compensation in respect thereof as determined by the Tribunal, if by reason only of the variation or revocation of such plan, such expenditure has ceased to be in any way beneficial to him.

(35) **Chapter V** namely Sections 40 to 46 contain some special provisions regarding new Town Development Authority. **Chapter VI** consists of



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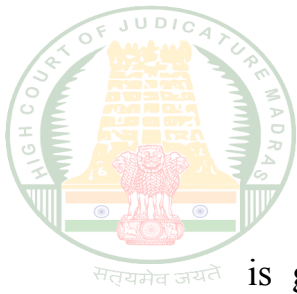
provisions relating to Control and Development and use of land. The provisions under Chapter VI of the Act deals with development and conformity in the development plan restrictions of buildings and lands in the area of the planning authority and gives powers to the authorities to stop unauthorised development and to take action for removal of unauthorised development etc. **Chapter VII** deals with levy, assessment and recovery of development charges. **Chapter VIII** deals with Finance. **Chapter IX** deals with constitution of Tribunals etc. **Chapter X** deals with appeal, revision and review as against orders passed by the authorities under the Act in exercise of their functions. **Chapter XI** deals with general provisions regarding penalties for various violations or offences specified under the Act. All miscellaneous provisions are under **Chapter XII** of the Act. The power to make Rules is given to the Government under Section 122 of the Act and all the Rules, Notifications and Orders are to be placed before legislation in terms of Section 123 of the Act. Under Section 124, the Planning Authority, with the previous approval of the Government, can make Regulations which is not inconsistent with the Act and Rules made thereunder.



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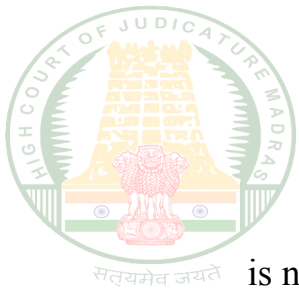
(36)The Development Control Rules for Madras Metropolitan Area originally framed, was substituted by G.O.Ms.No.328, Housing and Urban Development dated 18.02.1983. The Development Control Rules specifically mandate that every development should be with a written permission of the authority or such other Executive Officer of Local Body to whom the power has been delegated by the authority. However, the development Regulations for Chennai Metropolitan Area vide II Master Plan for Chennai Metropolitan Area, 2026, was prepared by Chennai Metropolitan Development Authority [CMDA] and approved by the Government of Tamil Nadu vide G.O.Ms.No.180, Housing and Urban Development Department dated 02.09.2008.

(37)In the II Master Plan, which was approved by the Government, Development Regulations are found regarding written permission for development, the manner and procedure of obtaining permission etc. The classification with reference to the user is provided under the Regulations. The procedure for getting site approval and regarding the requirements to get approval for projects, is given. While the land use are classified under 11 categories, the development that can be permitted within each category,



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is given in the Regulations. After the 11 categories of User Zones, Regulation 24 speaks about areas for buildings of special character like multi-storeyed buildings, continuous building areas and economically weaker section areas are given. Under Regulation 24[2], CRZ Area, Aquifer Recharge Area and Catchment Area are given under the heading 'Ecologically Sensitive Areas'. Under Regulation 24[2][C], the area as found in Annexure XII has been declared as Red Hills Catchment Area in order to protect the Redhills and Puzhal lakes from the negative impacts of urban development. Regulations for development in Catchment area is given in Annexure-XII. As per Annexure – XII, about 23 villages in full and substantial survey fields in four more villages, have been declared as Catchment Area. While permitting, existing authorised activities, it is only said that activities which are allowed in Commercial Use Zone and Institutional Use Zone are prohibited. Use of land as permissible in Primary Residential Zone, Mixed Residential Zone, Industrial Zone are allowed. Continuous Government lands are deemed to have been zoned for Open Space and Recreational use for developing social forestry and no land can be reclassified as Urban Use Zone even though Urban Use Zone

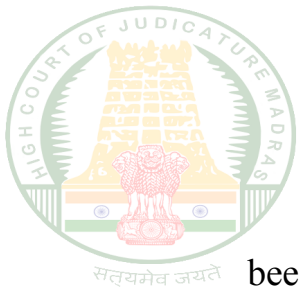


is not classified or defined.

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(38)As pointed out by the learned Advocate General, now, the Regulations vide G.O.Ms.No.190 dated 02.09.2008 is replaced by the Tamil Nadu Combined Development and Building Rules 2019. Catchment Area has been shown under Annexure XVII where development is prohibited or restricted. Regulations for Redhills Catchment Area is given in Appendix-B which is in consonance with the Development Regulations vide G.O.Ms.No.190.

(39)First of all, this Court is unable to find any scope for declaring a vast extent of land [more than 13,000 Hectares covering 27 villages] as a 'No Development Zone' unless such land is reserved or required or designated for a public purpose. When a land is reserved, allotted or designated for any purpose specified in a Master Plan, the Planning Authority namely, the CMDA may acquire the land by an Agreement or by paying an amount agreed or in lieu of any amount by granting the land owner, the transfer of development rights or by making an application to the Government for acquiring such land. In the present case, the Master Plan was published in the year 2008 and hence, the acquisition ought to have

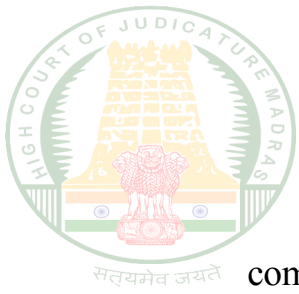


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been under the Land Acquisition Act, 1894.

(40) Under Section 36, the land required, reserved or designated in a Master Plan, shall be deemed to be a land needed for a public purpose under the Land Acquisition Act, 1894. From the reading of Sections 36 and 37, it may be inferred that the Government on the requisition of the Planning Authority can issue a declaration under Section 6 of the Land Acquisition Act. However, if the land is not acquired in terms of Section 37 within three years, such land shall be deemed to be released from such reservation, allotment or designation. Section 39 provide for compensation to a person if a property of the said person is injuriously affected by virtue of any of the provisions contained in any of the Master Plan subject to the proviso which gives certain exceptions. Except reservation of land for public purposes as contemplated under Section 36, no other reservation, prohibiting development is contemplated under the Act. It is to be noted that the Impugned Order refers to the area as "No Development Zone".

(41) When the State or the Local Body has made their stand very clear that they never had a proposal to acquire the land under Section 37 or to pay

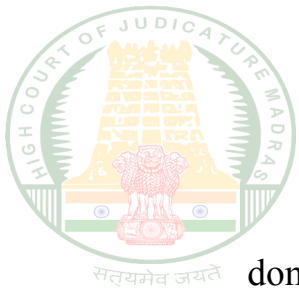


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compensation for the land under Section 39 of the Act, the Act does not give respondents any scope for contending that they have right to declare the area as water catchment area in public interest while preparing Master Plan and to reject Planning Permission on the ground that the area reserved is a 'No Development Zone'.

(42)Article 300-A of the Constitution declares that no person can be deprived of his or her property otherwise than by an authority of law. Therefore, a person cannot be deprived of his property right merely by an executive decision without any legal authority under a statute which is also expected to be a fair legislation. Unless there is a specific provision under law which authorises to restrict the rights of individuals, it is impossible for an authority who is delegated to perform certain functions under statute, to deprive the property right of individual owners to his whims and fancies.

(43)The Constitutional Bench of the Hon'ble Supreme Court in the case of ***K.T.Plantation Private Limited and Others Vs. State of Karnataka*** reported in ***2011 [9] SCC 1***, though recognizes deprivation of property of an individual by legislation for a public purpose, the power of eminent

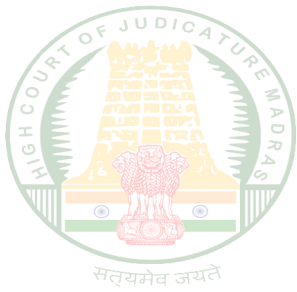


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domain, recognizes the power of judicial review over a decision, which deprives a person of his private property as unlawful and unfair, if it undermines the rule of law. When Article 300-A protects private property against an executive action, acquisition of property without payment of compensation will be unconstitutional. Since a law which is enacted to acquire a land for public purpose has to be reasonable, the Hon'ble Supreme Court in several judgments has reiterated that the law which is intended to deprive the property right of a person should be reasonable and it should comply with other provisions of the Constitution. It is therefore, recognized that a law that is intended to acquire private property for public purpose should provide for payment of compensation and should not be violative of Articles 14, 19 or 21.

(44) It is useful to refer to a few judgments of Hon'ble Supreme Court to understand the scope of Article 300-A of the Constitution, namely:

- (a) 2003 [7] SCC 589 [*Indian Handicrafts Emporium and Others Vs. Union of India and Others*] ;
- (b) 1981 [1] SCC 166 [*Maharao Sahib Shri Bhim Singhji Vs. Union of India and Others*] ;
- (c) 2005 [2] SCC 126 [*State of U.P. and Others Vs. Manohar*] ;



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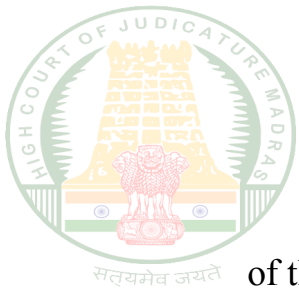
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(d) 2005 [12] SCC 77 [*State of Rajasthan and Others Vs. Basant Nahata*];

(e) 1982 [1] SCC 39 [*Bishambhar Dayal Chandra Mohan and Others Vs. State of U.P. and Others*];

(f) AIR 1988 SC 1487 [*Coffee Board, Karnataka, Bangalore Vs. Commissioner of Commercial Taxes, Karnataka and Others*].

(45) A Town-Planning legislation is intended to regulate development of towns to secure present and future inhabitants, better sanitary conditions, amenities and convenience. The object behind every Town Planning Legislation is to improve the living conditions of the people. In this State, Madras Town Planning Act, 1920 [hereinafter referred to as "1920 Act"] was enacted with the same object. Preparation of Town Planning Scheme by Municipal Council, formation of layouts, construction and improvement of public roads, projects and structures, to provide transport facilities, water supply, laying drainage, reservation of land for streets, roads etc., shows that the object behind the legislation was the same as in the present Act. Even earlier, under 1920 Act, acquisition of private land is contemplated when a private land is required for planned development of city under the Act. Section 33 of the Act, 1920, is similar to Section 37

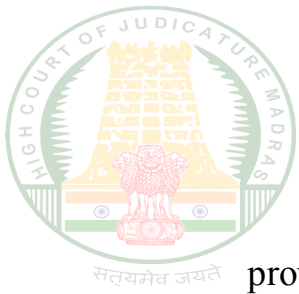


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of the Act, 1971 and if the land is not acquired within three years, the land ceases to have effect as a declaration under Section 6 of the Land Acquisition Act, 1894. Compensation at market value as on the date of publication of Town Planning Scheme is required to be paid to the land owners. Therefore, Sections 36 to 39 of the Act, 1971, are not new but was effective for more than a century and which specifically mandates acquisition of any land required, reserved or designated in a Regional Plan or Master Plan or Detailed Development Plan for a public purpose.

(46) The learned counsels for the petitioners have cited several judgments before this Court about the scope of Sections 37 and 38 of the Act, 1971. The Hon'ble Supreme Court and this Court have reiterated the position that the reservation or designation or declaration in Master Plans cannot survive when the land of a private land owner is not acquired within three years from the date of publication of the plan under the Act, 1971.

(47) In ***Bhavnagar University Vs. Palitana Sugar Mills Pvt Ltd. and Others*** reported in **2003 [2] SCC 111**, a Three Member Bench of the Hon'ble Supreme Court has considered a few provisions under Gujarat Town Planning and Urban Development Act, 1976 which are similar to the



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provisions under the Tamil Nadu Town and Country Planning Act, 1971.

The question that arose for consideration before Hon'ble Supreme Court was whether by reason of inaction on the part of the State and its authorities under the Town Planning Act to acquire the lands [which was reserved in a Development Plan for a public purpose] for a period of more than 10 years, in terms of provisions of Land Acquisition Act, 1894, the lands stood de-reserved/re-designated. The Hon'ble Supreme Court, after referring to several provisions, has followed well accepted principles on the interpretation of statute to hold that rights, whether private or public, cannot be taken away or hampered by implication from the language employed in a statute, unless the legislature clearly and distinctly authorises the doing of a thing which is physically inconsistent with the continuance of an existing right and that, an act should be so interpreted as in no respect to interfere with or prejudice a clear private right or title unless that private right or title is taken away *per directum*. The Hon'ble Supreme Court has considered the facts of the case before it and has observed as follows:

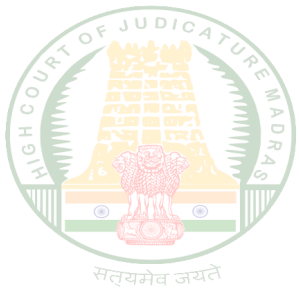


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"29. By reason of the provision of the said Act, a reasonable restriction has been imposed upon the owner on the user of his property. In terms of Section 12 of the said Act, town planning is contemplated through preparation of draft development plan which contains not only proposals for designating certain area for residential, industrial, commercial, agricultural or recreational purposes but also for the purposes for maintaining environment and ecological balance by setting up zoological gardens, green belts, natural reserves and sanctuaries. In terms of such development plan reservation of certain land for public use is also provided. From the relevant provisions of the said Act, as noticed hereinbefore, it is absolutely clear that in terms thereof the State Government is made the ultimate authority to publish a development plan, inter alia, providing for designation or reservation of the land. The State Government while arriving at its conclusion as regards public interest involved in the matter is required to arrive at its satisfaction on objective basis as provided in terms of sub-section (2) of Section 17 to the effect that the lands in respect whereof reservation



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is proposed to be made can be acquired for the fulfilment of the object therefor either by agreement or compulsory acquisition within the period specified therein. It has not been disputed before us nor is it necessary to consider in the facts and circumstances of this case as to whether establishment of the educational institutions or universities would be covered by the provisions of sub-section (2) of Section 12 thereof.

30. Sections 20 and 21 of the said Act are required to be read conjunctively with Sections 12 and 17. We may notice that clause (k) of sub-section (2) of Section 12 does not find mention in sub-section (2) of Section 17 as regards proposed reservation for the State and other statutory authorities but clauses (n) and (b) of sub-section (2) of Section 12 are specifically mentioned in Section 20. In Section 20, provisions of clauses (b), (d), (f), (k) and (o) of sub-section (2) of Section 12 have specifically been mentioned. The High Court has proceeded on the basis that the words “designation” or “reservation” are interchangeable for the purpose of the Act. The said finding of the High Court is not in question.



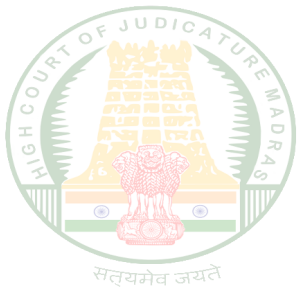
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31. Whereas in terms of Sections 12 and 17 of the said Act, the reservation and designation have been provided, sub-section (1) of Section 20 thereof only enables the authorities to acquire the land designated or reserved for the purpose specifically mentioned in clauses (b) and (n) of sub-section (2) of Section 12 as also other clauses specified therefor either by acquisition or agreement or in terms of the provisions of the Land Acquisition Act. Sub-section (1) of Section 20 is merely an enabling provision.

32. Sub-section (2) of Section 20, however, carves out an exception to the exercise of powers by the State as regards acquisition of the land for the purpose of carrying out the development of the area in the manner provided for therein; a bare reading whereof leaves no manner of doubt that in the event the land referred to under sub-section (1) of Section 20 thereof is not acquired or proceedings under the Land Acquisition Act are not commenced and further, in the event an owner or a person interested in the land serves a notice in the manner specified therein, certain consequences ensue, namely, the designation of the land shall be deemed to have lapsed. A legal



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fiction, therefore, has been created in the said provision."

(48)Following its earlier judgment in the case of ***Municipal Corporation of Greater Bombay Vs. Dr.Hakimwadi Tenants Association and Others*** reported in ***1988 [Supp] SCC 55***, arising out of the provisions of the Maharashtra Regional and Town Planning Act, 1966, the Hon'ble Supreme Court has held that if any private land is shown as reserved, allotted or designated for any purpose specified in any development plan, the same can be acquired within ten years either by an Agreement or by following the procedure prescribed under the Land Acquisition Act. If no steps are taken for acquisition of land within a period of six months from the date of service of notice under Section 127 of the said Act, it is held that the land shall be deemed to have been released from such reservation or allotment or designation.

(49)It is relevant to extract paragraph No.40 of the said judgment which reads thus:

"40. The statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required to



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do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof."

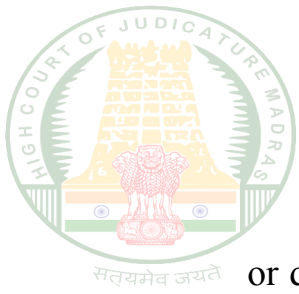
(50)As a matter of fact, the question whether the reservation would get automatically extended if a revised plan is made, was also examined by Hon'ble Supreme Court and in paragraph No.53, the Hon'ble Supreme Court has held as follows:-

*"53. As the facts of the present case stand absolutely on a different footing and this Court in **K.L. Gupte case [AIR 1968 SC 303 : (1968) 1 SCR 274]** was not called upon to answer the same, the same cannot be said to be an authority for the proposition that by reason of Section 21 of the Act, the designation of the land although lapsed in terms of Section 20, the same would get automatically extended or revised once a revised plan is made. This Court in **K.L. Gupte case [AIR 1968 SC 303 : (1968) 1 SCR 274]** merely held that the land which is reserved for ten years can be subjected to further reservation for any period till it is actually required for its town planning activities*



leading to revision of development plans from time to time. Therein, this Court did not negate the right of owners. Such a right of the landowners, as noticed hereinbefore, has been specifically acknowledged. Nowhere it was stated that the valuable right conferred on a landowner of getting his land reserved by serving notice would be defeated or taken away merely because a revised development plan was in the offing."

(51) Similar provisions under the Maharashtra Regional and Town Planning Act, 1966, [hereinafter referred to as 'the Maharashtra Act'] was also considered by the Hon'ble Supreme Court in yet another judgment in ***Shrirampur Municipal Council, Shrirampur Vs. Satyabhamabai Bhimaji Dawkher and Others*** reported in **2013 [5] SCC 627** and the Hon'ble Supreme Court held that if any land reserved, allotted or designated for any purpose specified in any plan under the Maharashtra Regional and Town Planning Act, 1966, is not acquired by the Agreement or under the Act or under the Land Acquisition Act, 1894, the reservation, allotment or designation shall be deemed to have lapsed and thereupon, the land shall be deemed to be released from such reservation, allotment



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or designation and shall become available to the owner for the purpose of development as otherwise permissible by referring to Section 127 of the Maharashtra Act.

(52)The Hon'ble Supreme Court, in ***Prakash R.Gupta Vs Lonawala Municipal Corporation*** reported in ***2009 [1] SCC 514***, reversed the judgment of the High Court to hold that the land in question, be released in favour of private owner. The High Court rejected the prayer of the private owner of the property by stating that there is no lapse of the reservation on account of Section 49 of the Act which refers to a scheme. Making a distinction between the scheme and reservation, the Hon'ble Supreme Court again reiterated that the reservation in the final Regional Plan or Development Plan cannot continue and the land has to be released in favour of private owner if the land is not acquired within ten years from the date on which the Regional Plan or Development Plan came into force.

(53)A similar view has been expressed in several precedents and we would summarise only a few, which are stated below:-

→ *Arruppukkottai Nadars Uravinmurai Podhu Abivirudhi Trust rep.by its President, Mr.M.Sudhahar Vs. The Commissioner,*



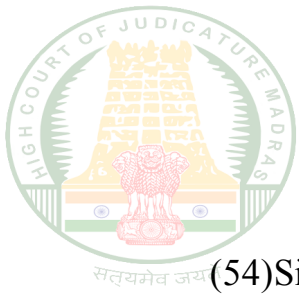
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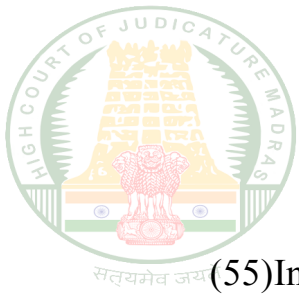
Arruppukkottai Municipality, Arruppukkottai and Another reported in **MANU/TN/0894/2002** ;

- *S.Kanagam Achi Vs. The Director, Town and Country Planning* reported in **MANU/TN/1572/2014** ;
- *Commissioner, Arruppukkottai Municipality Vs. K.S.Kamakshi Chetty and Others* reported in **MANU/TN/3603/2011** ;
- *V.Nagamani and Mrs.Soundara Devi Vs. The Director of Town and Country Planning and Another* reported in **2010 [2] CTC 510** ;
- *Pillayar PKVKN Trust Vs. Karpaga NNUS* reported in **2010 [9] SCC 344** ;
- *State of Mysore Vs. H.Sanjeeviah* reported in **AIR 1967 SC 1189** ;
- *Himat Lal K.Shah Vs. Commissioner of Police, Ahmedabad and Another* reported in **1973 [1] SCC 227** ;
- *Raju S.Jethmalani and Others Vs. State of Maharashtra and Others* reported in **2005 [11] SCC 222** ;
- *S.Rathna Devi Vs. The Secretary to Government and Another* in **WP.No.17753/2020 dated 19.03.2021** ;
- *Sparejon Samuel Vs. The Director of Town and Country Planning and Another* in **WP.No.136/2015 dated 15.10.2015** ;
- *A.S.Rathinam Vs. The Director of Town and Country Planning and 2 Others* in **WP.No.22991/2021 dated 03.01.2022**.



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(54) Since the Act does not contemplate requirement, reservation, designation of a private land in the plan prepared under the Act, 1971, for a public purpose without acquiring it and the fact that the Government or CMDA has no proposal to acquire the land, this Court is of the view that the reservation of such a vast extent of land as Catchment Area in Master Plan and to treat the same as ' No Development Zone ', while passing the impugned order shows that the land is reserved for a public purpose in the plan and hence, the impugned order is invalid and it has no sanctity of law. If the Government reserves such a vast area declaring the same as a No Development Zone, without any intention to acquire or to pay compensation at least under Section 39 of the Act, such a declaration even at the inception is void and we cannot accept the case of the respondents that such classification or declaration without acquisition is available to the Town Planning Authorities or the Local Body or the Government in exercise of their power under the Act, 1971. Such declaration amounts to deprivation of proprietary right of individual owners and the declaration is unconstitutional as it affects the right guaranteed under Article 300-A of the Constitution.



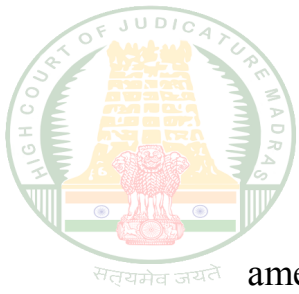
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(55) In the factual context, it is also useful to refer to yet another judgment of

Hon'ble Supreme Court which arise in a different context. In ***Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Coke and Chemicals Limited and Others*** reported in ***AIR 2007 SC 2458 : 2007 [8] SCC 705***.

The Hon'ble Supreme Court considered the provisions of the M.P. Nagar Tatha Gram Nivesh Adhiniyam [Act 23 of 1973] [hereinafter referred to as 'the Madhya Pradesh Act'].

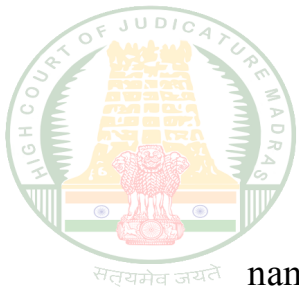
(56) It is necessary to record the following facts to understand the *ratio decidendi* of the said judgment. On 13.02.1974, the State Government issued a Notification in exercise of its power under Section 13[1] of the Madhya Pradesh Act constituting Indore Planning Area covering 37 villages. The 2 villages, B and K were not included in the said Notification. In respect of the area covered under the Notification dated 13.02.1974, the State Government issued a notification, establishing the authority, '*Indore Vikas Pradhikaran* [which is the appellant before the Hon'ble Supreme Court] under Section 38 of the Madhya Pradesh Act, the State delegated its power in favour of the District Planning Committee. By a Notification dated 13.11.2000, the District Planning Committee



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amended the planning area by adding 115 villages including the two villages, B and K. A draft Development Plan was published on 27.06.2003 followed by the Declaration dated 24.08.2004 declaring the intention to prepare a Town Development Plan after resolution, for construction of a by-pass road of 60 meters width. The private owners who own lands in Villages B and K, submitted application on 02.12.2004 before the Planning Authorities for sanction of their development plan under Section 29[1] of the Madhya Pradesh Act. Since the said application was not considered by the officials, a writ petition was filed by the private land owners for issuance of a writ of mandamus to direct the sanction of site plan. The said writ petition was dismissed by order dated 17.05.2006. The private land owners filed an appeal before the Division Bench of Madhya Pradesh High Court and the same was allowed striking down the declaration made under Section 50[2] of the Madhya Pradesh Act.

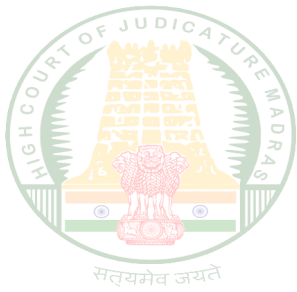
(57)The question that arose for consideration before Hon'ble Supreme Court, was whether the District Planning Committee in exercise of its delegated power can automatically extend the area of a portion of the appellant land,



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namely, Indore Vikas Pradhikaran despite the Notification constituting the appellant by the State is restricted to the area covered by the Notification dated 13.02.1974. The Hon'ble Supreme Court has considered several principles and the following paragraphs are relevant:

"46. Where, however, a scheme comes into force, although it may cause hardship to the individual owners as they may be prevented from making the most profitable use of their rights over property, having regard to the drastic consequences envisaged thereunder, the statute should be considered in such a manner as a result whereof greater hardship is not caused to the citizens than actually contemplated thereby. Whereas an attempt should be made to prevent unplanned and haphazard development but the same would not mean that the court would close its eyes to the blatant illegalities committed by the State and/or the statutory authorities in implementation thereof. Implementation of such land development as also building laws should be in consonance with public welfare and convenience. In United States of America zoning ordinances are enacted pursuant to the police power delegated by the State. Although in



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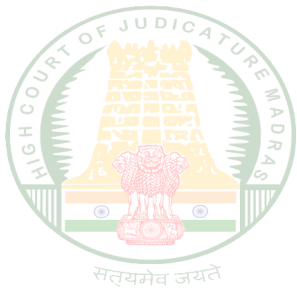
India the source of such power is not police power but if a zoning classification imposes unreasonable restrictions, it cannot be sustained. The public authority may have general considerations, safety or general welfare in mind, but the same would become irrelevant, as thereby statutory rights of a party cannot be taken away. The courts must make an endeavour to strike a balance between public interest on the one hand and protection of a constitutional right to hold property, on the other.

....

Human rights issue

53. The right to property is now considered to be not only a constitutional right but also a human right.

54. The Declaration of Human and Civic Rights of 26-8-1789 [Ed.: This historic declaration also known as the Declaration of the Rights of Man and the Citizen, 1789 was adopted by the French National Assembly after the French Revolution.] enunciates under Article 17: “17. Since the right to property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained,



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obviously requires it and just and prior indemnity has been paid". Further under Article 17 of the Universal Declaration of Human Rights, 1948 dated 10-12-1948, adopted in the United Nations General Assembly Resolution it is stated that: (i) Everyone has the right to own property alone as well as in association with others. (ii) No one shall be arbitrarily deprived of his property.

55. Earlier human rights were existed to the claim of individuals right to health, right to livelihood, right to shelter and employment, etc. but now human rights have started gaining a multifaceted approach. Now property rights are also incorporated within the definition of human rights. Even claim of adverse possession has to be read in consonance with human rights. As President John Adams (1797-1801) put it:

"Property is surely a right of mankind as real as liberty."

Adding, "The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence."

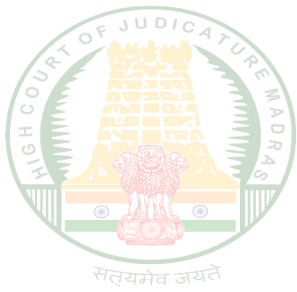
56. Property, while ceasing to be a fundamental right would, however, be given express recognition as



a legal right, provisions being made that no person shall be deprived of his property save in accordance with law.

Interpretation of the Act

57. The Act being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction. An owner of land ordinarily would be entitled to use or develop the same for any purpose unless there exists certain regulation in a statute or statutory rules. Regulations contained in such statute must be interpreted in such a manner so as to least interfere with the right to property of the owner of such land. Restrictions are made in larger public interest. Such restrictions, indisputably must be reasonable ones. (See Balram Kumawat v. Union of India [(2003) 7 SCC 628] ; Krishi Utpadan Mandi Samiti v. Pilibhit Pantnagar Beej Ltd. [(2004) 1 SCC 391] and Union of India v. West Coast Paper Mills Ltd. [(2004) 2 SCC 747]) The statutory scheme contemplates that a person and owner of land should not ordinarily be deprived from the user thereof by way of reservation or designation.



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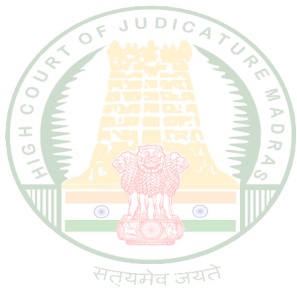
59. In Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai [(2005) 7 SCC 627] construing Section 5-A of the Land Acquisition Act, this Court observed: (SCC pp. 634-35, para 6-7)

“6. It is not in dispute that Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of ‘eminent domain’ may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.

7. Indisputably, the definition of public purpose is of wide amplitude and takes within its sweep the acquisition of land for a corporation owned or controlled by the State, as envisaged under sub-clause (iv) of Clause (f) of Section 3 of the Act. But the same would not mean that the State is the sole judge therefor and no judicial review shall lie. (See Jilubhai Nanbhai Khachar v. State of Gujarat [1995 Supp (1) SCC 596].

It was further stated: (SCC p. 640, para 29)

“29. The Act is an expropriatory legislation. This Court in State of M.P. v. Vishnu Prasad Sharma [AIR 1966 SC 1593] observed that in such a case the provisions of the statute should be strictly construed as it deprives a person of



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his land without consent. [See also Khub Chand v. State of Rajasthan [AIR 1967 SC 1074] and CCE v. Orient Fabrics (P) Ltd. [(2004) 1 SCC 597]]

There cannot, therefore, be any doubt that in a case of this nature due application of mind on the part of the statutory authority was imperative.”

In State of Rajasthan v. Basant Nahata [(2005) 12 SCC 77 : JT (2005) 8 SC 171] it was opined: (SCC p. 102, para 59)

“In absence of any substantive provisions contained in a parliamentary or legislative act, he cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one's right of property as envisaged under Article 300-A of the Constitution.”

In State of U.P. v. Manohar [(2005) 2 SCC 126] a Constitution Bench of this Court held: (SCC p. 129, paras 7-8)

“7. Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(f)



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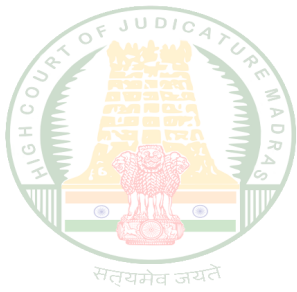
was deleted by the Forty-fourth Amendment to the Constitution, Article 300-A has been placed in the Constitution, which reads as follows:

‘300-A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law.’

8. This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities.”

In Jilubhai Nanbhai Khachar v. State of Gujarat [1995 Supp (1) SCC 596] the law is stated in the following terms: (SCC p. 622, para 34)

“34. The right of eminent domain is the right of the sovereign State, through its regular agencies, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the State including private property without its owner's consent on account of public exigency and for the public good. Eminent domain is the highest and most exact idea of property remaining in the Government, or in the aggregate body of the people in their



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sovereign capacity. It gives the right to resume possession of the property in the manner directed by the Constitution and the laws of the State, whenever the public interest requires it. The term 'expropriation' is practically synonymous with the term 'eminent domain'."

It was further observed: (SCC p. 627, para 48):

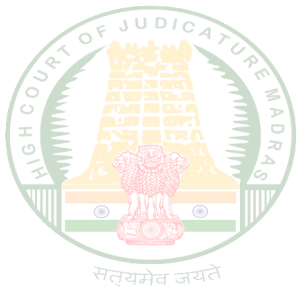
"48. The word 'property' used in Article 300-A must be understood in the context in which the sovereign power of eminent domain is exercised by the State and property expropriated. No abstract principles could be laid. Each case must be considered in the light of its own facts and setting. The phrase 'deprivation of the property of a person' must equally be considered in the fact situation of a case. Deprivation connotes different concepts. Article 300-A gets attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with the law made by Parliament or a State Legislature, a rule or a statutory order having force of law. It is inherent in every sovereign State by exercising its power of eminent domain to expropriate private property without owner's consent. Prima facie, State would be the judge to decide whether a purpose is a public purpose. But it is not the sole judge. This will be subject to judicial review and it is the duty of the court to determine whether a particular purpose is a



public purpose or not. Public interest has always been considered to be an essential ingredient of public purpose. But every public purpose does not fall under Article 300-A nor every exercise of eminent domain an acquisition or taking possession under Article 300-A. Generally speaking preservation of public health or prevention of damage to life and property are considered to be public purposes. Yet deprivation of property for any such purpose would not amount to acquisition or possession taken under Article 300-A. It would be by exercise of the police power of the State. In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation. Acquisition of mines, minerals and quarries is deprivation under Article 300-A.”

Rajendra Babu, J. (as the learned Chief Justice then was) in Sri Krishnapur Mutt v. N. Vijayendra Shetty [(1992) 3 Kar LJ 326] observed: (Kar LJ p. 329, para 8)

“8.The restrictions imposed in the planning law though in public interest should be strictly interpreted because they make an inroad into the rights of a private person to carry on his business by construction of a



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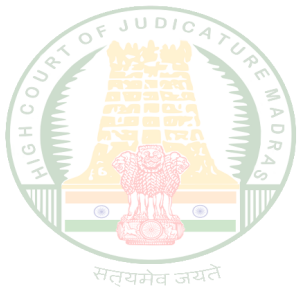
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suitable building for the purpose and incidentally may affect his fundamental right if too widely interpreted.”

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72. Land use, development plan and zonal plan provided for the plan at macro-level whereas the town planning scheme is at a micro-level and, thus, would be subject to development plan. It is, therefore, difficult to comprehend that broad based macro-level planning may not at all be in place when a town planning scheme is prepared.

73. Once a final plan comes into force, steps inter alia are taken for acquisition of the property. Section 34 of the Act takes care of such a contingency. The town development scheme, as envisaged under Section 49 of the Act, specifically does it. Out of nine clauses contained in Section 49, six relate to acquisition of land for different purposes. Clauses (v), (viii) and (ix) only refer to undertaking of such buildings or construction of work by the authority itself, reconstructions for the purpose of buildings, roads, drains, sewage lines and the similar amenities and any other work of a nature such as would bring about environmental improvements.



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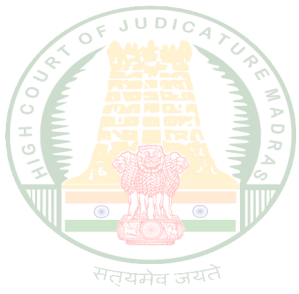


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79. Section 50 of the Act no doubt uses the word “at any time”. The question, however, is what that would imply. The town planning scheme, it would bear repetition to state, is made for the purpose of implementation of a development plan. Ordinarily, therefore, it would envisage the time period for coming into force of the development plan and the expiry thereof. Unless such a construction is to be given to the words “at any time”, it would lead to manifest injustice and absurdity which is not contemplated by the statute. For giving an effective meaning to the provisions of Section 50 of the Act, the same is required to be read in the context of other provisions of the statute and in particular the interpretation clauses which we have noticed hereinbefore.

80. Section 50(1) of the Act provide for declaration of this intention to prepare town development scheme “at any time”. The words “at any time” do not confer upon any statutory authority an unfettered discretion to frame the town development scheme whenever it so pleases. The words “at any



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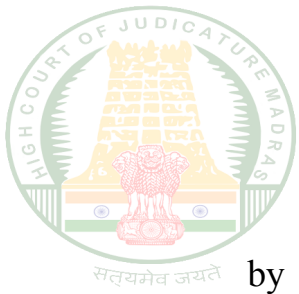


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time” are not charter for the exercise of an arbitrary decision as and when a scheme has to be framed. The words “at any time” have no exemption from all forms of limitation for unexplained and undue delay. Such an interpretation would not only result in the destruction of citizens' rights but would also go contrary to the entire context in which the power has been given to the authority.

81. The words “at any time” have to be interpreted in the context in which they are used. Since a town development scheme in the context of the Act is intended to implement the development plan, the declaration of intention to prepare a scheme can only be in the context of a development plan. The starting point of the declaration of the intention has to be upon the notification of development plan and the outer limit for the authority to frame such a scheme upon lapsing of the plan. That is the plausible interpretation of the words “at any time” used in Section 50(1) of the Act. (See State of H.P. v. Rajkumar Brijender Singh [(2004) 10 SCC 585] .)

(58)The Hon'ble Supreme Court went on further on the interpretation and purposive construction of an enactment and quoted the principle reiterated

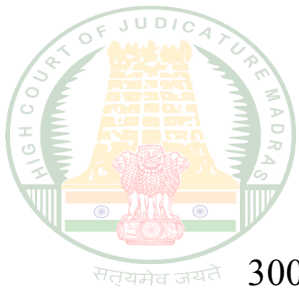


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by it in ***RBI V. Peerless General Finance and Investment Co. Ltd*** reported in ***1987 [1] SCC 424*** and the relevant paragraph is extracted below:-

“33.If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker; provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act.”

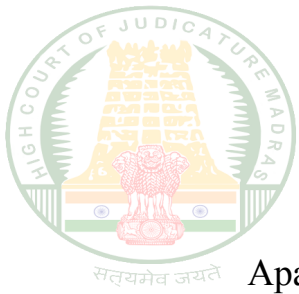
(59)The Hon'ble Supreme Court dismissed the Special Leave Petition filed by Indore Vikas Pradhikaran upholding the view of the Division Bench of the High Court holding that the Draft Development Scheme prepared by the appellant therein in respect of two villages is ultra vires. The judgment of Hon'ble Supreme Court on the interpretation of statute and on the scope of preparing a Development Plan under the Town Planning Act vis-a-viz., reiterated the right to property as recognised under Article



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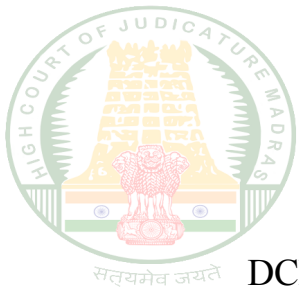
300-A of the Constitution. Hence, the judgment of Hon'ble Supreme Court in *Indore Vikas Pradhikaran's case* is an authority for the proposition that restriction or regulation regarding development under Town Planning legislation cannot be equated with the police power of the State and a classification imposing unreasonable restriction cannot be sustained. The Hon'ble Supreme Court emphasised the principle that Article 300-A of the Constitution will come into play whenever such restriction does not fall within the statutory power. In other words, when there is lack of legal authority for deprivation of the petitioners' properties, this Court has to strike down such illegal act. When we look at the Act as a whole and try to find out the object and purpose of each provision, this Court is unable to find such police power in the State to prepare a Master Plan with unreasonable restrictions without even disclosing or with a backing of a scientific study.

(60)The Hon'ble Supreme Court recently, in *Association of Vasanth Apartments' Owners Vs. V.Gopinath and Others* reported in **2023 SCC Online 137 : AIR 2023 SC 1011**, made a distinction between the requirement of Open Space Regulation [OSR] for development of



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Apartments as required under Rule 19 of the Development Control Rules [in short 'DCR'] and the reservation or designation of any private land for public purpose while preparing Master Plan or Detailed Development Plan under the Act, 1971. The Constitutional validity of Rule 19 of DCR came up for consideration before the Hon'ble Supreme Court. A writ petition was filed by the Association of Apartment Owners challenging the vires of Rule 19 of DCR under which a Gift Deed has to be executed in respect of 10% of area as OSR when total area of development exceeds 10,000 sq.m. A Division Bench of this Court dismissed the writ petition and upheld the validity of Rule 19. The Association preferred an appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court considered several other cases where similar issues arose for consideration and dealt with cases elaborately. On behalf of appellants before the Hon'ble Supreme Court, the argument was that the rule is contrary to the Act, that the requirement of 10% as OSR is violation of the civil right vested in every owner of the property to hold the land and that without payment of compensation, the appellants cannot be deprived of their property which is required to be conveyed in favour of Corporation as per



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DCR. Referring to some of its earlier judgments and by referring to constitutional right under Article 300A and Article 14, the argument before the Hon'ble Supreme Court was that the requirement to transfer free of cost 10% area reserved for recreational purposes is unconstitutional and the lands which are not being used for the purpose of Open Space should be reverted to the Apartment Owners. However, the Hon'ble Supreme Court made a distinction between Sections 36 to 39 of the Act, 1971 and the requirement under DCR to reserve up to 10% of the area as OSR if the total area of layout is more than 10,000 sq.m. Referring to Section 36 of the Act, 1971, it was contended before the Hon'ble Supreme Court and this Court that Rule 19[b] of DCR is beyond the rule making power as the Act does not empower the State to acquire the land without compensation.

(61)The Hon'ble Supreme Court, after analysis of all the statutory provisions under the Act, 1971, held that the Act does not contemplate execution of Gift Deed in principle. However, it was held that the land required, reserved or designated in Regional Plan, Master Plan, Detailed Development Plan, which is contemplated under Sections 36 and 37 of

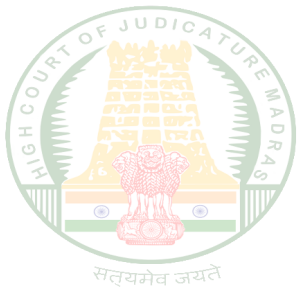


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the Act, 1971, is different from the requirement of reserving 10% of the area of development as OSR in terms of Rule 19 of DCR and is not ultra vires the Act and Rule 19 is statutory in nature. It is also held that neither the impugned Rule nor Regulation violates Article 14 or Article 300A of the Constitution of India. It was observed by Hon'ble Supreme Court that such reservation as OSR does not involve transfer. This judgment is on the interpretation and scope of Rule 19[b] of DCR. The scope of Sections 36 to 39 as interpreted by Hon'ble Supreme Court and this Court, in catena of judgments earlier discussed, would lead to the only conclusion that there is no scope of reservation of private property in the Master Plan for a public purpose and thereby, prohibit development without reference to Sections 36 to 39 of the Act.

(62) From the facts and legal principles narrated above, this Court is inclined to hold as follows:-

(a) The Government or the Local Body has no right to declare the vast extent of 13,000 Hectares as Water Catchment Area in the II Master Plan for Chennai Metropolitan Area 2026 for public purpose if they intend to prohibit any development activity



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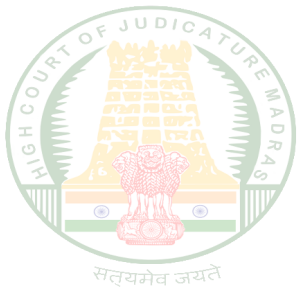
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without an intention of acquiring such land.

(b) Reservation or designation or requirement of such vast extent of land as Catchment Area in the Master Plan and thereby prohibiting any development by declaring the same as 'No Development Zone', is deemed to be released from such reservation, allotment or designation since the land is not acquired within three years from the date of publication of notice in the Tamil Nadu Government Gazette as contemplated under Section 26 of the Act, 1971.

(c) The 2nd respondent has no power to declare or reserve a vast extent of 13,000 Hectares of land covering 27 villages as 'No Development Area' or restricting development in the Master Plan without acquiring the land under Sections 36 and 37 of the Act or without paying compensation in terms of Section 39 of the Act, 1971.

(d) The reservation of vast extent of land as Catchment Area in the Master Plan in this case without an intention of paying



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compensation infringes the rights of land owners guaranteed under Article 300-A of the Constitution and such reservation is therefore, unconstitutional and can be ignored.

ISSUE No.[e]:-

(63) In the affidavit filed in support of the writ petition, specific averments are made as to discrimination in permitting development. In paragraph No.23 of the affidavit in WP.No.13437/2017, the details of about 59 buildings which have been recently constructed after II Master Plan, are furnished. In the counter affidavit, there is no specific denial as to the developments by several other Companies and individuals putting up huge constructions in the same vicinity which falls under Redhills Catchment Area. A specific ground is also raised that the impugned order prohibiting development, by citing the classification as Catchment Area is arbitrary and violative of Article 14 of the Constitution of India. The impugned order is therefore, **discriminatory and the petitioners have been discriminated by prohibiting them from utilising their lands even for construction of a godown without any other activity, while others in the same area are allowed to make profitable use of their rights over**



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the property. A similar ground is also raised by the petitioner in WP.No.13419/2017. **Therefore, the impugned order is liable to be quashed on the ground of being arbitrary, discriminatory and irrational.**

ISSUE [f]:-

What is Catchment?

(64) Invariably, Catchment is an area of land where water collects when it rains, often bounded by hills. As the water flows over the landscape it finds its way into streams and down into the soil, eventually feeding the river. Some of this water stays underground and continues to slowly feed the river in times of low rainfall. Every inch of land on the earth forms part of a catchment. Catchment in the normal parlance means collection of rainfall. Catchment Area with reference to a water body denotes the area from which rainfall flows into such water body like river or stream.

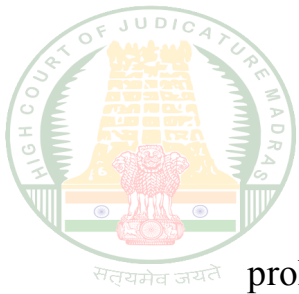
In *Narmada Bachao Andolan Vs. Union of India and Others* reported in *AIR 2000 SC 3751*, Catchment Area is understood as the area wherein the rainfall water is collected and drained into the river or reservoir. The entire area from which drainage is received by a body of water [Reservoir,



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lake or river] is recognized as Catchment Area in a few legislations. In several countries Catchment Authority is constituted under statutes to manage and protect water catchments by providing catchment infrastructure to ensure supply of quality water. From a little search, this Court finds instances of appointing Agencies to manage and protect the Catchment Area and to provide Catchment infrastructure to promote and ensure water quality. In Tamil, Water Catchment Area is known as "நீர்ப்பிடிப்பு பகுதி" which is given the meaning "நீர்நிலைகளுக்கு, நீர் வந்து சேருவதற்கு ஆதாரமான பகுதியாக அமையும் மழை பெய்யும் பரப்பு."

(65)The Catchment Area is not a water body as such. However, any area may serve as a Catchment Area with reference to a particular water body. Catchment is natural and it cannot be and need not be artificially created. In other words, out of a larger area which serves as a Catchment Area, an extent of about 13,000 Hectares of land covering 27 villages have now been earmarked to impose restrictions on development without a scientific study or knowledge of any social or economical impact and the possible benefits to the public. What is the outweighing advantage by

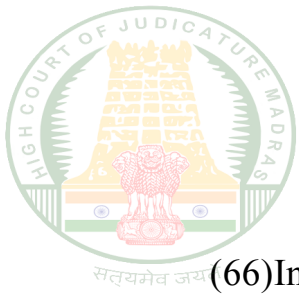


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prohibiting development is not stated on the basis of any scientific study.

By providing infrastructure to drain water to collect through storm water drainage channel or by making rain water harvesting compulsory in all areas surrounding Redhills lake, it is possible to achieve desired result without prohibiting development. If the 2nd respondent has notified a vast extent of about 13,000 Hectares as a 'No Development Area' to prevent any urban activities, the same without a scientific study cannot be permitted. Even if it is done in public interest, there is no scope for keeping the reservation without acquiring the land in terms of Section 38 of the Act, 1971. No other provision saves total prohibition for development affecting the property rights of the land owners. Though the right to property is no more fundamental after Article 19[1][f] had been deleted, the right guaranteed under Article 300-A is recognized as a constitutional or human right. Unless deprivation of right is under a fair and reasonable legislation, an executive decision in exercise of power under a statute without an application of mind or on any scientific basis cannot be permitted.

POLICY DISCONNECT OR GLARING CONTRADICTIONS:-



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(66) In the counter affidavit, it is stated that Redhills, Sholavaram and Puzhal lakes are the main sources of water supply to the Chennai City. Since these lakes have vast catchment areas in which several water bodies are existing and major water source to these lakes is the run-off during rainfall in the water bodies situated in the upstream site of these lakes, it is contended that maintenance of Catchment Area free from developments is very important to maintain the quantity as well as quality of drinking water supply sourced from these lakes to Chennai City. It is further stated that considering the importance of this Catchment Area [27 villages which are notified as Redhills Catchment Area], it is stated that the development therein are regulated as per Regulations in Annexure-XII of Development Regulations 2008. It is also stated that in the Catchment Area, only existing developments are allowed and no reclassification into any urban use zone is permitted.

(67) It is true that the State has a definite interest in seeing that no drop of water from any of the streams of the State go waste. If it is a contention that the vast extent of land is now classified as water catchment area prohibiting or restricting building activities and to keep the land as



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Agricultural Use Zone, this Court is unable to find any logic or any scientific basis for the conclusion.

(68) Every year about 90,000 cubic Kilometres volume of water evaporates from sea. Only less than 10% of the quantity is returned to the lands by rain. A scientific study reveals that 8% of fresh water is required for human health and sanitation purposes and 20% is consumed by industries. Remaining water around 70% is used only for agricultural purposes. It is true that agricultural operation is most essential and production of food grain and other consumer goods is very important for the existence of mankind and animals and all other living things. When the State has no definite plan or infrastructure to save water that goes to Sea during rainy season throughout the State, we are unable to appreciate any wisdom in the decision of the State, Local Body and the Planning Authorities to now designate a vast extent of more than 13,000 Hectares of land [covering 27 villages] in a partially developed portion of the City as Catchment Area with a hope that this would ensure regular feeding to Red Hills Lake which is one of the main sources of drinking water to the city and to allow only agricultural operation in this huge area which



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would deprive the city population to get a drop of drinking water from the lakes.

(69)The Hon'ble Supreme Court and this Court have time and again issued several directions to preserve and protect water body and water resources. In this regard, the judgment of the Hon'ble Supreme Court in ***State of Orissa Vs Government of India and Others*** reported in **2009 [5] SCC 492**, has issued directions to the Central and State Governments to constitute a body of eminent scientists to find out scientific ways and means to solve water shortage problem throughout the country. However, both the Central and State Governments have not found out a solution to prevent the increasing volume of rain water going to Sea by maintaining at least the carrying capacity of every water body. This Court, has issued several directions, taking note of the ecological impact by growing Eucalyptus trees and Karuvelam trees which draw up huge quantity of water from soil wherever they are planted, no active or effective step is taken by the State Government all these years despite several directions issued by this Court earlier to prevent falling of water level dramatically due to growing of these species. As a matter of fact, we find that growing



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of Eucalyptus trees in plain is encouraged by the Government owned Undertaking like M/s.Tamil Nadu Newsprint and Paper Limited [TNPL].

(70)Learned Advocate General produced before this Court, the Interim Report submitted by the Centre for Urbanization, Buildings and Environment [hereinafter referred to as M/s.CUBE] on the Study of Impact of Urbanization of the Red Hills Catchment Area and Measures for its Conservation and Protection from Urbanization.

(71)From the Report, it is revealed that out of 1189 sq.km of Chennai Metropolitan Area, [now the area is expanded to above 5000 sq.km.] an extent of 137.2 sq.km [13,720 Hectares] is declared as Red Hills Catchment Area. The Report is submitted only in the year 2023. From the Report it is also seen that the Report is about the study of Impact of Urbanization of Redhills Catchment Area and Measures for its Conservation and Protection from Urbanization. The concern of the Expert Body is about the Urban Development which can significantly impacts Catchment Areas, affecting the hydrological cycle, water quality and overall ecosystem. Since urban development involves the construction of impervious surfaces such as roads, buildings and parking



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lots, which prevent the natural infiltration of water into ground, leading to increased surface run-off, the Committee expressed its concern because of more water being flown into rivers and streams which can cause higher peak flows and increase the risk of flooding. The Expert Body also expressed its concern about the possible water pollution or contamination due to industrial activities in Catchment Area. The Expert Body also accepts vegetation as a balancing factor in regulating water flow reducing erosion and enhancing water quality through natural filtration process.

(72) If the prime intention of the respondents to reserve huge area as Catchment Area for the purpose of getting more water flow into Redhills Lake, the agricultural activities suggested by the Expert Body is quite contrary to the idea of Catchment Area being served as a water source for the Redhills lake. If agricultural activity is permitted in such huge extent of area, even a drop of water will not be available in the Redhills lake for human consumption. Therefore, obviously there is a policy disconnect.

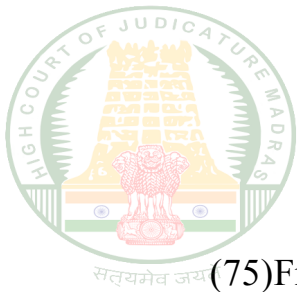
(73) From the above, this Court only infer that the respondents have no idea while declaring 27 villages as Catchment Area in the II Master Plan. It is surprising to note that the Catchment Area should be understood as a



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natural geographical feature. Therefore, by declaring a portion of Redhills Area as a Catchment Area is discriminatory. Even though management of catchment area is essential to improve the eco system, what is more required is to provide the necessary infrastructure to maintain the Catchment Area to serve the real purpose, that is, to get quality drinking water for the City. Culling out a specific area as a Catchment Area and declare this as a Development Prohibited Zone, as admitted by the respondents in the counter affidavit, is due to lack of proper consultation and planning. Therefore, the necessity for getting a Report from M/s.CUBE indicates that the respondents have now realised the Policy Disconnect or the lack of wisdom in restricting the Redhills Catchment Area to confined 13,720 Hectares of land and to declare the same as "Development Prohibited Zone".

(74) This Court, having gone through the Report and the contents of the counter affidavit, can infer that the decision taken in the year 2008 to declare a vast extent of 13,000 Hectares as Catchment Area in the Master Plan does not go well with the reasons now stated in the counter affidavit, prohibiting development in Catchment Area.



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(75) From the above discussion, this Court has no hesitation to hold that **the impugned order is lacking wisdom and it suffers from legal malafides.**

POINT [g]:-

(76) The learned Advocate General relied upon the judgment in ***J.Amsaveni's case [cited supra]***. In a similar case, a different note is struck in the following lines:-

"30. In the present case, there is no transfer of land but only restriction on use. The records reveal that the proposal for removing the area from being a catchment area was also considered atleast a decade ago, and rejected. Sections 26, 27 and 38 apply where at the time of making the plan, the land is reserved, allotted or designated for the use by the State for creation of public utility areas like roads, parks, community halls, etc. If these areas are not acquired, then the reservation under the plan lapses and the owner gets a right to develop it in a manner he deems fit. Even then, the development must be in accordance with the plan. As long as the plan exists, the owner cannot claim a right to raise a construction."

(77) The question before the Division Bench is exactly the same. After

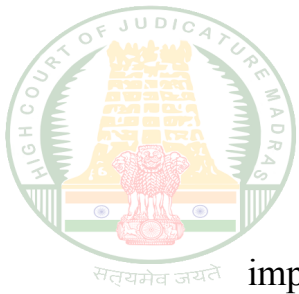


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taking note of the fact that the Redhills and Puzhal lakes are very important lakes for water supply and it is the duty of the State to protect the same, the Division Bench observed that Catchment Areas had been identified in the Master Plan and there is no transfer of ownership.

(78)The question before this Court is whether this Court, being a co-equal Bench, can ignore the said judgment or hold that the said judgment cannot be a binding precedent.

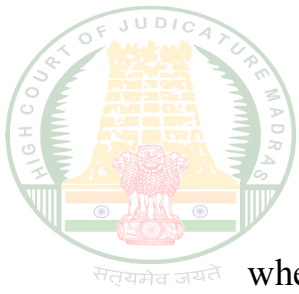
(79)The Hon'ble Supreme Court has time and again reiterated that if a Coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter has to be referred to a Larger Bench. While the law laid down in a decision delivered by a Bench of larger in strength is binding on any subsequent Bench of lesser or co-equal strength, it is always held as inappropriate for a Division Bench to overrule the decisions of co-equal Bench. Such a practice is held to be detrimental not only to the rule of discipline and the Doctrine of binding precedents, but was considered with great amount of concern to avoid inconsistency in decisions on the binding of law as consistency and certainty is more



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important for the development of law. However, if a judgment of co-equal Bench is *per incuriam* of a Larger Bench or a binding precedent by the Hon'ble Supreme Court or in ignorance of statutory provisions, a judgment cannot be a precedent or an authority for the proposition it lays. This exception is well accepted. Keeping in mind the principles that Hon'ble Supreme Court had reiterated to maintain judicial discipline, this Court has considered the judgment of the Division Bench in ***J.Amsaveni's case*** [cited supra] with a forensic mind.

(80)The Division Bench in ***J.Amsaveni's case***, has dealt with the same situation where the owner of land submitted a representation alleging that by virtue of Section 36 of the Act, 1971, the lands which fall within the Catchment Area as per the II Master Plan are not acquired by the Government within the period prescribed and that the lands shall be deemed to have been released. However, the Development Authority rejected the representation on the ground that the question of applying the Land Acquisition Act does not arise as the classification of lands as Catchment Area only restrict the usage of lands and hence, Section 38 of the Act, 1971, is not applicable. The Division Bench dealt with a case



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where the private land owner filed a writ petition to quash the communication dated 19.09.2017 and to direct the respondents to release the lands belonged to the petitioner from being reserved as Catchment Area and reclassified the same as Urban Use Zone within the stipulated time. It is to be noted that the issue that was taken for consideration by the Division Bench was whether the respondents therein are justified in classifying the area as a water catchment area for Redhills lake and declare it as a 'No Development Zone' under the II Master Plan for Chennai Metropolitan Area. After referring to Sydney Water Catchment Authority and Stream Sense Manual to know, what is a catchment, the Division Bench has relied upon several judgments of Hon'ble Supreme Court and the recommendations to protect and improve the environment, the water bodies and the need to prioritize providing drinking water over other development programs. Again the Division Bench relied upon a few judgments of Hon'ble Supreme Court on the importance to preserve the valuable right guaranteed under Article 21 of the Constitution of India and the duty of Courts to balance development on one hand and environment on the other. The Division Bench, in paragraph No.12,

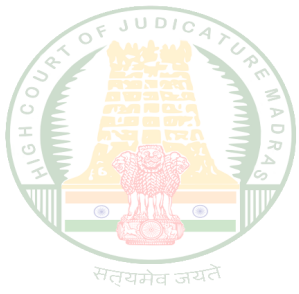


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referred to the judgment of Hon'ble Supreme Court in ***Indore Vikas Pradhikaran Vs. Pure Industrial Coke and Chemicals Limited*** reported in ***2007 [8] SCC 705***, wherein the Hon'ble Supreme Court has held as follows:-

"45. Town and country planning involving land development of the cities which are sought to be achieved through the process of land use, zoning plan and regulating building activities must receive due attention of all concerned. We are furthermore not oblivious of the fact that such planning involving highly complex cities depends upon scientific research, study and experience and, thus, deserves due reverence.

46. Where, however, a scheme comes into force, although it may cause hardship to the individual owners as they may be prevented from making the most profitable use of their rights over property, having regard to the drastic consequences envisaged thereunder, the statute should be considered in such a manner as a result whereof greater hardship is not caused to the citizens than actually contemplated thereby. Whereas an attempt should be made to



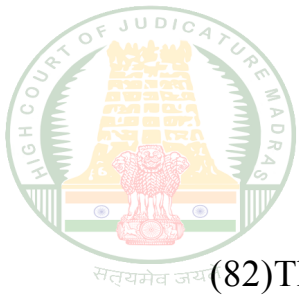
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prevent unplanned and haphazard development but the same would not mean that the court would close its eyes to the blatant illegalities committed by the State and/or the statutory authorities in implementation thereof. Implementation of such land development as also building laws should be in consonance with public welfare and convenience. In United States of America zoning ordinances are enacted pursuant to the police power delegated by the State. Although in India the source of such power is not police power but if a zoning classification imposes unreasonable restrictions, it cannot be sustained. The public authority may have general considerations, safety or general welfare in mind, but the same would become irrelevant, as thereby statutory rights of a party cannot be taken away. The courts must make an endeavour to strike a balance between public interest on the one hand and protection of a constitutional right to hold property, on the other."

(81) This Court has already referred to the relevant passages of the judgment of Hon'ble Supreme Court in **Indore Vikas Pradhikaran's case** [cited supra] in the earlier paragraphs of this judgment.



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(82)The judgment of Hon'ble Supreme Court in ***Indore Vikas***

Pradhikaran's case [cited supra] has been relied upon by the co-equal Bench ignoring the spirit of the judgment as a whole and ignoring the principle or legal position reiterated by Hon'ble Supreme Court in the said judgment.

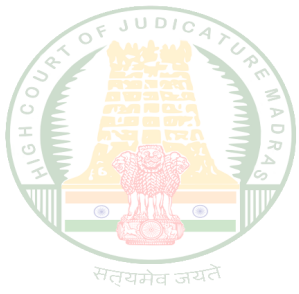
(83)Be that as it may, the Division Bench then extracted the facts leading to the filing of writ petition including the grounds raised in the writ petition. The judgment of a learned Single Judge made in WP.No.30169/2022 was relied on by the learned counsel for the petitioner therein, wherein the learned Single Judge held that lands having not been acquired as per Section 38 of the Act, 1971, stand released. After referring to the details furnished by the respondents therein for classifying 23 villages as Redhills Catchment Area, the Division Bench considered the policy of the respondents to restrict development only to preserve Redhills Catchment Area. After accepting the contention of the respondents that Sections 37 and 38 cannot be made applicable for classification of vast area as Catchment Area and therefore, application of Section 38 of Act, 1971, does not arise after referring to Sections 36, 37 and 38 of the Act, 1971,



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the Division Bench held that the State has power to regulate the manner in which an area is to be developed and that, it is fundamental of any Zoning Regulation law. The Division Bench also observed that a combined reading of the provisions of the Act shows that the plan must propose transfer of title from the owner to the Government for the purpose of implementing any of the plans set forth under Section 36 of the Act. Quite surprisingly after referring to the judgment of the Hon'ble Supreme Court in ***Association of Vasanth Apartments Owners Vs. V.Gopinath and Others*** reported in **2023 SCC Online 137**, the Division Bench has held as follows:-

"30.In the present case, there is no transfer of land but only restriction on use. The records reveal that the proposal for removing the area from being a catchment area was also considered atleast a decade ago, and rejected. Sections 26, 27 and 38 apply where at the time of making the plan, the land is reserved, allotted or designated for the use by the State for creation of public utility areas like roads, parks, community halls, etc. If these areas are not acquired, then the reservation under the plan lapses and the



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owner gets a right to develop it in a manner he deems fit. Even then, the development must be in accordance with the plan. As long as the plan exists, the owner cannot claim a right to raise a construction.

31. A master plan is formed under Section 17 of the Tamil Nadu Town and Country Planning Act, 1971. The master plan is prepared by the local planning authority after consultation with the regional planning authority. The provision under Section 17(2) empowers the architects of the master plan to decide as to how the land in the planning area (defined under Section 2(30) which includes the Master Plan for Chennai area) are to be used. The said Section 17 makes a difference between the manner of use under Section 17(2)(b) and 17(2)(c). This Section makes it very clear that the planning authorities have the power to restrict the usage of particular land or area. The provisions relating to acquisition do not apply to these lands. The areas where lands which are required, reserved or designated alone are to be proceeded for acquisition. In the case at hand, the restriction is on the use, that is to keep apart the area for the surface water to run off into the lake. By no



stretch of imagination, the restriction on use can be interpreted as requisition/reservation/designation for the purpose of land acquisition in terms of Section 17 (2) (b), (c), (d), (g), (i), (k) and (j). The relevant provision reads as under:

"17. Master Plans.

...

(2) The master plan may purpose or provide for all or any of the following matters, namely:-

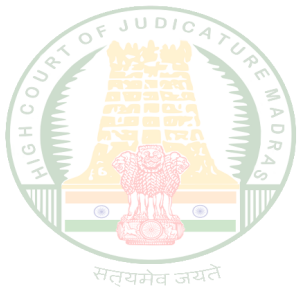
(a) the manner in which the land in the planning area shall be used;

(b) the allotment or reservation of land for residential, commercial, industrial and agricultural purposes and for parks, play-fields and open spaces;

(c) the allotment and reservation of land for public buildings, institutions and for civic amenities;

(d) the making of provision for national highways, arterial roads, ring roads, major streets, lines of communication including railways, airports and canals;

(e) the traffic and transportation pattern and traffic circulation pattern;



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(f) the major road and street improvements;

(g) the areas reserved for future development, expansion and for new housing;

(h) the provision for the improvement of areas of bad layout or obsolete development and slum areas and for relocation of population;

(i) the amenities, services and utilities;

(j) the provision for detailed development of specific areas for housing, shopping, industries and civic amenities and educational and cultural facilities;

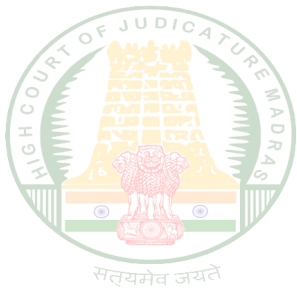
(k) the control of architectural features, elevation and frontage of buildings and structures;

(l) the provision for regulating the zone, the location, height, number of storeys and size of buildings and other structures, the size of the yards and other open spaces and the use of buildings, structures and land;

(m) the stages by which the master plan shall be carried out; and

(n) such other matters as may be prescribed."

32.The right of the owner to develop an area after getting approvals, is restricted, for a period of

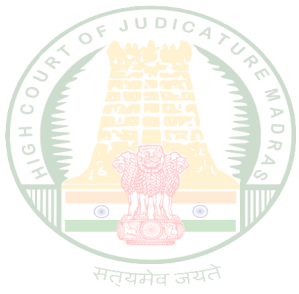


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three years. On the lapse of three years, law presumes that the Government does not require the land reserved by it and a right is conferred on the owner to develop it in accordance with law. The three year period is a reasonable restriction on the right of the owner. We have to note, even if there are no reservations, still the owner has to comply with the zoning and town planning laws. It is always open to the State to restrict the development of land. For example, it can refuse to grant permission for residential constructions in an industrial area and vice versa. That does not mean the right of the owner of the land is taken away, it is only regulated. Similarly, in the present case, the right, title and interest over the lands of the petitioner and those situated in 23 villages found in Annexure XVII of the 2019 Rules, are not taken away and they continue to be the owners. Even at the time of purchase, the petitioner was aware that they are purchasing lands near a huge trough of water. Unplanned development in such areas would lead to not only cutting of the source of water to the Red Hills lake but could also have consequences of flooding.



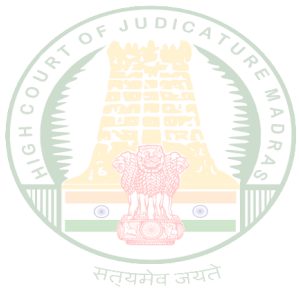
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33. *This would have been sufficient to dispose the writ petition. However, considering the importance of the issue we have to dwell into The Tamil Nadu Combined Development and Building Rules, 2019. These Rules of 2019 have been notified on 04.02.2019. The notification has been issued, inter alia, in the exercise of powers vested in the Government under Section 32(4) and Section 122 of the Tamil Nadu Town and Country Planning Act, 1971, apart from several other legislations dealing with local bodies. In particular we would refer to Annexure XVII read with Rule 9 of the Tamil Nadu Combined Development and Building Rules, 2019. As per the Annexure XVII, certain areas come under the category of development prohibited or restricted areas. Clause 12 of Annexure XVII reads as follows:-*

"(12) Catchment area (only for CMA): *Redhills and Puzhal lakes are the main sources of water supply to the Chennai City. In order to protect this water source from the negative impacts of the urban developments contiguous areas in the catchments of these lakes has been declared as "Redhills catchments area". The description of the catchments area and*



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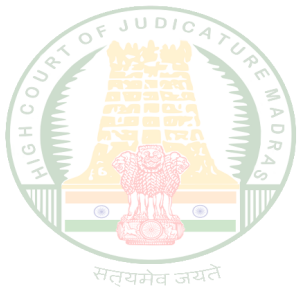


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regulations for development therein is given in Appendix-B."

34. As stated above, Red Hills and Puzhal lakes are very important lakes for water supply and it is the duty of the State to protect the same. Therefore, to prevent the negative impacts of urban development in these areas, "catchment areas" had been identified and Regulations for development had been notified. In so far as Red Hills catchment areas are concerned, Appendix-B to Annexure-XVII gives a list of 27 villages. Out of these 27 villages, 23 villages are covered in full and 4 villages have been partly notified. A perusal of the list of the villages notified shows that Vellanur and Morai villages come under the category of the entire villages being notified as the catchment areas. These two villages are found in Serial Nos. 4 and 5.

35. It has also been notified in clause 6 of Annexure B that no lands shall be re-classified into any urban use zone. The Rules read with the Annexure makes it very clear that the State and its entities in discharging its duties to protect the environment and to save the catchment areas, have decided to prohibit



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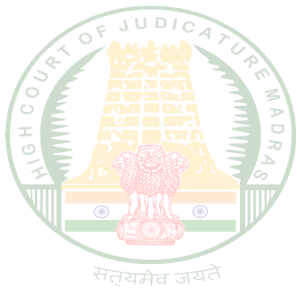
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any development in the form of layouts in these areas.

The need of the public outweighs the private interest in real estate development. Furthermore, the same has been observed in the very judgment that has been relied upon by the writ petitioner in W.P. No. 18388 of 2016 etc. batch dated 27.09.2016. The relevant paragraph No. 13 reads as under:-

"(13) Admittedly, in Development Regulation No. 24(2) (c), Annexure-XII of the Second Master Plan for Chennai Metropolitan Area, 2026, the lands situated at Alamathi Village belonging to the petitioners are covered under the Redhills Catchment Area. According to the respondents, the lake at Redhills is the main source of water supply to Chennai and in order to protect it from the negative impacts of urbanisation of the surrounding areas, it has been declared as a catchment area, where development is restricted. However, development to certain extent are allowed, subject to satisfying zoning regulations and planning parameters in some areas falling under the catchment area, whereas, it is the specific case of the petitioners that as per Section 38 of the Act, if an area reserved under the Master Plan is not acquired within three years from the date of publication of such Master Plan, such area is deemed to be released from such reservation."

36. The above order was passed on 27.09.2016



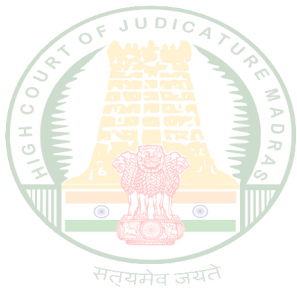
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and the Regulations have come into force on 04.02.2019. We have to point out that the petitioner has not challenged these Regulations also. We have already held that Section 38 is inapplicable to the facts of the case. The solution of the petitioner ought to have been to challenge the Regulation and she has failed to do so.

37.It is the duty of the State under Article 38 to promote the welfare of the people by securing and protecting as effectively as possible a social order in which justice prevails. Apart from that, the petitioner owes a duty under Article 51 A (g) to protect and improve the natural environment including forest, lakes, rivers and wild life and to have compassion for all living creatures. It is well-known that the lakes of Puzhal and Red Hills, supply water to the residents of the city of Chennai. There has been a growing demand for development of property in and around Chennai. This development has to go hand in hand with the requirements of environment. We feel that, in discharge of this constitutional duty to balance the interest of the public and to protect the environment, at the same time respecting the rights of the



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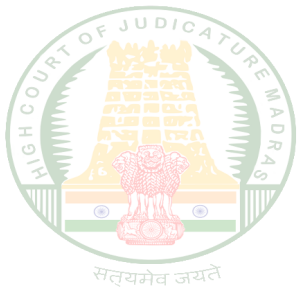


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individuals who own the property, these Regulations have been brought into force. Without water supply there is no point in trying to develop the land.

38.As early as in 1990, CMWSSB had flagged the issue of the negative impact of development of house sites in the catchment area. If the catchment area is filled up with houses, it will not only result in flooding but in the long term would result in drying up the lakes. We now refer to the work Understanding your catchment-Stream sense manual. It stated the use of catchment area. It reads:-

"Vegetation and wetlands act like sponges to slow and absorb water during wet times of the year. When we replace vegetation and wetlands with impervious surface (roading, paving, parking areas, rooftops, etc.), less water infiltrates into the ground and more water flows directly into streams through drainage ditches and stormwater drainage pipes. The increased runoff may cause a variety of problems, including flooding, streambank erosion, sedimentation and pollution. The problems created by paved surfaces are made worse at dry times of the year. Because infiltration is slowed, there is less build up of groundwater. The 'psonge' becomes dry. Without the return of groundwater, many streams simply dry up during periods of low rainfall. By reducing the amount of water a



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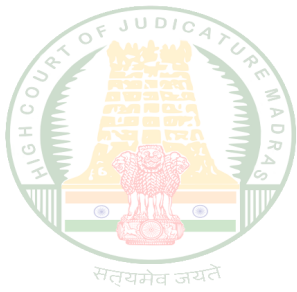
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catchment can hold, you end up having too much when it rains and not enough when it does not."

This shows that development, by means of construction on catchment areas, is absolutely deleterious to the environment.

39.It is in that light, the petitioner's right to property has been restricted and not taken away. Therefore, the argument on Article 300A fails. It is here that the position of law approved by the Supreme Court in Vasanth Apartments' case (stated supra) assumes relevance. The Court has in approval of the above view, quoted the view in Village of Euclid Ohio v. Ambler Realty Co, reported in MANU/USSC/0172/1926 as extracted hereunder:

"21.Building zone laws are of modern origin. They began in this country about 25 years ago. Until recent years, urban life was comparatively simple; but, with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities. Regulations, the wisdom, necessity, and validity of which, as applied to



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existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as oppressive. Such regulations are sustained, under the complex conditions of our day, for reasons analogous to those which justify traffic regulations, which, before the advent of automobiles and rapid transit street railways, would have been condemned as fatally arbitrary and unreasonable. And in this there is no inconsistency, for, while the meaning of constitutional guarantees never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world it is impossible that it should be otherwise. But although a degree of elasticity is thus imparted, not to the meaning, but to the application of constitutional principles, statutes and ordinances, which, after giving due weight to the new conditions, are found clearly not to conform to the Constitution, of course, must fall."

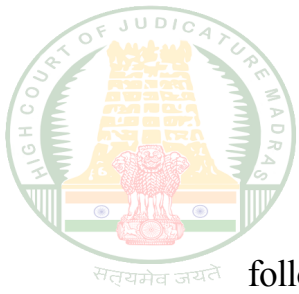
(84)First of all, the Division Bench has not noticed the *stare decisis* or the decision of the Hon'ble Supreme Court in ***Indore Vikan Pradhikaran's case*** [cited supra] and in the latest judgment in ***Association of Vasanth Apartments Owners's case*** [cited supra] reported in ***2023 SCC Online 137***. In the later judgment, the Hon'ble Supreme Court made the



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distinction between the reservation or designation or requirement of an area for a public purpose in a Master Plan and the requirement of reserving 10% of OSR where construction/development is in respect of more than 10,000 sq.m. as per Development Control Rules. It is noted that Hon'ble Supreme Court in the later case, held that there is no transfer involved since Rule 19 of DCR is held to be a valid legislation. The Division Bench in *J.Amsaveni's case* has quoted the selected phrases from the judgment of Hon'ble Supreme Court in the above cited two cases and came to the conclusion, apparently contrary to several judgments of Larger Bench of Hon'ble Supreme Court as well as the position reiterated in several decisions quoted by this Court in this judgment on interpretation of similar provisions under different statutes.

(85) Having regard to the issue that was framed for consideration and the conclusions reached placing reliance on the selected phrases of the two judgments of Hon'ble Supreme Court to derive some provisions ignoring the principles of law and the scope of similar provisions under different statutes as interpreted by Hon'ble Supreme Court, this Court is unable to



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follow the judgment of the Division Bench in *J.Amsaveni's case* [cited supra].

(86)The Hon'ble Supreme Court in *State of Assam Vs. Ripa Sarma* reported in **2013 [3] SCC 63**, has held that a judgment rendered in ignorance of the earlier judgments of the Benches of co-equal strength, or by a binding precedent, cannot be elevated to the status of precedent.

(87)In *Narmada Bachao Andolan and Others Vs. State of Madhya Pradesh and Others* reported in **2011 [7] SCC 639**, the Hon'ble Supreme Court has considered the Doctrine of Precedents and Doctrine of Per Incuriam and the discussion of the Hon'ble Supreme Court by referring to different several factual contexts cannot be ignored. For convenience, it is relevant to extract the relevant paragraphs which read thus:-

"PRECEDENCE DOCTRINE:-

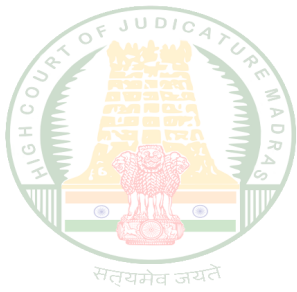
64. The court should not place reliance upon a judgment without discussing how the factual situation fits in with a fact situation of the decision on which reliance is placed, as it has to be ascertained by analysing all the material facts and the issues



involved in the case and argued on both sides. A judgment may not be followed in a given case if it has some distinguishing features. A little difference in facts or additional facts may make a lot of difference to the precedential value of a decision. A judgment of the court is not to be read as a statute, as it is to be remembered that judicial utterances have been made in setting of the facts of a particular case. One additional or different fact may make a world of difference between the conclusions in two cases. Disposal of cases by blindly placing reliance upon a decision is not proper. (Vide MCD v. Gurnam Kaur [(1989) 1 SCC 101 : AIR 1989 SC 38] , Govt. of Karnataka v. Gowramma [(2007) 13 SCC 482 : AIR 2008 SC 863] and State of Haryana v. Dharam Singh [(2009) 4 SCC 340 : (2011) 2 SCC (L&S) 112] .)

PER INCURIAM DOCTRINE:-

65. “Incuria” literally means “carelessness”. In practice per incuriam is taken to mean per ignoratium. The courts have developed this principle in relaxation of the rule of stare decisis. Thus, the “quotable in law” is avoided and ignored if it is rendered in



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ignorance of a statute or other binding authority.

66. While dealing with the observations made by a seven-Judge Bench in India Cement Ltd. v. State of T.N. [(1990) 1 SCC 12 : AIR 1990 SC 85] , the five-Judge Bench in State of W.B. v. Kesoram Industries Ltd. [(2004) 10 SCC 201] , observed as under : (Kesoram Industries Ltd. case [(2004) 10 SCC 201] , SCC pp. 292 & 297, paras 57 & 71)

“57. ... A doubtful expression occurring in a judgment, apparently by mistake or inadvertence, ought to be read by assuming that the court had intended to say only that which is correct according to the settled position of law, and the apparent error should be ignored, far from making any capital out of it, giving way to the correct expression which ought to be implied or necessarily read in the context, ...

71. ... A statement caused by an apparent typographical or inadvertent error in a judgment of the court should not be misunderstood as declaration of such law by



the court.”

(emphasis added)

(See also Mamleshwar Prasad v. Kanhaiya Lal [(1975) 2 SCC 232 : AIR 1975 SC 907], A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602 : 1988 SCC (Cri) 372 : AIR 1988 SC 1531], State of U.P. v. Synthetics and Chemicals Ltd. [(1991) 4 SCC 139] and Siddharam Satlingappa Mhetre v. State of Maharashtra [(2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] .)

67. Thus, “per incuriam” are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reason, so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.

68. Admittedly, the NWDT award did not provide for allotment of agricultural land to the major sons of such oustees. The States of Gujarat and Maharashtra had given concessions/relief over and above the said award. Thus, *Narmada Bachao Andolan (1)* [(2000) 10 SCC 664] has been decided with the presumption that such a right had been



conferred upon major sons by the NWDT award and Narmada Bachao Andolan (2) [(2005) 4 SCC 32] has been decided following the said judgment and interpreting the definition of “family” contained in the R&R Policy. When the two earlier cases were being considered by the Court, it had not been brought to its notice that the NWDT award did not provide for such an entitlement. In such cases, the issue is further required to be considered as to whether, as we will consider the definition of the word “family” at a later stage, the mistake inadvertently committed by this Court earlier, should be perpetuated.

69. The Courts are not to perpetuate an illegality, rather it is the duty of the courts to rectify mistakes. While dealing with a similar issue, this Court in Hotel Balaji v. State of A.P. [1993 Supp (4) SCC 536 : AIR 1993 SC 1048] observed as under : (SCC p. 551, para 12)

“...To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this we derive comfort and strength from the wise and inspiring words of Justice Bronson in Pierce v. Delameter [1 NY 3 (1847)] , AMY at p. 18:

“a Judge ought to be wise enough to know that

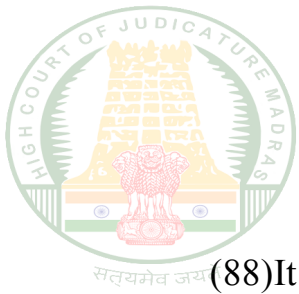


he is fallible and therefore ever ready to learn. : great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead : and courageous enough to acknowledge his errors.”’ [Ed. : As observed in Distributors (Baroda) (P) Ltd. v. Union of India, (1986) 1 SCC 43, p. 46, para 2.] ”

(See also Nirmal Jeet Kaur v. State of M.P. [(2004) 7 SCC 558 : 2004 SCC (Cri) 1989] and Mayuram Subramanian Srinivasan v. CBI [(2006) 5 SCC 752 : (2006) 3 SCC (Cri) 83 : AIR 2006 SC 2449] .)

70. In Ministry of Information & Broadcasting, In re [(1995) 3 SCC 619] this Court observed : (SCC p. 629, para 10)

“10. ... None is free from errors, and the judiciary does not claim infallibility. It is truly said that a judge who has not committed a mistake is yet to be born. Our legal system in fact acknowledges the fallibility of the courts and provides for both internal and external checks to correct the errors. The law, the jurisprudence and the precedents, the open public hearings, reasoned judgments, appeals, revisions, references and reviews constitute the internal checks while objective critiques, debates and discussions of judgments outside the courts, and legislative correctives provide the external checks. Together, they go a long way to ensure judicial accountability. The law thus provides procedure to correct judicial errors.”



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(88) It is also useful to refer to the judgment of Hon'ble Supreme Court in ***V.Kishan Rao Vs. Nikhil Super Speciality Hospital and Others*** reported in **2010 [5] SCC 513**, wherein the Hon'ble Supreme Court has held as follows:-

"54. When a judgment is rendered by ignoring the provisions of the governing statute and earlier larger Bench decision on the point such decisions are rendered per incuriam. This concept of per incuriam has been explained in many decisions of this Court. Sabyasachi Mukharji, J. (as his Lordship then was) speaking for the majority in A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602 : 1988 SCC (Cri) 372] explained the concept in the following words : (SCC p. 652, para 42)

"42. ... 'Per incuriam' are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong."

(89) How and what renders a judgment, *per incuriam* is also considered by the Hon'ble Supreme Court in the case of ***Punjab Land Development and***



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Reclamation Corporation Limited, Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others reported in ***1990 [3] SCC 682***.

(90)In ***Subhash Chandra and Others Vs. Delhi Subordinate Services***

Selection Board and Others reported in ***2009 [15] SCC 458***, the Hon'ble Supreme Court considered a few judgments on the issue, what is *per incuriam*. Whether a decision may be held to be *per incuriam* where relevant statutory provisions, or binding case law authority, have been overlooked or misinterpreted in arriving at the decision. It is well settled that a *per incuriam* precedent can be ignored or overlooked and of course, it is not an easy job in every case where the factual issues are little complicate. In the instant case, this Court has already observed that all the provisions of the Act, 1971, were not considered by the co-equal Bench. There is no specific provision which would enable the authorities to classify any land in the Master Plan as one reserved for public purpose and thereby prohibiting development without resorting to Sections 36, 37 and 39 of the Act, 1971. In other words, the 1971 Act though permits restricted land use according to classification subject to payment of compensation as contemplated under Section 39 of the Act, it does not

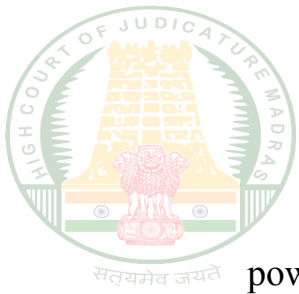


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authorise the classification of a huge track of lands as Catchment Area and declare the lands as "No Development Zone" without acquiring the same as contemplated under the Act. The conclusion reached by the Division Bench accepting the arguments of the respondents therein that reservation of a vast extent of land as Catchment Area does not fall within the purview of Sections 36 and 37 of the Act and therefore, Section 38 is not applicable, is in ignorance of law and principles reiterated by Hon'ble Supreme Court and this Court on the interpretation of Sections 36 to 38 of the Act, 1971, in several precedents. Since the judgment of the Division Bench in *J.Amsaveni's case* [cited supra] has failed to take note of several judgments which are binding on application of Doctrine of *stare decisis*, the said judgment does not stand as a precedent. This Court has no hesitation to hold that the judgment by co-equal Bench in *J.Amsaveni's case* is *per incuriam* of the core provisions of the Act, 1971, and several binding precedents.

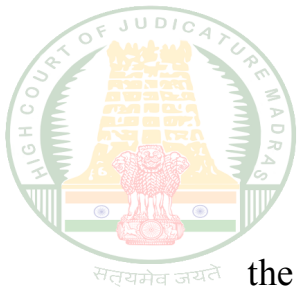
ISSUE [h]:-

(91)The learned Advocate General submitted that the restrictions or prohibitions in the Catchment Area is permissible in exercise of the police



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power of the State. He also relied upon the judgment of Hon'ble Supreme Court in *K.T.Plantation Private Limited and Another Vs. State of Karnataka* reported in *2011 [9] SCC 1*. He contended that the State has police power to acquire the land in exercise of its power of eminent domain which are distinguishable. In the above judgment, the constitutional validity of Roerich and Devikarani Roerich Estate [Acquisition and Transfer] Act, 1996, [hereinafter referred to as 'the Acquisition Act'] and Section 110 of Karnataka Land Reforms Act, 1961, along with scope of Article 300-A of Constitution were examined. The Acquisition Act contemplates some compensation and not compensation payable under Land Acquisition Act, 1894. The Hon'ble Supreme Court held that Acquisition Act was meant for promotion of agriculture and therefore, enacted as an agrarian reform to get protection under Article 31-A of Constitution so that no one can challenge under Articles 14 and 19 of Constitution. Even though Act provides for compensation, it was argued that compensation fixed is illusory. Since it is held that Act is protected under Article 31-A of Constitution, the Hon'ble Supreme Court further held that the Acquisition Act cannot be called in question in any Court on



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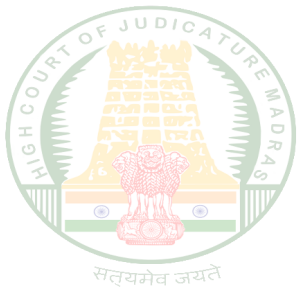
the ground that compensation provided by that Act was not adequate.

The Hon'ble Supreme Court however clarified the legal position that a law seeking to acquire private property for public purpose cannot say 'no compensation shall be paid' in paragraph No.192. When Tamil Nadu Town Planning Act contemplates acquisition by following Land Acquisition Act when a land is reserved for public purpose in a Master Plan and requires payment of compensation even if a person's right to develop is affected by restrictions, this Court is unable to find any support to the stand of State relying upon this judgment.

(92)It is to be noted that the Town Planning Act is enacted in exercise of statutory power of the State under Article 243[W] of the Constitution which reads as follows:-

243W. Powers, authority and responsibilities of Municipalities, etc.*Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow--*

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such



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law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

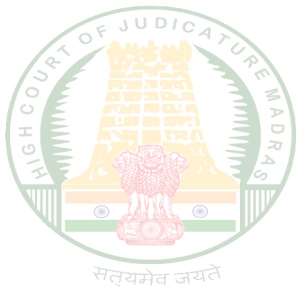
(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

(93) The following are the subjects listed in Twelfth Schedule of the Constitution:-

Twelfth Schedule [Article 243W of the Constitution]

(Seventy-Fourth Amendment) Act, 1992]

- 1. Urban planning including town planning.*
- 2. Planning of land- use and construction of buildings.*

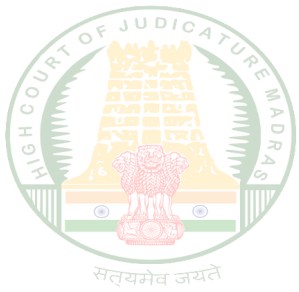


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3. *Planning for economic and social development.*
4. *Roads and bridges.*
5. *Water supply for domestic, industrial and commercial purposes.*
6. *Public health, sanitation conservancy and solid waste management.*
7. *Fire services.*
8. *Urban forestry, protection of the environment and promotion of ecological aspects.*
9. *Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.*
10. *Slum improvement and upgradation.*
11. *Urban poverty alleviation.*
12. *Provision of urban amenities and facilities such as parks, gardens, playgrounds.*
13. *Promotion of cultural, educational and aesthetic aspects.*
14. *Burials and burial grounds; cremations, cremation grounds and electric crematoriums.*
15. *Cattle pounds; prevention of cruelty to animals.*
16. *Vital statistics including registration of births and deaths.*



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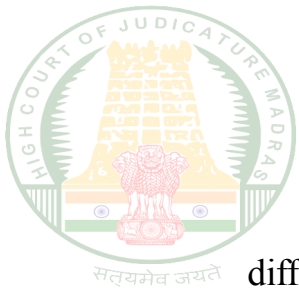
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*17.Public amenities includind street lighting,
parking lots, bus stops and public conveniences.*

18.Regulation of slaughter houses and tanneries.

(94)A legislation by a State in exercise of its power under Article 243[W] is only to provide basic amenities and to carry out responsibilities conferred upon the Local Body in relation to matters listed in the Twelfth Schedule. Having regard to the source of power, this Court is unable to accept the contention that the State has exercised its police power while preparing the Master Plan or any Development Plan through the authorities. The Police Power of the State may be exercised when the legislative power is exercised to protect the environment in public interest or when the legislation intend to protect the nation during emergencies. It is to be noted that Hon'ble Supreme Court has specifically held in the case of ***Chairman, Indore Vikas Pradhikaran's case [cited supra]***, that in India, source of power to legislate on town planning, is not a police power.

(95)Learned Advocate General submitted that the restrictions under Town Planning Act are similar to the Coastal Zone Regulation or restricting development under Archaeological Survey of India Regulations or under



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different Central enactments by the Union. The Central Government, in exercise of its power to protect environment, enacted Environment Protection Act. The Coastal Zone Regulations are in exercise of its power under the Act to protect environment. Similarly, the source of power to restrict development or prohibit development under different enactments cannot be compared with the restrictions under Town Planning legislation. When the restrictions or reservation under the Town and Country Planning Act is subject to satisfying the statutory provisions, the respondents cannot rely upon prohibitions or restrictions in different enactments where the source of power and object of legislations are entirely different. Hence, this Court is unable to countenance the arguments of learned Advocate General by comparing the restrictions under the Town Planning Act to that of Coastal Zone Regulations or other restrictions under Archaeological Survey of India Regulations.

ISSUE [i]:-

(96) From the additional counter affidavit filed by the respondents, it is seen that M/s.CUBE, an Expert Body has been tasked to carry out a study on the impact of urbanization of Redhills Catchment Area and measures for

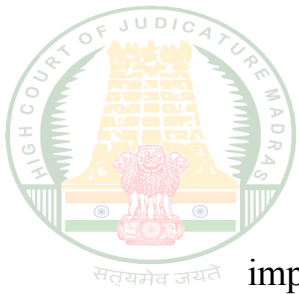


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its conservation and protection from urbanization. The Expert Body has submitted an interim report. The respondents have now stated that the Report was required by the Government at the instance of representatives from various stakeholders. Therefore, the respondents have submitted before this Court that they will review the categorisation and fresh Regulations on the development in water catchment area after a study. When the respondents have decided to review the Regulation after the Final Report from M/s.CUBE, this Court is of the view that the impugned order cannot be allowed to stand. It is also to be noted that the impugned order is contrary to the Master Plan inasmuch as the petitioners' were directed to demolish the godown/building only on the ground that no development is permissible in catchment area. Whereas, some developments which are permissible in Mixed Residential Zone, Semi-Industrial Zone, are permitted even as per the Regulations in catchment area. The impugned order is therefore, contrary to the Regulations in the II Master Plan.

CONCLUSION:-

(97)For all the above reasons, the writ petitions stand **allowed** and the



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impugned order dated 26.04.2017 in Letter No.24801/UD-VII[1]/2016-3 is hereby **quashed**. The classification of limited extent of 13,720 Hectares of lands as catchment area as per Second Master Plan is declared unconstitutional. However, it is open to the respondents to revise the Master Plan taking note of this judgment and in the light of the recommendations of M/s.CUBE in their Final Report strictly adhering to the provisions of the Tamil Nadu Town and Country Planning Act, 1971. The respondents shall consult experts and provide necessary infrastructure to ensure protection of water bodies throughout the area where the jurisdiction of CMDA is extended and supply of quality drinking water in sufficient quantity. No costs. Consequently, connected miscellaneous petitions are closed.

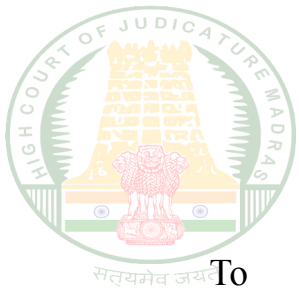
[S.S.S.R., J.] [N.S., J.]
30.04.2024

AP

Index: Yes

Internet : Yes

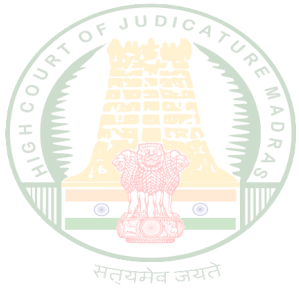
Neutral Citation: Yes



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- To
1. The Secretary
Government of Tamil Nadu
Housing and Urban Development
Department, Fort St George
Chennai 600 009.
 2. The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajar Maligai
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008.
 3. The Director,
Rural Development and Panachayat Raj
Panagal Building, Saidapet,
Chennai 600 015.
 4. The Commissioner
Sholavaram Panchayat Union
Sholaavaram, Thiruvallur District.
 5. The Superintending Engineer
Water Resources Organization
Palar Irrigation Division, Chepauk
Chennai 600 005.



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S.S. SUNDAR, J.,
and
N.SENTHILKUMAR, J.,

AP

Common Order in
WP.Nos.13419 & 13437/2017

30.04.2024