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W.P.Nos.3873, 24934 and 24935 of 2017 and 26578 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and**

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.Nos.3873, 24934, 24935 of 2017 and 26578 of 2013

and

W.M.P.Nos.26312, 26313 of 2017, 19735 of 2021 and 26092 of 2023

and

M.P.No.1 of 2013

W.P.No.3873 of 2017

V.N.R Nagar Welfare Association

... Petitioner

Vs.

1. The District of Town and Country Planning,
Anna Salai, Chennai – 600 002.
2. The District Collector,
Coimbatore.
3. The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore.
4. The Member Secretary,
Local Planning Authority of Coimbatore,
Sivananda Colony, Tata Batch, Coimbatore.
5. S.Thulasi
[R5 impleaded]

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 2 to 4 to clear all the encroachments notified in the Annexure A to the writ petition with necessary police protection within a time frame to be fixed by this Hon'ble Court.

For Petitioner : Mr.N.S.N.Krishnakumar

For R1, R2 & R4 : Mr.A.Selvendran,
Special Government Pleader

For R3 : Mr.K.Magesh, Standing Counsel

For R5 : Mr.Niranjan Rajagopalan
for M/s.Mathuvanthi Madhavan

W.P.No.24934 of 2017

R.Muralidharan

... Petitioner

Vs.

1. The District Collector,
Coimbatore District,
Coimbatore.
2. The Director of Town and Country Planning,
4th Floor, Chengalvarayan Building,
807, Anna Salai, Chennai – 600 002.
3. The Commissioner,
Coimbatore Corporation,
Coimbatore – 641 001.



4. The Member Secretary,
Local Planning Authority,
Tatabad, Coimbatore – 641 012.

... Respondents

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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 3rd respondent by proceedings in ROC. No.5795/ 2017/H1W dated 28.8.2017 and quash the same.

For Petitioner : Mr.P.Saravana Sowmiyan

For R1, R2 & R4 : Mr.A.Selvendran,
Special Government Pleader

For R3 : Mr.K.Magesh, Standing Counsel

W.P.No.24935 of 2017

R.Venkatachalam

... Petitioner

Vs.

1. The District Collector,
Coimbatore District,
Coimbatore.

2. The Director of Town and Country Planning,
4th Floor, Chengalvarayan Building,
807, Anna Salai, Chennai – 600 002.

3. The Commissioner,
Coimbatore Corporation,



Coimbatore – 641 001.

4. The Member Secretary,
Local Planning Authority,
Tatabad, Coimbatore – 641 012.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 3rd respondent by proceedings in ROC. No.5794/2017/H1W dated 28.8.2017 and quash the same.

For Petitioner : Mr.N.Manokaran

For R1, R2 & R4 : Mr.A.Selvendran,
Special Government Pleader

For R3 : Mr.K.Magesh, Standing Counsel

W.P.No.26578 of 2013

C.Arulsamy @C.A.Samy

... Petitioner

Vs.

1. The Commissioner,
Coimbatore City Municipal Corporation,
Big Bazaar Street,
Coimbatore – 641 001.

2. V.N.R Nagar Welfare Association
[R2 impleaded vide order dated 09.10.2013]

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India,



to issue a Writ of Certiorari, calling for the records pertaining to the impugned order dated 24.08.2013 issued by the respondent under Section 258(4) and 441 of the Coimbatore City Municipal Corporation Act, 1981, quash the same.

For Petitioner : Mr.N.Manokaran
For R1 : Mr.K.Magesh
For R2 : Mr.N.S.N.Krishnakumar

COMMON ORDER

(Order of the Court was made by **S.M.SUBRAMANIAM, J.**)

The Writ Petition in W.P.No.3873 of 2017 has been instituted for directing the respondents 2 to 4 to clear all the encroachments notified in the Annexure A to the writ petition with necessary police protection within a time frame to be fixed by this Hon'ble Court.

2. The writ petitioner in W.P.No.3873 of 2017 is V.N.R Nagar Welfare Association and have set out the encroachments and illegalities and misuse of O.S.R sites in Annexure-A, which is enclosed along with the typed-set of papers.

3. With reference to the grievances, it is found that the Commissioner,



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Coimbatore City Municipal Corporation conducted inspection and verified the documents. The learned counsel for the Coimbatore Corporation would submit that encroachments are identified and eviction notices were issued to the encroachers. In view of the pendency of the Writ Petitions, the Commissioner Corporation has not proceeded further.

4. The learned counsel for the writ petitioner in W.P.No.26578 of 2013, Mr.N.Manokaran would submit that the notice issued under Section 258(4) and 441 of the Coimbatore City Municipal Corporation Act, 1981 is untenable. Without providing any opportunity to the writ petitioner in W.P.No.26578 of 2013, Mr.C.Arulsamy, eviction notice was issued and therefore, the petitioner has filed the Writ Petition. A Civil Suit has been instituted in O.S.No.306 of 2003 before the II Additional District Munsif Court, Coimbatore to declare the subject property as O.S.R land as per the approved lay out plan. Writ petitioner in W.P.No.26578 of 2013/ Mr.C.Arulsamy has filed a Suit in O.S.No.262 of 2002 before the II Additional District Munsif Court, Coimbatore for bare injunction. It is made clear that mere pendency of a Civil Suit is not a bar for the



Commissioner, Coimbatore Corporation to invoke the provisions of the Coimbatore City Municipal Corporation Act for evicting the encroachers.

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Special enactment confer powers to the authorities to deal with the public properties. Persons claiming title have to approach the competent Civil Court of law. However, mere pendency of a Civil Suit is not a bar for invoking the provisions of the Act to evict the encroachers from the public land. Public property right will prevail over the private property of the right of individuals. In order to protect the public properties, special Acts are enacted and the powers conferred are independent and can be exercised for the purpose of removal of encroachments and to protect the public property. Thus, we made it clear that pendency of a Civil Suit is not a bar for the Commissioner Corporation to invoke the provisions of the Act and remove the encroachments by following the procedures, as contemplated under the Act and Rules.

5. The building plan approvals/layouts are granted under the provisions of the Statutes and Rules. Once such permission is accorded and in that permission, if a specified area is earmarked for public purpose, even the planning authorities shall not have power to exempt that land for being



put to use for any other purpose. In that context, the State Government also cannot have any jurisdiction to alter the conditions imposed in the layout, whereby certain lands are earmarked as open space to be used for public purposes.

6. Very recently, the Hon'ble Supreme Court of India in the case of *Vasanth Apartment's owner -vs- Gopinath and others* reported in **2023 SCC Online SC 137** case has elaborately considered the scope of the Tamil Nadu Town and Country Planning Act, 1971 wherein the Apex Court re-emphasised that the O.S.R lands and the public purpose lands approved under the layout are to be protected and the said lands cannot be utilized or converted for any other purpose other than purpose for which the approval was granted under the Tamil Nadu Town and Country Planning Act, 1971.

7. The learned Single Judge of this Court in the case of *M.Krishnasamy -vs- Member Secretary of Chennai Metropolitan Development Authority* reported in **[2013 1 CTC 18]** dealt with the O.S.R lands and to preserve the same for public purposes and for the purpose for which it was earmarked in the approved layout. The relevant paragraphs are



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extracted hereunder:-

29. *Thereafter, copies of the Draft Second Master Plan were made available to the public and also hosted in the official website of the First Respondent. Subsequently public consultations were conducted in April and July 2007 and a two day workshop was also held in August 2007. Thereafter, the draft was finalised and submitted to the Government. Finally, the Second Master Plan for Chennai Metropolitan Area was approved by the Government of Tamil Nadu in G.O.Ms. No. 190, Housing and Urban Development, dated 2.9.2008 and it was notified in the Gazette on the same day. As part of the Second Master Plan, a set of Regulations known as “Development Regulations” were issued and they came into force on 2.9.2008.*

30. *Regulation 26 of the Development Regulations 2008, contains stipulations regarding “Special Buildings”. A Special Building is defined in Regulation 2(40) to mean (i) a residential or commercial building with more than two floors, or (ii) a residential building with more than 6 dwelling units or (iii) a commercial building exceeding a floor area of 300 sq.meters.*

31. *Regulation 27 deals with “Group Developments”. It covers accommodation for residential or commercial or a combination of such activities housed in two or more blocks of buildings in a particular site, irrespective of whether these structures are interconnected or not. Similarly, Regulation 28 contains Special Rules for multi-storeyed buildings.*

32. *Regulation 29 deals with Layout and Sub-*



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division Regulations. This Regulation 29 of the Development Regulations (of 2008) actually corresponds to Rule 19 of the erstwhile Development Control Rules. Sub-Regulation (6) of Regulation 29 contains a Table similar to the one prescribed under the erstwhile Rule 19 of the Development Control Rules. Sub-Regulation (6) of Regulation 29 and the Table contained thereunder, read as follows:

“(6) Reservation of land for recreational purposes in a layout or sub-division for residential, commercial, industrial or combination of such uses shall be as follows:

<i>Extent of layout (1)</i>	<i>Reservation (2)</i>
<i>For the first 3,000 square meters</i>	<i>Nil</i>
<i>Between 3,000 square meters and 10,000 square meters</i>	<i>10 percent of the area excluding roads or in the alternative he shall pay the market value of equivalent land and excluding the first 3,000 square meters as per the valuation of the Registration Department. “No such area reserved shall measures less than 100 square meters with a minimum dimension of 10 meters”.</i>
<i>Above 10,000 square meters</i>	<i>10 percent of the area excluding roads. It is obligatory to make the reservation and no equivalent land cost in lieu of the same is acceptable.</i>

33. Regulation 27 which deals with Group Developments, also contains a stipulation under Sub-Regulation (10) that the reservation of land for



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Community Recreational Purposes such as park or playground, required in these Regulations, shall be as given in the Annexure XX. Annexure XX contains a Table which is as follows:

“Annexure XX:

Reservation of land for Community Recreational Purposes in cases of Special Buildings/Group Developments/Multi-storeyed Building Developments:

(1) The reservation of land for Community Recreational Purposes such as park/playground shall be as given below at ground level in a shape and location abutting a public road to be specified by Chennai Metropolitan Development Authority:

<i>Extent of site</i>	<i>Reservation</i>
<i>(a) For the first 3,000 square meters</i>	<i>Nil</i>
<i>(b) Between 3,000 square meters and 10,000 square meters</i>	<i>10 percent of the area excluding roads or in the alternative he shall pay the market value of the equivalent land excluding the first 3,000 square meters as per the valuation of the Registration Department, only where it is not possible to provide open space due to physical constraints. No such area reserved shall measure less than 100 square meters with a minimum dimension of 10 meters.</i> <i>The space so reserved shall be transferred to the Authority or to the Local body designated by it, free of cost, through a registered gift deed. In cases of residential developments, the Authority or the local body concerned may permit the Residents Association or Flat Owners'</i>



	<i>Association for maintaining such reserved space as park/playground and in such cases where the Authority decides to permit the Resident's Association or Flat Owners' Association for maintaining it, direct access from a public road for the reserved area may not be required, and right of access to the Authority or the local body concerned through set back space shall be transferred through a registered Gift Deed along with the reserved space.</i>
<i>(c) Above 10,000 square meters</i>	<i>Ten percent of the area excluding road shall be reserved and this space shall be transferred to the Authority or to the local body designated by it, free of cost, through a gift deed. It is obligatory to reserve the 10 percent of the site area and no charge can be accepted in lieu in case of the new developments or redevelopments.</i>

34. *A careful survey of (i) the provisions that existed from 1975 till 2008 under the First Master Plan and the Development Control Rules, and (ii) the provisions that exist with effect from 2008 under the Second Master Plan and the Development Regulations, would show that layouts had always been classified into 3 categories. They are, (i) those whose total land extent is upto 3,000 sq.meters, (ii) those whose total land extent is between 3,000 sq.meters*



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and 10,000 sq.meters, and (iii) those whose total land extent is above 10,000 sq.meters.

35. Consistently, the Development Control Rules which were in force till 2008 and the Development Regulations which are in force from 2008, have exempted layouts whose total extent of land is upto 3,000 sq.meters, from the obligation to reserve any open space. Similarly, the Rules have consistently given two options, either to hand over 10% of the area excluding roads or to pay the market value of equivalent land, in so far as layouts whose total extent of land is between 3,000 sq.meters and 10,000 sq.meters.

36. But, in respect of layouts whose total extent of land is above 10,000 sq.meters, the Rules have always insisted upon handing over of Open Space Reservation land to the extent of 10% of the total area. In respect of layouts whose total extent is above 10,000 sq.meters, it was made clear by the successive Government Orders that no charges in lieu of 10% of the area can be accepted. This is borne out by—

- (1) G.O.Ms. No. 743, Housing and Urban Development, dated 10.5.1979,
- (2) G.O.Ms. No. 940, Housing and Urban Development, dated 8.10.1982,
- (3) the Development Control Rules as of September, 2004 (hosted in the official website) and the Table contained therein under Rules 19(a) & 19(b), and
- (4) Regulation 29 and Annexure XX under the Development Regulations of the year 2008.

37. The above discussion containing the entire history of development of the legal obligations imposed upon developers of layouts under the



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Tamil Nadu Town and Country Planning Act, would show two things, namely, (i) that in respect of layouts where the total extent of land is above 10,000 sq.meters, it is not permissible to collect charges in lieu of 10% of the Open Space Reservation land; and (ii) that in respect of layouts where the total extent of land is between 3,000 sq.meters and 10,000 sq.meters, there was an option either to leave Open Space Reservation land or to pay charges in lieu thereof.

38. *In so far as the case on hand is concerned, the First Respondent-CMDA has taken a categorical stand that the land belonging to the Petitioner is in a layout whose original extent of site was above 10,000 sq.meters. Therefore, the obligation of the original promoter was to carve out Open Space Reservation land to the extent of 10% of the total area. No charges could be or could have been accepted in lieu thereof.*

39. *The fact that no Deed of Conveyance was executed in respect of OSR land already handed over to the Corporation, cannot really stand in the way, since the law is well settled by the Supreme Court in the decisions which I have referred to in paragraph 13 above. Therefore, I am of the considered view that the demand for OSR Charges from the Petitioner, on the ground that OSR land was not conveyed, cannot be sustained for 3 reasons namely—*

(i) that 10% of the area had actually been handed over to the local body about 36 years ago;

(ii) that no charges in lieu of OSR land can be accepted if the parent site of the layout is more than 10,000 sq.meters; and



(iii) that in any case, the legitimacy of the demand for conveying of the OSR land by a registered deed is doubted by the Supreme Court in Pt. Chet Ram and other cases. Therefore, the impugned demand is liable to be set aside and the Petitioner is entitled to succeed. Hence, this Writ Petition is allowed and the impugned order is set aside. There will be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.”

8. Even in respect of the public purpose lands, which were not gifted by executing a gift deed by the owners, the said lands are to be made available for public usage. Therefore, non-execution of a gift deed cannot be a ground to convert the land against the planning permission granted by the competent authorities.

9. At the outset, the planning permission/layout approval granted under the provisions of the Act is to be followed for all the purposes and any conversion, encroachments, misuse or otherwise are to be dealt with in accordance with law and all structures, constructions, encroachments are to be removed by following the procedures. Encouraging such unauthorized constructions, conversions or deviations would result in an anomalous situation, where greedy men will be again and again tempted to commit such



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illegality, which is detrimental to the environment and the very purpose and object of the scheme of Town Planning will be defeated. Therefore, scrupulous adherence of the planning permission by the competent authorities are imminent and deviations are to be dealt with in accordance with law. Unless actions are taken, there is no scope for peaceful living for future generation. We are duty bound to ensure that the environmental aspects are protected for the well-being of the people of that locality and peaceful life being an integral part under Article 21, such rights are to be protected by the authorities by following the provisions of the Act and Rules.

10. In view of the principles discussed above, the Commissioner, Coimbatore City Municipal Corporation is directed to scrutinize the files of the writ petitioners/owners/persons claiming right/persons claiming possession individually and identify the encroachments, illegalities, violations etc., if any and accordingly, issue fresh show-cause notice to all the persons and thereafter, on receipt of objections, if any and proceed with the eviction of encroachers, demolition of unauthorized constructions, removal of obstructions etc., in the manner contemplated under the provisions of the Statutes and Rules in force. It is made clear that all such



encroachments, illegalities and violations are to be removed by scrupulously following the procedures and by affording opportunity to the parties. The said exercise is directed to be completed within a period of twelve weeks from the date of receipt of a copy of this order. In respect of places where the Coimbatore City Municipal Corporation Act is inapplicable, the report is to be submitted to the jurisdictional Tahsildar for the purpose of evicting the encroachments, if any, by invoking the provisions of the Tamil Nadu Land Encroachments Act, 1905 or the appropriate Statutes and Rules in force.

11. As far as Writ Petitions in W.P.Nos.3873, 24934 and 24935 of 2017 and 26578 of 2013 are concerned, though facts are distinguishable, the Commissioner City Municipal Corporation has to scrutinize the documents and take appropriate decision for removal of illegalities.

12. Accordingly, all the Writ Petitions are disposed of. Consequently, the connected Miscellaneous Petitions are closed. No costs.

(S.M.S.,J.) (K.R.S.,J.)
26.02.2024



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Index : Yes

Speaking order

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To

1. The District of Town and Country Planning,
Anna Salai, Chennai – 600 002.
2. The District Collector,
Coimbatore.
3. The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore.
4. The Member Secretary,
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Sivananda Colony, Tata Batch, Coimbatore.



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